

DESIGNATED FOR PUBLICATION

Note: Pursuant to 38 U.S.C. § 4067(d) (1988),
this decision will become the decision of the
Court thirty days from the date hereof.

UNITED STATES COURT OF VETERANS APPEALS

No. 89-75

Charles W. Swan, Appellant,

v.

Edward J. Derwinski,
Secretary of Veterans Affairs, Appellee.

Before NEBEKER, *Chief Judge*, and KRAMER and FARLEY, *Associate Judges*

ORDER

Upon further consideration of the Secretary's motion for remand, the appellant's opposition to that motion, and upon consideration of the supplemental memoranda filed in response to the Court's order dated March 13, 1991, addressing the question whether the failure by the Regional Office to take into account 38 C.F.R. § 3.343(a) (1990) renders its decision, as well as the Board of Veterans' Appeals' (Board), void *ab initio* as not in accordance with law, thus requiring retrospective reinstatement of appellant's 100 percent rating to February 1, 1989, and it appearing that the parties concur in the affirmative, it is, therefore,

ORDERED that the Secretary's motion to remand, which has been held in abeyance, is denied. It is, however, a matter of the Secretary's discretion whether and when he desires to undertake a new review of the veteran's disability status. It is

FURTHER ORDERED that the November 8, 1988, rating decision of the Regional Office and the September 26, 1989, decision of the Board are reversed and the case is remanded with instructions that appellant's former disability rating of 100 percent and the corresponding benefits shall be retrospectively reinstated to February 1, 1989, the effective date of the reduction.

DATED: April 12, 1991

PER CURIAM.

Copies to:

Rick Surratt
Disabled American Veterans
1625 K Street, N.W., Suite 501
Washington, D.C. 20006
Representative for Appellant

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420