

AN INTRODUCTION TO VETERANS LAW: SERVING THOSE WHO SERVED US

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Executive Summary: The Federal Circuit is a court of appeals with exclusive jurisdiction over several important subjects including veterans law. Veterans law mainly encompasses monetary disputes against the government for benefits owed to veterans and their families following their service to the United States. These disputes invariably come up when a veteran or their family member is denied a benefit promised to eligible veterans, like a disability pension for veterans injured in connection with military service. Three pressing veterans law issues are (1) The Court of Appeals for Veterans Claims' (CAVC) newfound ability to certify class actions, (2) the Veterans Appeals Improvement and Modernization Act (AMA), and (3) the newfound reviewability of eligibility determinations under the Caregiver Program by the Board of Veterans Appeals. Veterans law is grounded in our desire to repay those who served our nation while ensuring that only legitimate claims are fulfilled. The foundational elements of veterans law are rooted in administrative law and the need for judicial review over agency decisions.

I. VETERANS LAW BACKGROUND

Veterans law is the body of law that governs the adjudication of veterans benefits claims; it is “the creature of a robust federal statutory and regulatory scheme.”¹ The Department of Veterans Affairs (VA) oversees and administers veterans benefits regulated under Title 38 of the United States Code.² Once a veteran is discharged from active military service, they and their family become eligible for various benefits.³ Some of these benefits include health care, compensation and pension, education and training, home loans, insurance, vocational rehabilitation and employment, burial and memorial services, and a variety of fiduciary services.

A. *A Brief History of the Veterans Affairs System*

Before the creation of the Veterans Administration, Congress and States provided various benefits to veterans.⁴ For fifty-eight years, from its inception in 1930 until 1988, the VA

¹ Angela Drake, Yelena Duterte, & Stacey-Rae Simcox, Review of Recent Veterans Law Decisions of the Federal Circuit, 69 AM. U. L. REV. 1343, 1345 (2020).

² 38 U.S.C. § 301.

³ See U.S. DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/opa/persona/index.asp> (last visited Sept. 1, 2023) (explaining that active service means “full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, Environmental Science Services Administration or National Oceanic and Atmospheric Administration”). Also, note that those service members dishonorably discharged are not eligible for benefits. *Id.*

⁴ Court History, U.S. COURT OF APPEALS FOR VETERANS CLAIMS, <http://www.uscourts.cavc.gov/history.php> (last visited Sept. 2, 2023).

operated virtually free of any judicial oversight.⁵ Under this system, when the VA denied a veteran’s claim, the veteran had no right to challenge the decision.⁶ In 1988, President Ronald Reagan signed the Veteran’s Judicial Review Act,⁷ thereby establishing the United States Court of Veteran’s Appeals—finally providing claimants an avenue to appeal claims that the VA denied.⁸ Congress changed the court’s name in 1999 to the United States Court of Appeals for Veterans Claims (CAVC).⁹ This court is wholly separate from the VA, and it hears opinions on appeal from the VA-contained Board of Veterans Appeals (BVA).¹⁰

B. *The Veterans Claims Process*

Veterans, or certain family members, must apply to receive benefits at their local VA office.¹¹ Upon receipt of the benefits application, the VA reviews the applicant’s claim and either accepts or denies it.¹² When a local VA office denies an applicant’s claim, they may appeal directly to the BVA, kicking off a uniquely pro-claimant appeals process.¹³

The BVA is the appellate body of the VA;¹⁴ it is comprised of a Chairman, a Vice Chairman, and Veterans Law Judges (VLJs).¹⁵ The BVA does not have a set number of judges; the number of judges varies based on the volume of appeals.¹⁶ Once the BVA reviews the appeal, a single VLJ issues a final decision.¹⁷ If a claimant does not agree with the BVA’s

⁵ See *id.* (noting the VA was the only federal agency free from oversight).

⁶ *Id.*

⁷ Pub. L. No. 100-687, 102 Stat. 4107 (1988) (codified as amended at 38 U.S.C. § 7101 (2018)).

⁸ See Court History, *supra* note 4 (noting that the CAVC is an Article I court).

⁹ See *id.* (explaining that the name change resulted largely from an influx of post-Vietnam claims in the 1970s and 1980s).

¹⁰ *Id.*

¹¹ Daniel T. Shedd, CONG. RESEARCH SERV., Overview of the Appeal Process for Veterans’ Claims 1 (2012), http://www.veteranslawlibrary.com/files/CRS_R42609.pdf.

¹² *Id.*

¹³ See Drake et al., *supra* note 1, at 1345 n.4 (quoting *Henderson v. Shinseki*, 562 U.S. 428, 440 (2011) (explaining that the VA must assist veterans in developing evidence to support their claims). For example, veterans are entitled to the “benefit of the doubt” when there is a balance of positive and negative evidence. See *Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990) (explaining that 38 U.S.C. § 3007(b) provides this unique standard of proof to veterans). The BVA reviews claims *de novo*. *Henderson*, 562 U.S. at 440–41.

¹⁴ Board of Veterans’ Appeals, U.S. DEP’T OF VETERANS AFFAIRS, <https://www.bva.va.gov/index.asp> (last visited Sept. 2, 2023).

¹⁵ Board of Veterans’ Appeals Organizational Chart, U.S. DEP’T OF VETERANS AFFAIRS, https://www.bva.va.gov/docs/Board_of_Veterans_Appeals_Organizational_Chart.pdf (last visited Sept. 2, 2023).

¹⁶ How Do I Appeal?, U.S. DEP’T OF VETERANS AFFAIRS, <https://www.bva.va.gov/docs/Pamphlets/How-Do-I-Appeal-Booklet--508Compliance.pdf> (last visited Sept. 2, 2023).

¹⁷ *Id.*

decision, they may begin the appeals process by timely filing a notice of appeal with the CAVC.¹⁸

The CAVC is comprised of seven permanent judges and two additional judges, all of whom serve fifteen-year terms.¹⁹ A panel of three judges hears appeals from the BVA, during which the CAVC reviews the BVA's decision, the written record, and the parties' briefs.²⁰ After the CAVC issues its judgment, a party has sixty days to appeal the decision to the United States Court of Appeals for the Federal Circuit.²¹

The Federal Circuit reviews questions of law; thus, claimants only appeal CAVC decisions when they believe that the CAVC has made a legal error.²² The Federal Circuit cannot review the CAVC's factual findings unless the case presents a constitutional issue.²³ Given the limited jurisdiction, few veterans law cases reach the Federal Circuit.²⁴ When a party does not agree with the Federal Circuit's decision, it can appeal to the Supreme Court.²⁵

The most recent veterans law case to reach the Supreme Court was *Arellano v. McDonough*.²⁶ Mr. Arellano suffered psychiatric conditions connected to an incident when the ship he served on collided with another ship.²⁷ In 2011, approximately thirty years after Mr. Arellano's service, he applied for and was granted VA benefits for psychiatric conditions.²⁸ The VA set the effective date of the benefits as June 3, 2011, the day Mr. Arellano applied.²⁹ Mr. Arellano appealed the effective date, arguing that 38 U.S.C. § 5110(b)(1) allows that if a veteran applies for benefits within one year of discharge from service, the effective date is retroactively set on the day after the discharge.³⁰ Mr. Arellano further argued that his medical

¹⁸ See Court Process, U.S. COURT OF APPEALS FOR VETERANS CLAIMS, https://www.uscourts.cavc.gov/court_process.php (last visited Sept. 2, 2023) (explaining that veterans must file a notice of appeal to the CAVC within 120 days of the BVA's decision).

¹⁹ Id.

²⁰ Id. However, most of the cases that reach the CAVC are non-precedential; single judges, as opposed to a panel of three judges, resolve these non-precedential cases. Id.

²¹ Id.

²² Court Role and Structure, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited Sept. 2, 2023).

²³ CONG. RESEARCH SERV., U.S. COURT OF APPEALS FOR VETERANS CLAIMS: A BRIEF INTRODUCTION 1 (2019), <https://crsreports.congress.gov/product/pdf/IF/IF11365>.

²⁴ Court Jurisdiction, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT, <http://www.cafc.uscourts.gov/the-court/court-jurisdiction> (last visited Sept. 2, 2023) (noting that, as of 2018, the Federal Circuit's case load consisted of 20% administrative law cases, 67% intellectual property cases, and 13% money damages against the United States government). Veterans benefits claims, international trade disputes, and personnel claims, account for the administrative law cases that make up 20% of the Federal Circuit's docket. Id.

²⁵ Court Process, *supra* note 18.

²⁶ 598 U.S. 1 (2023).

²⁷ Id. at 5.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 5-6.

condition prevented him from applying for benefits, so the one-year timer should have been equitably tolled, or paused, until Mr. Arellano was physically able to make the claim.³¹

The appeal reached the Federal Circuit, where a unanimous court sitting *en banc* decided against Mr. Arellano's appeal but was split on the reason.³² Some members decided that equitable tolling applies to § 5110(b)(1) but that it did not apply to Mr. Arellano's circumstances, and other members decided that equitable tolling was inapplicable to any use of § 5110(b)(1).³³ A unanimous Supreme Court ruled against Mr. Arellano, holding that, based on the specificity of the statute, Congress did not intend for equitable tolling to apply to the use of § 5110(b)(1).³⁴

Following *Arellano*, the Federal Circuit, sitting *en banc*, ruled in *Taylor v. McDonough*³⁵ that a veteran was entitled to benefits back to his 1971 discharge because the classified status of chemical tests delayed his VA claim filing.³⁶ The Federal Circuit split on the reasoning for the relief, with some judges finding that § 5110, as applied to Mr. Taylor, unconstitutionally denied him access to the VA adjudicatory system,³⁷ while other judges granted relief based on the doctrine of equitable estoppel.³⁸

II. THREE KEY VETERANS LAW ISSUES TO KEEP AN EYE OUT FOR

First, in 2017, the Federal Circuit and Congress revolutionized the veterans benefits process. In April 2017, the Federal Circuit decided *Monk v. Shulkin*.³⁹ After the VA denied his application for disability benefits because of his other-than-honorable discharge, Mr. Monk filed a petition for a writ of mandamus with the CAVC, requesting that the CAVC order the Secretary of the VA to "promptly adjudicate both his disability benefits application and the applications of similarly situated veterans."⁴⁰ The CAVC denied both Mr. Monk's request for class certification and his petition.⁴¹ The CAVC rejected the class action request because it lacked the authority to maintain class actions.⁴² The Federal Circuit reversed on appeal, holding that the All Writs Act⁴³ authorized the CAVC to aggregate cases, including Mr. Monk's, which concerned a petition for a writ of mandamus.⁴⁴ Since *Monk*, the CAVC has certified several class

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 8-10.

³⁵ 71 F.4th 909 (Fed. Cir. 2023).

³⁶ *Id.* at 916, 945.

³⁷ *Id.* at 945.

³⁸ 71 F.4th 909, 955 (Fed. Cir. 2023) (Dyk, J., concurring).

³⁹ 855 F.3d 1312 (Fed. Cir. 2017).

⁴⁰ *Id.* at 1314.

⁴¹ *Id.* at 1315.

⁴² *Id.* (explaining that at Mr. Monk's decision review hearing, the VA informed Mr. Monk that he could not move forward with his appeal until the BCNR provided records concerning his discharge status).

⁴³ 28 U.S.C. § 1651(a).

⁴⁴ *Monk*, 855 F.3d at 1318.

actions.⁴⁵ Until the CAVC adopts its own class action rules and procedures, the CAVC has opted to use Rule 23 of the Federal Rules of Civil Procedure as a guide for class action proceedings.⁴⁶ This new class action process provides veterans and their surviving family members with more choices on how to handle disagreements with VA decisions.⁴⁷

In 2022, the Federal Circuit placed limits on the CAVC's jurisdiction to certify classes, when it decided *Skaar v. McDonough*.⁴⁸ The board denied Mr. Skaar's claim that his blood disorder was connected with radiation exposure from a cleanup after a nuclear-armed bomber crashed in Palomares, Spain.⁴⁹ The CAVC certified a class consisting of Mr. Skaar as the class representative and other members who had not filed a claim or had filed a claim and had not yet reached a Board decision.⁵⁰ The Federal Circuit held that the CAVC lacked jurisdiction over the class members who had not yet received a Board decision.⁵¹

Second, in August 2017, Congress passed the Veteran Appeals Improvement and Modernization Act (AMA).⁵² The rules that the VA promulgated to implement the AMA took effect in February 2019.⁵³ The AMA, in part, created a new decision review process before the agency consisting of three different "lanes" of review: higher-level review, supplemental claims, and appeal.⁵⁴ The first two lanes involve a review by the agency of original jurisdiction, most often a VA regional office, that made the initial decision. Under higher-level review, claimants cannot submit additional evidence, there is only an argument.⁵⁵ In supplemental claims, claimants may submit evidence that is new and relevant.⁵⁶ In the appeals lane, veterans proceed directly to the Board of Veterans Appeals for *de novo* review; once at the Board, appellants may submit evidence in the hearing and evidence dockets but not in the direct docket.⁵⁷

Third, in April 2021, the CAVC changed the appeals process for the Caregivers Program.⁵⁸ The program provides VA benefits to the caretakers of disabled veterans who are unable to perform at least one activity of daily living or who require constant supervision

⁴⁵ See, e.g., *Godsey v. Wilkie*, 31 Vet. App. 207 (2019) (per curiam) (the CAVC's first certified class action).

⁴⁶ *Monk v. Wilkie*, 30 Vet. App. 167, 170-71 (2018) (en banc).

⁴⁷ *Monk*, 835 F.3d at 1321.

⁴⁸ 48 F.4th 1323 (Fed. Cir. 2022).

⁴⁹ *Id.* at 1326-27.

⁵⁰ *Id.* at 1331-32.

⁵¹ *Id.*

⁵² Pub. L. No. 115-55, 131 Stat. 1105 (2017).

⁵³ VA Claims and Appeals Modernization, 84 Fed. Reg. 138 (Jan. 18, 2019) (proposed final rule).

⁵⁴ 38 U.S.C. § 5104C; Board of Veterans' Appeals, U.S. DEPT. OF VETERANS AFFAIRS, <https://www.bva.va.gov/index.asp> (last visited Sept. 7, 2023).

⁵⁵ 38 U.S.C. § 5104B(d).

⁵⁶ 38 U.S.C. § 5108.

⁵⁷ 38 U.S.C. §§ 7105, 7113.

⁵⁸ *Beaudette v. McDonough*, 34 Vet. App. 95 (2021).

because of an impairment.⁵⁹ Maya Beaudette, wife of disabled veteran Jeremy Beaudette, was denied caregiver benefits upon reassessment in 2018. The couple attempted to appeal the decision to the Board, and it replied that it had no jurisdiction to review decisions under the Caregivers Program.⁶⁰ In 2020, the Beaudettes petitioned the CAVC for a writ of mandamus to allow them to appeal the decision to the Board.⁶¹ The court ruled that VA decisions to deny benefits under the Caregivers Program can be reviewed by the Board and, if need be, judicially reviewed.⁶²

III. THE NATIONAL DEFENSE AUTHORIZATION ACT

The National Defense Authorization Act (NDAA) authorizes appropriations and establishes policy for the Department of Defense, nuclear weapons at the Department of Energy, defense intelligence programs, and the federal government's other defense activities. The Act determines the agencies responsible for defense, establishes recommended funding levels, and sets the money spending policies. It does not provide budget authority, which is provided in subsequent legislation.⁶³

The passage of the Act follows a predictable yearly schedule. First, in early February, the executive branch releases its Presidential Budget Request, which details a proposed budget for the upcoming fiscal year. Then, the House and Senate Armed Services Committees hold hearings on the budget programs for the upcoming fiscal year. Next, the Committees release their proposed bills for review and passage through subcommittees and full committees. After the bills are passed in committees, the full House and Senate consider the bill on the floor. Then, the two versions go to "conference" in which the leadership of both committees work to reconcile differences. Finally, once the bill is passed in the House and Senate, the final bill is sent to the President for signature before it becomes law.⁶⁴

IV. FEDERAL TORT CLAIMS ACT

Civil litigation against the United States government is permitted under the Federal Tort Claims Act (FTCA).⁶⁵ Individuals are allowed to bring suit for money damages only for damage to or loss of property, or personal injury/death, caused by the negligence, wrongful act, or omission of a government employee while acting within the scope of his or her

⁵⁹ Id. at 100. For more information on the Caregivers Program, see The Program of Comprehensive Assistance for Family Caregivers, U.S. DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/family-member-benefits/comprehensive-assistance-for-family-caregivers> (last visited Sept. 7, 2023).

⁶⁰ Id.

⁶¹ Id. at 101.

⁶² Id. at 105, 108.

⁶³ National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81.

⁶⁴ Center for Arms Control and Non-Proliferation, The NDAA process, explained, <https://armscontrolcenter.org/the-ndaa-process-explained/> (last visited Sept. 7, 2023).

⁶⁵ Federal Tort Claims Against Federal Judiciary Personnel, <https://www.uscourts.gov/rules-policies/judiciary-policies/federal-tort-claims-against-federal-judiciary-personnel> (last visited Sept. 7, 2023).

employment.⁶⁶ The FTCA includes an intentional tort exception that does not allow an individual to sue the federal government for an intentional tort by a federal government employee.⁶⁷

V. FERES DOCTRINE

An exception to the remedies provided by the FTCA is the Feres Doctrine which prevents servicemembers from suing for injuries caused by negligence on the part of the federal government if the injury is active-duty service-related.⁶⁸ Discharged veterans injured at VA hospitals are excluded from the Feres Doctrine, whereas military reservists killed or injured in training exercises are included under the Feres Doctrine.⁶⁹ Critics of the Feres Doctrine level three main criticisms: (1) the loss of autonomy and rights of servicemembers because they are unable to sue for medical malpractice, (2) the majority of medical care provided to servicemembers is outside of combat zones, and (3) the change in the rationale for upholding the doctrine over the years from protecting military unity to preventing the second-guessing of orders.⁷⁰ Proponents counter by arguing litigation will not solve the problem of military hospital negligence because the Feres Doctrine only prevents the government from being sued and not individual hospitals.⁷¹ Additionally, seventy percent of people treated in military hospitals are dependents of servicemembers, who are not subject to the Feres Doctrine.⁷² In the NDAA 2020, Congress granted servicemembers an exception to the Feres Doctrine, allowing those injured by medical malpractice to file an administrative claim with the Secretary of Defense for compensation.⁷³

VI. THE PACT ACT

In August 2022, Congress passed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act,⁷⁴ which increases VA benefits for veterans who were exposed to toxic materials, such as burn pits or Agent Orange.⁷⁵ The PACT Act extends the period to enroll in VA healthcare from five to ten years for post 9/11 combat veterans, creates a presumption that an ailment is service-connected if a veteran is diagnosed

⁶⁶ *Id.*

⁶⁷ 28 U.S.C. § 2680(h).

⁶⁸ Callum D. Dewar et al., *The Changing Landscape of Military Medical Malpractice: From the Feres Doctrine to Present*, 49 *J. NEUROSURGERY* 1, 1 (2020).

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 3.

⁷³ *Id.*

⁷⁴ H.R. 3967, 117th Cong. (2022).

⁷⁵ FACT SHEET: President Biden Signs the PACT Act and Delivers on His Promise to America's Veterans, THE WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/10/fact-sheet-president-biden-signs-the-pact-act-and-delivers-on-his-promise-to-americas-veterans/> (last visited Sept. 4, 2023); U.S. DEP'T OF VETERANS AFFAIRS, *The PACT Act and Your VA Benefits*, <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/> (last visited Sept. 4, 2023).

with one of twenty-three conditions and meets service requirements, allows for the possibility that survivors of veterans who die of one of the twenty-three conditions can be eligible for benefits, and requires the VA to screen veterans enrolled in VA healthcare for toxic-exposure.⁷⁶

Two Federal Circuit appeals have been impacted by the PACT Act. In *Military Veterans-Advocacy Inc. v. Secretary of Veterans Affairs*,⁷⁷ the appellant waived its challenge to rules impacting U.S. service members exposed to Agent Orange in Thailand during the Vietnam War as moot due to increases in benefits through the passage of the PACT Act.⁷⁸ In *Onofre v. McDonough*,⁷⁹ a portion of a service member's appeal related to hypertension was remanded to the CAVC due to the PACT Act's change in the presumption of service connection related to hypertension.⁸⁰

Included in the PACT Act, the Camp Lejeune Justice Act of 2022⁸¹ waives government immunity by allowing people exposed to water at Marine Corps Base Camp Lejeune in North Carolina for at least thirty days between 1953 and 1987 to first make a claim with the Navy Judge Advocate General and later to bring suit in the Eastern District of North Carolina.⁸² Camp Lejeune's drinking water was potentially contaminated with industrial solvents from dry-cleaning waste and benzene from underground fuel tanks.⁸³ Unlike FTCA claims, which cap attorney's fees at twenty percent for administrative settlements and twenty-five percent for cases going to trial, the Camp Lejeune Act does not provide a limit.⁸⁴ Anecdotal reports suggest that contingency fees have been set as high as sixty percent, while Camp Lejeune claims have risen to third place in the money spent on mass tort advertising, behind Mesothelioma and

⁷⁶ Amy B. Wang, Matt Viser, & Paul Kane, Biden Signs Bill to Aid Veterans Exposed to Toxins from Burn Pits, WASH. POST (Aug. 10, 2022), <https://www.washingtonpost.com/politics/2022/08/10/biden-veterans-burn-pits/>.

⁷⁷ 63 F.4th 935 (Fed. Cir. 2023).

⁷⁸ Id. at 943.

⁷⁹ No. 2022-1897, 2023 WL 2534048 (Fed. Cir. Mar. 16, 2023).

⁸⁰ Id. at 2.

⁸¹ 28 U.S.C. § 2678.

⁸² Mark A. Behrens, Pres. Biden Signs Camp Lejeune Justice Act into Law, FEDERALIST SOC'Y (Aug. 11, 2022), <https://fedsoc.org/commentary/fedsoc-blog/pres-biden-signs-camp-lejeune-justice-act-into-law>; Camp Lejeune Justice Act Claims, Navy JAG Corps, [https://www.jag.navy.mil/legal-services/code-15/camp-lejeune/#:~:text=This%20Act%20includes%20a%20provision,%2C%20and%20\(2\)%20have%20suffered](https://www.jag.navy.mil/legal-services/code-15/camp-lejeune/#:~:text=This%20Act%20includes%20a%20provision,%2C%20and%20(2)%20have%20suffered) (last visited Sept. 4, 2023).

⁸³ Camp Lejeune: Past Water Contamination, U.S. DEP'T OF VETERANS AFFAIRS, <https://www.publichealth.va.gov/exposures/camp-lejeune/> (last visited Sept. 4, 2023).

⁸⁴ 28 U.S.C. § 2678; Michelle Andrews, Lawyer Fees Draw Scrutiny as Camp Lejeune Claims Stack Up, HEALTH NEWS FLA., <https://health.wusf.usf.edu/health-news-florida/2023-05-18/lawyer-fees-draw-scrutiny-as-camp-lejeune-claims-stack-up> (last visited Sept. 4, 2023).

Roundup.⁸⁵ In response members of Congress from both parties and houses have proposed legislation to limit attorney fees related to Camp Lejeune.⁸⁶

VII. VETERANS LAW IN THE NEWS

A. *Supreme Court*

George v. McDonough, 142 S. Ct. 1953 (2022): In 2014, Mr. George appealed a 1977 denial of his VA benefits claim after the regulatory procedure used to deny the claim was invalidated in 2003. The Supreme Court ruled against Mr. George, stating that a determination of a clear and convincing unmistakable error must be based on the laws and procedures that existed when Mr. George's original VA benefits claim was denied.

B. *U.S. Court of Appeals for the Federal Circuit*

Doyon v. United States, 58 F.4th 1235 (Fed. Cir. 2023). The Federal Circuit held that statutes related to Post Traumatic Stress Disorder (PTSD) required the Board for the Correction of Naval Records to use "liberal consideration" when evaluating the circumstances leading to a service member's discharge. This allows for the possibility of service members being discharged for "personality disorders" to challenge that the discharge was due to PTSD and thus entitle members not just to disability compensation but to military disability retirement pay.

Rudisill v. McDonough, 55 F.4th 879 (Fed. Cir. 2022): Mr. Rudisill appealed the VA's decision certifying ten months and sixteen days of education benefits for Mr. Rudisill where he believed his qualification for both the Montgomery GI Bill⁸⁷ and Post-9/11 GI Bill⁸⁸ entitled him to more benefits under 38 U.S.C. § 3327(a). Mr. Rudisill argued that 38 U.S.C. § 3327(a) allowed individuals with benefits under both programs to gain the entirety of the benefits entitled under each, totaling a maximum of 72 months. The Federal Circuit ruled that while the legislation allows for additional benefits to veterans who qualified under multiple periods of service, 38 U.S.C. § 3695(a) explicitly limits the aggregate of such benefits to "not exceed 48 months." As such, Mr. Rudisill was not entitled to more education benefits than the VA initially certified. The Supreme Court has granted certiorari in *Rudisill* and is scheduled to hear oral arguments on November 8, 2023.

Larson v. McDonough, 10 F.4th 1325 (Fed. Cir. 2021): Mr. Larson appealed The Board's decision denying him a total disability rating because his obesity and dysmetabolic syndrome were not disabilities because they were not part of the rating schedule to determine one's percentage of disability. He argued that CAVC has the power to decide what is a disability even if it cannot change its rating. The issue is whether CAVC is prohibited from deciding what is a disability after The Board has made its decision. The Federal Circuit ruled that CAVC has the

⁸⁵ Andrews, *supra* note 84 (reporting based on advertisements since 2012).

⁸⁶ *Id.*

⁸⁷ 38 U.S.C. § 3013.

⁸⁸ 38 U.S.C. § 3312.

power to decide what is a disability but not change the rating the disability receives to determine what percentage one is disabled.

Military-Veterans Advocacy v. Secretary of Veterans Affairs, 7 F.4th 1110 (Fed. Cir. 2021): Military-Veterans Advocacy moved for review of multiple VA regulations issued under the AMA. The issue is whether the regulations are valid under *Chevron's* deference. The Federal Circuit held that the regulation restricting attorney's fees for VA benefits claims was invalid because it was contrary to the clear meaning of the AMA. Additionally, the court found that regulations prohibiting concurrent claims while one is pending review and the exclusion of supplemental claims were inconsistent interpretations considering the constructions of previous statutes.

C. *U.S. Court of Appeals for Veterans Claims*

Martinez-Bodon v. Wilkie, No. 18-3721, 2020 WL 4590176 (Vet. App. 2020): Holding that the term "disability," which the CAVC previously defined as "a functional impairment of earning capacity," applies broadly and includes "more than just pain." However, the CAVC noted that the VA retained authority "to adopt and apply its rating schedule," which might limit the definition of "disability." Therefore, the CAVC found that the BVA "did not err in denying service connection for an anxiety disorder," because the VA had properly exercised its authority "to limit compensation to disabilities that conform to a DSM-5 diagnosis."

VIII. ADDITIONAL MATERIALS

A. *Definitions/Abbreviations/Standards*

- **“At least as likely as not standard:”** the evidentiary standard for veterans (*Gilbert v. Derwinski*, 1 Vet. App. 49 (1990)).
- **The Benefit of the Doubt Doctrine:** the burden of proof for veterans (*Id.*).
- **The Board/BVA:** The Board of Veterans’ Appeals (where veterans first bring their claims).
- **The CAVC:** The Court of Appeals for Veterans Claims (the U.S. Court of Appeals that hears appeals from the BVA).
- **Pro-claimant:** the veterans law system is non-adversarial. The VA has a statutory “duty to assist” the claimant in developing supportive evidence, and the BVA must give the veteran the benefit of the doubt.
- **The VA:** Department of Veterans Affairs (a federal cabinet-level agency).
- **Veteran:** Title 38 of the Code of Federal Regulations defines a veteran as “a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.”

B. *Further Reading Materials*

- Angela Drake, Yelena Duterte, & Stacey-Rae Simcox, *Review of Veterans Law Decisions of the Federal Circuit, 2021 Edition*, 71 AM. U.L. REV. 1619 (2022).
- Ryan Foley and Jamie Rowen, *Putting the “VA” in VTCS: How Facilitating VA Access Can Make Veterans Treatment Courts More Effective*, 12 WAKE FOREST J.L. & POL’Y 61 (2022).
- Lawton R. Nuss, *Reflections and Reactions Regarding the Model Veterans Treatment Court Act*, 90 UMKC L. REV. 637 (2022).
- Max W. Yarus, *The Uncharted Waters of Veterans Class Actions*, 9 STETSON J. ADVOC. & L. 115 (2022).
- John Heaney, *Enlisting Support: Ensuring that Veterans Disabled by Service-Related Mental Illness Receive the Help They Deserve*, 30 FED. CIR. BAR. 193 (2021).
- Cassandra A. Atkin-Plunk et al., *Veteran Treatment Court Clients’ Perceptions of Procedural Justice and Recidivism*, 32 CRIM. JUST. POL’Y REV. 501 (2020).