

# UNITED STATES COURT OF VETERANS APPEALS

No. 94-609

CARL SMALLWOOD, APPELLANT,

v.

JESSE BROWN,  
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before NEBEKER, *Chief Judge*, and MANKIN\* and IVERS, *Judges*.

## ORDER

This matter is before the Court on the Secretary's motion for clarification of the February 3, 1997, decision in this case, *Smallwood v. Brown*, \_\_ Vet.App. \_\_, No. 94-609 (Feb. 3, 1997). The Secretary also moves for a stay of the issuance of the above mandate pending a ruling on this motion. The Secretary correctly points out that the Court failed to adjudicate the issue of the appellant's claim for an increased rating for his service-connected gunshot wound to his chest.

The appellant's service-connected gunshot wound to the chest is rated at 40% disabling. In affirming the rating decision, the BVA discussed the history of this injury, up to and including an August 1991 VA examination. The Board found that the evidence presented did not warrant a rating higher than 40%, or moderately severe, as outlined in 38 C.F.R. § 4.97, Diagnostic Code 6818. Since the record concerning the appellant's lung injury provides a plausible basis for the rating decision, the finding of the Board is not clearly erroneous and this Court will not disturb that decision. *See* 38 U.S.C. § 7261(a)(4); *Solomon v. Brown*, 6 Vet.App. 396 (1994); *Gilbert v. Derwinski*, 1 Vet.App. 49 (1990).

Accordingly, the Secretary's motion for clarification is granted. The February 3, 1997, decision in this case is amended to reflect that the 1994 decision of the Board denying an increased rating for the appellant's service-connected gunshot wound of the chest is AFFIRMED. The judgment having not yet issued, it is further

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\* Judge Mankin was assigned to and participated in this case, but died before its final disposition.

ORDERED that the Secretary's motion to stay the issuance of the mandate is DENIED. It is further

ORDERED that judgment in this case will issue 21 days after the date of this order.

DATED: March 11, 1997

PER CURIAM.