BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: [redacted] [redacted]

[redacted]

Dear Appellant:

The Board of Veterans' Appeals (Board) has made a decision in your appeal, and a copy is enclosed.

If your decision contains a	*What happens next*
Grant	The Department of Veterans Affairs (VA) will be contacting you regarding the next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached to this decision, for additional options.
Remand	Additional development is needed. VA will be contacting you regarding the next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached to this decision, for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at http://www.vets.gov.

Sincerely yours,

[redacted]

Enclosures (1)
CC: [redacted] Attorney

BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

IN THE APPEAL OF
[redacted]
REPRESENTED BY
[redacted] **Attorney**

[redacted]
Docket No. [redacted]

DATE: [redacted]

ORDER

New and material evidence has been received to reopen the claim of entitlement to service connection for headaches.

New and material evidence has been received to reopen the claim of entitlement to service connection for a neck disability.

Entitlement to service connection for a neck disability is granted.

Entitlement to service connection for bilateral radiculopathy of the upper extremities as secondary to service-connected neck disability is granted.

Entitlement to service connection for obstructive sleep apnea as secondary to service-connected low back disability is granted.

Entitlement to service connection for deep venous thrombosis (DVT) as secondary to service-connected back disability is granted.

Entitlement to service connection for a convulsive tic as secondary to service-connected back disability is granted.

Entitlement to a total disability rating based on individual unemployability (TDIU) is granted.

Entitlement to special monthly compensation (SMC) at the housebound rate under 38 U.S.C. § 1114 (s) is granted.

IN THE APPEAL OF [redacted]

[redacted]
Docket No. [redacted]

REMANDED

Entitlement to service connection for migraine headaches, to include as secondary to service-connected neck and/or back disabilities, is remanded.

Entitlement to service connection for bilateral sciatica as secondary to service-connected back disability is remanded.

FINDINGS OF FACT

1. A November 2001 rating decision denied service connection for migraine and tension headaches and a cervical strain; the Veteran did not appeal that decision, and new and material evidence was not received within one year of notice of its issuance.

2. Evidence received more than one year since the November 2001 rating decision is neither cumulative nor redundant of evidence already of record, and raises a reasonable possibility of substantiating the Veteran's claims for entitlement to service connection for migraine headaches and a neck disability.

3. The Veteran's neck disability is related to active duty service.

4. The Veteran's bilateral radiculopathy of the upper extremities is proximately due to service-connected neck disability.

5. The Veteran's obstructive sleep apnea is proximately due to service-connected back disability.

6. The Veteran's bilateral leg DVT is proximately due to service-connected back disability.

7. The Veteran's convulsive tic is proximately due to service-connected back disability.

8. The Veteran is unable to secure or follow a substantially gainful occupation due to service-connected back disability.

9. The Veteran has additional service-connected disabilities apart from his back disability independently ratable at 60 percent or more disabling.

CONCLUSIONS OF LAW

1. The November 2001 rating decision denying the claims of entitlement to service connection for migraine and tension headaches and a cervical strain is final. 38 U.S.C. § 7105 (2012); 38 C.F.R. §§ 20.302, 20.1103 (2017).

2. New and material evidence has been received to reopen the claims of entitlement to service connection for migraine headaches and a neck disability. 38 U.S.C. § 5108 (2012); 38 C.F.R. § 3.156(a) (2017).

3. The criteria for entitlement to service connection for a neck disability have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.303 (2017).

4. The criteria for entitlement to service connection for bilateral radiculopathy of the upper extremities as secondary to service-connected neck disability have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.310 (2017).

5. The criteria for entitlement to service connection for obstructive sleep apnea as secondary to service-connected back disability have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.310 (2017).

6. The criteria for entitlement to service connection for bilateral leg DVT as secondary to service-connected back disability have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.310 (2017).

7. The criteria for entitlement to service connection for convulsive tic as secondary to service-connected back disability have been met. 38 U.S.C. § 1110 (2012); 38 C.F.R. § 3.310 (2017).

8. The criteria for entitlement to a TDIU have been met. 38 U.S.C. §§ 1155, 5107 (2012); 38 C.F.R. §§ 3.340, 3.341, 4.16, 4.19 (2017).

9. The criteria for SMC at the housebound rate are met. 38 U.S.C. § 1114 (s)(1) (2012); 38 C.F.R. § 3.350 (2017).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty in the United States Air Force from September 1972 to February 1974.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a March 2011 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

New and Material Evidence

1. New and material evidence has been received to reopen the claim of entitlement to service connection for migraine headaches.

2. New and material evidence has been received to reopen the claim of entitlement to service connection for a neck disability.

A decision of the RO becomes final and is not subject to revision on the same factual basis unless a notice of disagreement is filed within one year of the notice of the decision, or new and material evidence is received during the appeal period after the decision. 38 U.S.C. § 7105; 38 C.F.R. §§ 3.156(b), 20.302, 20.1103. If a claim of entitlement to service connection has been previously denied and that decision became final, the claim can be reopened and reconsidered only if new and material evidence is presented with respect to that claim. 38 U.S.C. § 5108; *see Manio v. Derwinski*, 1 Vet. App. 140, 145 (1991).

New evidence is defined as existing evidence not previously submitted to agency decision-makers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact

necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. 38 C.F.R. § 3.156(a).

The RO denied the Veteran's claims for service connection for migraine headaches and a neck disability in a November 2001 rating decision based on a lack of evidence showing a relationship between the Veteran's service-connected back disability and migraine headaches or neck disability. The Veteran was informed of this decision in December 2001, he did not appeal the decision and new and material evidence was not received within one year of notice of the decision. Thus, the November 2001 rating decision became final. *See* 38 U.S.C. § 7105; 38 C.F.R. §§ 3.156(b), 20.1103; *Buie v. Shinseki*, 24 Vet. App. 242, 252 (2010).

Evidence received more than one year since the most recent final November 2001 rating decision constitutes new and material evidence as to the Veteran's migraine headaches and neck claims. Specifically, in the Veteran's November 2009 claims to reopen he asserts his migraine headaches and pain in his cervical spine began during service after his back injury, in his March 2010 statement he indicates that pain medications for his back cause migraines, and in a March 2010 private opinion chiropractor J. R. suggests the Veteran's headaches may be related to in-service injuries to his neck and back and that his neck disability is due to an in-service injury to his thoracic and cervical spine. This evidence is new as it was not previously considered by the RO. The evidence is also material, as it is not cumulative or duplicative of evidence previously considered and it raises a reasonable possibility of substantiating the claims. As such, the Veteran has presented new and material evidence to reopen the previously denied claims of entitlement to service connection for migraine headaches and a neck disability and the claims are reopened.

Service Connection

Service connection may be established for a disability resulting from injury or disease incurred in or aggravated during active service. 38 U.S.C. §§ 1110. Service connection may also be granted for any disease diagnosed after discharge,

when all the evidence, including that pertinent to service, establishes that the disease was incurred in- service. 38 C.F.R. § 3.303(d).

Generally, to establish service connection the evidence must show: (1) the existence of a present disability; (2) in- service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred in or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004).

Service connection may also be established on a secondary basis for a disability that is proximately due to or the result of a service-connected disease or injury or aggravated by a service-connected disease or injury. 38 C.F.R. § 3.310. Secondary service connection generally requires (1) a current disability; (2) a service-connected disability; and (3) a nexus between the service-connected disability and the current disability. *See Wallin v. West*, 11 Vet. App. 509, 512.

3. Entitlement to service connection for a neck disability, to include as secondary to service-connected back disability, is granted.

4. Entitlement to service connection for bilateral radiculopathy of the upper extremities as secondary to service-connected neck disability is granted.

The Veteran seeks service connection for his neck disability based on a direct or secondary theory of entitlement. Specifically, he asserts that following his in-service back injury pain began in his lumbar, thoracic, and cervical spine areas. *See* November 2009 Informal Claim and March 2010 Veteran Statements. As the below discussion is favorable as to a direct service connection, no other theories of entitlement will be addressed.

The Veteran has current diagnoses of cervical spine degenerative joint disease, chronic cervical spine strain, arthritis, and spinal canal stenosis. *See* March 2010 private opinion and August 2010 VA examination report. Thus, element one is met.

Regarding element two, in-service incurrence of a disease or injury, the Veteran's service treatment records (STRs) note his complaints of headaches, back, occipital

and posterior cervical pain following his in-service back injury. *See* October 1973 and January 1974 STRs. Thus, element two is also met.

As to the final element, nexus, the only competent opinion of record substantiates the claim. Specifically, in his March 2010 private opinion, chiropractor J. R. opines that it is more likely than not that the Veteran's neck disability is caused by his military service. In support of his opinion, he reasons that the Veteran's in-service lumbar spine injury due to lifting would also result in injury to his thoracic and cervical spine segments because of the sudden and forceful nature of such a lifting incident, which is similar to a "whiplash" injury. He highlights the notations in the Veteran's STRs which note complaints of symptoms (occipital/ posterior cervical pain and headaches) that are consistent with injury to not only his lumbar spine, but also his thoracic and cervical spine. Thus, J. R. concludes that the Veteran's in-service lifting injury caused his current neck disability. The Board finds that this opinion tends to demonstrate that there is a relationship between the Veteran's in-service lifting injury and his current neck disability as. J. R. thoroughly reviewed the claims file, took the Veteran's lay statements into consideration, and provided an understandable and rational basis for his opinion, which relied on an accurate history. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 302 (2008). Further, the Board finds nothing in the record to doubt the qualifications of J. R., who has a long-standing history of providing treatment to the Veteran, and thus finds this medical opinion to be competent. There is no competent evidence to the contrary in relation to direct service connection.

Lastly, J. R. stated the Veteran has "mild to moderate radiculopathy in both upper extremities caused by mild to moderate cervical spinal stenosis." *See also* January 2011 VA examination report (relating upper extremity radiculopathy to the Veteran's neck disability).

Accordingly, service connection for a neck disability and service connection for bilateral radiculopathy of the upper extremities as secondary to service-connected neck disability are warranted. 38 U.S.C. § 1110; 38 C.F.R. §§ 3.303, 3.310.

5. Entitlement to service connection for obstructive sleep apnea as secondary to service-connected back disability is granted.

The Veteran seeks service connection for his obstructive sleep apnea due to his service-connected back disability. *See* October 2009 Informal Claim.

The Veteran has a current diagnosis for obstructive sleep apnea. *See* December 2009 private sleep study report. Additionally, he is service-connected for chronic lumbar strain with degenerative disc disease. Thus, elements one and two are met.

The crux of the secondary service connection claim therefore rests on element three, whether there is a relationship, or nexus, between obstructive sleep apnea and service-connected chronic lumbar strain with degenerative disc disease. Here, the Board finds that the only competent opinions of record addressing this relationship, that of private physicians Dr. P. P. and Dr. C. A. B., substantiates the claim. Specifically, in his December 2009 opinion, Dr. P. P. opined that it is more likely than not that the Veteran's obstructive sleep apnea is caused and aggravated by his service-connected back disability. In support of his opinion, he reasoned that Veteran struggles with excess body weight, sometimes becoming borderline obese, because pain and stiffness caused by his chronic lumbar strain often prevents him from getting proper exercise or developing healthy sleeping habits. He noted that abdominal and upper body (neck) fat is the most significant risk factor for obstructive sleep apnea, which results in reduced pharyngeal lumen size (due to fatty tissue within the airway or its lateral walls), a decrease in upper airway muscle protective force (due to fatty deposits in the muscles), as well as reduced upper airway size secondary to effects of the large abdomen on both chest wall and tracheal traction (in other words the collapse of his upper airway). Further, he noted the Veteran must lie on his back to find the least painful position to sleep, and that sleep apneas tend to be worse when sleeping in the supine position, as gravity causes the tongue to fall back over the airway and/or for the airway muscles, tonsils, and other tissue to collapse, thus blocking the airway. Lastly, he highlighted medications that the Veteran uses for chronic low back pain are noted to cause and/or aggravate obstructive sleep apnea, including Gabapentin (known side effects include apnea and snoring), Celestone (known side effects include abnormal fat deposits), and Depo/Medrol (known side effects include abnormal fat deposits and weight gain). Dr. P. P.'s opinion on the Veteran's

medications causing obstructive sleep apnea is further supported by Dr. C. A. B.'s March 2010 private opinion where he reached a similar conclusion. Thus, based on the Veteran's sleep study results from 2004 to 2009, his lay statements, and review of his private and VA treatment records, both private physicians concluded the Veteran's obstructive sleep apnea is due to or has been aggravated by his service-connected back disability. The Board finds that these opinions tend to substantiate a relationship between the Veteran's back disability and his obstructive sleep apnea, as both physicians provided an understandable and rationale bass for their opinions and relied on an accurate history. *See Nieves-Rodriguez*, 22 Vet. App. 295. For these reasons, the Board assigns these opinions high probative value. Since secondary service connection based on a proximate relationship is more favorable to the Veteran, the Board will grant service connection based on this theory of entitlement.

The Board recognizes that August 2010, January 2011, and June 2014 VA examiners ultimately reached a conclusion unfavorable to the Veteran's obstructive sleep apnea claim. However, the VA examiners failed to address the aggravation prong of secondary service connection, any effects of the Veteran's medications, or his lack of an ability to exercise due to his lumbar spine disability; thus all three opinions are inadequate. Accordingly, the Board assigns these negative opinions no probative value. *See Nieves*, 22 Vet. App. 295.

Accordingly, secondary service connection for obstructive sleep apnea as proximately due to service-connected back disability is warranted. 38 U.S.C. § 1110; 38 C.F.R. § 3.310.

6. Entitlement to service connection for bilateral leg DVT as secondary to service-connected back disability is granted.

The Veteran seeks service connection for DVT with multiple pulmonary emboli as secondary to his service-connected back disability. *See* November 2009 Informal Claim.

The Veteran has a current diagnosis of bilateral deep venous thrombosis. *See* February 2009 private treatment record. Additionally, he is service-connected for

chronic lumbar strain with degenerative disc disease. Thus, elements one and two are met.

As noted above, the crux of the secondary service connection claim therefore rests on element three, whether there is a relationship, or nexus, between bilateral leg DVT and service-connected chronic lumbar strain with degenerative disc disease. Here, the Board finds that the only competent opinions of record addressing this relationship, the February 2010 opinion by Dr. W. M. G. and the April 2010 opinion from Dr. C.I.P., substantiate the claim. Specifically, Dr. W. M. G. opined that it is at least as likely as not that the Veteran's bilateral DVT with pulmonary emboli (PE) is caused by or the result of his service-connected chronic lumbar strain with degenerative disc disease. In support of his opinion, Dr. W. M. G. stated that his chronic spine disorder often causes the Veteran to become sedentary for a long period of time during the day in addition to normal sleeping hours, and even more so during painful flare-ups. He noted that bed rest and sitting for extended periods of time are known causes of DVT. Additionally, he noted the Veteran takes several medications for his back disability that increase the likelihood of developing DVT/PEs including: Gabapentin 300mg (known side effects are dizziness, drowsiness, and sleep disorders which contribute to a sedentary lifestyle; DVT and PE are also specifically listed as side effects), Piroxicam 20 mg (known side effects are dizziness and drowsiness, which contribute to a sedentary lifestyle), and Tramadol HCL 50mg (known side effects are dizziness and drowsiness which contribute to a sedentary lifestyle). He also stated that over the years the Veteran has also received intramuscular injections of betamethasone sodium phosphate, betamethasone acetate, triamcinolone acetonide, and Depro Medol to treat pain in the lumbar spine area. He noted that known side effects of betamethasone and Depro Medol include DVT, which subsequently results in PE and that all the above mentioned steroid medications as well as Gabapentin are known to greatly reduce a patient's resistance to infections. Thus, he concluded based on review of the Veteran's entire claims file that his service-connected back disability caused his bilateral leg DVT with PE. Dr. C.I.P., a pulmonologist, provided a similar rationale in relating the Veteran's DVT to his service-connected lumbar spine disability. He noted that the Veteran had an appendectomy in January 2009, and that discharge instructions advised him to walk as much as possible to avoid developing DVT. However, given his chronic lumbar spine problems Dr. C.I.P. indicated the Veteran was unable to walk as

much as would have been optimal. Dr. C.I.P. ultimately opined that his sedentary behavior due to his lumbar spine disability, coupled with the side effects of medications used to treat his lumbar spine disability, led to his development of DVT.

The Board finds that these opinions tend to substantiate a relationship between the Veteran's back disability and his bilateral leg DVT, as Drs. W.M.G. and C.I.P. provided an understandable and rationale basis for their opinions and relied on an accurate history. *See Nieves-Rodriguez*, 22 Vet. App. 295. For these reasons, the Board assigns this opinion high probative value.

The Board recognizes that August 2010, January 2011, and June 2014 VA examiners ultimately reached a conclusion unfavorable to the Veteran's bilateral leg DVT claim, noting that the DVT was due to his recent appendectomy. However, as the VA examiners failed to address the aggravation prong of secondary service connection or any effects of the Veteran's medications or his lack of an ability to exercise or ambulate due to his lumbar spine disability, to include following his appendectomy, on his development of DVT, all three opinions are inadequate. Accordingly, the Board assigns these negative opinions no probative value. *See Nieves*, 22 Vet. App. 295.

Accordingly, secondary service connection for bilateral leg DVT is warranted. 38 U.S.C. § 1110; 38 C.F.R. § 3.310.

7. **Entitlement to service connection for a convulsive tic as secondary to service-connected back disability is granted.**

The Veteran seeks service connection for a convulsive tic as secondary to his service-connected back disability. *See* January 2010 Informal Claim.

The Veteran has a current diagnosis of periodic limb movement of sleep disorder (PLMD). *See* December 2009 sleep study, January 2010 private treatment record and March 2010 private opinion. Additionally, he is service-connected for chronic lumbar strain with degenerative disc disease. Thus, elements one and two are met.

As noted above, the crux of the secondary service connection claim therefore rests on element three, whether there is a relationship, or nexus, between PLMD and service-connected chronic lumbar strain with degenerative disc disease. Here, the Board finds that the only competent opinion of record addressing this relationship, the March 2010 private opinion by Dr. W. M. G., substantiates the claim. Specifically, Dr. W. M. G. opined that the Veteran's PLMD is more likely caused by or secondary to his service-connected chronic lumbar strain with degenerative disc disease. In support of his opinion, Dr. W. M. G. noted a combination of factors that led to his opinion including: reduced or prolonged limb immobility, such as that which occurs during periods of immobility during flare-ups of his lumbar spine pain and as a result of his pain medications he uses for lumbar spine pain; that PLMD is very likely to be secondary in part to his obstructive sleep apnea (which has been service-connected as secondary to his back disability); and since nerve injury is suspected to be a cause of PLMD, his moderate spinal canal stenosis noted at the L4-L5 level (undoubtedly a result of his lumbar spine disability) is logically a contributing factor. Thus, he concluded based on review of the Veteran's entire claims file and his current medical status that his service-connected back disability caused his PLMD. The Board finds that this opinion tends to substantiate a relationship between the Veteran's back disability and his convulsive tic as Dr. W. M. G. provided an understandable and rationale basis for his opinion and relied on an accurate history. *See Nieves-Rodriguez*, 22 Vet. App. 295. For these reasons, the Board assigns this opinion high probative value.

The Board recognizes that August 2010 and January 2011 VA examiners ultimately reached a conclusion unfavorable to the Veteran's convulsive tic claim. However, the VA examiners failed to address the Veteran's inactivity due to his lumbar spine disability, his now service-connected obstructive sleep apnea, or the aggravation prong of secondary service connection, thus both opinions are inadequate. Accordingly, the Board assigns these negative opinions no probative value. *See Nieves*, 22 Vet. App. 295.

Accordingly, secondary service connection for a PLMD is warranted. 38 U.S.C. § 1110; 38 C.F.R. § 3.310.

8. Entitlement to a TDIU is granted.

The Veteran maintains he is unemployable due to his service-connected chronic lumbar strain with degenerative disc disease and "related conditions." *See* November 2009 Veteran Statement and January 2010 VA Form 21-8940.

A TDIU may be assigned where the schedular rating is less than total if it is found that the Veteran is unable to secure or follow a substantially gainful occupation as a result of a single service-connected disability ratable at 60 percent or more, or as a result of two or more disabilities, provided at least one disability is ratable at 40 percent or more, and there is sufficient additional service-connected disabilities to bring the combined rating to 70 percent or more. 38 C.F.R §§ 3.340, 3.341, 4.16(a).

"Substantially gainful employment" is that employment "which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the veteran resides." *Moore v. Derwinski*, 1 Vet. App. 356, 358 (1991). "Marginal employment shall not be considered substantially gainful employment." 38 C.F.R. § 4.16(a).

The determination of whether a veteran is unable to secure or follow a substantially gainful occupation due to service-connected disabilities is a factual rather than medical question. *Geib v. Shinseki*, 733 F.3d 1350 (Fed. Cir. 2013). In determining whether unemployability exists, consideration may be given to the Veteran's level of education, special training, and previous work experience, but not to his age or to any impairment caused by nonservice-connected disabilities. 38 C.F.R. §§ 3.341, 4.16, 4.19.

The Veteran has a General Educational Development (GED) certificate with prior work in the engineering operations industry. He last worked full time in September 1999 as machine operator for General Electric Aircraft Engines. *See* January 2010 VA Form 21-8940.

The Veteran is service-connected for the following disabilities: depression rated as 70 percent disabling from October 28, 2009, and 50 percent disabling from January 21, 2011; chronic lumbar strain with degenerative disc disease rated as 10 percent

disabling from February 9, 1974, 40 percent disabling from October 25, 2000, 100 percent disabling from June 1, 2016, 40 percent disabling from October 1, 2016, and 20 percent disabling from May 23, 2017; infectious hepatitis rated as 10 percent disabling from February 9, 1974; left lower extremity radiculopathy rated as 10 percent disabling from May 23, 2017; right lower extremity radiculopathy rated as 10 percent from May 23, 2017; erectile dysfunction rated as noncompensable from October 28, 2009; posterior trunk scar of the lumbar spine rated as noncompensable from May 23, 2017; and now the above-cited service-connected disabilities that have not yet been rated. He thus meets the schedular criteria for a TDIU beginning October 28, 2009, (exclusive of the period of a temporary total rating from June 1, 2016, to October 1, 2016). *See* 38 C.F.R. § 4.16(a).

The evidence of record supports a TDIU. Specifically, the May 2017 VA examiner indicated the Veteran's ability to work would be impacted by his back disability due to work restrictions including avoidance of prolonged standing or sitting, lifting, carrying, bending, and twisting during episodes of pain. The examiner also noted that use of pain medication and muscle relaxants can affect his dexterity and alertness and that safety issues would need to be evaluated and considered. The August 2010 VA examiner also noted that pain due to the Veteran's back disability would impact his occupational tasks. Additionally, Social Security Administration records reveal that the Veteran is in receipt of disability benefits from March 2000 due to his back disability. Moreover, the Veteran has competently and credibly reported that when he was working his back pain became so severe he had to miss work or leave early without completing his shift. He also reported that his lower back pain destroyed his sleep hygiene and that as result he was unable to sleep without pain and would experience constant fatigue and daytime somnolence. Lastly, he reported that the side effects of his pain medications for his back disability caused him problems including frequent incapacitating migraines, numbness, and clumsiness in his hands. Thus, he maintains he was forced into medical retirement. *See* March 2010 Veteran Statement and August 2010 VA examination report. Based on the totality of the evidence, the Board finds that the Veteran is unable to secure or maintain a substantially gainful occupation due to his service-connected chronic lumbar strain with degenerative disc disease. Thus, affording the Veteran the benefit of the doubt, a TDIU is granted.

9. Entitlement to SMC is granted.

VA has a "well-established" duty to maximize a claimant's benefits. *See Buie v. Shinseki*, 24 Vet. App. 242, 250 (2011). This duty to maximize benefits requires VA to assess all of a claimant's disabilities to determine whether any combination of disabilities establishes entitlement to SMC under 38 U.S.C. § 1114. *See Bradley v. Peake*, 22 Vet. App. 280, 294 (2008).

Although the Veteran's back disability is not evaluated at 100 percent, for SMC purposes the above award of a TDIU based on his back disability satisfies the requirement of a "service-connected disability rated as total." *See Buie*, 24 Vet. App. 251; *Bradley*, 22 Vet. App. at 293. Thus, because the Veteran has a single service-connected disability rated as total (back disability) and additional service-connected disabilities independently rated at 60 percent (depression), the criteria for SMC under 38 U.S.C. § 1114 (s)(1) are met (in addition to the period for which he was assigned SMC from June 1, 2016, to October 1, 2016).

REASONS FOR REMAND

1. Entitlement to service connection for migraine headaches, to include as secondary to service-connected neck and/or back disability, is remanded.

The Veteran asserts that his headache disability was incurred during service following lifting injuries to his neck and back. Alternatively, he asserts that his service-connected back disability caused his migraine headaches including due to pain medications for his back and/or his now service-connected neck disability. *See* November 2009 Informal Claim, January 2010 and March 2010 Veteran Statements, and November 2011 Notice of Disagreement (NOD).

The Veteran was afforded VA examinations in August 2010 and January 2011. The VA examiners opined that the Veteran's headache disability was not proximately due to or caused by his service-connected back disability. However, both examiners failed to offer opinions on direct service connection, did not adequately address the causation prong of secondary service connection (failed to address back pain medications as a potential cause), and did not address the

aggravation prong of secondary service connection at all. Lastly, no opinions were rendered with respect to migraine headaches as secondary to now service-connected neck disability. The Board notes that a private March 2010 opinion stated that the Veteran's in-service spinal injury "may very likely have been the source of chest pain and shortness of breath noted in his records, after his spinal injury as well as triggering headaches and/or migraines." However, this language is speculative in nature and does not provide the Board with the information necessary to adjudicate on the merits of the claim. Thus, on remand an addendum opinion is required.

2. Entitlement to service connection for bilateral sciatica as secondary to service-connected back disability is remanded.

The Veteran asserts his bilateral sciatica is due to his service-connected back disability.

The Veteran was afforded VA examinations in August 2010 and January 2011. The August 2010 VA examiner opined that the Veteran's bilateral sciatica is at least as likely as not caused by or the result of service-connected back disability. However, the accompanying rationale is unclear and contradictory, thus this opinion is inadequate for rating purposes. The January 2011 VA examiner opined negatively on the claim, however she failed to address the aggravation prong of secondary service connection. Thus, on remand an addendum opinion is required.

Updated treatment records should also be secured on remand.

The matters are REMANDED for the following action:

1. Obtain any outstanding VA treatment records.

2. With any necessary assistance from the Veteran, obtain any relevant outstanding private treatment records.

3. Then obtain an addendum opinion from an examiner other than the August 2010 and January 2011 VA examiners. The claims folder should be made available and reviewed by the examiner. No additional

examination of the Veteran is necessary, unless the examiner determines otherwise.

The examiner should address the following:

(a) Please opine as to whether it is at least as likely as not (a 50 percent or greater probability) that diagnosed migraine headaches (*see* August 2010 VA examination report), had their onset in service or are otherwise related to service, to include as a result of lifting neck and back injuries in-service. In addressing this question, please comment on the Veteran's in-service complaints of headaches following his spinal injury. *See* October 1973 and January 1974 STRs.

(b) Please opine as to whether it is at least as likely as not (a 50 percent or greater probability) that diagnosed migraine headaches are (i) proximately due to or (ii) have been aggravated (worsened) by service-connected neck disability and/or service-connected back disability, to include as due to pain medications used to treat the same. The examiner should note that inquiries (i) and (ii) require two opinions: one on proximate causation and one on aggravation for both his neck and back disabilities.

(c) Please opine as to whether it is at least as likely as not (a 50 percent or greater probability) that diagnosed right radiculopathy with bilateral sciatica extending into the legs (*see* August 2010 VA examination report), is (i) proximately due to or (ii) has been aggravated (worsened) by service-connected back disability, to include as due to pain medications used to treat the same. The examiner should note that

inquiries (i) and (ii) require two opinions: one on proximate causation and one on aggravation.

A comprehensive rationale must be furnished for all opinions expressed.

If the examiner is unable to provide a medical opinion, then he or she should provide a rationale for that conclusion, to specifically include a statement as to whether there is any additional evidence that could enable an opinion to be provided, or whether the inability to provide the opinion is based on the limits of medical knowledge.

[redacted]
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD [redacted] Associate Counsel