

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 01-0623

ELLIS C. SMITH, APPELLANT,

v.

R. JAMES NICHOLSON,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KASOLD, LANCE, and SCHOELEN, *Judges*.

ORDER

Veteran Ellis C. Smith appeals through counsel a December 12, 2000, decision of the Board of Veterans' Appeals (Board) that, *inter alia*, granted a disability rating of 10% (but no higher) effective from June 10, 1999, for his service-connected tinnitus pursuant to 38 C.F.R. § 4.87, Diagnostic Code (DC) 6260 (2002), but denied a compensable rating prior to that date. This Court (1) vacated the Board decision to the extent that it denied a compensable rating for tinnitus prior to June 10, 1999, because the Board did not provide an adequate statement of reasons or bases for its interpretation of the word "persistent" in the pre-1999 version of DC 6260, and (2) reversed the Board's decision to the extent that it denied two separate 10% ratings for bilateral tinnitus under DC 6260. *See Smith v. Nicholson*, 19 Vet.App. 63 (2005). The Secretary appealed.

On appeal, the Secretary argued only that the Court erred in its holding that the pre-June 13, 2003, versions of DC 6260 required the assignment of dual ratings for service-connected bilateral tinnitus. The U.S. Court of Appeals for the Federal Circuit reversed that holding. *See Smith v. Nicholson*, 451 F.3d 1344, 1350-51 (Fed. Cir. 2006), *cert. denied*, __ U.S. __, 75 U.S.L.W. 3385 (Jan. 22, 2007).

Accordingly, that portion of the December 12, 2000, decision of the Board denying a disability rating greater than 10% for Mr. Smith's bilateral tinnitus is AFFIRMED. Because the Board did not provide an adequate statement of reasons or bases for its interpretation of the word "persistent" in the pre-1999 version of DC 6260, that part of the Board decision that denied a compensable rating for tinnitus prior to June 10, 1999, is SET ASIDE, and the matter is REMANDED for further adjudication consistent with the Court's April 5, 2005, opinion. *See Smith*, 19 Vet.App. at 71-74.

So ordered.

DATED: February 8, 2007

PER CURIAM.