2016

Rheumatoid Arthritis: Painful Motion is Limited Motion

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by Tyler Crowe

Reporting on *Petitti v. McDonald,* No. 13-3469, ____ Vet. App. ____ (October 28, 2015).

In *Petitti v. McDonald*, the Court was asked to clarify what constitutes "painful motion" and what evidence the Board of Veterans' Appeals must consider when making this determination in light of the interplay between 38 C.F.R. §4.71a, Diagnostic Code 5002 and 38 C.F.R. §4.59.

Title 38 C.F.R. §4.71a, DC 5002 describes how rheumatoid arthritis (RA) is to be evaluated under the disability rating schedule. Section 4.59 is one of several regulations that precede the rating schedule for the musculoskeletal system and explain how to arrive at proper evaluations under the DCs; it specifies that painful motion of a joint is to recognized as a disability.

The issue arose from Mr. Petitti's RA, which presented while he was serving in the Air Force. The Board found Mr. Petitti to be entitled to a 40% disability, but the Board denied a disability rating over 40% for RA despite objective evidence of symptomology affecting multiple joints and a determination that Mr. Petitti's complaints of joint pain were credible. The Board also determined that Mr. Petitti was not entitled to a 10% disability rating for each joint under §4.59 because the VA examinations showed neither limited motion on range-of-motion testing nor objective evidence of pain on movement.

On appeal, the Court first reviewed DC 5002, pointing to specific language in DC 5002 stating that limitation of motion that is noncompensable under the DC for the affected joint may still be compensable on the basis of a minimum disability rating for each major joint or group of minor joints affected. Limitation of motion may be objectively confirmed by satisfactory evidence of painful motion and is a prerequisite for both a compensable disability rating under the DC relevant to the particular joint involved and for a minimum disability rating.

The Court next looked to §4.59, which ensures that a veteran experiencing an "actually" painful joint is entitled to at least the minimum compensable rating for the joint under the DC for the joint involved.

Reading §4.59 and DC 5002 together, the Court found the terms "painful motion" and "actually painful joints" to be synonymous. For further guidance regarding "painful motion," the Court looked to its prior interpretation of the relationship between §4.59 and DC 5003 (for degenerative arthritis) in *Lichtenfels v. Derwinski*, 1 Vet. App. 484 (1991), because of the striking similarities between the language in DCs 5002 and 5003 pertaining to the assignment of a minimum rating for noncompensable limitation of motion.

In *Lichtenfels,* the Court held that, where arthritis is established, painful motion of a major joint or group of minor joints is deemed limited motion and entitled to a minimum 10% rating per joint even though there is no actual limitation of motion. *Lichtenfels* held that § 4.59 links painful motion and limitation of motion, so a claimant with painful motion is considered to have limited motion under DC 5003 even though actual motion is not limited.

In the present matter, the Court concluded that the interpretation in *Lichtenfels* of the effect of § 4.59 on DC 5003 also applies to DC 5002. When DC 5002 is read with § 4.59, painful motion of a joint is deemed limited motion of that joint, thus satisfying the requirement for limited motion under DC 5002 and entitling the claimant to the minimum disability rating for that joint under DC 5002 and § 4.59, even though the claimant does not have actual limitation of motion.

The Court then moved to what constitutes painful motion and what type of evidence is sufficient under the regulation to verify painful motion. DC 5002 requires that limitation of motion be corroborated by a person other than the veteran based upon that person's observations. DC 5002 also describes evidence that will "objectively confirm" limitation of

motion as "satisfactory evidence of painful motion." The Court stated that "satisfactory evidence of painful motion" is capacious and encompasses not only a doctor's observations but also lay description of a veteran's painful motion. A lay description detailing observations of a veteran's difficulty undertaking various activities falls within "satisfactory evidence of painful motion" that has been "objectively confirmed." The Court acknowledged that a veteran's own statements may be lay probative lay evidence when they describe symptoms capable of lay observation, citing *Jandreau v. Nicholson*, 492 F.3d, 1372, 1377 (Fed. Cir. 2007), with the caveat that there must be objective confirmation from a person other than the veteran or claimant of a veteran's joint pain.

When describing Mr. Petitti's disability, the Board had found that "[t]here is no doubt that pain exists that is daily and causes fatigue and stiffness," yet had determined that Appellant had no painful motion of the joints. The Court found that the Board's conclusion was clearly erroneous. The Court reversed the Board's finding and remanded the matter to the Board to determine the specific joints affected by RA and whether Mr. Petitti would receive a higher disability rating for the chronic residuals of his RA.

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