

## **APPENDIX A**

**Decision of the Arizona Court of Appeals, Division One, 1 CA-CR 06-0840**

**Judgment Superior Court of Arizona, Maricopa County, CR2004-020922-**

**001 DT**

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

DIVISION 1  
COURT OF APPEALS  
STATE OF ARIZONA

FILED JUL 29 2008

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

PHILIP G. URRY, CLERK  
By gjh

STATE OF ARIZONA, ) 1 CA-CR 06-0840  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) MEMORANDUM DECISION  
) (Not for Publication -  
) Rule 111, Rules of the  
JIMMY B. WOODS, ) Arizona Supreme Court  
)  
Appellant. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2004-020922-001 DT

The Honorable Brian K. Ishikawa, Judge

**AFFIRMED**

Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
And Cassie Bray Woo, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Karen M. V. Noble, Deputy Public Defender  
Attorneys for Appellant

O R O Z C O, Judge

501105

FROM :

FAX NO. :

Oct. 13 2006 03:22PM P1

Michael K. Beane, Clerk of Court

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2004-020922-001 DT

09/22/2006

HONORABLE BRIAN K. ISHIKAWA

CLERK OF THE COURT  
J. Bower  
Deputy

STATE OF ARIZONA

JACQUELINE N SCHESNOL

v.

JIMMY S. WOODS (001)

BRUCE E BLUMBERG

DOB: [REDACTED]

APO-SENTENCINGS-CCC  
APPEALS-CCC  
DISPOSITION CLERK-CSC  
RFR  
VICTIM WITNESS DIV-AG-CCC

SUSPENSION OF SENTENCE - PROBATION GRANTED

State's Attorney:	the above-named counsel
Defendant's Attorney:	the above-named counsel
Defendant:	Present
Court Reporter:	Renee Mobley

9:51 a.m.

Count 1: The Defendant was found guilty after a trial by jury.

Count 2: The Defendant was found guilty after a trial by jury.

Count 3: The Defendant was found guilty after a trial by jury.

Count 4: The Defendant was found guilty after a trial by jury.

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

Docket Code 109

Form R109B-04

Page 1

(ATTACHMENT 2)

FROM :

FAX NO. 1

Oct. 13 2006 03:23PM P3

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/22/2006

CR2004-020922-001 DT

4. IT IS ORDERED that probation shall run concurrent with probation in Counts 1, 3, and

Count 3 Probation Term: 5 Years

To begin 09/22/2006.

4. IT IS ORDERED that probation shall run concurrent with probation in Counts 1, 2, and

Count 4 Probation Term: 7 Years

To begin 09/22/2006.

3. IT IS ORDERED that probation shall run concurrent with probation in Counts 1, 2, and

Conditions of probation include the following:

Condition 16 - Restitution, Fines, and Fees:

RESTITUTION: Count 2 - \$30,120.83 payable \$100.00 per month, beginning 11/01/2006, to the following persons:

US Department of Labor (Business) \$23,527.83  
Attn: San Francisco FECA Office

Department of Veteran Affairs (Business) \$ 6,593.00  
Attn: Agent Cashier

Restitution ledger provided; priority of payment as stated in the restitution ledger.

PROBATION SERVICE FEE: Count 2 - \$50.00 per month, beginning 11/01/2006.

ASSESSMENTS:

Count 2: Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00.

Count 2: PROBATION SURCHARGE: \$5.00

Docket Code 109

Form R109B-04

Page 3

**APPENDIX B**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**N0. 21-15032 D.C. N0. 2:20-cv-02375-DLR-MHB**

**District of Arizona, Phoenix**

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF**

**ARIZONA. N0. CV 20-02375-PHX-DLR (MHB))**

**ORDER**

**BOARD OF VETERANS' APPEALS, Department of Veterans' Affairs**

**DOCKET NO. 08-30 070A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 20 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JIMMY D. WOODS,

Plaintiff-Appellant,

v.

STATE OF ARIZONA; MARK  
BRNOVICH, Attorney General, Attorney  
General of the State of Arizona,

Defendants-Appellees.

No. 21-15032

D.C. No. 2:20-cv-02375-DLR-  
MHB  
District of Arizona,  
Phoenix

ORDER

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

The district court certified that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a). On January 19, 2021, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's January 19, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 2) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Jimmy D. Woods,

10 Plaintiff,

11 v.

12 State of Arizona, et al.,

13 Defendants.  
14

No. CV 20-02375-PHX-DLR (MHB))

**ORDER**

15 On December 4, 2020, Plaintiff Jimmy D. Woods, who is not in custody, filed a pro  
16 se document styled as a "Mandatory Judicia Notice and Authorities to Void State Court  
17 Judgment," which the Clerk of Court docketed as a civil rights Complaint pursuant to 42  
18 U.S.C. § 1983. By Order dated December 14, 2020, the Court found that the filing was  
19 Plaintiff's fifth attempt to improperly seek appellate relief from his state court conviction.  
20 Accordingly, the Court dismissed the Complaint and this action for lack of subject matter  
21 jurisdiction pursuant to the *Rooker-Feldman* doctrine; Judgment was entered the same day  
22 (Doc. 7). The instant Motion for Reconsideration (Doc. 8) followed.

23 Motions for reconsideration should be granted only in rare circumstances.  
24 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). A motion for  
25 reconsideration is appropriate where the district court "(1) is presented with newly  
26 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,  
27 or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah*  
28 *County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Mere disagreement with a

1 previous order is an insufficient basis for reconsideration. *See Leong v. Hilton Hotels*  
2 *Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988). A motion for reconsideration “may not  
3 be used to raise arguments or present evidence for the first time when they could reasonably  
4 have been raised earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
5 877, 890 (9th Cir. 2000). Nor may a motion for reconsideration repeat any argument  
6 previously made in support of or in opposition to a motion. *Motorola, Inc. v. J.B. Rodgers*  
7 *Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003).

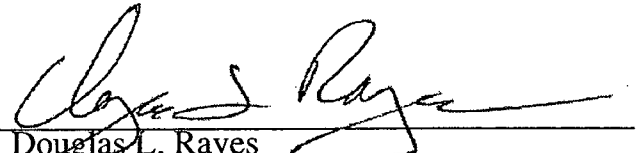
8 The Court has reviewed Plaintiff’s Complaint, the Motion for Reconsideration, and  
9 its December 14 Order. The Court finds no basis to reconsider its prior ruling.  
10 Accordingly, the Motion for Reconsideration will be denied.

11 **IT IS ORDERED:**

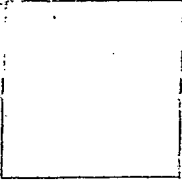
12 (1) The Motion for Reconsideration (Doc. 8) is **denied**.

13 (2) This action must remain **closed**.

14 Dated this 8th day of January, 2021.

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19 Douglas L. Rayes  
United States District Judge  
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BOARD OF VETERANS' APPEALS  
DEPARTMENT OF VETERANS AFFAIRS  
WASHINGTON, DC 20420

IN THE APPEAL OF  
JIMMY D. WOODS



DOCKET NO. 08-30 070A

) DATE  
)  
)

16 July 10  
Som

On appeal from the  
Department of Veterans Affairs Regional Office in Phoenix, Arizona

THE ISSUE

The propriety of the decision to terminate VA compensation benefits effective from  
February 1, 2007.

REPRESENTATION

Veteran represented by: Veterans of Foreign Wars of the United States

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

K. M. Schaefer, Associate Counsel

IN THE APPEAL OF  
TIMMY D. WOODS



INTRODUCTION

The Veteran served on active duty from August 1979 to October 1982.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a decision issued in February 2007 by the Department of Veterans Affairs (VA) Regional Office (RO) in Phoenix, Arizona, which terminated the Veteran's VA compensation benefits effective from February 1, 2007. The Veteran appealed that decision to BVA, and the case was referred to the Board for appellate review.

A hearing was held on December 3, 2009, in Phoenix, Arizona, before the undersigned Veterans Law Judge (VLJ), who was designated by the Chairman to conduct the hearing pursuant to 38 U.S.C.A. § 7107(c), (e)(2) and who is rendering the determination in this case. A transcript of the hearing testimony is in the claims file.

FINDINGS OF FACT

1. Prior to February 1, 2007, the Veteran was service-connected for and assigned a 30 percent disability evaluation for tendinitis of the left shoulder; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the right knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the left knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the right knee; and, a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the left knee. His combined evaluation was 60 percent.
2. The Veteran was found guilty of two counts of theft and two counts of fraudulent schemes and artifices in a jury trial at the Superior Court for the State of Arizona in Maricopa County, and he was sentenced to seven years of probation, ordered to pay \$6,953 in restitution to VA (as well as separate restitution to the Department of Labor), and ordered to perform 400 hours of community service.

IN THE APPEAL OF  
JIMMY D. WOODS



3. The VA Office of the Inspector General (IG) requested that the Phoenix RO establish an overpayment of \$6,593 and terminate the Veteran's VA disability compensation based on the criminal conviction. The RO subsequently sent a letter to the Veteran on February 15, 2007, indicating that his VA compensation benefits were being terminated effective from February 1, 2007.

4. The Veteran was not provided a period of 60 days to submit evidence for the purpose of showing that the adverse action should not be taken.

CONCLUSION OF LAW

The termination of the Veteran's VA compensation benefits was not procedurally proper, and those benefits are restored effective from February 1, 2007. 38 U.S.C.A. §§ 5104 (West 2002); 38 C.F.R. § 3.103 (2009); *see also Roberts v. Shinseki*, 23 Vet. App. 416 (2010).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Upon receipt of a substantially complete application for benefits, VA must notify the claimant what information or evidence is needed in order to substantiate the claim and it must assist the claimant by making reasonable efforts to get the evidence needed. 38 U.S.C.A. §§ 5103(a), 5103A; 38 C.F.R. § 3.159(b); *see Quartuccio v. Principi*, 16 Vet. App. 183, 187 (2002). The notice required must be provided to the claimant before the initial unfavorable decision on a claim for VA benefits, and it must (1) inform the claimant about the information and evidence not of record that is necessary to substantiate the claim; (2) inform the claimant about the information and evidence that VA will seek to provide; and (3) inform the claimant about the information and evidence the claimant is expected to provide. 38 U.S.C.A. §§ 5103(a); 38 C.F.R. § 3.159(b)(1); *Pelegri v. Principi*, 18 Vet. App. 112, 120 (2004).

IN THE APPEAL OF  
JIMMY D. WOODS



Nevertheless, the Board has restored the Veteran's benefits in the decision below, and therefore, the benefit sought on appeal has been granted in full. Accordingly, regardless of whether the notice and assistance requirements have been met in this case, no harm or prejudice to the appellant has resulted. *See, e.g., Bernard v. Brown*, 4 Vet. App. 384 (1993); VAOPGCPREC 16-92.

*Law and Analysis*

The appeal arises from the termination of the Veteran's VA compensation benefits. The record reflects that the Veteran was in receipt of service-connected benefits for tendinitis of the left shoulder from August 24, 1994, and for Osgood-Schlatter's disease of the bilateral knees from October 9, 1982. As of October 22, 2003, he was assigned a 30 percent disability evaluation for tendinitis of the left shoulder; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the right knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the left knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the right knee; and, a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the left knee. His combined evaluation was 60 percent.

An investigation was initiated upon a referral from the United States Postal Inspection Service alleging that the Veteran had submitted false claims to VA. Following an investigation, he was found guilty of two counts of theft and two counts of fraudulent schemes and artifices in a jury trial at the Superior Court for the State of Arizona in Maricopa County. The Veteran was sentenced to seven years of probation, ordered to pay \$6,953 in restitution to VA (as well as separate restitution to the Department of Labor), and ordered to perform 400 hours of community service.

As a result, the VA Office of the Inspector General (IG) office requested that the Phoenix RO establish an overpayment of \$6,593 and terminate the Veteran's VA disability compensation based on the criminal conviction. The RO subsequently

~~CONFIDENTIAL~~

IN THE APPEAL OF  
JIMMY D. WOODS

sent a letter to the Veteran on February 15, 2007, indicating that his VA compensation benefits were being terminated effective from February 1, 2007.

The Board observes that 38 C.F.R. § 3.105 sets forth certain notice procedures in cases involving severance of service connection, reduction of evaluations, and discontinuance of benefits. However, the Court of Appeals for Veterans Claims (Court) has held that such procedures are not applicable in cases of fraud. *Roberts v. Shinseki*, 23 Vet. App. 416 (2010). Therefore, any deficiencies in procedure as defined by 38 C.F.R. § 3.105 need not be addressed in this case.

Nevertheless, the Court also found in *Roberts v. Shinseki* that the due process procedures applicable in cases of fraud are set forth in 38 C.F.R. § 3.103. Specifically, the regulation provides that the claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation, and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision, 38 C.F.R. § 3.103(b)(1).

Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension, or dependency and indemnity compensation shall be terminated, reduced, or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken. 38 C.F.R. § 3.103(b)(2).

In this case, the Board notes that the due process requirements set forth under 38 C.F.R. § 3.103(b)(2) were not satisfied and that none of the exceptions set forth under 38 C.F.R. § 3.103(b)(3) are applicable. The Veteran was first notified of the termination of his benefits in a letter sent to him on February 15, 2007. The letter advised him that his benefits had been terminated as of February 1, 2007, and that he had the right to appeal and to request a hearing. However, the Veteran was not provided a period of 60 days in which to submit evidence for the purpose of

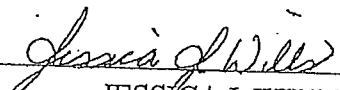
JIMMY D. WOODS

showing that the adverse action should not be taken. Instead, the adverse action had already been effectuated without any time for him to respond. Thus, in terminating the benefits, the RO failed to afford the Veteran all due process to which he is entitled pursuant to 38 C.F.R. § 3.103. Accordingly, the Board has no choice but to restore the Veteran's benefits.

Even so, the Board advises the Veteran that this decision in no way overturns his conviction by the Superior Court for the State of Arizona in Maricopa County or his obligation to repay the \$6,593 to VA as determined by that Court. Further, in light of the Veteran's conviction and order to pay restitution to VA, the Board's decision should not be construed as dictating that the Veteran is entitled to receive actual payment of benefits from VA from February 1, 2007, and/or that he would not be obligated to repay any such benefits at a future date. Such matters will be determined by the RO based on the necessary calculations. Finally, the error in terminating the Veteran's benefits was purely procedural, and the Board's decision does not preclude the RO from once again terminating the Veteran's benefits after properly following all necessary notice procedures for the termination of benefits as set forth under 38 C.F.R. § 3.103.

ORDER

The termination of VA compensation benefits was not procedurally proper, and restoration of those benefits is granted effective from February 1, 2007.

  
JESSICA J. WILLS

Acting Veterans Law Judge, Board of Veterans' Appeals