

## 21-432 ARELLANO V. McDONOUGH

DECISION BELOW: 1 F.4th 1059

LOWER COURT CASE NUMBER: 2020-1073

QUESTION PRESENTED:

Under 38 U.S.C. § 5110(b)(1), "[t]he effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release *if application therefor is received within one year from such date of discharge or release.*" (emphasis added.) Veterans who miss this one-year statutory deadline—even if because of a service-connected physical or mental impairment—are barred from recovering retroactive disability benefits reaching back to their date of discharge. In *Irwin*, this Court held that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95-96 (1990). Despite this, an "equally divided" Federal Circuit held 6-6 that military veterans are categorically precluded from pursuing equitable tolling of § 5110(b)(1)'s one-year deadline, regardless of the facts and circumstances of their individual cases.

The questions presented are:

- (1) Does *Irwin's* rebuttable presumption of equitable tolling apply to the one-year statutory deadline in 38 U.S.C. § 5110(b)(1) for seeking retroactive disability benefits, and, if so, has the Government rebutted that presumption?
- (2) If 38 U.S.C. § 5110(b)(1) is amenable to equitable tolling, should this case be remanded so the agency can consider the particular facts and circumstances in the first instance?

CERT. GRANTED 2/22/2022