21-No. 7028

SUPREME COUET OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 15 2021
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FRED PRIDE,

Petitioner,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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Friend of the Court

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I. Questions Presented

(A)

A special provision, 38 C.F. R. § 3 157, (Authority 38 U.S. Code § 5108), effectively makes a VA medical record itself an informal claim that can be raised either by filing an emotion to reverse a medical decision associated with the medical record or by filing a supplemental claim. Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283. (Fed. Cir. 2005), are Court provisions that make it an obligation for VA to ensure that a veteran who is appearing pro se receives due process of law and equal protection of the law, which the above Court provisions require the VA to do by obligating VA to examine all claims found in the medical record to ensure that the correct claim is raised for a veterans who is proceeding pro se. At what point does its lack of obeying those Court provisions can it be said that VA failed in its obligation to ensure due process of the law and equal protection of the law for a veteran who files a submission pro se?

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This matter came before a VA branch office in Huntsville, Alabama, when Appellant submitted an application to have his 1984 schizophrenia diagnosis claim reopened. The VA Regional Office in Montgomery, Alabama, misconstrued Appellant's intention and processed his submission as an appeal of his schizophrenia service-connected claim. The Regional Office in Montgomery, Alabama, provided no means for Appellant to inform it of this error, nor did VA ever try to correct the error on its own. Appellant respectfully petition this Court for a writ of certiorari to allow this Court to review the judgments made by the VA and the Federal Circuit regarding this issue.

V. Opinions Below

The decision by the VA Regional Office in Montgomery, Alabama, which resulted in a denial of the reopening of Appellant's 1984 schizophrenia diagnosis claim, occurred on September 7, 2011. A decision by the Board denying the reopening of Appellant's 1984 schizophrenia claim came December 15, 2015. A decision by the Veterans Court mooting Appellant's schizophrenia diagnosis claim came February 28, 2017. Another decision by the Board denying the reopening of Appellant's 1984 schizophrenia diagnosis claim came July 18, 2019. A decision by the Veterans Court denying the reopening of Appellant's 1984 schizophrenia diagnosis claim came September 29, 2020. A decision by the United States Court of Appeals for the Federal Circuit denying the reopening of Appellant's schizophrenia diagnosis claim came September 20, 2021.

VI. Jurisdiction

Appellant's claim was denied by the United States Court of Appeals for the Federal Circuit on September 20, 2021. Appellant invokes this Court's jurisdiction under U.S.C. § 1257, having timely filed this petition for writ of certiorari within ninety days of the final judgment by the Federal Circuit.

VII Constitutional Provisions involved

United States Constitution, Amendment XIV:

"All person 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 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 law".

United Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble and to petition the Government for a redress of grievances".

VIII. Statement of the Case

At its core, this case concerns whether or not VA failed to fulfill its legal obligation under Court provisions, "Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005)". Those Court previsions obligate VA to view submission by a veteran proceeding pro se liberally, and to take in consideration all claims on the medical record to ensure that the correct claim is raised.

When Appellant submitted his application to the VA branch office in Huntsville, Alabama, He stated in his application that he wanted to reopen the 1984 schizophrenia diagnosis

claim to see if the "new and material" evidence that he was now prepared to provide would indicate that the schizophrenia diagnosis was an incomplete diagnosis or a misdiagnosis. To be certain that they were in an agreement on this point, the VA representative in Huntsville, Alabama, instructed Appellant to write in the application in his own hand writing exactly what he wanted, which Appellant did do.

In a letter Dated April 20, 2011, the RO in Montgomery, Alabama, informed Appellant that it had processed his application and begun work on his claim. Appellant recognized that the RO had misconstrued his intention. He recognized that when the RO in Montgomery, Alabama, received his application, in carrying out its legal obligation to view his pro se submission liberally, the RO had misconstrued and filed his submission as an appeal to reopen the schizophrenia service-connected claim.

Appellant proceeded to send the letter back to the RO in Montgomery, Alabama; along with notations written in his own handwriting in the letter asking the RO why the part about the schizophrenia service-connected claim was added to his application. Unfortunate for Appellant effort to ensure that the 1984 schizophrenia diagnosis claim be raised, the RO in Montgomery, Alabama, did not acknowledge his letter and continued to identify his submission as a supplemental claim to reopen the schizophrenia service-connected claim.

After not hearing from the RO and not knowing if the RO had corrected the error, in June 21, 2011, Appellant sent another letter to the RO in Montgomery, Alabama, regarding his submission. There was no response from the RO in Montgomery, Alabama. Appellant receive his next letter for the RO in Montgomery, Alabama, dated September 7, 2011, informing him

that it had made a decision on his claim for schizophrenia service-connected. Appellant realized that the RO had not corrected the error, thus, had failed to acknowledge or consider any of his correspondences informing it that it had raised an incorrect claim.

The sufficiency of a claimant's appeal submissions is a question of law where the material facts concerning the content of the submission are not in dispute and the "interpretation of the legal requirements governing" them "will dictate the outcome" in the case. Durr v. Nicholson. 400 F. 3d 1375. 1378-79 (Fed. Cir. 2005). Based on this Court prevision, whether or not the RO was acting in violation of its legal obligation when it failed to take in consideration all claims associated with Appellant's medical record, to ensure that the correct claim be raised and the correct court proceeding for settling the claim be initiated, becomes an issue for the law.

The pleading by a veteran is not to be narrowly construed. See *Robinson v. Shinseki. 557 F. 3d 1355, 1358-59 (Fed. Cir. 2009).* VA did not have to be reminded of that legal obligation in this case given that the claimant's pleading was following a diagnosis by the VA in which he was negatively stigmatized by the diagnosis, and given that Appellant stated in his application that he wanted to see if the evidence would show that the schizophrenia diagnosis was incomplete or a misdiagnosis. *Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009)*. See also 38 C.F.R. 19. 116 (1980) ("Such allegation shall be construed in a liberal manner in determining their adequacy, with consideration of the technicality involved."). When considering VA's obligation to ensure that the correct claim is raised, the statue, 38 C.F.R. § 3. 157, must be taken in consideration. That statue effectively makes a VA medical record an informal claim. If identified as an informal claim, the medical record containing Appellant's 1984 schizophrenia diagnosis could have been

raised by the VA through a supplemental claim, or it could have been raised through a motion to have the schizophrenia diagnosis reversed. In any event, raising the 1984 schizophrenia diagnosis claim by the VA should have been a simple thing to do if VA would have had the mind to do so.

The disruption occurred when VA ignored its obligation under, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009), see also Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005), and failed to consider all claims on Appellant's medical record to ensure that the correct claim was raised. Unlike the Veterans Court where proceeding is more adversarial in nature, see *Forshey v.Principi. 284 F. 3d 1355 (Fed. Cir. 2002)* (en banc), in proceedings before VA, "the relationship between the veteran and the government is non-adversarial and pro-claimant," *Jaquay v. Principi. 304 F. 3d 1276. 1282 (Fed. Cir. 2002)*. Because of the paternalistic nature of the proceedings, the Board and the Regional Office are legally obligated "to fully and sympathetically develop the veteran's claim to its optimum before deciding on the merits. *"Mcgee and Peake. 511 F. 3d 1352. 1357 (Fed Cir. 2008);* see also *Corner, 5523d 1352. 1357.*

This is the right approach to take because to do otherwise would be putting the proverbial cart before the horse. As the Court has made clear on several occasions, including with Corner v. Peake, "duty to read an appeal submission sympathetically ... is antecedent to its duty to ensure that an issue has been properly raised on appeal." This legal provision reveals that when dealing with a submission by a veteran who is proceeding pro se, it is a legal duty on the part of the VA to ensure that the correct issue is properly raised. Appellant argues that the above Court provisions should extend to making it an obligation for VA to ensure that the correct court

proceeding for settling the claim is selected. Appellant argues that the VA failed to rise up and fulfill its legal obligation entirely. Therefore, VA was in dereliction of its legal duty when it failed to ensure that the correct claim was raised and the correct court procedure for settling Appellant's claim was selected, which means that VA failed to ensure that Appellant received due process of law and equal protection of the law.

1. The schizophrenia diagnosis

On April 17, 1984, Appellant was transferred from a County Jail to the VA Medical Center in Tuscaloosa, Alabama, for psychiatric testing to rule out schizophrenia. The reason the social worker, who was brought to the County Jail to interview Appellant, ordered the psychiatric testing was because of the unusual nature of the ideas that Appellant expressed about God and his relationship with God. Appellant explained to the social worker that God had appeared to him in a Visitation while he was under a tree at the end of his grandmother cotton field. In the Visitation, God revealed to Appellant that He had a plan for him.

Appellant learned later that God would assign him to bring a world-changing Message to the Church, to America and to the world. That Message is: God is all things, is making all things, and is doing all things; all things are good and are made and done by God. This is a world-changing Message because it means that the "you" that you and I thought we were do not exist; only God exists. Thus, it is understandable why the social worker would order the psychiatric testing for him because he knew that some of the religious ideas that he revealed to the social worker about God and about his relationship with God must have appealed strange

and unusual. (Some of his unusual ideas are in his book; a copy of his book is attached to this petition; If it is not appropriate at this time, please discard the book).

During the 30 days that he remained in the VA Medical Center, Appellant continued to be questioned about his ideas about God and his relationship with God. And as his medical record will confirm, his ideas about God and his relationship with God were at the heart of all Appellant's psychiatric testing and oral examinations. During his stay at the VA Medical Center in 1984, Appellant was diagnosis with the condition of schizophrenia.

In 2008, Appellant was diagnosed by VA with PTSD. Recognizing that he suffered from PTSD, this provided a reason for Appellant to want to know if the 1984 schizophrenia diagnosis by the VA was a misdiagnosis or, at the least, an incomplete diagnosis because the VA examiner had over looked the PTSD condition during the 1984 examination. More importantly, given that the condition and symptoms relating to PTSD and the condition and symptoms relating to schizophrenia are so medically and symptomatically close, and given that his medical record made it possible to conclude that his religious ideology served as the primary reason for his schizophrenia diagnosis, this provided the reason for Appellant to want to know not only if the schizophrenia diagnosis was a misdiagnosis, but if the schizophrenia diagnosis was an attempt to suppress his religious ideology.

Appellant visited the branch office of VA in Huntsville, Alabama, to start the proceeding for working with the 1984 schizophrenia diagnosis claim. His purpose for wanting to reopen the 1984 schizophrenia diagnosis was because he believed the evidence in his medical record would show that the 1984 schizophrenia diagnosis was based primarily on his religious ideology

and, therefore, it was possible that the schizophrenia diagnosis was not a legitimate diagnosis.

Proceeding pro se at the branch office of VA in Huntsville, Alabama, Appellant had no way of knowing that his submission should have been worded in a special way. At this time, filing a motion to have the schizophrenia diagnosis reversed, and filing a supplemental claim to have the 1984 schizophrenia diagnosis reopened to see if the evidence would warrant a reversal of the schizophrenia diagnosis, were one and the same to Appellant's legally untrained mind. The substantive appeal provision, 38 U.S.C. § 4005 (1980), does not require veteran to set forth "theories of error," "arguments," and "reasons" when challenging a decision. That interpretation is contrary to the plain language of the statue, which only requires that the veteran "allege" an error and does not prescribe the further steps of articulating the reasons or bases for the error. Congress could not have intended that, in a system designed to be pro-veteran and non-adversarial, a pro se claimant would be required to demonstrate the same mastery of legal principles and procedures expected of a seasoned practitioner, or risk procedural default.

2. Direct Appeals

Appellant's precise wordings in his application and in his letters to the RO should have left no doubt about which claim Appellant wanted raised. This leaves open the possibility that there was another reason why VA chose not to assist Appellant in raising the 1984 schizophrenia diagnosis claim. Appellant was convinced that the new and "material evidence" (CUE) he was prepared to introduce would result in a reversal of the schizophrenia diagnosis.

The DSM-5 criteria for schizophrenia are: (1) delusion, (2) hallucination, (3) disorganized speech, (4) grossly disorganized or catatonic behavior, and (5) negative systems. A person must be experiencing at least one of those criteria to be diagnosed with schizophrenia. By showing that Appellant did not exhibit one of the criteria that the DSM says a person must exhibit at least one to be diagnosed with schizophrenia,[1] by showing that Appellant has never requested any medication or treatment of any sort for schizophrenia for the 27 years since his diagnosis, along with his psychiatric record provided by a private psychiatrist, Dr. Eugene Adams, which named PTSD as the number one cause of Appellant's mental health problem, Appellant's medical record was to serve as part of the "new and material" evidence (CUE) for showing why it is possible that the 1984 schizophrenia diagnosis was a clear and unmistakable error.

As mentioned above, in a letter dated September 7, 2011, the Regional Office in Montgomery, Alabama, informed Appellant that the RO had made a decision on his claim. The letter stated that the claim was denied because the evidence submitted was not "new and material". Appellant recognized that the RO was still operating in violation of its duty under provisions, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005", and all other relative legal provisions mentioned above, because Appellant recognized that by stating that his claim was denied because of the lack of "new and

[1] What are the DSM-5 criteria for schizophrenia? Updated: September 17, 2020 | Author: Frances R. Frankenburg, MD; Chief Editor L Xiong, MD. The specific DSM criteria for schizophrenia are as follows: the presence of two (or more) of the following, each present for a significant portion of time during a 1-month period (or less if successfully treated), with at least one of them being (1), (2) or (3): (1) delusion, (2) hallucination, (3) disorganized speech, (4) grossly disorganized or catatonic behavior, and (5) negative symptoms.

material" evidence for supporting the schizophrenia service-connected claim, the RO was continuing to refer to his submission as an appeal to reopen the schizophrenia service-connected claim, and not as a motion to reverse the 1984 schizophrenia diagnosis.

With help from Senator Jeff Sessions, Appellant was able to finally get his medical record from the VA Medical Center in Tuscaloosa, Alabama, which Appellant sent to the Regional Office in Montgomery, Alabama, before it had made its decision. The Regional Office did not respond. Instead, the RO made its decision to deny the reopening of the schizophrenia service-connected claim. Even though the RO was continuing to identify his submission erroneously as an appeal to reopen the schizophrenia service-connected claim, Appellant appealed the decision made by the Regional Office in Montgomery, Alabama, to the Board of Veterans Appeals, along with his claim for a higher rating for PTSD and his claim for unemployablity. Dated September 26, 2013, Appellant received a letter from the RO in Montgomery informing him that the RO had certified his appeal to the Board of Veterans' Appeals. Dated October 25, 2013, Appellant received a letter from the Board informing him that it had received and docketed his claim.

Appellant was ordered to appear before the Board for a hearing dated for April 14, 2014. With three claims before the Board, Appellant obtained a representative from the American Legion to represent him at the hearing before the Board. He informed the representative from the American Legion that, in his effort to raise the issue regarding the 1984 schizophrenia diagnosis, the Regional Office in Montgomery, Alabama, had misconstrued his submission and raised an incorrect claim. However, during the hearing before the Board, the representative

did not raise the issue regarding the 1984 schizophrenia diagnosis.

This evidence supports Appellant's assertion that no one wanted to take an interest in any effort to get the 1984 schizophrenia diagnosis claim raised. This leaves open the possibility that the schizophrenia diagnosis was based primarily on Appellant's religious ideology. It also leaves open the possibility that the schizophrenia diagnosis was an effort to suppress Appellant's religious ideology. If this assertion is true, it becomes not only a question of whether or not, intentionally or unintentionally, Appellant's Civil Rights under the 14th Amendment, which promises protection of the law and due process of law, was violated, but a question of whether or not Appellant's Religious Right under the 1st Amendment to the Constitution was also violated.

On June 2, 2014, Appellant dismissed the representative from the American Legion on the grounds that the representative had failed to support, or even mention, the reopening of the 1984 schizophrenia diagnosis claim. In a correspondence dated June 2, 2014, the Board informed Appellant that it had made a decision on the case. In its decision, the Board remanded for readjudication Appellant's claim for a higher rating for PTSD and his claim for unemployablity. However, given that Appellant's claim involving the reopening of the 1984 schizophrenia diagnosis had not been properly raised by neither the RO or by the spokesman from American Legion, the Board could only take upon itself to accept the 1984 schizophrenia diagnosis as a separate disability diagnosis.

Therefore, on remand of Appellant's claim to have the 1984 schizophrenia diagnosis reopened, the Board only asked the RO to carry out the necessary examination to determine

which of the two mental illnesses, schizophrenia or PTSD, was the most severe to Appellant's mental health? The Regional Office continued to identify Appellant's schizophrenia service-connected claim as if it were his 1984 schizophrenia diagnosis claim. After denying the reopening of the claim, the RO returned the claim to the Board. On December 15, 2015, the Board made its decision agreeing with the Regional Office decision not to reopen the schizophrenia service-connected claim, even though the Board was continuing erroneously to support the RO in raising the schizophrenia service-connected claim and not the 1984 schizophrenia diagnosis.

Along with his claim for a higher PTSD rating and his claim for unemployablity, Appellant appealed his claim to have the 1984 schizophrenia diagnosis claim reopened to the Veterans Court. At this time, Appellant was assigned an attorney to assist him with his three claims that were now before the Veterans Court. Appellant was hopeful that his attorney would make the Court aware of the failure on the part of VA to carry out its legal obligation under, 38 C.F.R. § 3. 157 see Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005), which resulted in an incorrect claim raised.

On February 28, 2017, Appellant's attorney informed him that the Veterans Court had made a decision. In its decision, the Court remanded to the Board for readjudication Appellant's claim for a higher PTSD rating and his claim for unemployablity. However, the Court could only moot Appellant's claim involving the 1984 schizophrenia diagnosis, citing the lack of litigation on the claim. Subsequently, Appellant learned that his attorney had failed to raise the issue regarding the 1984 schizophrenia diagnosis, just as the RO, the Board and the representative

from the American Legion had done.

Given that Appellant's medical record were contain in his Records before the Agency, and given that all his letters and correspondences were contained in his Records before the Agency, there is just no reason for his attorney to have overlooked Appellant's intention to have the 1984 schizophrenia diagnosis claim raised. This only served to strengthen Appellant's argument that the reason no one wanted to be a part of any effort to have the original 1984 schizophrenia claim reopened was because evidence in his medical record reveals that Appellant's schizophrenia diagnosis was based, primarily, on his religious ideology. If this assertion is true, this would bring into question whether Appellant's Religious Right under the 1st Amendment to the Constitution and Appellant's Civil Right under the 14th Amendment to the Constitution were violated.

After receiving the remand from the Veterans Court, the Board remanded Appellant's claim for a higher rating for PTSD and his claim for unemployablity to the RO in Montgomery, Alabama, for readjudication. From 2017, when it was remanded to the Board by the Veterans Court on order by the Court that the case be handled expeditiously, Appellant's claim for higher PTSD rating and his claim for unemployablity have been with the RO in Montgomery, Alabama, and the Board for four years. The Board did not remand Appellant's claim to have the 1984 schizophrenia service-connected claim reopened to the RO because the Veterans Court had ordered the Board to develop a Statement of the Case for Appellant's claim to have the 1984 schizophrenia diagnosis claim reopened.

When the Board failed to act on his 1984 schizophrenia diagnosis claim for two years,

again Appellant obtained an attorney to assist him with that claim. However, the unusual coincidences surrounding the reopening of the 1984 schizophrenia diagnosis claim continued.

The first of those unusual coincidences occurred when, after failing to act for two years from the time of receiving the remand involving the 1984 schizophrenia diagnosis claim, the Board sent out a Statement of the Case for what should have been the 1984 schizophrenia diagnosis claim, but, instead, the Board sent out a SOC for the schizophrenia service-connected claim, the very next day after it received a letter from Appellant's attorney informing the Board that he was representing Appellant. The Board received the letter from Appellant's attorney on April 26, 2018. On the very next day, April 27, 2018, the Board sent out the Statement of the Case. It was unusual that this action by the Board would unfold in that manner. In addition, even after receiving the letter from the attorney informing the Board that he was representing Appellant, the Board sent the Statement of the Case to Appellant, instead of sending it to his attorney. It was unusual that this action by the Board would unfold in that manner.

Appellant immediately forwarded the SOC to his attorney and asked his attorney to begin work on the SOC because he had only 60 days (from April 27 until June 27) to complete the SOC and return it to the Board. This brought about yet another unusual coincidence. Appellant's attorney misplaced the SOC that Appellant had forwarded to him. Therefore, the attorney was unable to process and return the SOC to the Board in a timely manner. The SOC was scheduled to be in by June 27, 2018. It was August 20, 2018, before Appellant received a letter from his attorney informing him that he had located the SOC. It was unusual that this action involving Appellant's attorney would unfold in that manner.

After not receiving the SOC in a timely manner, the Board dismissed Appellant's appeal. In a correspondence dated October 8, 2018, the Board informed Appellant that his attorney had submitted a VA form 9 *"Appeal To Board of Veterans' Appeals"*. In the same correspondence, the Board informed Appellant that it could not accept his VA Form 9 *"Appeal To Board of Veterans' Appeal"* as his substantive appeal as the time limit to continue his appeal had passed.

Thinking that this was the final decision by the Board, after dismissing his attorney for not being attentive to his case and letting important filing dates pass, Appellant filed an appeal again to the Veterans Court. However, the attorney for the Secretary filed a motion to dismiss Appellant's appeal, citing that Appellant had not exhausted all his remedies with the VA. The Court agreed with the attorney for the Secretary, and the claim was remanded to the Board. At this time, Appellant sent a letter to the Board reiterating that this claim was suppose to be about the reopening of the 1984 schizophrenia diagnosis claim, not the schizophrenia service-connected claim. The letter explained that the information Appellant had submitted, as well as the information Appellant was prepared to send once he had gotten assurance from the Board that he and the Board were now working on the same claim, was to serve as "new and material" evidence (CUE) for reopening the 1984 schizophrenia diagnosis claim. The Board did not reply to Appellant's letter.

In a correspondence dated July 18, the Board announced its final decision on Appellant's claim. However the Board was continuing erroneously to raise the schizophrenia service-

connected claim and not the 1984 schizophrenia diagnosis claim. In its decision, the Board agreed with the decision made by the Regional Office and denied the reopening of the 1984 schizophrenia service-connected claim, citing the lack of "new and material" evidence. Just as the RO had done, the Board was continuing to go forward with the reopening of the schizophrenia service-connected claim, substituting it for the reopening of the 1984 schizophrenia diagnosis claim. This made it impossible for Appellant to submit any "new and material" evidence that VA would accept because his "new and material" evidence was to be used for challenging the 1984 schizophrenia diagnosis itself, not for trying to show that the schizophrenia was service-connected. Appellant appealed the final decision made by the Board to the Veterans Court of Appeals.

In a correspondence dated September 29, 2020, the Veterans Court informed Appellant that it had made a decision. In its decision, the Veterans Court agreed with the decision by the Board not to reopen the schizophrenia service-connected claim. However, the Veterans Court was the first to acknowledged the existence of the 1984 schizophrenia diagnosis claim, and the first to acknowledged the possibility that an incorrect claim had being raised. Nonetheless, the Court explained that if Appellant wanted to have the 1984 schizophrenia diagnosis claim reopened, he should have submitted a motion to reverse the schizophrenia diagnosis.

Appellant recognized that the Court did not consider or mention the fact that he had already brought to the Court's attention that his submission twelve years ago, even though he was assisted by a VA representative, was misconstrued and an incorrect claim was raised.

Neither did the Court consider or mention the fact that Appellant had raised this issue in his brief. There is no reason why the Court could not have recognized the legal duty on the part of VA under the Court provisions, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); see Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005). These legal provisions make it a legal obligation for VA to ensure that the correct claim is raised when a veterans' submission is pro se.

Appellant appealed the decision made by the Veterans Court to the United States Court of Appeals for the Federal Circuit. In a letter dated September 20, 2021, the Federal Circuit informed Appellant that it had made its decision. In its decision, the Federal Circuit rationed that it did not have jurisdiction over the case, citing that it did not have jurisdiction to assess whether Appellant's evidence of service connection was "new and material" and it did not have jurisdiction to consider a clear and unmistakable error (CUE) claim that had never been filed.

There were at least two errors made by the Federal Circuit. First, the Federal Circuit continued, just as the VA and the Veterans Court, to ignore all Appellant's correspondences and efforts to point out that the VA had raised an incorrect claim from the beginning. Second, the Federal Circuit continued erroneously to identify Appellant's 1987 schizophrenia service-connection claim as the claim in question and not the 1984 schizophrenia diagnosis claim.

At this point, especially now that the Veterans Court had already raised the possibility that Appellant's intention was to have the 1984 schizophrenia diagnosis claim reopened, it should have been clear to the Federal Circuit that Appellant had a right to now accused VA of violating

Court provisions established by, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); see Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005). These Court provision made it a legal obligation for VA to view his pro se submission liberally, and to consider all claims on his medical record to ensure that the correct claim be raised. It should have been clear to the Federal Circuit that the question now was not about "new and material" evidence, which would placed this case out of reach of the jurisdiction of the Federal Circuit, rather, the question now was about whether or not the VA had violated Court provisions.

Given that the evidence reveals that the question now involves whether or not VA had violated legal provisions established by the Court, this evidence shows that the Federal Circuit did have jurisdiction and should have recognized that it had jurisdiction. This makes it possible to conclude that the Federal Circuit avoided acknowledging this fact because, just as VA and the Veterans Court, the Federal Circuit did not want to become involved in any effort to have the 1984 schizophrenia diagnosis claim reopened.

Just as the VA and the Veterans Court had done, the Federal Circuit wanted to keep silent about the 1984 schizophrenia diagnosis and wanted no part in any effort to have the 1984 schizophrenia diagnosis claim reopened. This strengthens Appellant's argument that it is possible that his schizophrenia diagnosis was based, primarily, on his religious ideology, and, therefore, no one wanted to be the one to initiate any action to look into that possibility. This makes it possible to conclude that, consciously or sub-consciously, a bias or prejudice has been presence all along, and continues to be presence, in this situation involving Appellant's 1984 schizophrenia diagnosis, and that this bias has been used in a way to give freedom to the

conventional teaching of the Religion of Christianity and to suppress the religious ideology regarding the Religion of Christianity possessed and expressed by Appellant.

The attorney for the Federal Circuit stated that when Appellant appealed to the Veterans Court, he argued not only that the VA's 1987 schizophrenia service-connection decision be reopened, but that Appellant argued that the 1984 schizophrenia diagnosis was incomplete or in error because it failed to recognize that he suffered from, at least in part, PTSD. In this instance, the Federal Circuit is completely in error. The evidence clearly shows that in all his communications with the VA Regional Offices, with the VA Board and with the Veterans Court, including all his letters and correspondences, Appellant never mentioned anything about wanting to reopen the schizophrenia serve-connected claim. Instead, not only was the 1984 schizophrenia diagnosis claim the only issue raised by Appellant in his application, but in all his subsequence communications with VA, with the Veterans Court and with the Federal Circuit, Appellant pressed only one issue, and that was that the RO had misconstrued when accepting his submission liberally, and in doing so had raised an incorrect claim.

The attorney for the Federal Circuit also stated that the Veterans Court found no error in the Board's conclusion that Appellant had presented no "new and material" evidence relevant to his claim. Appellant argues that the Federal Circuit should have recognized that the reason the Veterans Court came to the conclusion that no "new and material" evidence was presented is because the VA Regional Office and the Board had mistakenly raised an incorrect claim and the Veterans Court had mistakenly ignored that error. The Federal Circuit failed to recognize that it was impossible for the evidence sent in by Appellant to match the kind of evidence that

VA could call "new and material" evidence because Appellant was sending in "new and material" evidence to support the reopening of the 1984 schizophrenia diagnosis claim, not "new and material" evidence to be used for reopening the schizophrenia service-connected claim.

The attorney for the Federal Circuit also stated that, to the extent that Appellant was suggesting that he was misdiagnosed in 1984, it lacked jurisdiction over that assertion because Appellant had not properly raised it to the Board in the form of a CUE claim. The information sent in by Appellant regarding his PTSD (showing that the schizophrenia could have been mistaken for PTSD), along with his medical records (showing that Appellant has never experienced any of the five symptoms that the DSM states a person must experience at least one in order to be diagnosed with schizophrenia, and showing that for the 27 years since his diagnosis with schizophrenia, Appellant has never experienced any psychotic episode or breakdown related to schizophrenia, nor requested any medication, treatment or counseling for schizophrenia), this, along with his medical record from a private psychiatrist (showing that PTSD was the primary cause of his mental problem), all of this the Federal Circuit should have recognize was part of the evidence sent in by Appellant to serve as "new and material" evidence (CUE) for reopening the 1984 schizophrenia diagnosis claim.

The Federal Circuit should have noticed that this evidence would have been relevant "new and material" evidence for reopening the 1984 schizophrenia diagnosis claim, if VA had not misconstrued Appellant's submission and raised an incorrect claim. In short, the Federal Circuit should have recognized that the reason Appellant's 1984 schizophrenia diagnosis claim was not

raised, as well as the reason the evidence Appellant sent in was not considered "new and material" evidence, was because the RO mistakenly raised an incorrect claim from the beginning, and for 12 years the VA provided no way for Appellant to alert it of this error.

The questions are, in light of Court provisions, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005), should the Veterans Court have, when it recognized the possibility that VA had raised an incorrect claim and had put in motion an incorrect court procedure, remanded the claim back to the Board with instruction for readjudication, and did the Federal Circuit erred when it agreed with the Veterans Court decision not to remand the claim back to the Board for readjudication?

IX. REASONS FOR GRANTING THE WRIT

A. To ensure that veterans' Constitutional Right for equal justice and due process of law provided to him by the 14th Amendment to the Constitution was not violated, and to avoid erroneous deprivation of the veterans' right to reopen a claim, this Court should clarify the "initiation" standard for pro se under the legal provision, 38 C.F.R. § 3. 157; **see** Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005).

A special provision, 38 C.F.R. § 3 157, effectively makes a VA medical record itself an informal claim. This makes eminently good sense, especially in Appellant's situation where a disability was already found by the VA, but rated non-service-connected and non-compensable, and later another disability was found by VA that is service-connected and closely related to the non-service-connected disability symptomatically and medically. The medical record is the VA's record, composed typically in the absence of the patient, stored in the VA's files, and is a record of which the claimant may not be informed. But the VA is on constructive notice of its own

medical records, *Bell v. Derwinsk, 2. Vet. App. 611. 613 (1992)*, therefore, the medical record becomes an informal claim that should be able to be challenged if the information in the medical record establishes a possibility that a misdiagnosis did occur. This makes perfect sense: If in the pro-veteran system the VA learns that its own records establish a possibility that a misdiagnosis occurred, it should act on that possibility. Therefore, the above mentioned legal provisions reveal why Appellant had the legal right to request to have the 1984 schizophrenia diagnosis case reopened.

The 14th Amendment to the Constitution promises all American citizens due process of law and equal protection of the laws. It states in part:" nor shall any state deprive any person of life, library, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law". Surely Congress intended for this Law to apply to a veterans who is proceeding pro se. And it does; see Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005). These Court precedents obligate the VA to, when carrying out its obligation to view submission by a veteran proceeding pro se liberally, consider all claims on the veterans' medical record to ensure that the correct claim is raised. By way of a natural connection, these Court rulings must apply to making it an obligation on the part of VA to ensure that the correct court procedure for settling the claim is selected. The VA is obligated to assist a veteran who is appearing pro se in this manner because it is the only way that a veteran who is appearing pro se can be assured to receive due process of law and equal protection of the law.

Therefore, it is requested that this Court grant a writ of certiorari so it can be determined

whether or not the VA was fulfilling its entire legal duty to ensure Appellant, who was appearing pro se, receive due process of law and equal protection of the law when it failed to take into consideration, 38. C.F.R. § 3. 157; see, Corner v. Peake. 552 F. 3d 1362 (Fed. Cir. 2009); see also Andrew v. Nicholson. 421 F. 3d 1278. 1283 (Fed. Cir. 2005).

The 1st Amendment to the Constitution promises religious freedom without any interference from the government. Christianity remains the dominant religion among American people in the United States. Christians, who can be found in every area of endeavor in the United States, including the government, follow and are loyal to the conventional teaching of the Scriptures. This makes it possible for any Christians, including those whose area of endeavor is in the government, to maintain, consciously or sub-consciously, a bias or prejudice in favor of the conventional teaching of Christianity and against any unconventional teaching of Christianity. Naturally, this in itself makes it difficult for anyone to introduce a new idea into the Religion of Christianity.

Even though it is well known and well accepted by Christians that God sends His Chosen Ones into the world to bring Messages, scriptural evidence will confirm that none of those men were accepted with open arms by the people. That kind of beholding to the conventional teaching of Christianity continues among Christians today. And this situation, too, has made it more difficult for anyone to deliver a Message from God to the Church. Naturally, the negative stigma that comes with a schizophrenia diagnosis will make it even more difficult for anyone to introduce a new idea into the religious community of the Religion of Christianity.

God instructed Appellant to bring to the Church His word informing the Church that, if

the Religion of Christianity is to maintain a meaningful and productive role in society, Christians have to start interpreting the Scriptures from the viewpoint of Science in order to start bringing forth the types of ideas that are capable of elevating the Religion of Christianity to the level of reality occupied by all other endeavors occurring in America, which is a level of reality where only scientifically verifiable ideas are permitted.

The 1st Amendment to the Constitution prevents the government, including an agency such as the VA, from interfering with the practice of religion. Appellant is aware that it is not within the scope of this Court to speak either for or against the conventional teaching of Christianity by the Church, nor to speak for or against the religious ideology regarding Christianity maintained and expressed by Appellant. But it is in the scope of this Court, as legal stewardess over the American people, to be mindful of the distribution of a product in the United States that might be deceptive and/or harmful to the American people and to America as a whole.

As an industry operating in America, the stagnate growth rate maintained by the Religion of Christianity, compared to the tremendous growth rate occurring in all other areas of endeavor in the United States, is easily recognizable. Appellant alleges that this inability or unwillingness to grow on the part of the Religion of Christianity has caused the current teaching of the Religion of Christianity to become deceptive and even harmful to the American people and to America as a whole. Therefore, given that it is within the scope of this Court to examine any serious allegation suggesting that a product is being distributed in the United States that could be causing harm to the American people, and given that it is possible that Appellant was diagnosis by VA with schizophrenia because his religious ideology incorporates such allegation

it is requested that a writ of certiorari be granted and Appellant be ordered to appear before this Court to present his views in an oral argument or presentation before this honorable Court.

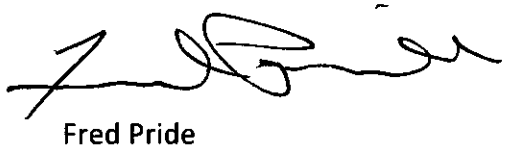
It should be no doubt that a diagnosis of schizophrenia carries with it a negative stigma. And it should be no doubt that the negative stigma that came with Appellant being diagnosis by VA with schizophrenia has suppressed his ability to practice and spread his religious ideology regarding Christianity. Therefore, it is requested that this Court grant a writ of certiorari so that the Court can examine whether or not Appellant's schizophrenia diagnosis by VA was based primarily on his religious ideology regarding Christianity, and whether or not his schizophrenia diagnosis was an attempt to suppress his religious ideology regarding Christianity. If this assertion is true, it is requested that this Court make the decision of whether or not that action by VA violated Appellant's Civil Right under the 14th Amendment to the Constitution and his Religious Right under the 1st Amendment to the United States Constitution.

X. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant a writ of certiorari to review these judgments by the VA and the Federal Circuit.

DATED this 14th day of December, 2021.

Respectfully submitted,



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