

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 97-1948

JOSE A. SANCHEZ-BENITEZ, APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KRAMER, *Chief Judge*, and FARLEY and HOLDAWAY, *Judges*.

ORDER

In a December 29, 1999, opinion, the Court affirmed a July 3, 1997, Board of Veterans' Appeals (Board) decision that had denied the appellant's claim for service connection for a neck disability (claim 1) and had denied an increased rating for his service-connected degenerative disc disease with lumbar muscle spasm, currently rated as 20% disabling (claim 2). *Sanchez-Benitez v. West*, 13 Vet.App. 282 (1999). On January 20, 2000, judgment was entered. The appellant, on March 20, 2000, filed an appeal of the December 1999 decision to the United States Court of Appeals for the Federal Circuit (Federal Circuit).

The Federal Circuit, in an August 3, 2001, opinion, dismissed the appellant's appeal with respect to claim 1, stating that it is precluded by statute from reviewing the factual determinations of the Board or this Court. *Sanchez-Benitez v. Principi*, 259 F.3d 1356, 1363 (Fed. Cir. 2001). With respect to claim 2, the Federal Circuit stated that, because this Court had made a factual determination regarding an issue that the Board had not addressed in its July 1997 decision, it was vacating this Court's December 1999 decision with respect to that claim. The Federal Circuit then remanded claim 2 to this Court with instructions for this Court to remand that claim to the Board for "redetermination." *Id.* at 1363. In rendering its decision on claim 2, the Federal Circuit stated that remanding that claim to the Board was necessary in order for the Board to determine, in the first instance, whether 38 C.F.R. § 3.321(b)(1) should be considered when adjudicating that claim. *Id.* at 1362-63; *see* 38 C.F.R. § 3.321(b)(1) (2000) ("General rating considerations" for compensation claims in exceptional cases); *see also Winters v. Gober*, 219 F.3d 1375, 1379 (Fed. Cir. 2000) (Court of Appeals for Veterans Claims should not decide issue until Board has made determination with respect to it and it is "properly presented on appeal"). On September 24, 2001, the Federal Circuit issued mandate.

Because the Federal Circuit remanded claim 2 to this Court with instructions that this Court remand that claim to the Board, the Court will vacate the July 1997 Board decision with respect to claim 2 and remand that matter for readjudication consistent with this order and the Federal Circuit opinion. On remand, the appellant is free to submit additional evidence and argument on the

remanded claim in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order). The Board shall proceed expeditiously, in accordance with section 302 of the Veterans' Benefits Improvement Act, Pub. L. No. 103-446, § 302, 108 Stat. 4645, 4658 (1994) (found at 38 U.S.C. § 5101 note) (requiring Secretary to provide for "expeditious treatment" of claims remanded by Board or Court).

On consideration of the foregoing, it is

ORDERED that the Board's July 3, 1997, decision with respect to claim 2 is VACATED and that matter is REMANDED to the Board for readjudication consistent with this order and the Federal Circuit opinion.

DATED: November 6, 2001

PER CURIAM.