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No. 20-

Supreme Court, U.S.  
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**SUPREME COURT OF THE UNITED STATES**

Cherrie Hollie,

*Petitioner*

vs.

Robert Wilkie, Secretary of Veterans Affairs,

*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI**

ORIGINAL

Cherrie Hollie  
3675-39<sup>th</sup> Ave., Apt. 5  
Oakland, CA. 94619  
Telephone: (510) 482-5810

Petitioner in Pro Per

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**I**  
**QUESTIONS PRESENTED**

A. Did the Federal Circuit err in dismissing Petitioner's appeal from the U.S. Court of Appeals for Veterans Affairs for lack of jurisdiction?

B. Did the Federal Circuit err in failing to make a finding as to whether Petitioner is legally the surviving spouse of the late veteran, Charlie P. Hollie, as defined by 38 C.F.R. 3.50 (b) ?

C. Did the Federal Circuit err in failing to make a finding that Petitioner meets the requirement of 38 C.F.R. 3.54 with respect to her entitlement to a Department of Veterans Affairs survivor's pension?

D. Did the Federal Circuit commit error by its failure to consider some evidence presented by Petitioner relevant to the appeal and included in the record?

E. In failing to determine that Petitioner was eligible for a veterans' survivor's pension, was Petitioner unconstitutionally denied equal protection of the laws as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution?

F. Did the Federal Circuit commit error by its failure to consider Petitioner's equitable arguments?

G. Did the United States Court of Appeals for the Federal Circuit err in failing to rule on the denial to Petitioner of oral argument by the U.S. Court of Appeals for Veterans Claims?

**II**  
**PETITION FOR WRIT OF CERTIORARI**

Cherrie Hollie, Petitioner in Pro Per, respectfully petitions this court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

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**III**  
**OPINIONS BELOW**

The decision by the U.S. Court of Appeals for Veterans Affairs of November 27, 2019 is attached in the Appendix. The decision of June 3, 2020 of the United States Court of Appeals for the Federal Circuit dismissing Petitioner's appeal is attached in the Appendix.

**IV**  
**JURISDICTION**

The decision of the U.S. Court of Appeals for the Federal Circuit dismissing Ms. Hollie's appeal was decided on June 3, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. Section 1257, having timely filed this petition for a writ of certiorari within ninety days of the judgment of the U.S. Court of Appeals for the Federal Circuit.

**V**  
**CONSTITUTIONAL PROVISIONS INVOLVED**

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

**VI**  
**STATEMENT OF THE CASE**

On November 27, 2019, the U.S. Court of Appeals for Veterans Claims

affirmed a December 27, 2018 Board of Veterans Appeals decision denying Petitioner a survivor's pension. On June 3, 2020, the U.S. Court of Appeals for the Federal Circuit dismissed Petitioner's appeal, stating that she had a sympathetic case, but claiming that the court did not have jurisdiction as Petitioner allegedly did not raise constitutional issues. As can be seen herein, Petitioner effectively raised the issue of equal protection of the laws as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution.

While the U.S. Court of Appeals for Veterans Claims found that Petitioner did not qualify as a surviving spouse for purposes of entitlement to a survivor's pension, Petitioner has strong arguments that she is veteran Charlie Hollie's surviving spouse as defined by 3 C.F.R. Section 3.50..

This case involves the interpretation of 38 C.F.R. Section 3.54 and interpretation of the benefit of the doubt rule and of general equitable principles. The case also involves the issue of equal protection of the laws as guaranteed by the 5<sup>th</sup> Amendment to the U.S. Constitution and by the 14<sup>th</sup> Amendment to the U.S. Constitution.

It is undisputed that Appellant was married to the veteran, the late Charlie Hollie, who died in March 2009. Mr. Hollie died of chronic renal failure, as is evidenced in his death certificate. He was also granted an improved veteran's pension in December 2008 because of his renal failure. It should be noted that Mr. Hollie was a veteran who served in the U.S. Marine Corps from 1960 to 1964 and in the U.S. Navy from 1964 to 1968 and was honorably discharged from the U.S. Marine Corps in June 1964 and was honorably discharged from the U.S. Navy in August 1968. Appellant and the late Charlie Hollie were married on or about July 18, 1970 (see RBA960). It is also undisputed that Appellant gave birth to a son, Jermaine Hollie, during the marriage. Jermaine Hollie was born on April 11, 1971. His birth was a full-term birth.

While the parties were divorced in 1976 because of an extreme level of domestic violence by the veteran to Appellant at a time before the passage of significant legislation protecting women from domestic violence (including, but not limited to, the Violence Against Women Act, which was signed by President Bill Clinton in September 1994), it is an undisputed fact that the veteran, Charlie Hollie, never married after the divorce and that Appellant was not married at the time of the veteran's death. It should be noted that among the violent incidents that forced Appellant to file a Petition for Dissolution of Marriage was an incident in which the veteran, Charlie Hollie, was fighting with Petitioner against a cement wall. In said fight, the Petitioner sustained a head injury, causing her excruciating pain and injuries which in fact caused her to go blank. See the V9, which is part of the record at RBA73-75 and RBA 82-83.

Given the circumstances, Appellant, who was married to the veteran for over a year and gave birth to his son during the marriage, contends that she should be deemed his surviving spouse for purposes of the granting to her of a survivor's pension and states that both legal and equitable grounds support her claim.-

## **VII**

### **REASONS FOR GRANTING THE WRIT**

#### **A. This Court Should Grant the Writ of Certiorari Because the Federal Circuit Erred in Dismissing Petitioner's Appeal. The Federal Circuit Had A Duty to Issue A Ruling on the Merits.**

Rather than dismiss Petitioner's appeal from the U.S. Court of Appeals for Veterans Claims, the Federal Circuit had a duty to decide Petitioner's case on the merits. See Kloeckner v. Solis (2012), 568 U.S. 541 and Sayers v. Department of Veterans Affairs, 19-2195 Fed. Cir. 2020). Petitioner had numerous meritorious arguments in support of her position, including the language of Code of Federal Regulations 3.54, which reads in relevant part as follows: A surviving spouse may qualify for pension, compensation, or dependency and indemnity

compensation if the marriage to the veteran occurred before or during his or her service or, if married to him or her after his or her separation from service, before the applicable date stated in this section.

- (a) *Pension.* Death pension may be paid to a surviving spouse who was married to the veteran
  - (1) One year or more prior to the veteran's death, or
  - (2) During any period of time if a child was born of the marriage, or was born to them before the marriage, or
  - (3) Prior to the applicable delimiting dates, as follows:
    - (v) World War II—January 1, 1967.
    - (vi) Korean conflict—February 1, 1965.
    - (vii) Vietnam era—March 8, 1985, and
    - (viii) Persian Gulf War—January 1, 2001.
- (b) *Compensation.* Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Department of Veterans Affairs in effect on December 31, 1957, or who was married to the veteran:
  - (1) Before the expiration of 15 years after termination of the period of service in which the injury or disease which caused the aggravated injury or disease which caused the veteran's death was incurred or aggravated, or
  - (2) One year or more, or
  - (3) For any period of time, if a child was born of the marriage, or was born to them before the marriage.
- (c) *Dependency and indemnity compensation.* Dependency and indemnity compensation payable under 38 U.S.C. Section 1310 (a) may be paid to the surviving spouse of a veteran on or after January 1, 1957, who was married to the veteran:
  - (1) Before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred o
  - (2) For one year or more; or
  - (3) For any period of time if a child was born of the marriage.

In this case, Appellant married the veteran, Charlie Frank Hollie, in July 1970.

Appellant gave birth to her and Mr. Hollie's son, Jermaine Hollie, on April 11, 1971. Jermaine Hollie's birth certificate is found at RBA76. The parties were divorced (because of severe domestic violence suffered by Appellant that was perpetrated on her by the veteran. As a result, Petitioner has Post Traumatic Stress Disorder (See RBA 124) It should be noted that in her



Social Security Statement dated November 29, 2017 at RBA17, it is stated that Appellant's marriage to Charlie Frank Hollie ended in Mr. Hollie's death. In a letter dated April 25, 2018 (See RBA49), A. Weber, M.D. states that Appellant is being treated at the Schuman-Liles Clinic in Oakland, CA. for Post-Traumatic Stress Disorder (PTSD), from her abusive marital relationship with Charlie Hollie, which caused her mental and emotional abuse with violent physical attacks and even stalking. Appellant still suffers anguish and significant pain from the trauma that was inflicted on her during the marriage. As a result, Petitioner was given an expedited hearing before the Board of Veterans Appeals pursuant to 38 U.S. Section 7107. See RBA50.

Appellant and the veteran clearly were married for over a year and they had a child who was born during the marriage, clearly qualifying her for a survivor's pension according to 38 C.F.R. 3.54.

Given these facts, it is clear that the decision of The Honorable Margaret Bartley of the U.S. Court of Appeals for Veterans Claims denying Appellant a survivor's pension is erroneous. The facts and the law make clear that Appellant Cherrie Hollie is eligible for a VA survivor's pension and should be awarded a survivor's pension.

It should be noted that in P. 8 towards the end of the first full paragraph of Respondent's Informal Brief at the Federal Circuit, it is stated that "However, there is no dispute that Ms. Hollie divorced Mr. Hollie to escape abuse".

This court should note that while the court in **Haynes v. McDonald, 785 F. 3d 614, 616 (Fed. Cir. 2015)**, held that the appellant in that case, who had divorced her veteran spouse four years before he died, was not entitled to the requested benefits, it should be noted that said case did not involve a survivor's pension. Nor is it clear from the court's ruling whether there was a child of the marriage. The present case is distinguishable in light of the severity of the

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### **C. The Federal Circuit's Denial of Petitioner's Equitable Claims Was Erroneous**

The Federal Circuit did not fairly or adequately consider Petitioner's equitable claim to a survivor's pension.

As was mentioned in Appellant's Informal Opening Brief in the U.S. Court of Appeals for Veterans Affairs, on P. 15 of the transcript (RBA33) from the hearing of September 26, 2018 before The Honorable Thomas Knope, Barry D. Ammon, Esq., who was at the hearing on behalf of Appellant, stated that it is a matter of justice and fairness that Appellant to be awarded a VA survivor's pension. Specifically, at the top of P. 16 (RBA34), Mr. Ammon argues that "Ms. Hollie was married to the veteran. She remained—even though they were divorced—in regular contact with him throughout his life and especially in the last five of his life when he needed medical help and for many years before that".

Mr. Ammon then stated on the record at P. 16 (RBA34), the following:

They did have a child during the marriage. They were married at least a year. He did serve in Vietnam. He was discharged—entered the military in '64, discharged in '68, clearly in the Vietnam era. Clearly under all three of these criteria the requirement is met and we—Ms. Hollie submits that at least in equity she should be granted the pension.

Judge Knope then stated Okay.

Mr. Ammon then states the following on the record:

There certainly is financial hardship as we've pointed out, also. And of course, even a modest VA pension would be helpful to her.

Judge Knope then states Okay.

Mr. Ammon then states:

--stressful marriage with Charlie Hollie (Ms. Hollie's and the late Charlie Hollie's marriage certificate is included in the record at RBA960 and the Final Judgment of Dissolution

of Marriage with Charles Hollie is attached to the record at RBA343). She really and if anyone is deserving Ms. Hollie certainly is.

Ms. Hollie then states on the record on P. 16 (RBA34):

If it hadn't been for the extreme (meaning extreme (domestic violence)) I could have stayed and just fought him back. Just stayed and just hang with it but it was like my head hit the cement and (inaudible).

Judge Knope then states (At P. 17, RBA35): Right.

Ms. Hollie then states at P. 17, RBA35: I just—oh—I just—

Judge Knope then states:

Well, I want to thank you very much for coming in, ma'am. I have your—I understand what you're arguing and I know that you've submitted a number—a great deal of testimony about your—when you were married so I do want to thank you very much for coming in for that I also—that's all I really have and if there's nothing else I think we can close the hearing at this time.

It is clear that the argument summarized above states a strong case for the application of equity in this matter, which would result in the granting to Petitioner a VA survivor's pension. Given that the Federal Circuit, while stating in its opinion, that Petitioner's case is sympathetic, did not consider her equitable arguments, this Court should grant this petition to allow said issue to be more fully briefed.

**D. The Federal Circuit Failed to Consider Certain Evidence That Was in The Record.**

Petitioner requested that the Federal Circuit consider certain evidence. A court, including an appellate court, should consider all relevant evidence. In fact, said evidence was not considered by the Federal Circuit. It is an axiom that a court, including an appellate court,

should consider all relevant evidence. Given the fact that the Federal Circuit did not consider all relevant evidence, this Petition should be granted to allow said issue to be more fully briefed.

**E. The Federal Circuit Erred in Not Addressing the Denial of Oral Argument to Petitioner at the U.S. Court of Appeals for Veterans Claims and in Denying Oral Argument to Petitioner.**

Pursuant to Rules of Court Rule 34, Petitioner requested oral argument at the U.S. Court of Appeals for Veterans Claims. It is axiomatic that actually having the appellant in the courtroom or, in certain circumstances, virtually, allows the court and the appellant to have to answer each other's questions in a far more personal and accurate manner than when an appellate court decides a case solely on the briefs and record. Yet said court did not allow Petitioner oral argument. Nor did the Federal Circuit specifically find that the denial of oral argument to Petitioner was erroneous.

**F. The Federal Circuit Erred in Not Considering Petitioner's Equitable Arguments, Including Her General Equitable Arguments and The Benefit of the Doubt Doctrine**

Petitioner made strong equitable arguments to the Federal Circuit. As she had argued to the U.S. Court of Appeals for Veterans Affairs and as has been previously stated herein, Petitioner was married to the veteran for over one year and gave birth to the veteran's son and her son, Jermaine Hollie, during the marriage. While Petitioner had no choice but to divorce the veteran because of the severe domestic violence that she had suffered in an era (the early 1970's), when there was little legal protection for abused women, she was not married at the time of the death of the veteran, Charlie Frank Hollie. Nor was the veteran married at the time of his death. Additionally, Petitioner had assisted the veteran significantly with his health care in the last 5 years of his life. It is clear that but for the severe domestic violence that Petitioner suffered when she was married to the veteran, she would have been married to him at the time of

his death.

Even the U.S. Court of Appeals for Veterans Affairs and the Federal Circuit have stated in their decisions that Petitioner's equitable case is strong.

It should be noted that the statutorily-mandated benefit-of-the-doubt rule assists the VA in deciding a veteran's or a veteran's survivor's claims on the merits after the claim has been fully developed by the VA which would include the obtaining of VA medical examinations and opinions. See **Harris v. Shinseki, 704 F. 3d 946 (Fed. Cir. 2013)**. The VA differs from every other federal benefits agency in being statutorily obliged to help the veteran develop his or her claim (see 38 U.S.C. Section 5103A and other statutes), and a number of other provisions and practices of the VA's administrative process reflects a congressional policy to favor the veteran, see, among other statutes, 38 U.S.C. Section 5107 (b). It is clear that it is Congress' decision to place a thumb on the scale in the veteran's favor or the veteran's survivor's favor in the course of VA decisionmaking.

The "benefit of the doubt statute, 28 U.S.C. Section 5107 (b), and the analogous "reasonable doubt" regulation, 38 C.F.R. Section 3.102, apply to all material issues relating to a claim, including the competency as well as the credentials of a VA examiner. See *Kelly v. Nicholson*, 463 F. 3d 1349, 1354 (Fed. Cir. 2006), which states that 38 U.S.C. Section 5107 (b) "applies not only to decisions relating to the overall merits of a claim, but by its plain language it applies to all decisions determining any material issue relating to claim".

In **Hodge v. West, 155 F. 3d 1356 (Fed. Cir. 1998)**, the Federal Circuit observed:

....in the context of veterans' benefits. where the system of awarding compensation is so uniquely pro-claimant, the importance of systemic fairness and the appearance of fairness carries great weight. (See 155 F. 3d 1356, 1363).

This court should note that in **Shinseki v. Sanders, 556 U.S. 396. 120 S. Ct. 1696**

(2009), the U.S. Supreme Court noted that Congress has made clear that the VA is not an ordinary agency. See **Sanders, 129 S. Ct. 1696, 1707**. In said ruling, Justice Souter stated that the VA differs from virtually every other agency in being itself obliged to help the claimant develop his claim, see, e.g., 38 U.S.C. Section 5103A, and a number of other provisions and practices of the VA's administrative and judicial review process reflect a congressional policy to favor the veteran, see, e.g., Section 5107 (b), which states that ("The Secretary shall give the benefit of the doubt to the claimant" whenever "there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter". Justice Souter further stated that "even if there a question in my mind, I would come out the same way under the longstanding "rule that interpretive doubt is to be resolved in the veteran's favor." **Brown v. Gardner, 513 U.S. 115, 117. 115 S. Ct. 552. 130 L. Ed 2d 462 (1994)**.

It is clear that under **Brown v. Gardner, supra.**, the benefit of the doubt rule should have been applied to this matter but was not in fact applied.

There can be little doubt that in this case, equitable principles strongly favor Petitioner Cherrie Hollie. It is important to reiterate that she was married to the veteran, Charlie Hollie, for over 5 years. She gave birth during the marriage to she and the veteran's son, Jermaine Hollie. She only left the marriage because of severe and documented domestic violence, which included a severe blow to the head. Moreover, Ms. Hollie is not currently married and lives by herself and has not been married for over 40 years.

A correct application of equitable principles, including, but not limited to the benefit of the doubt rule, would dictate that Appellant Cherrie Hollie be granted a survivor's pension and that she should be granted pension benefits from the date of her application for pension benefits in February 2015. If the court deems it proper, Appellant requests that her survivor's

benefits be awarded from April 2009 (the veteran, Charlie Hollie, died in March 2009) to the present.

**III**  
**CONCLUSION**

For the foregoing reasons, Petitioner Cherrie Hollie respectfully requests that this Court Issue a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

DATED: August 25, 2020



CHERRIE A. HOLLIE

Petitioner in Pro Per

3675-39<sup>th</sup> Ave., Apt. 5

Oakland, CA. 94619

Telephone: (510) 482-5810