

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jeffrey E. AKARD — PETITIONER
(Your Name)

vs.

Denis McDonough — RESPONDENT(S)
Sec. of Veteran's Affairs
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Federal Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

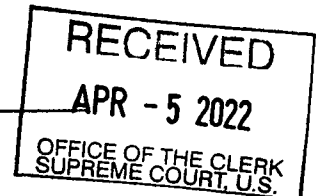
PETITION FOR WRIT OF CERTIORARI

Jeffrey E. AKARD #199176
(Your Name)

1000 Van Nuys Rd.
(Address)

New Castle IN 47362-9060
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Does a disabled veteran have a "personal stake, interest, or standing" on seeing that his withheld 20% benefit, due to his incarceration, receive a 'special apportionment' to be sent to his SSA disabled Father?

IF this disabled veteran had a wife, child, and a disabled Father, wouldn't the veteran file for whom it goes to and be the person to file appeals for his apportionment's decision?

When a veteran's withheld 20% benefit's dollar amount per month is not enough money for the veteran's Father, or anyone, to obtain "dependant" status, then shouldn't the veteran be the party to file for 'special apportionment'?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from Federal Courts:

The opinion of the United States Courts of Appeals appears in Appendix A to the petition and is

reported at 2021-1383 2021 WL 5876031 Lexis 36633; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States ^{Veteran's Claims} District Court appears at Appendix B to the petition and is

reported at 19-6262; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 12/13/2021, Mandate Feb. 03, 2022. Appx. A

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

For cases from the state courts:

The date on which the highest state court decided my case was _____
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Appendix No. A.

The jurisdiction of the Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth and Fourteenth Amend. due process rights violated to a state incarcerated pro-se petitioner's brief not considered by 38 CFR § 3.451 Special Apportionment, states in part, "Without regard to any other provision regarding apportionment where hardship is shown to exist... may be specially apportioned. In determining the basis for special apportionment, consideration will be given such as factor as: Amount of Department of Veterans Affairs benefits payable; apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee."

Where appeals are denied on apportionment, not special apportionment, veteran's father proof of SSA disability, and 20% is requested. Dependant status to deny claims violates due process by the 10% current benefit cannot make him my dependant, nor 20% benefit requested would not be enough money to claim dependant. So, STOP denying a "Special Apportionment" for those reasons.

Eighth Amend. Cruel and Unusual Punishment violations by use of, incarcerated veteran does not have a "Personal stake, interest, or standing" in the appeal. However, due to incarceration the VA 38 CFR § 5313 reduces my VA disability benefit to 10% and then withholds the 20% benefit as punishment on top of my sentence. Further not allowing this 20% benefit to be sent to my disabled father is a third additional 8th Amend. violation.

STATEMENT OF THE CASE

Petitioner appeals cause 2021-1383 Dec. 13, 2021, denial of special apportionment to veteran's disabled Father by United States Court of Appeals For the Federal Circuit and thier Feb. 03, 2022, Mandate Issuing a Final judgment as Feb. 17, 2022. Appx A.

Jeffrey E. Akard, pro-se, a serviced-connected honorably discharged From Full-enlistment 30% disabled veteran, is presently incarcerated with suppressed actual innocence evid, not adjudicated on the merits of Const. violations. Veteran's disability compensation was reduced by 38 CFR § 5313 From 30% to 10% in June 2009. In 2013 Akard learned his Father was awarded Full SSA disability and that a VA 38 CFR § 3.451 Special Apportionment existed.

In May 2018, VA denied apportionment request. Appx. D.

In June 2019, VA Board dismissed appeal, Appx C.

In Aug, 2020, Ct. Veteran's Claims affirmed Board. Appx. B.

In Feb, 2021, Ct. Fed. Cir. App. affirmed Vet. Ct. Appx A.

In Feb 2022, Ct. Fed. Cir. App. Issued Final judgment. Appx A.

REASONS FOR GRANTING THE PETITION

Petitioner's "Personal stake, interest, and standing" in the outcome of this controversy is being able to reach out from behind these prison walls to provide some assistance for my disabled Father, by support from a 20% VA benefit 'Special Apportionment' pursuant 38 CFR § 3.451. I ask the Justices to not condemn my Father due to my incarceration or on the blanket use of Belton, Ferenc, or Redding's "typically" reasons.

The Board and appeals courts offer a 'catch 22' by saying, 1) veteran presents no support payments being sent to parent, from his current reduced 10% benefit per 38 CFR § 5313; and 2) veteran's Father is not his dependant, even though the bare minimum amount of 20% (Key Factor for apportionment § 3.1665(e)(1)) is not enough money (10% or 20%) to make anyone a dependant; 3) VA Form 21P, 509 is based on 30% or higher benefit and 38 USC 7101-13 is moot when veteran's Father cannot be a "dependant" living off of available 20% benefit requested. Therefore, Filing and appeal process rests with the veteran to get a Special Apportionment granted since the Father can't apply.

The burden of "hardship is shown to exist" in § 3.451 and VCAA 2000, by proof in his Father's 2009 SSA Notice of Award of disability, showing a 38 CFR 3.102 Reasonable doubt in lower court's decision that should be resolved in favor of claimant.

Recently in, *AKard v. McDonough*, 2021 U.S. App. Lexis 36633, courts are using reasoning in my case (non precedential) not binding but a "AKard definition" in, *Foller v. McDonough*, 2022 U.S. Vet. Claims Lexis 244 No. 18-7000, is quoted in Opinion and Dissent, "AKard tracked the statute providing for the people who may appeal." See ante at 14 n.10. If veteran had a wife or child, this

Would be simple, but this is an "unusual IF not exceptional circumst." to grant special apportionment decision in Veteran's Favor, and ultimately his Father's Favor. see Shipwash v. Brown, 8 Vet. 218(1995).

Veteran Akard was sentenced in 2009, but these denials amount to additional punishment to his prison sentence where he could relieve some hardships from his Father, with this 'bare minimum' 20% benefit special apportionment since he cannot be there in person to help him out.

Therefore, no court adjudicated merits of Fifth, Eighth, or Fourteenth Amend. viol. using 38 CFR § 3.451 Special Apportionments' guidance, shown on p. 3, that provides this 20% benefit may relieve hardship for Veteran's Father's SSA disabilities.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Jeff E. Akard (SIGNATURE)
Petitioner, pro se
Jeffrey E. AKARD #199176 (PRINTED NAME)

Date: March 11, 2022

1000 Van Nuys Rd.
New Castle IN 47362-9060

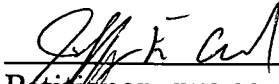
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CERTIFICATE OF AUTHENTICITY

I declare under penalty of perjury under the laws of the United States of America that the documents contained within the foregoing Appendices are true, authentic and accurate copies of the Original documents.

Executed on: 03/11/2022



Petitioner, pro se

APPENDIX A

**United States Court of Appeals
for the Federal Circuit**

JEFFREY E. AKARD,
Claimant-Appellant

v.

**DENIS MCDONOUGH, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2021-1383

Appeal from the United States Court of Appeals for
Veterans Claims in No. 19-6262, Judge Michael P. Allen.

MANDATE

In accordance with the judgment of this Court, entered
December 13, 2021, and pursuant to Rule 41 of the Federal
Rules of Appellate Procedure, the formal mandate is
hereby issued.

FOR THE COURT

February 3, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

IN THE
United State Court of Appeals
For The Federal Circuit

Jeffrey E. Akard,
Appellant,

v.

2021-1383

Denis McDonough,
Sec. of V.A.,
Appellee.

Motion To Stay

COMES NOW, appellant Jeffrey E. AKARD, pro-se and pursuant to Fed. Rules of App. Procedure Rule 41 (d) Staying the Mandate pending a Petition For Certiorari, seeks this Court to Stay the Feb. 03, 2022 Mandate For a (d)(2) duration of 90 days. In support OF the motion the appellant offers the Following:

1. The Feb. 03, 2022, Mandate was received by Akard in the NCCF log on Feb. 09, 2022. Appellant has not prepared a Motion For Rehearing as his research and argument remains unchanged.
2. Appellants timelines are believed to be 90 days From last judgement of Dec. 13, 2021, entered by this Court to File For further proceedings. Good cause For a Stay is pro-se appellant currently has § 1983 action in the 7th Cir. So. Dist of Indiana;

a pending deadline to complete a 28 USC § 2254 against denial of authorization to File Successive Petition For Post-Conviction Relief; and a July 04, 2022, deadline against Personal Injury § 1983 that has not been started,

3. Rule 41 directs appellant to present substantial question for granting the stay. I sought a § 3.451 Special Apportionment to my disabled Father who cannot be 'my dependant' from my current 10% benefit payment and would never be considered my dependant from the 20% benefit apportionment that I'm trying to send him. Therefore, I requested to STOP being denied apportionment on his dependant status or that I don't have a standing on seeing my disabled Father was helped out the only way I could - by a 'Special Apportionment' as stated in § 3.451.

4. I request 90 day stay to seek a Rehearing or complete a Writ of Certiorari to the US Supreme Court.

02/10/22

Respectfully Submitted,
Jeffery K. Arkard

Certificate of Service

I hereby certify I handed the law library staff a pre-paid first-class postage true and complete copy of the foregoing on Feb. 10, 2022, address to this Court and For:

Dept. of VA Gen. Counsel Solicitor General Rm 5614
810 Vermont Ave 950 Pennsylvania Ave NW
Washington DC 20420 Washington DC 20530-0601

Jeffery K. Arkard
JEFF ARKARD
1000 Van Nuts Rd
New Castle IN
47362



**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

February 18, 2022

Jeffrey E. Akard
New Castle Correctional Facility
1000 Van Nuys Road
PO Box E
New Castle, IN 47362

Re: Akard v. McDonough, Appeal No. 2021-1383

Dear Mr. Akard,

This letter responds to your submission received by the Clerk's Office on February 17, 2022. Final judgment has been entered in this case and it is now closed in this court.

The above appeal was decided on December 13, 2021, and the mandate issued on February 3, 2022. Thus, no action will be taken on the submitted documents. Further related filings in this closed case will receive no response.

Very truly yours,

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

By: M. Hull, Deputy Clerk

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JEFFREY E. AKARD,
Claimant-Appellant

v.

**DENIS MCDONOUGH, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2021-1383

Appeal from the United States Court of Appeals for
Veterans Claims in No. 19-6262, Judge Michael P. Allen.

Decided: December 13, 2021

JEFFREY E. AKARD, New Castle, IN, pro se.

MARIANA TERESA ACEVEDO, Commercial Litigation
Branch, Civil Division, United States Department of Jus-
tice, Washington, DC, for respondent-appellee. Also repre-
sented by BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR.,
LOREN MISHA PREHEIM; AMANDA BLACKMON, Y. KEN LEE,
Office of General Counsel, United States Department of
Veterans Affairs, Washington, DC.

Before PROST, TARANTO, and CHEN, *Circuit Judges*.

PER CURIAM.

In 2013 and 2015, Jeffrey E. Akard, a veteran of the U.S. Army, requested that the Department of Veterans Affairs (VA) pay to his father the disability benefits being withheld from Mr. Akard during his incarceration. The relevant VA regional office (RO) denied his request for want of evidence that Mr. Akard's father was a dependent parent eligible for such "apportionment." Mr. Akard appealed to the Board of Veterans' Appeals, and the Board dismissed the appeal on the ground that he (unlike his father, who did not appeal) lacked a personal stake in the RO's apportionment ruling and so lacked standing to appeal the ruling to the Board. The Court of Appeals for Veterans Claims (Veterans Court) affirmed the Board's decision. *Akard v. Wilkie*, No. 19-6262, 2020 WL 5200711 (Vet. App. Aug. 27, 2020); Supplemental Appendix (SAppx.) 1–3. Mr. Akard appeals. We affirm.

I

In 1999, VA awarded Mr. Akard disability compensation based on what it found were service-connected low-back and right-shoulder conditions, for which VA assigned him a combined disability rating of 30%. Mr. Akard was later incarcerated after being convicted of several felonies. In April 2009, VA learned of Mr. Akard's incarceration and proposed reducing his benefit payments from 30% to 10%, as authorized by statute, 38 U.S.C. § 5313, and by regulation, see 38 C.F.R. § 3.665(a) (providing that compensation payable to veterans incarcerated for more than 60 days is limited according to 38 C.F.R. § 3.665(d)); *id.* § 3.665(d) (limiting the compensation payable to an incarcerated veteran with an evaluation of at least 20% to the rate under 38 U.S.C. § 1114(a), equal to a 10% rating). VA implemented the reduction in June 2009, and Mr. Akard does not contest the reduction.

In both 2013 and 2015, Mr. Akard requested that his withheld benefits—the difference between the 30% awarded and the 10% paid during incarceration—be paid to his father, who, Mr. Akard explained, became disabled in August 2009. SAppx. 8–9. The VA’s “apportionment” regulation allows for some or all of the compensation not paid to an incarcerated veteran to be “apportioned” to a “dependent parent[]” on the basis of individual need. See 38 C.F.R. § 3.665(e)(1). The RO “accepted an apportionment claim from [Mr. Akard] on behalf of his father.” SAppx 5. In April 2017, the RO, seeking to determine eligibility, asked that Mr. Akard’s father complete a dependency form, VA Form 21P-509, see SAppx. 7, and there is no dispute here about the adequacy of notice to Mr. Akard’s father of that request. Mr. Akard’s father did not respond, and the RO denied Mr. Akard’s apportionment request in May 2017, finding insufficient evidence of his father’s eligibility. *Id.*

Mr. Akard filed a notice of disagreement, which the RO accepted for filing. *Id.* at 5. Whether by that filing or a separate appeal, Mr. Akard appealed the denial of apportionment to the Board.¹ Mr. Akard’s father did not appeal. Indeed, in his brief in the Veterans Court, the Secretary stated that the RO failed to give Mr. Akard’s father the required notice of the May 2017 denial at the time, providing that notice only in a June 2020 letter that informed Mr.

¹ Congress made various changes in appeal procedures in the Veterans Appeals Improvement and Modernization Act of 2017 (“AMA”), Pub. L. No. 115-55, 131 Stat. 1105. The parties have not specified whether Mr. Akard’s appeal to the Board proceeded under the pre-AMA or post-AMA version of 38 U.S.C. § 7105, one difference being that a formal appeal followed the notice of disagreement under the older version whereas no such separate formal appeal is required under the current version.

Akard's father of his still-live right to appeal. Sec'y Br. at 7, *Akard*, 2020 WL 5200711 (19-6262).

The Board dismissed Mr. Akard's appeal in June 2019, citing 38 U.S.C. § 7108's directive that "[a]n application for review on appeal shall not be entertained unless it is in conformity with this chapter [38 U.S.C. §§ 7101-7113]." 38 U.S.C. § 7108; see SAppx. 4-5 (citing statute). The Board reasoned that Mr. Akard did not have "standing" to appeal the denial of apportionment to his father. *Id.* at 5. To have standing to appeal a denial of apportionment, the Board said, an appellant must have a "personal stake in the outcome of the controversy." *Id.* (citing *Redding v. West*, 13 Vet. App. 512, 514 (2000) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962))). Here, the Board concluded, Mr. Akard did not show such a stake. The Board explained that an apportionment award "is an entity which is legally separate from [the veteran's] benefits"; incarcerated veterans typically lack a "personal stake" in the benefits that have been properly withdrawn from them (as is undisputed here); and it is only such duly withdrawn benefits that are at issue in a request for apportionment to a dependent. *Id.* (citing *Belton v. Principi*, 17 Vet. App. 209, 211-12 (2003) and *Ferenc v. Nicholson*, 20 Vet. App. 58, 64 (2006)). The Board also found that there was no indication that Mr. Akard was his father's legal guardian, that Mr. Akard's father was his dependent, or that Mr. Akard was adversely affected by the denial of apportionment. *Id.* For those reasons, the Board dismissed Mr. Akard's appeal. *Id.*

Mr. Akard appealed to the Veterans Court. The Veterans Court affirmed the Board's dismissal of the appeal on August 27, 2020, agreeing with the Board that Mr. Akard "lacked a 'personal stake' in the decision to deny apportionment of benefits to his father." *Akard*, 2020 WL 5200711, at *1-2. While observing that Article III itself does not apply to administrative bodies such as the Board, *id.* at *1 n.14, the Veterans Court ruled that the Board had properly identified the "key concept" defining why Mr. Akard had no

**United States Court of Appeals
for the Federal Circuit**

JEFFREY E. AKARD,
Claimant-Appellant

v.

**DENIS MCDONOUGH, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2021-1383

Appeal from the United States Court of Appeals for
Veterans Claims in No. 19-6262, Judge Michael P. Allen.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

December 13, 2021

Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

APPENDIX B

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-6262

JEFFREY E. AKARD, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before ALLEN, *Judge*.

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

ALLEN, *Judge*: Self-represented appellant Jeffrey Akard served the Nation honorably in the United States Army. In this appeal, which is timely and over which the Court has jurisdiction,¹ he contests a June 6, 2019, Board of Veterans' Appeals decision that dismissed his appeal concerning the apportionment of withheld VA benefits to his father.² Because appellant lacks a sufficient personal stake in the apportionment of benefits to his father as a matter of law, we will affirm the Board's decision.

I. ANALYSIS

Because appellant is proceeding pro se, the Court liberally construes appellant's arguments.³ But as an appellant he still bears the burden to establish error in the Board's decision.⁴ Appellant argues that the Board erred in dismissing his appeal. As we will explain, appellant's argument is incorrect.

¹ See 38 U.S.C. §§ 7252(a), 7266(a).

² Record (R.) at 3-7.

³ See *De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992).

⁴ See, e.g., *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table); *Berger v. Brown*, 10 Vet.App. 166, 169 (1997).

Appellant is service connected for both a low back disability and residuals of a right shoulder condition.⁵ His combined disability rating is 30%.⁶ In April 2009, VA learned that appellant was incarcerated after having been convicted of several felonies, and consequently VA proposed to reduce his disability benefit payments to a level corresponding to a 10% rating.⁷ VA effected this reduction in June 2009.⁸ This reduction was appropriate given appellant's incarceration and appellant does not argue otherwise.⁹

Despite the reduction in his benefits due to incarceration, appellant's benefits could still be apportioned to, among others, a veteran's "dependent parents on the basis of individual need."¹⁰ Appellant requested that his withheld benefits be apportioned to his father.¹¹ VA requested that appellant's father complete a dependency form to determine whether he qualified for apportionment.¹² Appellant's father did not respond to VA's request. VA then denied the apportionment request because it determined that appellant's "father is not considered a dependent, [and therefore] has no eligibility for an apportionment."¹³

Appellant appealed this decision (but his father did not). In the decision before the Court, the Board determined that appellant lacked standing to contest the decision – that is, that he had no "personal stake" in the outcome of the apportionment decision.¹⁴ Therefore, the Board dismissed appellant's appeal. It is that determination appellant contests.

We review the Board's decision concerning appellant's standing de novo.¹⁵ The Board correctly decided that appellant lacked standing to contest VA's decision not to apportion his

⁵ R. at 587-96, 714-17.

⁶ R. at 550.

⁷ R. at 294-95.

⁸ R. at 281-84.

⁹ See 38 U.S.C. § 1114(a); 38 C.F.R. § 3.665 (2020).

¹⁰ 38 C.F.R. § 3.665(e).

¹¹ R. at 140-41, 223-25.

¹² R. at 115-17, 124-29.

¹³ R. at 100.

¹⁴ R. at 4. The Courts notes that the Board and the Secretary discuss the issue in the context of standing under Article III of the Constitution. Technically, Article III standing requirements don't apply to administrative bodies such as the Board. But that does not matter. The key concept is what the Board identified – does appellant have a "personal stake" in the issue. *Id.* So, we will use the term "standing" with the understanding that we are not doing so in the sense that the Constitution's Article III standing concepts apply fully to administrative bodies.

¹⁵ See *Starr Int'l Co. v. United States*, 856 F.3d 953, 963 (Fed. Cir. 2017); *Sowers v. McDonald*, 27 Vet.App. 472, 479

benefits to his father. As we have made clear, "[a]lthough arising from a veteran's benefits, an apportionment is an entity legally separate from those benefits."¹⁶ And we later held that "[o]nce the reduction of benefits has been authorized, the appellant no longer has a personal stake in the apportioned payments."¹⁷

Belton and *Ferenc* are dispositive. Appellant does not have a legally sufficient "personal stake" in the denial of apportioned benefits to his father. If VA incorrectly denied apportioned benefits to his father, the person who can contest that "error" is appellant's father. The Board thus correctly decided that appellant lacked a "personal stake" in the decision to deny apportionment of benefits to his father. That apportionment denial was distinct from appellant's benefits claim.¹⁸ Appellant lacks standing to challenge that apportionment determination.

II. CONCLUSION

After consideration of the parties' briefs, the governing law, and the record, the Court AFFIRMS the June 6, 2019, Board decision.

DATED: August 27, 2020

Copies to:

Jeffrey E. Akard

VA General Counsel (027)

(2016).

¹⁶ *Belton v. Principi*, 17 Vet.App. 209, 211 (2003).

¹⁷ *Ferenc v. Nicholson*, 20 Vet.App. 58, 64 (2006).

¹⁸ *Belton*, 17 Vet.App. at 211.

**IN THE
UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

Jeffrey E. Akard,)
Petitioner-Appellant,)
V.)
Robert L Wilkie,)
Secretary of Veterans Affairs)
Respondent-Appellee.)

Cause Number:
19 - 6262

APPELLANT'S INFORMAL BRIEF

1. If there is more than one issue listed on the first page of the Board decision, which issue(s) are you appealing?

Entitlement to an apportionment of 20% benefit to the veteran's SSA disabled father.

2. For each issue you listed in Question 1, did the Board incorrectly state any facts? YES

The Board's Finding of Facts stated the veteran does not have a "personal stake" in the outcome of the decision and that I was denied because I did not provide evidence of "support payments" showing my father as my "dependent". A 'catch 22' for denial but also shows the approval.

Personal Stake – If I was still receiving my full 30% benefit, I would be traveling to and supporting my disabled father. However, I only get 10% benefits and the withheld 20% benefit could go towards the fact I'm not able to be there to help him, 20% could be saved up over months and used to provide assistance to my father.

Support Payment – Since 2007 the veteran's benefit has been reduced from 30% to 10%. Even if I sent 10% to my father it would not equal a measurable support payment per §3.665(e). The

federal BOP from 2007-2019 and now the Indiana DOC have repeatedly failed to provided medical care for this veteran's service-connected left shoulder injuries, chronic lower back injuries from Airborne ops, nor medication to treat my GERD. Therefore, the veteran has to use the 10% benefit to treat his disabilities.

Dependent – If the veterans only gets 10% benefit since 2007 and it goes towards meds, how can I claim my father as a dependent from that amount. Therefore, the reasons used to deny apportionment are a catch 22 because they do not apply.

3. Are there any documents in the Record Before the Agency (RBA) that support your claim(s)?

YES

RBA p. 79. Social Security Administration's Notice of Award showing L. Earl Akard is disabled.

4. Did VA fail to obtain any documents identified by you or your representative or mentioned in the Record Before the Agency (RBA) when it was gathering evidence for your case? YES

RBA p. 43. 06/12/2018 Board's p. 1 Statement of the Case Evidence: - does not list the SSA Notice of Award for L. Earl Akard as evidence.

5. To your knowledge, did the Board fail to apply or misapply any law, case, or regulation? YES
If yes, what is that law, case, or regulation and how should the Board have applied it?

The claim should be remanded or granted because the Board failed to consider:

1) VA Form 21P.509 Statement of Dependency of Parent. 1. You are a veteran whose parents are dependent on you for support and you are: Receiving compensation benefits based on 30 percent or higher service-connected disability.

However, 38 CFR § 5313 says I'm 10% benefit, making the VA Form 21P.509 moot. I cannot make a parent a dependent based on my reduced 30% to 10% since 2007 where my father's disability started in 2009. Therefore, I shouldn't be denied by that dependency argument.

2) §3.451 Special Apportionments states consideration is given to Amount of Dept. of Veterans Affairs benefit payable, and apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.

Therefore, I am asking for the bare minimum amount allowed to be apportioned – 20% benefit. Social Security Administration is a federal department or agency that found my father is disabled, unable to work and thus showing a hardship does exist for this special apportionment. RBA 46.

3) §3.665(e)(1) states a key factor for determining apportionment is 2. Amount of compensation available to be apportioned. This 20% benefit is a small amount, the bare minimum amount, but would provide useful for my disable father and this § used for approval.

4) RBA p. 47 Veteran's Claims Assistance Act of 2000 (VCAA) provides the burden was met by the information the veteran provided as my father is SSA disabled, 20% benefit is available to be apportioned and this could be considered unusual if not exceptional circumstances to grant a decision in favor. *Shipwash v. Brown*, 8 Vet. App. 218, 227 (1995). RBA p. 631

5) 38 CFR §3.102. Reasonable Doubt states such doubt will be resolved in favor of the claimant. RBA p. 47. The Board did not adequately address reasonable efforts to contact or consider my disabled father's evidence or of his personal stake in the denial, nor did the Board consider evidence of his SSA Notice of Award see §3.103 or that the requested apportionment is the bare minimum to considered or allowed - 20% benefit. *Hope v. Shinseki*, (2009) US App. Vet. Claims Lexis 937.

6. Do you think that the Board decision is wrong for any other reason(s)? YES

I conducted my military duty honorably with an honorable discharge from a full enlistment, I did not seek a medical discharge. RBA p. 318. I have not had an increase evaluation done since 2004, so really it should be a greater amount to be apportioned due to continued L shoulder injuries and increased chronic lower back muscle spasms and pain plus decreased mobility. Please do not judge my father because I am incarcerated. Rather, see that this requested apportionment of 20% could do some good.

7. What action do you want this Court to take?

Approve or Grant an apportionment of 20% benefit be paid to the veteran's father or remand.

8. Appellant has submitted 5 pages before this Court because this form does not appear on Indiana DOC LexisNexis as Appellant's Informal Brief nor do Ind. DOC computers have 38 CFR § nor any UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS case law. Petitioner has twice requested Lists of Court's Rules of Practice and Procedure and List of Practitioners but was never received. Petitioner proceeds pro-se.

Please sign and date this form after you have finished completing it.

Appellant's Telephone Number: N/A

Appellants Address: Jeffrey E. Akard #199176
PO Box 1111 WVCF
Carlisle IN 47838-1111

Appellant's Signature: _____

Date: _____

Sept 2019 ?

APPENDIX C



BOARD OF VETERANS' APPEALS
FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
JEFFREY E. AKARD

SS [REDACTED]
Docket No. 18-38 490A

DATE: June 6, 2019

ORDER

The Veteran's appeal of the denial of an apportionment of the VA disability compensation benefits withheld during his incarceration is dismissed.

FINDING OF FACT

The Veteran does not have a personal stake in the outcome of the decision denying an apportionment of the VA disability compensation benefits withheld during his incarceration.


CONCLUSION OF LAW

The Veteran's appeal of the denial of an apportionment of the VA disability compensation benefits withheld during his incarceration must be dismissed because it does not conform with the applicable law. 38 U.S.C. §§ 5313, 7104, 7105A, 7108 (2012); 38 C.F.R. §§ 3.665 (2018).

REASONS AND BASES FOR FINDING AND CONCLUSION

The Board, in accordance with the provisions of 38 U.S.C. § 7104, has reviewed and considered all the evidence and material of record in the Veteran's claims file. The Board finds that the Veteran's appeal of the denial of an apportionment of the

IN THE APPEAL OF
JEFFREY E. AKARD


Docket No. 18-38 490A

VA disability compensation benefits withheld during his incarceration must be dismissed. *See* 38 U.S.C. 7108.

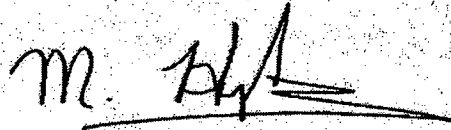
Although arising from the Veteran's benefits, an apportionment is an entity which is legally separate from those benefits. *See Belton v. Principi*, 17 Vet. App. 209, 211-12 (2003) (holding an incarcerated veteran did not have standing to file an appeal of the termination of an apportionment granted on behalf of his mother). In order to have standing to file an appeal, an individual must demonstrate that he or she has been injured and has a "personal stake in the outcome of the controversy." *See Redding v. West*, 13 Vet. App. 512, 514 (2000) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)). Incarcerated veterans typically do not have standing to appeal decisions regarding apportionments of the VA disability compensation benefits withheld during their incarcerations because they no longer have a personal stake in those benefits once reduction of benefits has been authorized. *See Ferenc v. Nicholson*, 20 Vet. App. 58, 64 (2006).

Here, the Veteran's VA disability compensation benefits were reduced to the 10 percent payment rate due to his incarceration for felony. *See* 38 U.S.C. § 5313; 38 C.F.R. § 3.665. Although the Agency of Original Jurisdiction (AOJ) accepted an apportionment claim from the Veteran on behalf of his father, as well as a notice of disagreement after the denial of the claim, the Board notes the Veteran did not have a personal stake in those benefits because a reduction of his benefits had been authorized. *See Ferenc*, 20 Vet. App. at 64. There is no indication that the Veteran is his father's legal guardian or that the Veteran's father is even his dependent. Because the Veteran is incarcerated, he is entitled to receive no more than the reduced portion of benefits that he already receives. *See* 38 C.F.R. § 3.665(a). Therefore, he does not have a personal stake in the outcome of the benefits withheld during his incarceration, nor has he shown that he has been adversely affected by a denial of an apportionment to his father.

In sum, the Board finds the Veteran did not have standing to seek an apportionment on behalf of his father or file an appeal after the denial of an apportionment to his father because he has no right to the benefits being withheld during his incarceration. Thus, his appeal must be dismissed because it does not conform with the applicable law. *See* 38 U.S.C. 7108.

IN THE APPEAL OF
JEFFREY E. AKARD

SS [REDACTED]
Docket No. 18-38 490A



M. HYLAND
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD

L. S. Kyle, Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential, and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

APPENDIX D

Statement of the Case		<i>Department of Veterans Affairs Phoenix VA regional Office</i>		Page 22 06/12/2018
NAME OF VETERAN JEFFREY EARL AKARD	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA	

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

DECISION:

Entitlement of 20 percent Apportionment to Father, Lambert E. Akard is denied.

REASONS AND BASES:

A review of your claims file reveals that an apportionment for your father, Lambert E. Akard, was denied in a VA Special Apportionment Decision, dated May 12, 2017. We notified you of the decision and your appellate rights in a letter dated May 15, 2017. We received your Notice of Disagreement on June 6, 2017, indicating you disagree with evaluation assigned and requested a separate rating evaluation for your right elbow. You elected a de novo review by a Decision Review Officer (DRO) with your Notice of Disagreement.

After de novo review of your VA claims file, we have denied apportionment for your father, Lambert E. Akard as a review of the evidence does not indicate your father is a dependent under VA regulations, therefore, entitlement to an apportionment is denied.

The VA Decision, dated May 12, 2017, denied apportionment for you father Lambert E. Akard. On October 25, 2013, you requested an apportionment for your father, Lambert Earl Akard. There are no dependents on your award. On April 11, 2017, we requested a copy of your birth certificate, a completed VAF 21P-509, and evidence of support payments to your father. Your father was also sent development for an apportionment. You responded on May 9, 2017, with a duplicate copy of your claim letter, your birth certificate and a VAF 21-4138, indicating you do not provide support. There was no response from your father. VAF 21P-509 was not returned. Therefore, there is no evidence that your father is your dependent. In turn, since your father is not considered a dependent, he has no eligibility for an apportionment of your benefits while you are incarcerated.

An apportionment to a parent may be granted if the parent is deemed to be considered a dependent if the monthly income does not exceed \$400 for a mother or father not living together. Reference: 38 Code of Federal Regulation (CFR)§3.250(i).

We received a birth certificate showing the Lambert E. Akard is your father.

On April 11, 2017, we sent you a letter asking you to complete and return VA Form 21P-509, Statement of Dependency of Parent(s). This form has not been received

Since the evidence does not show your father is a dependent under VA regulations, the denial for your father to receive an apportionment of your compensation is continued.

D-1

Department of Veterans Affairs **APPEAL TO BOARD OF VETERANS' APPEALS**

IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

1. NAME OF VETERAN (Last Name, First Name, Middle Initial) AKARD, Jeffrey R.	2. CLAIM FILE NO. (Include prefix) 345/216/AAA	3. INSURANCE FILE NO., OR LOAN NO.
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4. I AM THE:

VETERAN VETERAN'S WIDOW/ER VETERAN'S CHILD VETERAN'S PARENT

OTHER (Specify)

6. TELEPHONE NUMBERS		6. MY ADDRESS IS: (Number & Street or Post Office Box, City, State & ZIP Code)
A. HOME (Include Area Code) N/A	B. WORK (Include Area Code) 520-663-5000	

7. IF I AM NOT THE VETERAN, MY NAME IS:
(Last Name, First Name, Middle Initial)

Tucson AZ IF 60 Days Pass 85734 Peru, IN 46970

8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

A. I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES:
(List below.)

Denial of entitlement of 20 percent Apportionment to Father. Evidence showing need & hardship by SSA letter not recognized.

B. I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.

9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

- Benefit I want: Entitlement of 20% Apportionment, that is withheld from me, be sent to my Father.
- Statement of the Case was in error: The SOC and Reasons And Bases on p. 22 stated, "evidence does not indicate your Father is a dependant under VA regulations, therefore, entitlement to an apportionment is denied." However, hardship to my Father was shown to exist, that is material to this determination by the evidence sent, but

(Continue on the back, or attach sheets of paper, if you need more space.)

10. OPTIONAL BOARD HEARING

IMPORTANT: Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans' Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE VA REGIONAL OFFICE PERSONNEL.

Check one (and only one) of the following boxes:

A. I DO NOT WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision most quickly. If you choose, you may write down what you would say at a hearing and submit it directly to the Board.)

I WANT AN OPTIONAL BOARD HEARING:

B. BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)

C. IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.)

D. AT A LOCAL VA OFFICE.* (Choosing this option will add significant delay to issuance of a Board decision.)
 *This option is not available at the Washington, DC, or Baltimore, MD, Regional Offices.

11. SIGNATURE OF PERSON MAKING THIS APPEAL Jeffrey R. Akard	12. DATE (MM/DD/YYYY) 07/30/2018	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if signed by appellant. See paragraph 6 of the instructions.)	14. DATE (MM/DD/YYYY)
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CONTINUATION SHEET FOR ITEM 9

Not mentioned on p. 1 - Evidence - section nor in the p. 22 - Decision, the Jan. 16, 2012, Notice of Award From Social Security Administration to Lambert E. AKARD Stating, "We Found that you became disabled under our own rules on August 5, 2009." This notice was provided pursuant to § 3.103(c)(2)(d) - Submission of Evidence.

Furthermore, page 4 states § 3.451 Special Apportionments, "In determining the basis for special apportionment, consideration will be given such factors as: Amount of Department of Veterans Affairs benefits payable." In this instant matter, 20% is the requested amount. However, § 3.451 goes on to say, "While apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee." I'm asking for exactly 20% or just at the mark considered reasonable amount to provide relief to Father. P. 22 says, "denied in a VA Special Apportionment Decision,..."

• Correct law for this claim is:

Social Security Administration is a Federal department or agency in which my Father was found to be disabled and unable to work, thus showing hardship does exist.

I am a 30% VA awarded service-connected disabled veteran that has only received 10% payments since 2007 and has not been allowed an evaluation by VA for rate increase since 2007. Therefore, denial based on "Evidence of Support Payments" to my father, when I only receive 10% is moot. Throughout 38 CFR including § 3.665(c)(1) - a key factor for determining apportionment is, "Amount of compensation available to be apportioned." 20% being sent to my parents is a small amount, but I have shown there is a need.

Page 22 stated the VA, "has applied the benefit-of-the-doubt and liberally and sympathetically reviewed... as well as all evidence of record." § 3.102 Reasonable doubt is found, there is a need and § 3.103 there is NO showing that the SSA letter was considered in evidence.

(Attach additional sheets, if necessary)