

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 04-0702

RONALD J. DOMINO,

APPELLANT,

v.

R. JAMES NICHOLSON,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENE, *Chief Judge*, and KASOLD, HAGEL, MOORMAN,
LANCE, DAVIS, and SCHOELEN, *Judges*.

ORDER

Pending before the Court is the appeal of a February 10, 2004, Board of Veterans' Appeals (Board) decision denying the appellant entitlement to service connection for a spastic stomach, claimed as ulcers. The Board denied the appellant's claim based upon its finding that there was clear and unmistakable evidence of record showing that the appellant's condition "preexisted service and was not permanently aggravated therein." Record (R.) at 2. The appellant argues that the Board decision on appeal should be reversed because the Board erred in determining that there was clear and unmistakable evidence of record to rebut the presumption of soundness. The Secretary concedes that remand, but not reversal, is warranted because the Board did not provide an adequate statement of reasons or bases to support its decision and because the medical opinion of record on which the Board relied is not sufficient to rebut the presumption of soundness.

The Court requires that the parties file supplemental memoranda of law, not to exceed 10 pages in length, addressing the appropriate remedy in this case. Specifically, the parties are directed to address VA's ability to develop additional evidence to meet its burden in rebutting the presumption of soundness, especially in light of the Board's finding in this case that the VA regional office has "fully developed all evidence necessary for the equitable disposition of this claim" (R. at 2) and the Secretary's apparent concession that the evidence presently of record is not sufficient to rebut the presumption of soundness. The parties are further directed to discuss or distinguish, as appropriate, specific statutory, regulatory, and other authorities in support of their arguments including, but not limited to, *Adams v. Principi*, 256 F.3d 1318, 1321-22 (Fed. Cir. 2001) (and authorities cited therein); *Mariano v. Principi*, 17 Vet.App. 305, 312 (2003); *Meister v. Derwinski*, 1 Vet.App. 472, 473 (1991) (per curiam); and 38 C.F.R. § 3.304(c) (2007).

Furthermore, the matter will be set for oral argument on September 27, 2007, at 10:00 a.m. Therefore, the Court does not anticipate granting any motions for extensions of time to file the briefs required by this order, absent extraordinary circumstances.

Upon consideration of the foregoing, it is

ORDERED that, not later than 14 days after the date of this order, the parties file supplemental memoranda of law, not to exceed 10 pages, addressing the above issues. It is further

ORDERED that this matter is set for oral argument on Thursday, September 27, 2007, at 10:00 a.m. in the Courtroom at Suite 900, 625 Indiana Avenue, NW, Washington, DC 20004. Counsel for the parties will be allotted 30 minutes each for presentation of argument.

DATED: August 22, 2007

PER CURIAM.