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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 23-3069

ANTHONY ARMAND POLICH, APPELLANT,

V.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before MOORMAN, *Senior Judge*.¹

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

MOORMAN, *Senior Judge*: The appellant, Anthony Armand Polich, appeals a January 26, 2023, Board of Veterans' Appeals (Board) decision that denied his claims for a disability rating greater than 50% for his service-connected post-traumatic stress disorder (PTSD) with residuals of a traumatic brain injury (TBI) and for service connection for residuals of his TBI, to include Meniere's disease and vertigo. Record of Proceedings (R.) at 5-22. The appellant expressly limits his arguments on appeal to the Board's denial of a disability rating greater than 50% for his service-connected PTSD with residuals of a TBI and stated that he is not challenging the Board's decision regarding Meniere's disease and vertigo. *See* Appellant's Brief (Br.) at 4 n.3. Therefore, the Court will dismiss the appeal as to the Board's denial of service connection for residuals of a TBI, to include Meniere's disease and vertigo. *See Pederson v. McDonald*, 27 Vet.App. 276, 285 (2015) (en banc). This appeal is timely, and the Court has jurisdiction pursuant to 38 U.S.C. § 7252(a) to review the Board's decision. For the following reasons, the Court will affirm that portion of the Board's decision that denied a disability rating greater than 50% for the appellant's service-connected PTSD with residuals of a TBI.

¹ Judge Moorman is a Senior Judge acting in recall status. *In re Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 02-24 (Jan. 3, 2024).

I. BACKGROUND

Mr. Polich served honorably on active duty in the U.S. Army from October 1967 to October 1969. R. at 3924. He was medically retired due to injuries sustained during his service in Vietnam. *Id.* Upon discharge, he filed a claim seeking compensation for disabilities resulting from shell fragment wounds in service. R. at 4187-88. VA issued a rating decision in January 1970, awarding service connection for the loss of Mr. Polich's eye and scars. R. at 4145.

In August 1997, Mr. Polich was awarded service connection for PTSD, rated 30% disabling. R. at 3213-14. In 2002, Mr. Polich sought an increased disability rating for his PTSD, *see* R. at 2948, and VA provided him PTSD examinations in February and July 2002, R. at 2875-79. The July 2002 examiner noted that Mr. Polich had "adequate memory and concentration for purposes of the interview," but his "memory problems have increased to some extent so that in situations where he experiences stress . . . he has difficulty maintaining focus on his tasks and will have a tendency to forget what he is doing." R. at 2878.

In December 2002, the regional office (RO) issued a decision that increased Mr. Polich's rating for his PTSD to 50%. R. at 2844-48. The RO noted that during an April 2001 examination at a VA facility, Mr. Polich's memory was intact, and the February and July 2002 VA examinations recorded "adequate" memory and concentration. R. at 2845-46. The RO found that a 50% disability rating was warranted "[b]ased on evidence of impaired motivation and Global Assessment of Functioning scores in the 50s." R. at 2847.

In September 2010, Mr. Polich filed a claim for service connection for residuals of a TBI, to include Meniere's disease and migraine headaches. R. at 2073. On January 15, 2013, a decision review officer granted service connection for residuals of a TBI but assigned a 0% disability rating. R. at 1719-27. The decision noted that a VA examiner had stated that Mr. Polich's memory was normal, and although Mr. Polich had reported short-term memory loss and confusion, a "November 30, 2012, TBI consult . . . noted that if [he] did have cognitive impairment it is unlikely due to his TBI" and the examiner stated that "it is likely that PTSD-type symptoms, slower cognitive processing speed, and poor sleep contribute[d] to [his] memory impairment at [that] time." R. at 1724.

In August 2016, the RO continued Mr. Polich's 50% disability rating for his PTSD and the noncompensable rating for his TBI. R. at 1080-85. The RO noted that the 50% rating for PTSD was assigned based on, among other things, "[f]orgetting names," "[m]ild memory loss,"

"[f]orgetting recent events," and "[f]orgetting directions." R. at 1081. In discussing Mr. Polich's TBI residual symptoms, the RO found a level of severity of "0" in the area of "[m]emory, [a]ttention, [concentration, [and e]xecutive functions" based on "[n]o complaints of impairment of memory, attention, concentration, or executive functions." R. at 1083. In November 2018, Mr. Polich opted in to the Veterans Appeals Improvement and Modernization Act of 2017 (AMA) via the Rapid Appeals Modernization Program (RAMP) program.² R. at 617-18.

Mr. Polich underwent VA compensation and pension examinations for his PTSD and TBI in March 2019. R. at 443-49, 452-57. The TBI examiner noted that Mr. Polich reported that he experienced short-term memory problems that had gotten progressively worse since the 1990s; the examiner stated that, "given the date of onset provided by the veteran, it is less likely as not due to his TBI" because "TBI residuals begin around the time of the injury, not decades later." R. at 444-45. The TBI examiner noted that Mr. Polich had been diagnosed with both PTSD and TBI, and the examiner explained that she was "unable to opine on what portion of the soldier's reported emotional, cognitive, and neurobehavioral symptoms are due to the residuals of his [TBI] alone without resorting to pure speculation due to the common overlapping of symptoms identified for both conditions." R. at 448. The PTSD examiner also stated that it was not possible to differentiate which of Mr. Polich's symptoms were attributable to his TBI and PTSD, and she explained that "[t]here is potential overlap of symptoms between PTSD and his . . . TBI residuals such as irritability . . . and reduced motivation." R. at 452.

VA issued a decision in March 2019, continuing Mr. Polich's PTSD and TBI ratings, R. at 525-30. That decision again explained that Mr. Polich's 50% disability rating for PTSD was based on, among other things, forgetting names, mild memory loss, forgetting recent events, and

² On August 23, 2017, the President signed into law the AMA, Pub. L. No. 115-55, 131 Stat. 1105 (codified as amended in scattered sections of 38 U.S.C.), which "dramatically overhauled the VA appeals process." *Mil. Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110, 1140 (Fed. Cir. 2021). The AMA implementing regulations became effective on February 19, 2019. *See* Pub. L. No. 115-55, § 2(x), 131 Stat. at 1115; 38 C.F.R. § 19.2(a) (2024); *see also* VA Claims and Appeals Modernization, 84 Fed. Reg. 2449, 2449 (Feb. 7, 2019) (codified at 38 C.F.R. pts. 3, 8, 14, 19, 20, 21). For the period between the AMA being signed into law and February 19, 2019, however, Congress explicitly provided VA with the authority to operate programs to test the feasibility and advisability of the new appeal system, *see* Pub. L. No. 115-55, § 4(a)(1), 131 Stat. at 1119-20; *Dolbin v. McDonough*, 34 Vet. App. 334, 336 (2021) (order), and VA launched RAMP as one of these test programs in November 2017, *see* U.S. DEP'T OF VETERANS AFFS., COMPREHENSIVE PLAN FOR PROCESSING LEGACY APPEALS AND IMPLEMENTING THE MODERNIZED APPEALS SYSTEM, PUBLIC LAW 115-55, SECTION 3, at 28-30 (2017), <https://benefits.va.gov/benefits/docs/appeals-report-201711.pdf>. Claimants with pending legacy appeals could voluntarily opt into RAMP by withdrawing their legacy appeals and electing either the higher level review (HLR) lane or the supplemental claim lane. *Id.* at 29; *see* 38 C.F.R. § 3.2400(c)(1), (d) (2024).

forgetting directions. R. at 527. The RO also explained that "[t]he VA [e]xaminer ha[d] stated that it is not possible to differentiate what symptom(s) is/are attributable to TBI and any non-TBI mental health diagnosis. As such, the symptoms of TBI and PTSD are evaluated under the diagnosis which provides the greater benefit." R. at 529. The RO concluded that in Mr. Polich's case, evaluating his symptoms under the PTSD criteria resulted in the greater benefit. *Id.*

Mr. Polich sought HLR of the March 2019 decision, R. at 504-08, and VA issued a decision in November 2019, R. at 412-17. The decision continued Mr. Polich's 50% disability rating for PTSD and stated that his TBI "is now evaluated with this issue, and a single 50[%] evaluation is assigned for the combined effects of [PTSD] and [TBI]." R. at 413. VA explained that under the rating criteria for TBI, Mr. Polich's memory impairment symptoms would warrant a 40% rating for this TBI, R. at 416, and therefore, because his PTSD rating of 50% was higher, a 50% rating was assigned "for the combined effects of PTSD and [TBI]," R. at 417. Mr. Polich timely sought Board review of this decision. R. at 321.

In the January 2023 decision here on appeal, the Board denied a rating greater than 50% for PTSD with residuals of TBI and found that the criteria for service connection for Meniere's disease and vertigo as residuals of TBI had not been met. R. at 5-22. The Board found that Mr. Polich's TBI symptoms include "mild impairment of memory, attention, concentration, or executive function based on objective evidence on testing" coinciding with the assignment of a severity level of 2 under rating criteria for TBI, but that "the TBI evaluations have no identified symptoms related to TBI that are not considered in assigning the rating for PTSD," and therefore, "the weight of the evidence is against the assignment of any separate or higher rating." R. at 17. This appeal followed.

II. ANALYSIS

The Board's determination of the proper disability rating is a finding of fact that the Court reviews under the "clearly erroneous" standard. *See* 38 U.S.C. § 7261(a)(4); *Buckley v. West*, 12 Vet.App. 76, 81 (1998). A finding of fact is clearly erroneous when the Court, after reviewing the entire evidence, "is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *see Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990). As with any material issue of fact or law, the Board must provide a statement of reasons or bases that is "adequate to enable a claimant to understand the precise basis

for the Board's decision, as well as to facilitate review in this Court." *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *see* 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. at 56-57.

"When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." 38 U.S.C. § 5107(b). When all evidence is considered and "a reasonable doubt arises . . . such doubt will be resolved in favor of the claimant." 38 C.F.R. § 3.102 (2024). "A reasonable doubt" exists where there is "an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim" and is "a substantial doubt . . . within the range of probability as distinguished from pure speculation or remote possibility." *Id.* "[E]vidence is not in 'approximate balance' or 'nearly equal' . . . when the evidence persuasively favors one side or the other." *Lynch v. McDonough*, 21 F.4th 776, 781-82 (Fed. Cir. 2021). The benefit of the doubt doctrine applies where the determination is "too close to call" or where the evidence is "nearly equal." *Ortiz v. Principi*, 274 F.3d 1361, 1364-65 (Fed. Cir. 2001). The "preponderance of the evidence" standard requires proving that a fact is more probable than not. *Id.* at 1365.

PTSD is measured against the rating criteria described in 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411, which directs the rating specialist to apply the General Rating Formula for Mental Disorders. According to the general rating formula, a 50% disability rating is warranted when the evidence demonstrates

[o]ccupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

38 C.F.R. § 4.130, DC 9411 (2024). A 70% disability rating is warranted when the evidence demonstrates

[o]ccupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene;

difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships.

Id.

The guidelines for rating residuals of a TBI are set forth in 38 C.F.R. § 4.124a, DC 8045. DC 8045 explains that "[t]here are three main areas of dysfunction that may result from TBI," including cognitive impairment (defined as decreased memory, concentration, attention, and executive functions of the brain), emotional/behavioral, and physical, and "[e]ach of these areas . . . may require evaluation." 38 C.F.R. § 4.124a, DC 8045 (2024).

For cognitive impairment not evaluated under another DC, the table for "Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified" provides a scale from 0 to 3 for levels of non-total impairment, with 0 indicating "[n]o complaints of impairment of memory, attention, concentration, or executive functions," and a 1 indicating "[a] complaint of mild loss of memory . . . , attention, concentration, or executive functions, but without objective evidence on testing." 38 C.F.R. § 4.124a. A rating is then assigned based on highest level of impairment reflected by that scale. 38 C.F.R. § 4.124a.

DC 8045 further explains that "[t]here may be an overlap of manifestations of conditions evaluated under the table . . . with manifestations of a comorbid mental or neurologic or other physical disorder that can be separately evaluated under another diagnostic code." 38 C.F.R. § 4.124a, DC 8045 note 1. In such cases, the regulation directs that "[i]f the manifestations of two or more conditions cannot be clearly separated, assign a single evaluation under whichever set of diagnostic criteria allows the better assessment of overall impaired functioning due to both conditions." *Id.* However, "if the manifestations are clearly separable," a separate evaluation will be assigned for each condition." *Id.*; *see also* 38 C.F.R. §§ 4.14 (2024), 4.25(b) (2024) (stating that VA requires that all disabilities be rated separately, but it may not rate the same symptoms twice, as doing so would be impermissible "pyramiding").

The appellant argues that the Board "failed to maximize benefits and fully compensate Mr. Polich's TBI memory impairments." Appellant's Br. at 5. The appellant asserts that the Board's finding that the evidence "ha[s] no identified symptoms related to TBI that are not considered in assigning a rating for PTSD" is clearly and legally erroneous. Appellant's Br. at 8. The appellant also advances a novel argument regarding the Board's application of the benefit of the doubt rule. Appellant's Br. at 9-18. He points out that the Secretary's regulation, § 3.102, states that

"reasonable doubt" is "a substantial doubt . . . one within the range of probability as distinguished from pure speculation or remote possibility," and asserts that "probable" means "likely to be or become true or real." Appellant's Br. at 15-16. The appellant states that "[a]ny doubt as to the cause of the [appellant's memory] impairment (PTSD vs. TBI) is concededly substantial; however, even being substantial doubt it is still "likely to be or become true or real," and "[a]s such, it only rises to reasonable doubt." Appellant's Br. at 17-18. The appellant therefore asserts that reasonable doubt exists as to whether the appellant's memory impairments are attributable to his PTSD or his TBI, and the Board erred in not affording him the benefit of the doubt and thus finding that the impairments are "clearly separable" under DC 8045. *Id.*

Even if the Court were to agree with the appellant's novel interpretation of the benefit of the doubt rule, the appellant has not met his burden of establishing error in the Board's decision. *Berger v. Brown*, 10 Vet.App. 166, 169 (1997) ("[T]he appellant . . . always bears the burden of persuasion on appeals to this Court."). Regardless of the standard the appellant urges this Court to consider, the appellant has identified no evidence in the record that demonstrates that his memory impairments are separable from his PTSD. He misunderstands or misrepresents the Board's decision and previous decisions regarding his PTSD and TBI disability ratings.

The appellant correctly asserts that the Board made two dispositive, favorable findings of fact: (1) that Mr. Polich experiences disability in the form of "mild impairment of memory, attention, concentration, or executive function based on objective evidence on testing," and (2) that VA assigned a level of severity of 2 to his memory impairment symptoms, which corresponds to a 40% rating under DC 8045. Appellant's Br. at 7 (citing R. at 16). However, the appellant later represents that "the Board favorably determined that these memory impairments resulted from the TBI." Appellant's Br. at 17. This is not correct. The Board simply did not make the finding the appellant suggests it did. The Board found that the evidence did not show that the appellant's memory symptoms could be separated from his PTSD. R. at 13.

The Board's determination that the appellant's documented memory impairments would warrant a 40% disability rating under DC 8045 was not a finding that his TBI caused those memory impairments. The Board acknowledged that the appellant experiences some level of memory impairment and, because the symptoms could not be separated from his PTSD symptoms, the Board made a determination as to the level of impairment under DC 8045 to determine which DC would afford the appellant the greatest benefit, as the regulations require the Board to do. 38 C.F.R.

§ 4.124a, DC 8045 note 1 ("If the manifestations of two or more conditions cannot be clearly separated, assign a single evaluation under whichever set of diagnostic criteria allows the better assessment of overall impaired functioning due to both conditions.").

Moreover, the Board reviewed the appellant's TBI evaluations from June 2016, March 2019, and May 2021 and found that "the TBI evaluations have no identified symptoms related to the TBI that are not considered in assigning the rating for PTSD." R. at 12-13. The appellant reads the Board's conclusion as merely suggesting that the TBI evaluations did not answer the question. Appellant's Br. at 16. However, the record clearly demonstrates otherwise.

For example, a January 2013 decision review officer explained that a "November 30, 2012, TBI consult . . . noted that if [the appellant] did have cognitive impairment[,] it is unlikely due to his TBI," and the examiner stated that "it is likely that PTSD-type symptoms, slower cognitive processing speed, and poor sleep contribute[d] to [his] memory impairment at [that] time." R. at 1724. Additionally, the March 2019 TBI examiner noted that the appellant reported memory problems, and the examiner concluded that "given the date of onset provided by the veteran, it is less likely as not due to his TBI" because "TBI residuals begin around the time of the injury, not decades later." R. at 444-45. The examiner further stated that she was "unable to opine on what portion of the soldier's reported emotional, cognitive, and neurobehavioral symptoms are due to the residuals of his [TBI] alone without resorting to pure speculation due to the common overlapping of symptoms identified for both conditions." R. at 448.

Thus, to the extent that the appellant points to the Board's assessment that his memory impairments warrant a 40% disability rating under DC 8045 as evidence that his memory impairments are severable from his TBI, his argument is without merit. Moreover, the Board's finding does not, as the appellant argues, merely "suggest . . . that 'the TBI evaluations' don't answer the question." Appellant's Br. at 16 (quoting R. at 17). Rather, the Board's decision represents a finding based on affirmative evidence that the appellant's memory impairment symptoms cannot clearly be separated as a manifestation of his PTSD or TBI. *See* 38 C.F.R. § 4.124a, DC 8045 note 1.

In further support of his theory that his memory impairment symptoms are severable from his PTSD symptoms, the appellant states that memory impairment was not identified as a symptom of PTSD prior to VA's finding that his TBI is service connected and that he did not suffer from, nor did he receive any compensation for, his memory impairments before that time. Appellant's

Br. at 8. In this regard, he correctly points out that the December 2002 RO decision increasing his PTSD evaluation to 50% did not include memory impairment symptoms as the basis for his increased disability rating. Appellant's Br. at 8; *see also* R. at 2845-46. However, the appellant points to no evidence that suggests his memory impairment symptoms were related to his TBI. Instead, appellant's counsel infers, and would have this Court infer, that the mere fact that VA did not identify memory impairment symptoms related to his PTSD in 2002 means that any memory impairment symptoms that may have developed after 2002 are clearly separable from his PTSD and attributable to his TBI diagnosis. Yet, the appellant points to no evidence in the record or to any legal authority to support this claim and, in fact, ignores evidence in the record that directly contradicts his theory.

The appellant ignores that when he was awarded service connection for residuals of a TBI, VA did not find that he experienced any compensable memory impairment symptoms. R. at 1724. In January 2013, the RO awarded service connection for TBI and found that the evidence demonstrated that his memory was normal at that time. *Id.* The RO noted that the appellant had reported short term memory loss and confusion but that a November 30, 2012, TBI examiner "noted that if [the appellant did] have cognitive impairment it is unlikely due to [his] TBI [and was] . . . likely that PTSD-type symptoms, slower cognitive processing speed, and poor sleep contribute[d] to [his] memory impairment at th[at] time." *Id.*

The appellant also fails to acknowledge that his March 2019 TBI examiner acknowledged his reports of memory impairment symptoms and found that "given the date of onset provided by the veteran, it is less likely as not due to his TBI" because "TBI residuals begin around the time of the injury, not decades later." R. at 444-45. The TBI examiner explained that she was "unable to opine on what portion of the soldier's reported emotional, cognitive, and neurobehavioral symptoms are due to the residuals of his [TBI] alone without resorting to pure speculation due to the common overlapping of symptoms identified for both conditions." R. at 448.

Not only has the appellant pointed to no evidence that supports his position that his memory impairment symptoms are "clearly separable" from his PTSD symptoms, all the medical evidence of record suggests otherwise. Thus, even considering the appellant's novel interpretation of the benefit of the doubt rule, the appellant has presented no evidence that it is "'likely to be or become true or real,'" Appellant's Br. at 17-18, that his memory impairment symptoms are clearly separable

from his PTSD symptoms, and he has therefore failed to meet his burden of establishing error in the Board's decision. *See Berger*, 10 Vet.App. at 169.

The appellant argues alternatively that, even if his memory impairment symptoms are properly rated as a mental disorder, the Board failed to ensure that he is adequately compensated. The appellant again relies on his misunderstanding of the Board's finding that, if rated under the TBI criteria, his memory impairment symptoms would warrant a 40% disability rating. The appellant erroneously equates this finding with a finding that he has a separate disability entitled to a 40% disability rating. As discussed above, this is not what the Board found, nor what the record demonstrates. The Board found that the appellant's memory impairment symptoms are not severable from his PTSD symptoms. R. at 17. The Board then properly followed the instructions provided in DC 8045 and determined which of the two potentially applicable diagnostic criteria (DC 9411 for mental disorders or DC 8045 for TBI residuals) "allows the better assessment of overall impaired functioning due to both conditions," 8 C.F.R. § 4.124a, DC 8045 note 1, which, in this case was DC 9411. R. at 5-17.

To the extent that the appellant suggests that he is entitled to a higher disability rating under the diagnostic criteria for mental disorders, he has not argued nor demonstrated that he meets the criteria for a 70% disability rating pursuant to DC 9411. *See Berger*, 10 Vet.App. at 169; *see also Locklear v. Nicholson*, 20 Vet.App. 410, 416 (2006) (holding that the Court is unable to find error when arguments are undeveloped); *Coker v. Nicholson*, 19 Vet.App. 439, 442 (2006) (per curiam) ("The Court requires that an appellant plead with some particularity the allegation of error so that the Court is able to review and assess the validity of the appellant's arguments."), *vacated on other grounds sub nom. Coker v. Peake*, 310 F. App'x 371 (Fed. Cir. 2008) (per curiam order); *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant bears the burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table).

The appellant argues that "[f]airness demands that his additional 40% rating be compensated." Appellant's Br. at 18. Again, he misunderstands that he does not have an additional, separate 40% disability. Thus, his suggestion that a 50% rating and a 40% rating should be combined under 38 C.F.R. § 4.25, for the assignment of a 70% rating, is without merit. There is simply no 40% rating to be combined under 38 C.F.R. § 4.25 (combined ratings table). As noted, DC 8045 provides guidance for symptoms that cannot be separated from manifestations of other disabilities, and the Board followed those guidelines. Finally, to the extent that the appellant argues

that "fairness" demands that a higher disability rating be assigned, his argument lies in equity, not law, and "this Court has no equitable authority to provide" the relief the appellant seeks. *See Burris v. Wilkie*, 888 F.3d 1352, 1357-58 (Fed. Cir. 2018) (finding that this Court has no equitable authority under section 503); *Eicher v. Shulkin*, 29 Vet.App. 57, 64 (2017).

III. CONCLUSION

Based on the foregoing analysis, the parties' briefs, and a review of the record on appeal, the Board's January 26, 2023, decision, to the extent that it denied a disability rating greater than 50% for PTSD with residuals of a TBI, is AFFIRMED. The appeal of the Board's decision, to the extent that it denied service connection for residuals of TBI, to include Meniere's disease and vertigo, is DISMISSED.

DATED: August 30, 2024

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)