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 operated virtually free of any judicial oversight.[5] Under this system, when the VA denied a veteran's

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[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 AFFS., https:/www.va.gov/opa/persona/index.asp (last visited Sep. 17, 2024) (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 who are 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 Sep. 17, 2024).
[5] *See id.* (noting the VA was the only federal agency free from oversight).

claim, the veteran had no right to challenge the decision.[6] In 1988, President Ronald Reagan signed the Veterans Judicial Review Act (VJRA),[7] thereby establishing the United States Court of Veterans 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] In addition to passing the VJRA, Congress passed 38 U.S.C. § 511 which contained several exceptions for the new review system, while still maintaining the finality principle present in 38 U.S.C. § 211.

B. Impact of the Veterans Judicial Review Act and 38 U.S.C. §511

The VJRA and 38 U.S.C. § 511 reflect Congress's intent to both expand judicial review for veterans' claims beyond the pre-1988 system and insulate Article III courts from the heavy volume of benefits adjudications that would result from expanding the scope of judicial review for these claims. While the VJRA and Section 511 are generally thought of as necessary reforms for the veterans' claims system, it is important to consider the impact these reforms had on veterans' ability to assert their rights in Article III courts.

Under the VJRA, veterans cannot file claims directly in federal district courts or regional courts of appeals. Instead, veterans must follow the process laid out in the statute. The statute sharply limits access to Article III trial courts and instead mandates that veterans bring their claims to CAVC, an Article I court with specialized but much narrower powers. The language of 38 U.S.C. § 511 makes it clear that the Secretary's decisions on benefits are "final and conclusive" and bars "any court" from reviewing them, except through the specialized process found in the VJRA. Together, the VJRA and Section 511 drastically limit the ability for veterans to assert rights in Article III courts. As a consequence, veterans face a narrower set of remedies than other federal claimants around issues related to due process and equal protection. Veterans cannot seek damages or broad equitable relief in Article III courts for benefits-related harms. In practice, the VJRA and Section 511 serve to channel disputes related to VA decisions or practices away from Article III Courts and into the specialized system set up by the VJRA. If a claim is able to somehow still reach an Article III Court, the scope of review for Article III courts is limited to narrow legal questions only.

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[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.*

C. 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 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

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[11] Daniel T. Shedd, CONG. RSCH. 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 AFFS., https:/www.bva.va.gov/index.asp (last visited Sep. 2, 2023).

[15] *Board of Veterans' Appeals Organizational Chart*, U.S. DEP'T OF VETERANS AFFS., https:/www.bva.va.gov/docs/Board_of_Veterans_Appeals_Organizational_Chart.pdf (last visited Sep. 2, 2023).

[16] *Board Appeals*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/decision-reviews/board-appeal (last visited Sep. 17, 2024).

[17] *Id.*

[18] *See Court Process*, U.S. COURT OF APPEALS FOR VETERANS CLAIMS, https://www.uscourts.cavc.gov/court_process.php (last visited Sep. 17, 2024) (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 Sep. 17, 2024).

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 *Rudisill v. McDonough*.[26] Mr. Rudisill served a total of eight years on active duty in the U.S. Army.[27] Though he first enlisted in 2000, he reenlisted twice over the next decade.[28] Under the Montgomery GI Bill,[29] Mr. Rudisill was entitled to thirty-six months of educational benefits paid by the Department of Veterans Affairs (VA).[30] Under the Post-9/11 GI Bill,[31] Mr. Rudisill was separately entitled to thirty-six months of educational benefits.[32] However, Mr. Rudisill's benefits were subject to a forty-eight-month cap on aggregate benefits.[33] Mr. Rudisill used twenty-five months and fourteen days of his Montgomery benefits on his undergraduate education, and he wanted to use his Post-9/11 GI benefits to attend Yale Divinity School.[34] However, looking to Section 3327(d)(2) of the Post-9/11 GI Bill, the VA told Mr. Rudisill that because he requested his Post-9/11 benefits before he used all of his Montgomery benefits, he could only receive thirty-six months of benefits rather than forty-eight months.[35]

The educational benefits provided by the Post-9/11 GI Bill were intentionally more generous than those provided by the Montgomery Bill to address the difficulty of military service after the terrorist attacks on September 11, 2001.[36] Because the Post-9/11 GI Bill did not take effect until August 1, 2009, servicemembers who were entitled to Post-9/11 benefits but had only received benefits through the Montgomery program needed a mechanism to access the better

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[23] CONG. RSCH. 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 Sep. 17, 2024) (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] 601 U.S. 294 (2024).
[27] *Id.* at 298.
[28] *Id.*
[29] 38 U.S.C. §§ 3001–3036 (2023).
[30] *Rudisill*, 601 U.S. at 298.
[31] 38 U.S.C. §§ 3301–3327 (2023).
[32] *Rudisill*, 601 U.S. at 298.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.* at 300.

benefits.[37] Section 3327 governs these situations.[38] Under this section, those who meet the criteria for both benefits based on the same period of service can exchange Montgomery benefits for Post-9/11 benefits if they meet the following two criteria: first, that they fall into one of six categories as of August 1, 2009, one of the categories being "entitled to [Montgomery benefits]," and second, that they meet the requirements for Post-9/11 benefits as of the date they choose to exchange benefits.[39] Section 3327(d)(2)(A) states that if a veteran has already used some of their Montgomery benefits when switching, as Mr. Rudisill had, the educational benefits are capped at "the number of months of unused entitlement . . . under [the Montgomery GI Bill]," as of the date of the switch.[40]

Mr. Rudisill filed a notice of disagreement with the VA, which denied his claim.[41] The Board of Veterans' Appeals affirmed the VA's denial of Mr. Rudisill's claim, but the Court of Appeals for Veterans Claims reversed, finding that the statutory structure and legislative purpose supported Mr. Rudisill's interpretation of the statute.[42] Though a panel of the Federal Circuit agreed, the *en banc* Federal Circuit reversed the panel in a 10-2 decision.[43] The *en banc* court found that because Mr. Rudisill made an "election" to switch to his Post-9/11 benefits under § 3327(a)(1), his benefits were capped according to § 3327(d)(2).[44]

In a 7-2 decision, the U.S. Supreme Court reversed the *en banc* Federal Circuit.[45] The majority opinion, written by Justice Jackson, found that Mr. Rudisill's service earned him two separate entitlements: one under the Montgomery GI Bill and another under the Post-9/11 GI Bill.[46] Further, the Court found that both statutes establish "a baseline rule" that, unless some other limitation applies, the VA *shall* pay a veteran's benefits.[47] While each bill entitles the veteran to thirty-six months of benefits, both are subject to the aggregate benefits cap of forty-eight months established by 38 U.S.C. § 3695(b).[48] The majority of the Court rejected the government's argument that, based on 38 U.S.C. § 3322(d), veterans entitled to two separate benefits entitlements must "coordinate" the entitlements to use the Post-9/11 benefits because the statutory text does not impose a duty on the veteran to "coordinate" entitlements.[49] The Court reasoned that because Mr. Rudisill is already entitled to both the Montgomery and the Post-9/11

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[37] *Id.* at 302.
[38] *Id.*
[39] *Id.* at 302–03 (quoting 38 U.S.C. § 3327(a)(1)(A), (C)).
[40] *Id.* at 303 (quoting 38 U.S.C. § 3327(d)(2)(A)).
[41] *Id.* at 304.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 305.
[46] *Id.* at 306.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 307–08.

benefits, he "has no need to coordinate any entitlement," so § 3322(d) does not apply to him.[50]

II. THREE KEY VETERANS LAW CONCEPTS

First, in 2017, the Federal Circuit and Congress revolutionized the veterans benefits process. In April 2017, the Federal Circuit decided *Monk v. Shulkin*.[51] 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."[52] The CAVC denied both Mr. Monk's request for class certification and his petition.[53] The CAVC rejected the class action request because it lacked the authority to maintain class actions.[54] The Federal Circuit reversed on appeal, holding that the All Writs Act[55] authorized the CAVC to aggregate cases, including Mr. Monk's, which concerned a petition for a writ of mandamus.[56] Since *Monk*, the CAVC has certified several class actions.[57] 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.[58] This new class action process provides veterans and their surviving family members with more choices on how to handle disagreements with VA decisions.[59]

In 2022, the Federal Circuit placed limits on the CAVC's jurisdiction to certify classes when it decided *Skaar v. McDonough*.[60] 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.[61] 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.[62] The Federal Circuit held that the CAVC lacked jurisdiction over the class members who had not yet received a Board decision.[63]

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[50] *Id.*
[51] 855 F.3d 1312 (Fed. Cir. 2017).
[52] *Id.* at 1314.
[53] *Id.* at 1315.
[54] *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).
[55] 28 U.S.C. § 1651(a).
[56] *Monk*, 855 F.3d at 1318.
[57] *See, e.g.,* Godsey v. Wilkie, 31 Vet. App. 207 (2019) (per curiam) (the CAVC's first certified class action).
[58] Monk v. Wilkie, 30 Vet. App. 167, 170–71 (2018) (en banc).
[59] *Monk*, 835 F.3d at 1321.
[60] 48 F.4th 1323 (Fed. Cir. 2022).
[61] *Id.* at 1326-27.
[62] *Id.* at 1331-32.
[63] *Id.*

Second, in August 2017, Congress passed the Veteran Appeals Improvement and Modernization Act (AMA).[64] The rules that the VA promulgated to implement the AMA took effect in February 2019.[65] 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.[66] 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.[67] In supplemental claims, claimants may submit evidence that is new and relevant.[68] 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.[69]

Third, in April 2021, the CAVC changed the appeals process for the Caregivers Program.[70] 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 because of an impairment.[71] 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.[72] In 2020, the Beaudettes petitioned the CAVC for a writ of mandamus to allow them to appeal the decision to the Board.[73] 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.[74] The Secretary appealed the CAVC's decision.[75]

On February 27, 2024, the Federal Circuit affirmed the CAVC's decision.[76] The question before the court was "whether the Beaudettes have a 'clear and indisputable' right to Board review under the correct interpretation of 38 U.S.C. § 1720G(c)(1)."[77] The court separated an eligibility decision from a judgmental treatment decision; where the VA would

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[64] Pub. L. No. 115-55, 131 Stat. 1105 (2017).
[65] VA Claims and Appeals Modernization, 84 Fed. Reg. 138 (Jan. 18, 2019) (proposed final rule).
[66] 38 U.S.C. § 5104C; *Board of Veterans' Appeals*, U.S. DEPT. OF VETERANS AFFAIRS, https:/www.bva.va.gov/index.asp (last visited Sep. 7, 2023).
[67] 38 U.S.C. § 5104B(d).
[68] 38 U.S.C. § 5108.
[69] 38 U.S.C. §§ 7105, 7113.
[70] *Beaudette v. McDonough*, 34 Vet. App. 95 (2021).
[71] *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 AFFS., https:/www.va.gov/family-member-benefits/comprehensive-assistance-for-family-caregivers (last visited Sep. 17, 2024).
[72] *Beaudette*, 34 Vet. App. at 95.
[73] *Id.* at 101.
[74] *Id.* at 105, 108.
[75] Beaudette v. McDonough, 93 F.4th 1361, 1363 (Fed. Cir. 2024).
[76] *Id.* at 1364.
[77] *Id.* at 1366.

have the authority to prescribe certain medical care, the Board has the authority to review other decisions, like eligibility decisions.[78] The court found that the Beaudettes were deemed ineligible in part because Mr. Beaudette was not available for an in-person evaluation, but that this was a procedural point of eligibility under the Caregiver Program, not a medical determination.[79] Therefore, the Board did have the authority to review the decision.[80] The court concluded by stating "the Beaudettes and other similarly situated veterans and caregivers have an indisputable right to judicial review of Caregiver Program decisions that do not affect the furnishing of support or assistance."[81]

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.[82]

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.[83]

IV. FEDERAL TORT CLAIMS ACT

Civil litigation against the United States government is permitted under the Federal Tort Claims Act (FTCA).[84] 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,

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[78] *Id.* at 1369.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81.
[83] CTR. FOR ARMS CONTROL AND NON-PROLIFERATION, *The NDAA Process, Explained*, https:/armscontrolcenter.org/the-ndaa-process-explained/ (last visited Sep. 17, 2024).
[84] U.S. COURTS, *Federal Tort Claims Against Federal Judiciary Personnel*, https://www.uscourts.gov/rules-policies/judiciary-policies/federal-tort-claims-against-federal-judiciary-personnel (last visited Sep. 17, 2024).

or omission of a government employee while acting within the scope of his or her employment.[85] 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.[86]

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.[87] 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.[88] 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.[89] Proponents counter by arguing that 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.[90] Additionally, seventy percent of people treated in military hospitals are dependents of servicemembers, who are not subject to the Feres Doctrine.[91] 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.[92]

VI. THE PACT ACT

In August 2022, Congress passed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act,[93] which increases VA benefits for veterans who were exposed to toxic materials, such as burn pits or Agent Orange.[94] The PACT

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[85] *Id.*
[86] 28 U.S.C. § 2680(h).
[87] Callum D. Dewar, Jason H. Boulter, Brian P. Curry, Dana M. Bowers, & Randy S. Bell, *The Changing Landscape of Military Medical Malpractice: From the Feres Doctrine to Present*, 49 J. NEUROSURGERY 1, 1 (2020).
[88] *Id.* at 2.
[89] *Id.*
[90] *Id.*
[91] *Id.* at 3.
[92] *Id.*
[93] H.R. 3967, 117th Cong. (2022).
[94] *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-

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 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.[95]

Two Federal Circuit appeals have been impacted by the PACT Act. In *Military Veterans-Advocacy Inc. v. Secretary of Veterans Affairs*,[96] 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.[97] In *Onofre v. McDonough*,[98] 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.[99]

Included in the PACT Act, the Camp Lejeune Justice Act of 2022[100] 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.[101] Camp Lejeune's drinking water was potentially contaminated with industrial solvents from dry-cleaning waste and benzene from underground fuel tanks.[102] Unlike FTCA claims, which cap attorneys' 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.[103] 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

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releases/2022/08/10/fact-sheet-president-biden-signs-the-pact-act-and-delivers-on-his-promise-to-americas-veterans (last visited Sep. 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 Sep. 4, 2023).

[95] 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.

[96] 63 F.4th 935 (Fed. Cir. 2023).

[97] *Id.* at 943.

[98] No. 2022-1897, 2023 WL 2534048 (Fed. Cir. Mar. 16, 2023).

[99] *Id.* at 2.

[100] 28 U.S.C. § 2678.

[101] 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 (last visited Sep. 17, 2024).

[102] *Camp Lejeune: Past Water Contamination*, U.S. DEP'T OF VETERANS AFFS., https://www.publichealth.va.gov/exposures/camp-lejeune/ (last visited Sep. 17, 2024).

[103] 28 U.S.C. § 2678; Michelle Andrews, *Lawyer Fees Draw Scrutiny as Camp Lejeune Claims Stack Up*, HEALTH NEWS FLA. (MAY 18, 2023, 10:39 AM), https://health.wusf.usf.edu/health-news-florida/2023-05-18/lawyer-fees-draw-scrutiny-as-camp-lejeune-claims-stack-up.

Mesothelioma and Roundup.[104] In response, members of Congress from both parties and houses have proposed legislation to limit attorney fees related to Camp Lejeune.[105]

VII. VETERANS LAW IN THE NEWS

A. Supreme Court

Bufkin v. McDonough, 604 U.S. 369 (2025): Veteran Petitioners Mr. Bufkin and Mr. Thornton sought disability benefits from the VA, claiming they had post-traumatic stress disorder ("PTSD") stemming from their military service. They argued that they qualified for benefits under the benefit-of-the-doubt rule that requires the VA to give claimants the "'benefit of the doubt,'" allowing veterans access to treatment when it is a close call, including when there is evidence for and against them receiving care. The Supreme Court affirmed the Court of Appeals, ruling against the Petitioners, and finding that the VA's benefit-of-the-doubt determinations are a factual question, as opposed to a legal question, that are reviewed for clear error. Under this standard, the VA's original decisions are given defence. In the dissenting opinion, Justice Jackson and Justice Gorsuch argue that a "[n]ondeferential review" would have better "minimize[d] the risk that veterans with borderline claims will be denied benefits to which they are entitled." [106]

Rudisill v. McDonough, 601 U.S. 294 (2024): Mr. Rudisill appealed the Federal Circuit's *en banc* decision denying him GI benefits when he believed his qualification for both the Montgomery GI Bil[107] and Post-9/11 GI Bill[108] entitled him to more benefits under 38 U.S.C. § 3327(a) than he previously claimed. Mr. Rudisill argued that 38 U.S.C. § 3327(a) allows individuals with benefits under both programs to gain the entirety of the benefits entitled under each, up to the 48-month aggregate benefits cap. The Supreme Court reversed the Federal Circuit's holding and ruled that 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," and Mr. Rudisill is free to access both sets of benefits, in whatever order he chose, up to the cap. As such, Mr. Rudisill is entitled to more education benefits than the VA initially certified.

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.

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[104] Andrews, *supra* note 84 (reporting based on advertisements since 2012).
[105] *Id.*
[106] *Id.* at 372.
[107] 38 U.S.C. § 3013.
[108] 38 U.S.C. § 3312.

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

Powers v. McDonough, 748 F. Supp. 3d 842 (C.D. Cal. 2024): A California District Court recently ruled in favor of unhoused veterans with disabilities, issuing an injunction compelling the West Los Angeles VA to provide the veterans with housing, as well as an order to stop entering into illegal land-use agreements. For context, the VA received land in the 1800s—land intended to house veterans with disabilities. Now, with approximately 3,000 unhoused veterans in Los Angeles alone, the Court found that the West Los Angeles VA "has not made good on its promise to build housing for veterans,"[109] instead leasing its property to a private school, UCLA's baseball team, an oil company, and other private entities. In response, the government appealed. Although the oral arguments have not been scheduled yet, it will be up to the Ninth Circuit to reconsider this case and its key issues impacting veterans.

NOW-NYC v. Department of Defense, 755 F. Supp. 3d 350 (S.D.N.Y. 2024): The National Organization of Women-New York City ("NOW-NYC") sued the Department of Defense and VA, claiming unlawful and discriminatory IVF policies, which require service members to show that their need to procreate is "connected to their military service,"[110] formally called the "Service Connection Requirement."[111] If service members cannot show this nexus, their fertility healthcare will not be covered by the VA's Veteran's Health Admission ("VHA"). The New York District Court dismissed the case for lack of jurisdiction, finding that the claim was barred from District Court review under the VJRA, and for failure to state a claim. On January 6, 2025, NOW-NYC appealed the case to the Second Circuit.

Doyon v. United States, 58 F.4th 1235 (Fed. Cir. 2023):[112] 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.

Larson v. McDonough, 10 F.4th 1325 (Fed. Cir. 2021):[113] Mr. Larson appealed the Board of Veterans' Appeals decision denying him a total disability rating because his obesity

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[109] *Powers*, 748 F. Supp. 3d at 847.
[110] *NOW-NYC*, 755 F. Supp. 3d at 355.
[111] *Id.*
[112] On remand, the U.S. Court of Federal Claims set aside the BCNR's decision as "arbitrary and capricious," ruling in favor of Plaintiff Veteran Doyon. Doyon v. United States, No. 19-1964C, 2024 WL 3861736, at *15 (Fed. Cl. Aug. 19, 2024).
[113] Upon a finding that it had jurisdiction to hear Mr. Larson's claims, the Court of Appeals for Veterans Claims remanded the case, holding that "the Court will vacate that part of the Board's decision that denied entitlement to benefits for morbid obesity, dysmetabolic syndrome, fatigue, edema, skin tags, acanthosis nigricans, and striae, and remand those matters for further proceedings consistent with this decision." See Larson v. McDonough, No. 17-0744, 2021 WL 5296717, at *1 (Vet. App. Nov. 15, 2021).

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

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).