

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 07-0532

FLORA L. KERNEA, APPELLANT,

v.

ERIC K. SHINSEKI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before GREENE, *Chief Judge*, and DAVIS and SCHOELEN, *Judges*.

ORDER

In an August 24, 2009, joint motion for remand (JMR), the parties propose that the Court set aside the February 1, 2007, Board of Veterans' Appeals (Board) decision on appeal. They contend that the Board provided an inadequate statement of reasons and bases for its determinations that (1) the appellant was not entitled to enhanced DIC under a theory of "hypothetical entitlement"; and (2) the appellant failed to file a claim alleging clear and unmistakable error in a prior rating decision. The Court agrees that the assertions of error are supported by the record. The motion will be granted, the Board decision set aside, and the matter remanded for further adjudication. On remand, the appellant is permitted to submit additional evidence and argument to support her claim. *See Kay v. Principi*, 16 Vet.App. 529 (2002). Additionally, on remand, the Board must ensure compliance with terms of the JMR or explain why such terms will not be fulfilled. *See Forcier v. Nicholson*, 19 Vet.App. 414, 426 (2006). The Secretary is expected to provide expeditious treatment pursuant to 38 U.S.C. § 7112.

On consideration of the foregoing, it is

ORDERED that the Secretary will include a copy of the parties' motion and a copy of this order in the claims file. It is further

ORDERED that the joint motion for remand is GRANTED. The February 1, 2007, Board decision is SET ASIDE and the matter is REMANDED for readjudication in accordance with the bases for remand included in the joint motion. Under Rule 41(b) of the Court's Rules of Practice and Procedure, this order is the mandate of the Court.

DATED: August 27, 2009

PER CURIAM.