

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 98-821

HERSEY ANDERSON,

APPELLANT,

v.

TOGO D. WEST, JR.

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before HOLDAWAY, STEINBERG, and GREENE, *Judges*.

O R D E R

The appellant appeals through counsel a February 27, 1998, Board of Veterans' Appeals (Board) decision that denied as not well grounded a claim for Department of Veterans Affairs (VA) service connection for arthritis of the left hip as secondary to a service-connected left-knee disability. The appeal has been assigned to this panel for review. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990) (criteria for assignment of cases to panel).

The appellant has filed a brief that raises only one issue, as follows: "Whether the appellant's due process rights were violated by the . . . failure [of VA] to furnish him with a copy of a [December 1996 VA] medical report [that] it contended [sic] to rely upon in the adjudication of his claim". Brief (Br.) at 3. On September 10, 1998, the Secretary filed the record on appeal (ROA), which contains a copy of the December 1996 VA medical report. Record (R.) at 460-64. However, due to the poor quality of the copy provided, the Court is unable to read much of two pages of that report as reproduced in the ROA, *see* R. at 463-64, one of which (R. at 464) is quoted by both the Secretary (on pages 8-9 of his December 7, 1998, motion for summary affirmance) *and* in the Board decision here on appeal (R. at 4).

The appellant in his brief complains that he has been furnished only with "an illegible copy [of that report] as of this date [October 28, 1998]." Br. at 4. Notwithstanding this complaint and the obvious importance of the 1996 VA medical examination report (especially the page located at R. 464), the Secretary has not offered to the Court any explanation as to why a legible copy of that record is not included in the ROA. The Court has determined the need to verify for itself the contents of the December 1996 VA medical examination report.

On consideration of the foregoing, it is

ORDERED that, not later than 15 days after the date of this order, the Secretary file with the Court and serve on the appellant a legible copy of the December 1996 VA medical examination report, or, in the alternative, that the Secretary certify that a legible copy cannot be produced and explain to the Court the reason(s) therefor.

DATED: May 18, 1999

PER CURIAM.