No. 24-8218

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

[redacted]
Appellant

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS
Appellee.

APPEAL FROM FINAL DECISION OF THE BOARD OF VETERANS' APPEALS

OPENING BRIEF OF APPELLANT, [redacted]

VA DISABILITY GROUP, PLLC
HALEY SMITH, ATTORNEY
7837 S. Sprinkle Rd.
Portage, MI 49002
Phone: (844) 838-5297
Email: haley@vadisabilitygroup.com
Date: August 4, 2025

FOR THE AGENCY:
Mitchell W. O'Hara, Attorney
Department of Veterans Affairs OGC
810 Vermont Ave NW
Washington, D.C. 20420
mitchell.ohara@va.gov

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Issue #1

When a claimant withdraws an issue on appeal to the Board in writing, and there are multiple appeals with numerous issues on appeal, 38 C.F.R. § 20.205 requires that the withdrawal must specify that the appeal(s) are withdrawn in their entirety or must list the issues to be withdrawn. In October of 2019, [redacted] signed and returned an appeals satisfaction notice that only generally referred to withdrawal of "all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC)." The Board determined that this was a valid withdrawal as to two separate appeals, one containing seven issues and the other containing 18 issues. Was the Board's decision not to reinstate [redacted] September 2019 substantive appeals to the August 2015 and October 2016 rating decisions based on the ambiguous appeals satisfaction notice clearly erroneous?

Issue #2

When the Board has performed the necessary fact-finding and explicitly weighed the evidence of record, the Court should reverse when, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed. In its decision, the Board considered the applicable regulation, 38 C.F.R. § 20.205, discussed the appeals satisfaction notice filed in October of 2019, and found that the correspondence included [redacted] name and file number. Should the Court reverse the Board's clearly erroneous finding that the substantive appeals were validly withdrawn?

II. STATEMENT OF THE CASE

A. Jurisdictional Statement

The Court has exclusive jurisdiction to review Board decisions.[1]

[1] 38 U.S.C. § 7252.

B. Statement of the Case and Relevant Facts

[redacted] served honorably in the United States Army from 1983 to 2007.[2] Among other awards, he received the Army Superior Unit Award, Global War on Terrorism Service Medal, and Korea Defense Service Medal.[3]

In November of 2014, [redacted] requested increased ratings for bilateral knee osteoarthritis and bilateral corneal dystrophy, and sought service connection for the right fourth finger, a urinary tract infection, second degree burns, epididymitis, and bilateral shoulders.[4] In August of 2015, VA granted service connection for the right shoulder with a 20% rating, left shoulder with a 20% rating, hand sprains of the right fourth finger with a 0% rating, residual scar of the back with a 0% rating, and epididymitis with a 0% rating.[5] VA increased bilateral corneal dystrophy to 30% disabling, continued the 10% ratings for the knees, and denied service connection for a urinary tract infection.[6] Within one year of this rating decision, a timely notice of disagreement was filed.[7]

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[2] R. at 4355.
[3] *Id.*
[4] R. at 5181.
[5] R. at 4592-4621.
[6] R. at 4614.
[7] R. at 3984-3986.

[redacted] sought service connection for depression in May of 2016.[8] A couple of months later, he filed claims for sleep apnea, a sleep condition, headaches, tinnitus, hypertension, and a mental health condition.[9] VA issued a rating decision in October of 2016 granting service connection for depression with a 70% rating and continuing the 0% rating for hypertension.[10] VA denied service connection for headaches, sleep apnea, and tinnitus.[11] This decision was timely appealed.[12]

VA issued statements of the case in August of 2019.[13] On August 22, 2019, a VA employee spoke to [redacted] about his notice of disagreements and statements of the case.[14] [redacted] asked the VA employee to explain what the issuance of the statements of the case meant and about reconsideration of his claims.[15] He also told the VA employee that he could not work and received Social Security.[16]

In September of 2019, timely VA Form 9s were submitted in response to the August 2019 statements of the case.[17] One month later, an "Appeals

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[8] R. at 4557-4560.
[9] R. at 4422-4425.
[10] R. at 3889-3919.
[11] R. at 3914-3915.
[12] R. at 3879-3881.
[13] R. at 3368-3422; R. at 3308-3367.
[14] R. at 3307.
[15] *Id.*
[16] *Id.*
[17] R. at 3302-3303; R. at 3304-3306.

Satisfaction Notice" was signed and dated by [redacted] with his social security number.[18] The notice stated:

> I have received the recent correspondence regarding the decision to grant one or more of my issues on appeal. Based on the decision rendered, I am satisfied and wish to withdraw all remaining issues associated with this appeal. By signing and submitting this form, I am asking to withdraw all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC) and ask the regional office of jurisdiction to discontinue further development actions associated with this appeal. Please only return this document if you no longer want to pursue the remaining items contained in your Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC).[19]

On March 5, 2020, VA sent [redacted] a letter explaining it had discontinued action on his appeals for major depression, hypertension, headaches, sleep apnea, tinnitus, earlier effective dates for major depression and hypertension, right shoulder, left shoulder, hand sprain, scars, epididymitis, bilateral corneal dystrophy, bilateral knees, a urinary tract infection, and entitlement to earlier effective dates for the shoulders, hand sprain, scar, epididymitis, bilateral corneal dystrophy, knees, and a urinary tract infection.[20]

[redacted] representative submitted a letter in May of 2020 stating that [redacted] incorrectly signed and returned an appeals satisfaction letter

[18] R. at 3259.
[19] *Id*.
[20] R. at 3246-3249.

in October of 2019.[21] The representative also argued that VA failed to notify their office that [redacted] submitted the form to close out his claims.[22] In a statement in support of claim from the same month, [redacted] stated that he "did not understand that by signing and submitting an appeals satisfaction form in October 2019 that I would be withdrawing my claims. It was not my intention to withdraw these claims as I planned on continuing to pursue these benefits including individual unemployability."[23]

In February of 2021, VA sent a letter explaining that it could not accept the substantive appeals from September of 2019.[24] [redacted] filed a Board appeal.[25] His representative submitted a brief explaining that the appeals satisfaction notice was filed incorrectly and the representative was not notified regarding this notice.[26]

On July 10, 2024, the Board issued a decision.[27] The Board found that [redacted] validly withdrew his appeals to the August 2015 and October 2016 rating decisions.[28] The Board found that the withdrawal was in writing,

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[21] R. at 2237.
[22] *Id.*
[23] R. at 2020-2021.
[24] R. at 1928-1930.
[25] R. at 1917.
[26] R. at 1918.
[27] R. at 5-12.
[28] R. at 5.

included his name and social security number, and a clear statement that the appeal was withdrawn.[29] This appeal ensued.

III. SUMMARY OF THE ARGUMENT

When a claimant withdraws an issue on appeal to the Board in writing, and there are multiple appeals with numerous issues on appeal, 38 C.F.R. § 20.205 requires that the withdrawal must specify that the appeal(s) are withdrawn in their entirety or must list the issues to be withdrawn. In October of 2019, [redacted] signed an appeals satisfaction notice stating that he wished to withdraw "all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC)." At the time, he had appealed two separate rating decisions, each with multiple issues on appeal. He later explained that he did not understand what he was signing or that by signing this form, it would close out his appeals. The Board's decision not to reinstate [redacted] September 2019 substantive appeals to the August 2015 and October 2016 rating decision based on the ambiguous appeals satisfaction notice was clearly erroneous.

When the Board has performed the necessary fact-finding and explicitly weighed the evidence of record, the Court should reverse when, on the entire evidence, it is left with the definite and firm conviction that a mistake has been

[29] R. at 9-10.

committed. In its decision, the Board considered the applicable regulation, 38 C.F.R. § 20.205, discussed the appeals satisfaction notice filed in October of 2019, and found that the correspondence included [redacted] name and file number. The Court should reverse the Board's clearly erroneous finding that the substantive appeals were validly withdrawn.

IV. ARGUMENT

1. The Board clearly erred when it found that the substantive appeals of the August 2015 and October 2016 rating decisions were withdrawn.

Only an appellant, or an appellant's authorized representative, may withdraw an appeal.[30] The withdrawal must include the name of the veteran, the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn.[31] If the appeal involves multiple issues, the withdrawal **must** specify that the appeal is withdrawn in its entirety or list the issue(s) withdrawn from the appeal.[32] An appeal withdrawal is effective when received by the Board.[33] The withdrawal of an appeal must be "explicit and unambiguous."[34] When considering whether the submission is ambiguous, the Board should not lose track of the pro-claimant nature of the VA system.[35]

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[30] 38 C.F.R. § 20.205(a).
[31] 38 C.F.R. § 20.205(b)(1).
[32] *Id*. (emphasis added).
[33] 38 C.F.R. § 20.205(b)(3).
[34] *Hembree v. Wilkie*, 33 Vet. App. 1, 5 (2020).
[35] *Id*.

If a written withdrawal must be explicit to be valid, a claim cannot be withdrawn implicitly.[36]

The Board's determination that an appeal is withdrawn is a finding of fact that the Court reviews under the "clearly erroneous" standard of review.[37] The Board makes a clearly erroneous finding when a finding is not based on a plausible account of the record evidence.[38] Under this standard, the Court is not permitted to substitute its judgment for that of the Board on issues of material fact.[39]

As with any finding on a material issue of fact and law presented on the record, the Board must support its findings with an adequate statement of reasons or bases that enables the claimant to understand the precise bases for those determinations and facilitates review before the Court.[40] To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for evidence it finds persuasive or unpersuasive, and provide reasons for rejecting material evidence favorable to the claimant.[41]

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[36] *See Curtis v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 2188 (December 2021) (nonprecedential decision cited only for persuasive value).
[37] *Kalman v. Principi*, 18 Vet. App. 522, 524 (2004).
[38] *Id*.
[39] *Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990).
[40] 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet. App. at 56-57.
[41] *Caluza v. Brown*, 7 Vet. App. 498, 506 (1995).

a. Because [redacted] withdrawal did not specify which of his two substantive appeals he wished to withdraw, nor list the issues withdrawn, the Board clearly erred in failing to reinstate his substantive appeals.

In August of 2015, VA granted service connection for the right shoulder with a 20% rating, left shoulder with a 20% rating, hand sprains of the right fourth finger with a 0% rating, residual scar of the back with a 0% rating, and epididymitis with a 0% rating.[42] VA increased bilateral corneal dystrophy to 30% disabling, continued the 10% ratings for the knees, and denied service connection for urinary tract infection.[43] [redacted] filed a notice of disagreement with this rating decision on August 9, 2016.[44]

[redacted] sought service connection for depression in May of 2016.[45] A couple of months later, he filed claims for sleep apnea, a sleep condition, headaches, tinnitus, hypertension, and a mental health condition.[46] VA issued a rating decision in October of 2016 granting service connection for depression with a 70% rating and continuing the 0% rating for hypertension.[47] VA denied

[42] R. at 4592-4621.
[43] R. at 4614.
[44] R. at 3984-3986.
[45] R. at 4557-4560.
[46] R. at 4422-4425.
[47] R. at 3889-3919.

service connection for headaches, sleep apnea, and tinnitus.[48] This decision was timely appealed in December 2016.[49]

VA issued two separate statements of the case in August of 2019.[50] One was dated August 21, 2019, and contained seven issues, and the other was dated August 21, 2019, and contained 18 issues. On August 22, 2019, a VA employee spoke to [redacted] about his notice of disagreements and statements of the case.[51] [redacted] asked the VA employee to explain what the issuance of the statements of the case meant and about reconsideration of his claims.[52] He also told the VA employee that he could not work and received Social Security.[53]

In September of 2019, timely VA Form 9s were submitted in response to the August 2019 statements of the case.[54] [redacted] stated that he was seeking an earlier effective date and increased rating for hypertension, an earlier effective date for major depressive disorder, service connection for headaches, and service connection for sleep apnea.[55] In the other VA Form 9, he sought earlier effective dates and increased ratings for DJD

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[48] R. at 3914-3915.
[49] R. at 3879-3881.
[50] R. at 3368-3422; R. at 3308-3367.
[51] R. at 3307.
[52] *Id*.
[53] *Id*.
[54] R. at 3302-3303; R. at 3304-3306.
[55] R. at 3303.

acromioclavicular sprain and impingement syndrome right shoulder, DJD acromioclavicular sprain and impingement syndrome left shoulder, hand sprain status post fourth finger fracture, residual scar status post second degree burn to back, right testicle epididymitis, bilateral corneal dystrophy, osteoarthritis of the right knee, osteoarthritis of the left knee, service connection for urinary tract infection, and earlier effective date for urinary tract infection.[56]

One month later, on October 8, 2019, a standard form titled "Appeals Satisfaction Notice" was signed and dated by [redacted] with his social security number.[57] The notice stated:

> I have received the recent correspondence regarding the decision to grant one or more of my issues on appeal. Based on the decision rendered, I am satisfied and wish to withdraw all remaining issues associated with this appeal. By signing and submitting this form, I am asking to withdraw all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC) and ask the regional office of jurisdiction to discontinue further development actions associated with this appeal. Please only return this document if you no longer want to pursue the remaining items contained in your Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC).[58]

On March 5, 2020, VA sent [redacted] a letter explaining it had discontinued action on his appeals for major depression, hypertension,

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[56] R. at 3305-3306.
[57] R. at 3259.
[58] *Id*.

headaches, sleep apnea, tinnitus, earlier effective dates for major depression and hypertension, right shoulder, left shoulder, hand sprain, scars, epididymitis, bilateral corneal dystrophy, bilateral knees, urinary tract infection, and entitlement to earlier effective dates for the shoulders, hand sprain, scar, epididymitis, bilateral corneal dystrophy, knees, and a urinary tract infection.[59]

[redacted] representative submitted a letter in May of 2020 stating that [redacted] incorrectly filed an appeals satisfaction letter in October of 2019.[60] The representative also argued that VA failed to notify their office that [redacted] submitted the form to close out his claims.[61] In a statement in support of claim from the same month, [redacted] stated that he "did not understand that by signing and submitting an appeals satisfaction form in October 2019 that I would be withdrawing my claims. It was not my intention to withdraw these claims as I planned on continuing to pursue these benefits including individual unemployability."[62]

In February of 2021, VA sent a letter explaining that it could not accept the substantive appeals from September of 2019 "as the time limit to continue

[59] R. at 3246-3249.
[60] R. at 2237.
[61] *Id*.
[62] R. at 2020-2021.

your appeal has passed."[63] It stated that "because you did not submit a timely Substantive Appeal, our decision on your claim is final."[64] [redacted] filed a Board appeal the following month.[65] His representative submitted a brief explaining that the appeals satisfaction notice was filed incorrectly and the representative was not notified regarding this notice.[66]

The Board determined that the October 2019 statement submitted by [redacted] was in writing, included his name and social security number, and a clear statement that the appeal was withdrawn.[67] The Board found this statement "constitutes a valid withdrawal of the appeal as it complied with the requirement of the applicable regulation by including the name of the Veteran, the applicable VA file number, and a statement that the appeal was withdrawn."[68] The Board concluded that [redacted] withdrew his appeal pertaining to the issues addressed in the August 2015 and October 2016 rating decisions and "there remain no allegations of errors of fact or law for appellate consideration."[69]

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[63] R. at 1928-1930.
[64] *Id*.
[65] R. at 1917.
[66] R. at 1918.
[67] R. at 9-10.
[68] R. at 10.
[69] R. at 12.

When more than one issue is on appeal, as is present in this case, 38 C.F.R. § 20.205(b) requires a written withdrawal to do one of two things: (1) "specify that the appeal is withdrawn in its entirety" or (2) "list the issue(s) withdrawn from the appeal." Neither occurred here.

The appeals satisfaction notice that [redacted] signed stated that he wished to withdraw "all remaining issues **associated with this appeal**."[70] However, this notice did not specify *which* appeal [redacted] was withdrawing. This is particularly important here where there were two active and entirely separate substantive appeals ongoing, stemming from two separate rating decisions and statements of the case.[71] One appeal challenged the effective date and increased rating for hypertension, the effective date for major depressive disorder, and service connection for headaches and sleep apnea.[72] The other challenged earlier effective dates and increased ratings for the right shoulder, left shoulder, hand sprain, residual scar of the back, epididymitis, bilateral corneal dystrophy, osteoarthritis of the bilateral knees, and service connection and an earlier effective date for a urinary tract infection.[73]

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[70] R. at 3259 (emphasis added).
[71] *See* R. at 3302-3302; R. at 3304-3306.
[72] R. at 3303.
[73] R. at 3305-3306.

It cannot be reasonably argued that the appeals satisfaction notice specified that *both* of his substantive appeals were being withdrawn in their entirety nor did it list any individual issues that were on appeal.[74] When numerous issues and two substantive appeals were active, as was the case here, VA's regulation requires specificity and simply referring to "my issues on appeal" or "this appeal" does not convey the scope of the withdrawal in the specific – i.e., clear and precise – manner mandated by § 20.205(b)(1).[75]

Because there were two separate substantive appeals, each with numerous issues on appeal, and the October 2019 appeals satisfaction notice did not specify which appeal was withdrawn in its entirety or identify any specific issues to be withdrawn, the written withdrawal did not satisfy the requirements of 38 C.F.R. § 20.205(b) and therefore was not a valid withdrawal. The Board clearly erred in finding to the contrary.

b. Reversal, not remand, is the appropriate remedy.

Normally, when the Board misinterprets the law and fails to make the relevant initial factual findings, the proper course for the Court is to remand the case to the Board for further development and application of the correct

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[74] *See Krebs v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 1165 (June 2021) (nonprecedential decision cited only for persuasive value).
[75] R. at 3259; *see Krebs v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 1165 (June 2021) (nonprecedential decision cited only for persuasive value).

law.[76] But, where the Board has performed the necessary fact-finding and explicitly weighed the evidence, the Court should reverse when, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed.[77] The Court has the authority to reverse factual findings made by the Board that are clearly erroneous.[78]

The only permissible view of the evidence is that the Board's conclusion that the substantive appeals of the August 2015 and October 2016 rating decisions were withdrawn was clearly erroneous. The Board considered the applicable regulation, 38 C.F.R. § 20.205, discussed the appeals satisfaction notice filed in October of 2019, and found that the correspondence included [redacted] name and file number.[79] There can be no dispute that [redacted] October 2019 correspondence – which did not specify which appeal was being withdrawn or that both appeals were withdrawn in their entirety, nor list the specific issues to be withdrawn – was not a valid withdrawal according to the applicable regulation.[80]

Remand is generally the appropriate remedy when the Board has provided inadequate reasons or bases for its decision.[81] Nothing would be

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[76] *See Deloach v. Shinseki*, 704 F.3d 1370, 1381 (Fed. Cir. 2013).
[77] *Id*. at 1380.
[78] *See Taylor v. McDonough*, 36 Vet. App. 261, 264 (2023).
[79] R. at 9-10.
[80] 38 C.F.R. § 20.205(b).
[81] *See Tucker v. West*, 11 Vet. App. 369, 374 (1998).

gained in sending this back on remand for the Board to reweigh the evidence it already considered: the regulation and the appeals satisfaction notice. Remanding the case back for the Board to "fix" its errors would only delay [redacted] case further. His substantive appeals have already been pending for over five years.

The Court's memorandum decisions, though not precedential, are instructive on why reversal, not remand, is the appropriate remedy.

In *Curtis v. McDonough*, the Secretary conceded that the 2018 purported withdrawal was silent as to any claims in the left extremities.[82] The Court disagreed with the Secretary that remand was the appropriate remedy and reversed the Board's conclusion that the left arm claim was withdrawn.[83] The Board found that the submission's silence as to any issue pertaining to the left-arm claim means that the Board could have only reached one conclusion – that it was not withdrawn.[84]

In *Krebs v. McDonough*, the Court found that the Board erred as a matter of law when it determined that Mr. Krebs' vague statement of withdrawal met the regulatory requirements of 38 C.F.R. § 20.205(b).[85] Mr. Krebs' withdrawal

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[82] *See Curtis v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 2188 (December 2021) (nonprecedential decision cited only for persuasive value).
[83] *Id*.
[84] *Id*.
[85] *See Krebs v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 1165 (June 2021) (nonprecedential decision cited only for persuasive value).

only stated that he wished to withdraw his appeal.[86] The Court found that this withdrawal "clearly didn't list any individual issues. Nor did it 'specify' that the entire appeal was being withdrawn."[87] The Court found that there was no dispute of material fact to be resolved on remand, that Mr. Krebs' withdrawal did not meet the regulatory requirements to be effective, and reversal of the Board's decision was appropriate.[88]

Howard v. McDonough is similar to the facts at issue here.[89] In March of 2020, VA issued a supplemental statement of the case denying seven service-connection claims.[90] One week later, VA received an "appeals satisfaction notice" signed by the veteran and his representative.[91] The Court found that the Board clearly erred in concluding that Mr. Howard had withdrawn his appeal regarding the seven service connection claims.[92] The Court found the appeals satisfaction notice "at best, ambiguous; it did not list any particular claims and it did not specify by date a definite SOC or SSOC from which relevant claims could be identified."[93]

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[86] *Id*.
[87] *Id*.
[88] *Id*.
[89] *See Howard v. McDonough*, 2021 U.S. App. Vet. Claims LEXIS 1449 (August 2021) (nonprecedential decision cited only for persuasive value).
[90] *Id*.
[91] *Id*.
[92] *Id*.
[93] *Id*.

Similarly, in *Wilson v. Shinseki*, after the issuance of a March 2012 statement of the case, Mr. Wilson submitted an appeals satisfaction notice which was signed and dated.[94] The Court found that the appeals satisfaction notice did not fulfill the withdrawal requirements and was left with the definite and firm conviction that the Board lacked a plausible basis for its decision.[95]

These cases are just some examples in which the Court has reversed the Board's finding that a claim was clearly and unambiguously withdrawn. Here, the only permissible view of the evidence is that the Board clearly erred when it found that [redacted] substantive appeals were withdrawn. His withdrawal was, at best, ambiguous because it did not list any particular claims he wanted to withdraw, didn't list which appeal he was seeking to withdraw, and did not specify by date a definite SOC for which relevant claims could be identified. The Board could only have reached one conclusion here: that the two substantive appeals were not withdrawn. There is no dispute of material fact to be resolved on remand.

In the event that the Court disagrees that reversal is appropriate, remand is warranted for the Board to properly apply 38 C.F.R. § 20.205 and to

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[94] *See Wilson v. Shinseki*, 2013 U.S. App. Vet. Claims LEXIS 1632 (September 2013) (nonprecedential decision cited only for persuasive value).
[95] *Id*.

determine whether the October 2019 appeals satisfaction notice suitably withdrew his pending appeals considering the lack of specificity contained in the notice. This notice did not specify whether [redacted] intended to withdraw both pending substantive appeals or only whether he wished to withdraw a certain issue or issues, nor did he identify by date any SOC. The Board failed to explain how an appeals satisfaction notice, generally referencing recent SOCs and SSOCs, indicated a desire to withdraw all issues in two pending appeals.

2. The Board's errors prejudiced [redacted]

In reviewing a Board decision, the Court must take due account of the rule of prejudicial error.[96] Prejudice is established by demonstrating a disruption of the essential fairness of the adjudication, which can be shown by demonstrating that the error (1) prevented the claimant from effectively participating in the adjudicative process, or (2) affected or could have affected the outcome of the determination.[97] The Federal Circuit explained that though the Court is free to review the record of proceedings and go outside of the facts as found by the Board to determine whether a VA error is prejudicial, the Court is prohibited from making factual findings in the first instance when those

[96] 38 U.S.C. § 7261(b)(2); *Vogan v. Shinseki*, 24 Vet. App. 159, 161-62 (2010).
[97] *Simmons v. Wilkie*, 30 Vet. App. 267, 279 (2018).

questions of fact are open to debate.[98] The Court can only affirm on a ground not considered by the Board and VA if it is clear that the factual basis for such conclusion is not open to debate and the Board on remand could not have reached any other determination on that issue.[99]

[redacted] was prejudiced by the Board's errors. First, the Board ignored the ambiguity in the October 2019 appeals satisfaction notice. Specifically, [redacted] failed to specify *which* of his two pending substantive appeals he wished to withdraw, nor did he specify which individual issues he wished to withdraw. Contrary to the Board's findings, it is unclear which substantive appeal and which issues, if any, [redacted] intended to withdraw. As a result of the Board's errors, [redacted] substantive appeals to the August 2015 and October 2016 rating decisions were not reinstated and the appeals were withdrawn. Had the Board properly applied the law, it likely would have found that [redacted] withdrawal was not valid. Instead, [redacted] was forced to appeal the Board's erroneous conclusions of law and findings of fact to this Court, further delaying adjudication of his claims.

V. RELIEF REQUESTED

The Board's decision that denied reinstatement of [redacted] substantive appeals to the August 2015 and October 2016 rating decisions was

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[98] *See Tadlock v. McDonough*, 5 F.4th 1327, 1333-1334 (Fed. Cir. 2021).
[99] *Id*. at 1336.

clearly erroneous. Because reversal is appropriate when "there is absolutely no plausible basis" for the Board's decision and where that decision is "clearly erroneous in light of the uncontroverted evidence in appellant's favor," the only permissible view of the record is that the Board clearly erred. The Court should reverse the Board's findings that his appeals were withdrawn.

In the event that the Court disagrees that reversal is appropriate with respect to the Board's decision, [redacted] alternatively requests that the Court set aside the Board's July 10, 2024, decision and remand it for further adjudication. Specifically, the Board must discuss all requirements of a written withdrawal and consider that because there were two pending appeals each with multiple issues on appeal, any withdrawal must list the particular issues to be withdrawn or state that the appeal is withdrawn in its entirety for it to be valid.

Date: August 4, 2025

Respectfully submitted,
VA DISABILITY GROUP, PLLC

BY: *<u>/s/ Haley Smith</u>*

HALEY SMITH, ATTORNEY
7837 S. Sprinkle Rd
Portage, MI 49002
Phone: (844) 838-5297
Email: haley@vadisabilitygroup.com

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on August 4, 2025, I caused Appellant's opening brief to be served on the Appellee by and through the Court's E-Filing system:

Mitchell W. O'Hara, Attorney
Department of Veterans Affairs OGC (027)
810 Vermont Ave NW
Washington, D.C. 20420
mitchell.ohara@va.gov

VA DISABILITY GROUP, PLLC

BY: */s/ Haley Smith*
HALEY SMITH, ATTORNEY