

APR 15 2019

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No. 18-1319

In the
Supreme Court of the United States

ELIJAH THOMAS,

Petitioner,

v.

ROBERT WILKIE,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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APRIL 15, 2018

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QUESTION PRESENTED

Should the 120 day deadline stated in 38 U.S.C. § 7266(a) for filing a claim in the Court of Appeals for Veteran Claims be equitably tolled where the Veteran who has suffered 100% disability is unable to file papers due to severe bodily swelling and pain that left him housebound?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Elijah Thomas requests that the Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.



OPINIONS BELOW

The Opinion and Judgment of the United States Court of Appeals for the Federal Circuit is reproduced below at App.1a, 5a. The Order and Judgment of the Court of Appeals for Veterans Claims are included below at App.6a, 8a, and 10a.



JURISDICTION

The Opinion of the United States Court of Appeals for the Federal Circuit was entered on January 14, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATUTORY PROVISION INVOLVED

38 U.S.C. § 7266(A)

In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.



STATEMENT OF THE CASE

I Elijah Thomas, I am a Vietnam veteran I have a diagnosed of PTSD April 1996, I am 100% disabled. I was awarded unemployability September 2004. I receive special monthly compensation, based on being house bound starting in March 2009. The Board of Veterans Appeals denied my claim under 28 U.S.C. § 1151, and early effective dated for hypertension, December 20, 2017. I had 120 days to file a Notice of Appeal, I file five day after the deadline had passed. The disability I am seeking is the cause I file late is severe neck shoulder, back and leg pain. The only release was surgery. I provided medical evidence from the VA Hospital to support my problem. The Veteran Court of Appeals denied my claim for lack of Jurisdiction July 10, 2018.

I requested reconsideration to the Veteran Court of Appeals that was denied for lack of jurisdiction August 15, 2018. I requested tolling for my appeals.

My friend who been there for many years was dying. This was painful and stressful she lived forty miles away. I never was the caretaker I mention, and I was losing a friend.

I appealed my case to the United States Court of Appeals for the Federal Circuit, for tolling. I provided updated an medical report as I was preparing for surgery. My appeal was denied January 14, 2019.



REASONS FOR GRANTING THE PETITION

September 2004 I stop working due to chronic neck, shoulder and back pain, I was later award unemployability, since that time my pains had worsen severe to unbearable pain. Neck, shoulder, both arm and hand, back and both legs. The cause of the pain is pinch nerve.

I am asking the Court that the 120 day deadline in 38 U.S.C. Section 7266(a) be subject to equitable tolling and that my failure to file a NOA should be excused under tolling principles.



CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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