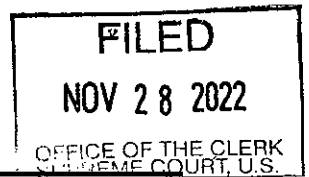


No. **22 - 6223**



IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

BYRON O. WOODS, SR.,

Appellant/Plaintiff

v.

UNITED STATE,

Appellee/Defendant

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

PETITION FOR WRIT OF CERTIORARI

Byron O Woods Sr.
15549 Firerock Ln
Moreno Valley, Ca 92555
909-549-6252

Appellant
Self-Represented

i.

QUESTIONS PRESENTED

(1) The *Pullman-Standard*, 456 U.S. 273 (1982), this Court developed which is the standard for reviewing jurisprudence for issues of fact and issues of law, and held the Court of Appeals, according to Rule 52(a) broadly requires that findings of fact of a lower court, may not be set aside unless clearly erroneous. This Rule, however, does not apply to conclusions of law. The question before this Court is, did the Appeals Court for the Federal Circuit enter a decision in conflict with the decision of another United States Court of Appeals on the same important matter?

(2) Whether the Appeals Court for the Federal Circuit itself, along with the Court of Claims findings rested on an erroneous view of the law, requiring both to be set aside on that basis?

ii.

PARTIES TO THE PROCEEDINGS

The parties to these proceedings are Petitioner, Byron O. Woods Sr., (Mr. Woods), and Respondent, the United States of America (Department of the Navy (DON)).

iii.

CORPORATE DISCLOSURE STATEMENT

No corporations or corporate entities are involved in these proceedings.

iv.

RELATED PROCEEDINGS

Other than the direct appeal that form the basis for this Petition, there are no other related case within the meaning of Rule 14.1(b)(3):

- *Woods v. United States*, No. 20-1462C, U.S. Court of Federal Claims. Judgment entered June 23, 2021.

- *Woods v. United States*, No. 21-2261, U.S. Court of Appeals for the Federal Circuit. Judgment entered July 22, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Byron O. Woods Sr., (Mr. Woods), respectfully petitions for a writ of certiorari seeking review of the United States Court of Appeals for the Federal Circuit decision in *Woods v. United States*, No. 20-1462C, U.S. Court of Federal Claims. See No. 21-2261.

OPINIONS BELOW

The Court of Appeals published opinion affirming the Court of Federal Claims that Mr. Woods's claims was outside its jurisdiction, in addition, denying his motion for rehearing is reported at *Woods v. United States*, Court of Appeals, No. 21-2261, Federal Circuit 2022, and attached as Appendix D. The Court of Federal Claims orders denying Mr. Woods's petition for lack of subject-matter jurisdiction is unreported and attached as Appendix B.

JURISDICTION

The judgement of the Court of Appeals for the Federal Circuit was entered on July 22, 2022. A Petition for Rehearing was denied on August 29, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the relationships between the Tucker Act 28 U.S.C. § 1491(b)(1). 28 U.S. Code § 2501. Time for filing suit. 10 U.S. Code § 1201. Retirement. 28 U.S. Code § 1295 – Jurisdiction of the United States Court of Appeals for the Federal Circuit. To Fed. R. Civ. P. 12(b)(1). For lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(6). Defenses and Objections. Fed. R. Civ. P. 52. Findings and Conclusions by the Court; Judgment on Partial Findings.

DISCUSSION

Mr. Woods's case comes before this Court as a basic military disability retirement pay claim. And as it currently stands, this Court rarely, if ever, grants this type of writ, and it has come to his attention as to why. First and foremost, there is an ocean of case law created that speaks directly to Mr. Woods's situation, and as this Court has repeatedly stated within that ocean of case law. *Stare decisis* is the bedrock of the American judicial system. Well-reasoned opinions become controlling precedent, thus creating stability and predictability in our legal system. It is only with great solemnity and with the assurance that the newly chosen course for the law is a significant improvement over the current course that we should depart from precedent. *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 494, 97 L. Ed. 2d 389, 107 S. Ct. 2941 (1987).

And because *Stare decisis* is preferred because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. Adhering to precedent is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right. *Payne v. Tennessee*, 501 U.S. 808 (1991). The well-reasoned opinion and precedent that controls Mr. Woods's case is as follows. In a disability retirement claim case, in the absence of clear evidence to the contrary.

The [presumption of regularity] presumes that public officers have properly discharged their official duties. The U.S. Court of Federal Claims must recognize the strong presumption of regularity accompanying government proceedings, including that the military generally carries out its responsibilities properly, lawfully and in good faith. The plaintiff bears the burden of overcoming the strong, but rebuttable, presumption that the military discharges its duties correctly, lawfully, and in good faith. See *Richey v. United States*, 322 F.3d 1317, 1326 (Fed. Cir. 2003); *Porter v. United States*, 163 F.3d at 1316. It

is well-settled law that Mr. Woods bore the heavy, yet rebuttable task, to prove by a preponderance of the evidence. Overcoming the presumption that the Department of the Navy discharge its duties correctly, lawfully, and in good faith. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (citing *Zunamon v. Brown*, 418 F.2d 883, 886 (8th Cir. 1969)). As Mr. Woods will prove below, he not only overcame that strong, but rebuttable, burden, but he did it not by the preponderance of the evidence, but beyond any reasonable doubt.

STATEMENT OF THE CASE

A. Statutory Framework

In May 2018, Mr. Woods applied for additional services at the Veteran Readiness and Employment (VR&E), formerly called Vocational Rehabilitation and Employment. Where based on his stage 3 chronic kidney disease (CKD), he qualified for several programs, but not all. The reason that was explained to him as to why he did not qualify for the specific program he applied for; the VR&E counselor stated Mr. Woods had to have been medically retired to qualify for the program he was attempting to enter. Additionally, the VR&E counselor further stated that based on his kidney condition he should have been medically retired and he should apply to have his discharge changed.

Specifically, it was explained to Mr. Woods that he could petition the Board for Correction of Navy Records (BCNR) to have his discharge changed from Honorable, to Medical, and therefore, re-request for the program he wanted to enter. This was the first time Mr. Woods had heard he could have been entitled to disability retirement pay due to his kidney condition, at which time, he began his due diligence as to disability retirement pay. And on September 4, 2018, Mr. Woods submitted a request for correction of error and injustices pursuant to 10 U.S.C. §1552. Correction of military records. A member who believes he was erroneously denied disability retirement may petition the BCNR for corr-

ection of his military record. *See Chambers v. United States*, 417 F.3d 1218 (Fed. Cir. 2005). While Mr. Woods was conducting his investigation and gathering evidence and documents to support his claim, it had come to his attention that he could not only request to have been medically retired, that he could also challenge his non-judicial Punishment (NJP) he was convicted of while in service, also pursuant to section §1552. During the investigation and gathering of evidence and documents it had also come to Mr. Woods's attention that he was placed on legal hold after his End of Active Service (EAS), without a view to a summary court-martial.

So, when Mr. Woods submitted his request to the BCNR, he asked the Board to determine if those actions was in error or unjust, all pursuant to section §1552. To make clear, section §1552 is not a money-mandate, but unlike Mr. Woods's request to have been medically retired, which required a money-mandate, the request to determine if the legal hold was in error or unjust, that action did not require such a mandate. Specifically, each application accepted for consideration and all pertinent evidence of record will be reviewed by a three-member panel sitting in executive session, to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing.

This determination will be made by majority vote. 32 CFR § 723.3(e)(1). When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination *shall* be made in writing and include a brief statement of the grounds for denial. The brief statement of the grounds for denial *shall* include the reasons for the determination that relief should not be granted, including the applicant's claims of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based. Including, if applicable, factors required by regulation to be considered for determination of the character of and reason for discharge. 32 CFR § 723.3(e)(3)(4). So, based on the above re-

gulation, the Board had an obligation to determine whether him being placed on legal hold after his EAS was unjust and was required to have explained its reasoning as to why relief was not be granted. Meaning, the BCNR needed to explain its reasoning as to why Mr. Woods's claim that the legal hold violated his constitutional rights, in addition, to violating statutory and regulatory provisions, why relief was not granted.

Additionally, the BCNR was established "to review, upon the request of a member or former member of the uniformed services retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case." 10 U.S.C. § 1554(a). Members who are dissatisfied with the decision of the BCNR may obtain judicial review. *Mitchell v. United States*, 930 F.2d 893, 896 (Fed. Cir. 1991). At which time, Mr. Woods was dissatisfied with the decision of the BCNR, and he did request and obtain judicial review.

Where a court may only set aside a board decision that was "arbitrary or capricious, unsupported by substantial evidence, or otherwise not in accordance with law," *i.e.*, "essentially the standard under which administrative agency decisions are reviewed." *Fisher v. United States*, 402 F.3d 1167, 1180 (Fed. Cir. 2005); *Walls v. United States*, 582 F.3d 1358, 1367 (Fed. Cir. 2009) ("[J]udicial review of decisions of military correction boards is conducted under the APA."). In December 2020, Mr. Woods submitted his complaint to the Claims Court pursuant to the Tucker Act which grants the court jurisdiction over "any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1).

The Tucker Act does not create a substantive right of action. *United States v. Testan*, 424 U.S. 392, 398 (1976). A party seeking to bring a suit in this Court must point to a money-mandating statute or regulation. *United States v. Mitchell*, 463 U.S. 206, 212 (1983)

A party may seek certain equitable relief that is “incident of and collateral to” judgment on the money-mandating claim, including the “restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records[.]” 28 U.S.C. § 1491(a)(2). Title 10 U.S.C. § 1201 — governing military disability retirement — is a money-mandating statute. *Fisher*, 402 F.3d at 1174 (citing *Sawyer v. United States*, 930 F.2d 1577 (Fed. Cir. 1991)). All claims before this Court are barred if filed six years after the claim first accrues. 28 U.S.C. § 2501.

“[T]he special statute of limitations governing the Court of Federal Claims requires” that timeliness be considered a jurisdictional question. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 132 (2008). As stated above, the money-mandate Mr. Woods used was section § 1201, a medical condition determined to be Unfitting by reason of physical disability, which meets the statutory criteria under Chapter 61 of 10 U.S.C., reference (a) for entitlement to disability retired or severance pay. However, because Mr. Woods filed his claim in September 2018, the Claims Court concluded that his claim was time-barred pursuant to section § 2501.

The Claims Court came to this legal conclusion based on the findings of May 3, 2007, when during his separation physical examination. The Navy physician found Mr. Woods fit to separate, moreover, because Mr. Woods did not rebut the fit to separate determination, nor did he demand a retiring board prior to his discharge, as of his discharge. Mr. Woods waived his right to pursue any such claim with the BCNR, and because he did not bring suit until December 2020, his complaint was well outside the six-year window from separation, meaning, June 9, 2013.

Because as of June 19, 2007, his discharge date, that triggered the statute of limitations to begin running barring his December 2020 complaint, pursuant to section § 2501. In the alternative, also on May 3, 2007, Mr. Woods signed BUMEDNIST 6120.6C, which both the Claims Court and Appeals Court refer to as the “acknowledgement.” Stating

Mr. Woods was found fit to separate and he understood that after discharge, he would not receive a retirement board, nor will he be processed through the Disability Evaluation System (DES). And just as with Mr. Woods having actual knowledge of his kidney condition prior to discharge, and not demanding a retiring board triggering the statute of limitations. The Claims Court also considered BUMEDNIST 6120.6C, to have also acted as a waiver after his discharge, barring access to the BCNR, also triggering the limitation statute pursuant to section § 2501. So, based on Mr. Woods having actual knowledge of his kidney condition prior to his discharge, in addition to him not demanding a retiring board, the Claims Court using *Chambers v. United States*, 417 F. 3d 1218 (Fed. Cir. 2005).

Invoked the exception to the *Freidman* rule, *Friedman*, 310 F.2d 381, 396 (1962), quoting *Real. Real v. United States*, 906 F.2d 1557, 1560 (Fed. Cir. 1990)). The *Freidman* rule states, *the claim accrues on final action of a board, not on release from active service*. The court has consistently held that Congress has entrusted the military boards with the task of determining whether a serviceman should be retired for disability and therefore that no cause of action arises (and the statute of limitations does not run) until a proper board has acted or declined to act. See, e. g., *Furlong v. United States*, 152 F. Supp. 238, 138 Ct. Cl. 843, 845-846; *Uhley v. United States*, 121 F. Supp. 674, 128 Ct. Cl. 608, 611-612; *Girault v. United States*, 135 F. Supp. 521, 133 Ct. Cl. 135, 143-144; *Odell v. United States*, 139 F. Supp. 747, 134 Ct. Cl. 634, 638; *Lipp v. United States*.

The exception to the *Freidman* rule applies to cases where "the service member is aware of the prospect of disability retirement but does not obtain a decision entitling him to disability retirement from the appropriate board during service." In the alternative, Mr. Woods signed BUMEDINST 6120.6C. The provision of BUMEDINST 6120.6C provided for the implementation of a policy of the Secretary of the Navy "that all personnel of the naval service be made aware of the possibility of being denied any benefits provided by reference (a) [Chapter 61, U.S. Code, Title 10] by reason of not rebutting, under certain

circumstances, a finding that they are fit for duty.” The background for the instruction is also set forth. It points out that for a member to be eligible for benefits the Secretary must determine, while the person is entitled to receive basic pay, that he or she is unfit to perform his or her duties due to the physical disability. Since basic pay is not received after discharge or release. The member *must* qualify for the benefits provided before being discharged or released from active duty.

Thus, the instruction sets up a procedure whereby the member *may not only rebut* the finding of fitness, but allege unfitness, and present evidence to support the claim. If the evidence is considered reasonable, the member is referred to a hospital for study and, if additional study warrants, is granted an appearance before a medical board. That board's report is then forwarded to the Chief of Naval Personnel through the Chief of the Bureau of Medicine and Surgery, and a final disposition of the case is made.

And based on those two factors, the Claims Court assured itself that it lacked subject-matter jurisdiction and granted the Government's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1).

B. Reason for Granting the Writ of Certiorari

i. Granting of Certiorari

This is as straightforward a certiorari candidate for a disability retirement pay case can be. It is manifestly important: because of the Appeals Court ruling of law in this case at issue, that ruling became controlling precedent and, consequently, affected not only the rights of Mr. Woods, but future service members. Which goes directly to *Stare decisis*, and it is promoting evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and the question presented. Because the Appeals Court departed from the doctrine of *Stare decisis* and the *Pullman-Standard* where this Court's defined the mixed questions of fact and law. Whereby Mr. Woods had established

the historical facts, to which the Appeals Court had admitted. That section § 2501 as the rule of law which was undisputed and controlling at the time of Mr. Woods's discharge from service. Lastly, that section § 2501 as applied to the established facts Mr. Woods put before the court, did those factual allegations in fact violate the rule of law barring any further action by Mr. Woods? *Pullman-Standard*, 456 U.S. at 273. Again, it is well-established that Mr. Woods bore the burden of establishing the court's jurisdiction over its claims by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed.Cir.1988).

However, it is also well-established that the Appeals Court, when determining whether the Claims Court had jurisdiction to have heard Mr. Woods's claim. As a threshold matter, the Appeal Court was required to have accepted as true all undisputed facts asserted in Mr. Woods's complaint and have drawn all reasonable inferences in his favor. Normally when considering a motion to dismiss—even one based on the lack of subject matter jurisdiction—a court must accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiffs favor. *See Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L.Ed.2d 90 (1974); *Englewood Terrace Ltd. P'ship v. United States*, 61 Fed. Cl. 583, 584 (2004).

Moreover, the Appeals Court was to review the Court of Federal Claims' dismissal of Mr. Woods' complaint for lack of subject matter jurisdiction de novo. *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). “[J]urisdiction [must] be established as a threshold matter.” *Weishan Hongda Aquatic Food Co. v. United States*, 917 F.3d 1353, 1362 (Fed. Cir. 2019). It is further well-established that section § 2501 is a jurisdictional requirement attached by Congress as condition of government's waiver of sovereign immunity. The Appeals Court was required to have strictly construed the statute, meaning, to avoid stale claims which might prejudice the government. *Colon v. United States*, 35 Fed. Cl. 337 (1996). And again, Mr. Woods is not arguing to the contrary,

but what is being argued, as with the Claims Court, the Appeals Court also misconstrued the very rule of law that court created. And as this Court has held, "where findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue." *Kelley v. Southern Pacific Co.*, 419 U.S. 318, 331-32, 95 S. Ct. 472, 479-80, 42 L.Ed.2d 498 (1974). *Pullman-Standard*, 456 U.S. at 292, 102 S. Ct. at 1792.

ii. Applying the Pullam-Standard

As to the legal questions of fact applied to section § 2501 and the Appeals Court erroneous view and misapplication of the rule law. When jurisdictional facts are challenged, however, the plaintiff must demonstrate jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed.Cir.1988). It is beyond dispute that the Appeals Court challenged Mr. Woods's assertion that his cause of action accrued as of September 24, 2020, by invoking the exception to the *Freidman* rule. When the BCNR first denied his request to have been placed on the Permanent Disability Retirement List (PDRL).

a. Historical Facts Established

Within the Appeals Court Opinion it established five facts which led to its legal conclusion. (i) Based on Mr. Woods having knowledge of his kidney condition prior to his discharge, that was sufficient to trigger the exception to the *Freidman* rule. (ii) The Claims Court placed upon its record suggesting that Mr. Woods specifically believed he was unfit for continued service. (iii) Despite Mr. Woods having actual knowledge of his kidney condition, he signed an acknowledgement upon his separation stating that he did not have a medical condition that would disqualify him from the performance of his duties. (iv) By Mr. Woods signing the acknowledgement, he should have been placed on notice that the Navy considered him ineligible for disability retirement, at which point he could have filed

his disability claim. (v) Mr. Woods failed to demand Board review, prior to his discharge, based on his kidney condition.

b. The Undisputed Rules of law

Because jurisdiction must be established as a threshold matter. Mr. Woods needs to have overcome each fact by the preponderance of the evidence. Although a court is to give pro se plaintiffs more latitude in their pleadings than parties represented by counsel, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), such leniency does not relieve them of jurisdictional requirements, *Kelley v. Sec'y, U.S. Dep't of Lab.*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Because section § 2501 (statute of limitations) for the Court of Federal Claims is "jurisdictional," it is "not susceptible to equitable tolling." *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 136 (2008). 10 U.S.C. § 1201(b)(1) (2007).

As a general rule, a cause of action against the Government first accrues when all of the events which fix the Government's alleged liability have occurred, and the plaintiff was or should have been aware of their existence. *Anaheim Gardens v. United States*, 33 Fed. Cl. 773, 776 (1995). In military disability retirement cases, a claim accrues upon the final decision by an appropriate board. *Real v. United States*, 906 F.2d 1557, 1560 (Fed. Cir. 1990); *Friedman v. United States*, 159 Ct. Cl. 1, 24, 310 F.2d 381, 395-96 (1962), cert. denied sub. nom., *Lipp v. United States*, 373 U.S. 932, 10 L. Ed. 2d 691, 83 S. Ct. 1540 (1963). 10 U.S. Code § 1201.

The requirements of section § 1201 are as follows: (b) *Required Determinations of Disability*. Determinations referred to in subsection (a) are determinations by the Secretary that: (1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of the member's intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence. (3)(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by

the Department of Veterans Affairs at the time of the determination; and (ii) the disability is the proximate result of performing active duty. The *Friedman* rule states, claims of entitlement to disability retirement pay generally do not accrue until the appropriate military board either finally denies such a claim or refuses to hear it. The decision by the first statutorily authorized board that hears or refuses to hear the claim invokes the statute of limitations. *Friedman v. United States*, 159 Ct. Cl. 1, 310 F.2d 381, 396 (1962).

However, there is an exception to the *Friedman* rule addressed by the Claims Court in *Real*. This exception applies to cases where "the service member is aware of the prospect of disability retirement but does not obtain a decision entitling him to disability retirement from the appropriate board during service." *Real v. United States*, 18 Cl. Ct. 118 (1989). Fed. R. Civ. P. 12(b)(1), a court should not grant a motion to dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957) (footnote omitted); *Hamlet*, 873 F.2d at 1416. 14.

The Appeals Court reviews the Court of Federal Claims' dismissal for lack of subject matter jurisdiction de novo. *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). "[J]urisdiction [must] be established as a threshold matter." *Weishan Hongda Aquatic Food Co. v. United States*, 917 F.3d 1353, 1362 (Fed. Cir. 2019).

c. Rule of Law as Applied to the Established Facts Did Not Violate Section § 2501

The Appeals Court legal conclusion within its Opinion for invoking the exception was as follows, the exception applies to Mr. Woods's disability claim because Mr. Woods was aware of his medical condition prior to discharge. However, that legal conclusion is contrary to the Appeals Court's own holding in *Chambers'* which is the controlling rule of law in this case at issue. For example, as with *Chambers*, the Appeals Court also argued that Mr. Woods's case fell into the exception to the *Friedman* rule addressed by the Claims Court in *Real*. That is because Mr. Woods had actual knowledge of his kidney condition

prior to his discharge the exception applies, thereby triggering the statute upon his discharge. However, it was also opined within Chambers, the Appeals Court stated, it did not read *Real* as broadly as the Claims Court. The Claims Court concluded that, even though Real knew or should have known that he suffered from significant medical problems prior to discharge and understood that he would be ineligible for future disability benefits if he did not challenge the Navy's finding that he was fit for duty, he did not contest that determination and thus waived the right to further review. *Real v. United States*, 18 Cl. Ct. 118, 128 (Ct. Cl. 1989).

But the Appeals Court did opine that there are circumstances under which the service member's failure to request a hearing board prior to discharge has been held to have the same effect as a refusal by the service to provide board review. 906 F.2d at 1560 (citing *Miller v. United States*, 361 F.2d 245, 175 Ct. Cl. 871 (1966); *Huffaker*, 2 Cl. Ct. 662). Specifically, such failure can invoke the statute of limitations when the service member has sufficient actual or constructive notice of his disability, and hence, of his entitlement to disability retirement pay, at the time of discharge. *Id.* at 1562.

Real thus framed the issue before it as "[w]hether the veteran's knowledge of the existence and extent of his condition at the time of his discharge was sufficient to justify concluding that he waived the right to board review of the service's finding of fitness by failing to demand a board prior to his discharge." *Id.* Such knowledge, the Appeals Court held, must be determined by reference to the statutory requirements for disability retirement, namely, 10 U.S.C. § 1201. *Id.* However, that was not the case within Chambers, and in the alternative, could not have been the situation in Mr. Woods's case as well.

The Appeals Court stated, *Real* thus concerned the service member's knowledge at the time of discharge, not, as here, many years after discharge. *Real* did not fashion a rule, as the Claims Court suggests, that a service member's claim accrues when he learns of his disabling condition, whether before or after discharge. Indeed, such a rule would be unten-

able, given that a military board *must* determine eligibility for disability retirement before such a claim accrues. There can be no waiver of board review absent an opportunity for such review, as at discharge. Simply put, after discharge, a veteran has nothing to waive. The appropriate inquiry under *Real*, therefore, is whether at the time of his separation from the Army in 1970, Chambers knew that he was entitled to disability retirement due to a permanent disability that was not a result of his intentional misconduct and was service connected.

If Mr. Woods understands the above rule of law correctly, his cause of action did not accrue as of his separation triggering section 2501. His cause of action turns on, prior to his discharge, whether he knew he was entitled to disability retirement pay due to a permanent disability that was not a result of his intentional misconduct and was service connected. But unlike Chambers', Mr. Woods's case was not remanded back to the Claims Court, also Mr. Woods's knowledge of his kidney condition was in fact determined by reference to the statutory requirements for disability retirement within section § 1201.

As to the first requirement of section § 1201, within the Claims Court Opinion and Order, it was stated, there is no question that Mr. Woods CKD was accurately diagnosed by multiple doctors before separation. AR 139–40, 189. So, the Claims Court confirmed that Mr. Woods's kidney condition was accurately diagnosed, meaning, based upon accepted medical principles. It was further stated that Mr. Woods was aware at the time of separation that he had a "permanent disability." *Chambers*, 417 F.3d at 1224; 10 U.S.C. § 1201(b)(1) (2007). Which goes to the second part of the first requirement, meaning, the kidney condition was of a permanent nature and stable, and both taking together.

Mr. Woods met the first requirement of section § 1201, next, also within the Opinion and Order, it was stated, there is no indication that his CKD was "a result of his intentional misconduct." *Chambers*, 417 F.3d at 1227; 10 U.S.C. § 1201(b)(2) (2007). And this too confirmed that Mr. Woods met the second requirement of the statute. Next, as to the third

requirement, also within the Opinion and Order it was stated, Mr. Woods was also aware, that his disability rating was at least 30 percent under the VA schedule. 10 U.S.C. § 1201(b)(3)(B); AR 17–18, which also meets the third requirement of the statute. Lastly, as to whether the kidney condition was the proximate result of Mr. Woods's performing the duties of his rating. The Claims Court opined that several doctors, prior to his discharge, informed Mr. Woods that his condition would likely worsen. AR 189, AR 197.

In fact, he was told that he should not undertake combat duty or re-enlist because of his kidney condition. AR 140, 189. Per the Claims Court own fact-finding analysis and legal conclusion. Mr. Woods, prior to his discharge on June 19, 2007, had met all the requirements pursuant to section § 1201(1)(2)(b)(3)(B)(ii). However, because Mr. Woods argued that the Navy physician who conducted the separation physical, illegally terminated his DES process, prior to discharge, the most important and only requirement left of section § 1201 was not met. This was the required determination of the Secretary, as the statute states, upon a determination by the Secretary of the Navy (DON). And because Mr. Woods was still on active duty, at that time, that meant the DON PEB.

This determination was to have affirmed or rejected the MEB panel's determination that Mr. Woods was unfit to perform the duties of his rating because of the kidney condition incurred while entitled to basic pay. And as stated above, those required determinations referred to in subsection (a) were (b)(1) (2)(3)(b)(ii) were all met, notwithstanding, the determination of the DON PEB in lieu of the Secretary of the Navy. And unlike Chambers, Mr. Woods's kidney condition diagnoses he received prior to discharge indicated that his condition was not minor, temporary, or circumstantial.

That he in fact was to have been referred to the DON PEB for a determination as to whether his kidney condition disqualified him from continuing naval service, and if so, his entitlement to disability retirement pay. And the only appropriate body that could have made that entitlement decision while Mr. Woods was still on active duty, receiving base

pay, was the DON PEB. As the *Freidman* rule states above, Mr. Woods's claim was to have accrued on the final action of the DON PEB, not his release from active service. That it has been consistently held that Congress has entrusted the Secretary of the Navy, in this case at issue, with the task of determining whether Mr. Woods should have been retired for disability and therefore that no cause of action arises, and the statute of limitations did not run until the DON PEB, the proper board, at that time, had acted or declined to act. See, e. g., *Furlong v. United States*, 152 F. Supp. 238, 138 Ct. Cl. 843, 845-846

Which makes the Appeals Court legal conclusion the *Freidman* exception applied to Mr. Woods's disability claim based on him being aware of his kidney condition prior to discharge infirm because of an erroneous view of the law, that statement is not conclusory, it has support within the law. For example, it was the Appeals Court that part company with its own holding in *Chambers*, meaning, *Real* did not fashion a rule, Mr. Woods's claim accrued when he learns of his kidney condition, whether before or after discharge. Given the DON PEB *must* have determined his eligibility for disability retirement, while still entitled to base pay, before such a claim accrued.

Mr. Woods could not have waived the DON PEB review absent an opportunity for such review, as at discharge. Simply put, after discharge, Mr. Woods had nothing to waive. The above should prove the Appeals Court legal conclusion violated the doctrine of *Stare decisis* by not adhering to precedent, which is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right. And the settled applicable rule of law is that Mr. Woods's cause of action, based on his knowledge of his kidney condition alone, without an entitlement determination from the DON PEB, prior to his separation, therefore, no cause of action arose.

And if the above rule of law is good law, which it is, because the Appeals Court used it as its justification within its legal conclusion. Then based on that legal conclusion, the *Real* exception should not have applied to Mr. Woods meaning the Claims Court had

subject-matter jurisdiction. Which among other thing, the Appeals Court also had subject-matter jurisdiction, that is based on the facts, evidence, and the law. However, there was a two-part legal argument as to Mr. Woods's knowledge of his kidney condition prior to his discharge, triggering the statute of limitations. The Appeals Court stated, once Mr. Woods signed the document acknowledging the Navy considered him ineligible for disability retirement, he failed to demand Board review at that time.

Again, that legal conclusion by the Appeals Court was infirmed because of the court's erroneous view of the law. Specifically, as Mr. Woods argued in his petition, he could not, upon his own initiative, demand a medical board, nor a retirement board, based on his knowledge of his kidney condition, prior to his separation. This assertion was not conclusory and had support within the law. It is not within the mission of the Department of the Navy to retain members on active duty or in the Ready Reserve to provide prolonged, definitive medical care when it is unlikely the member will return to full military duty.

Accordingly, line commanders, commanding officers of MTFs and individual medical and dental officers *shall* promptly identify for evaluation by Medical Boards and appropriate referral to the PEB under this instruction, those members presenting for medical care whose *physical or mental fitness to continue naval service is questionable*. SECNAVINST 1850.4E. § 1005. (Emphasis Added). Nowhere within that instruction does it allow for Mr. Woods to have promptly demanded identification for evaluation, prior to his discharge, by an MEB and an appropriate referral to the PEB as to his kidney condition.

The instruction is unequivocal that his treating physician, not Mr. Woods, was required to have referred his case, first, to the MEB, second, the appropriate referral to the PEB. Referral of a Marine to the DES is a very serious decision and most physicians will exhaust all treatment options and fully discuss their decision with their patient before making the referral. There are four phases to the DES process: (1) Medical Evaluation Board (MEB), (2) Physical Evaluation Board (PEB); (3) Transition, and (4) VA Disability

Compensation Benefits Phase totaling 230 days. *Circumstances Not Meriting an MEB for Referral to the PEB.* In addition to the medical conditions listed above, the following circumstances also contraindicate evaluation by an MEB for referring the matter to the PEB (refer to SECNAVINST 1850.4 series, section 3202): Request for referral to the PEB by the service member. Request by member for referral to an MEB or PEB in the absence of appropriate diagnosis(es) meriting an MEB. MANMED Ch. 18(5)(4)(b).

So, the Appeals Court concluded the Navy considered Mr. Woods ineligible for disability retirement, at which point, he failed to demand review by the DON PEB. Again, the court misconstrued the rule of law. Meaning, prior to Mr. Woods's discharge, there was only one way in which the Navy could have considered him ineligible for disability retirement. For a member to be eligible for benefits the Secretary *must* determine, while the person is entitled to receive basic pay, that he or she is unfit to perform his or her duties due to physical disability. Since basic pay is not received after discharge or release.

The member *must* qualify for the benefits provided before being discharged or released from active duty. In military disability retirement cases, a claim accrues upon the final decision by an appropriate board. *Freidman*, 310 F.2d 381 (1962). See, e. g., *Furlong v. United States*, 152 F. Supp. 238, 138 Ct. Cl. 843, 845-846. So, on September 24, 2020, the BCNR, operating in lieu of the Secretary of the Navy. Determined that Mr. Woods, while still entitled to base pay, was ineligible for disability retirement. The BCNR's legal conclusion was that, while, arguably, Mr. Woods was not fit for full duty, but limited duty, making him ineligible to have been placed on the PDRL.

It should be beyond dispute, the BCNR was the first statutory board authorized to have acted for the Secretary of the Navy and made the required determination as to Mr. Woods's eligible for disability retirement. And because Mr. Woods's claim was a military disability retirement case, his claim accrued on September 24, 2020, upon the final decision by the BCNR, and not as of June 19, 2007, his release from military service. Lastly, that

assertion, if taken as true, would have given the Claims Court the authority to determine if Mr. Woods should have been placed upon the PDRL. As stated above, where findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue. By the Appeals Court having subject-matter jurisdiction, that meant, the Claims Court would have also had subject-matter jurisdiction.

Which makes remand by the Appeals Court the only resolution of the legal question presented being whether Mr. Woods was entitled to disability retirement pay, prior to his discharge, or not? This is because the Claims Court, based on its fact-finding analysis, never determined if Mr. Woods was entitled to disability retirement pay, only that his claim was time-barred. And the Appeals Court could not have resolved whether Mr. Woods should have been placed on the PDRL, because the Claims Court failed to do so. For example, fact-finding is the basic responsibility of district courts, rather than appellate courts.

And the Court of Appeals could not have resolved in the first instance this factual dispute which had not been considered by the Claims Court." *DeMarco v. United States*, 415 U. S. 449, 450, n. (1974). And based on the above, it should be undisputed that Mr. Woods proved beyond any doubt, with the assistance of the Claims Court, several sets of facts in support of his claim which would have entitled him to relief. The Claims Court should not have granted the motion to dismiss, and the Appeals Court should have never affirmed grant the motion to dismiss. *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957) (footnote omitted); *Hamlet*, 873 F.2d at 1416. 14.

Finally, as to the legal hold, this is being placed within this writ for Mr. Woods to not forfeit that cause of action in his appeal of the Claims Court. As argued above, the BCNR was obligated by its own regulation, 32 CFR § 723.3(e)(1), which required the Board to have addressed Mr. Woods's argument that him being placed on legal hold with-

out a view to summary court-martial was unconstitutional. The Board's determination *shall* be made in writing and include a brief statement of the grounds for denial *shall* include the reasons for the determination that relief should not be granted, including the applicant's claims of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based.

According to the Appeals Court Opinion which stated, Mr. Woods believed the legal hold, without a court martial, was a violation of his constitutional rights. *Id.* Which was correctly assessed by the Appeals Court, as to Mr. Woods's belief, which he supported with facts, evidence, and the applicable laws within his petition. However, unlike when Mr. Woods opined that he was entitled to the PDRL, his belief as to the legal hold, without a court martial, was a violation of his constitutional rights, that belief was ignored. The Appeals Court basically stated that the Claims Court similarly lacks the jurisdiction necessary to remove mention of Mr. Woods's legal hold from his records:

That claim also accrued in 2007 when Mr. Woods was placed on legal hold following his acceptance of a non-judicial punishment. Yet Mr. Woods failed to file that claim until many years after the expiration of the statute of limitations. Furthermore, Mr. Woods's legal hold claim is a request for injunctive relief, rather than a request for money damages. And adjudication of Mr. Woods's legal hold claim is not necessary to adjudicate a money-mandating claim. *Cf. Fuller v. United States*, 127 Fed. Cl. 640, 645–46 (2016) (assessing a legal hold claim necessary to determining a money-mandating claim). The Tucker Act does not grant the Court of Federal Claims the necessary subject matter jurisdiction to accord such relief.

The Appeals Court again misconstrued the rule of law, making its findings infirmed because of an erroneous view of the law, and here is how. First, the BCNR found the NJP to have been unjust and ordered it removed. So, Mr. Woods's argument in his petition to the Appeals Court was, if the NJP was found to be unjust, why wasn't the legal hold? Sec-

ond, the Appeals Court erroneous view of the law validates Mr. Woods's argument, for example, the court stated above, that Mr. Woods claim accrued in 2007 when he was placed on legal hold following his acceptance of a non-judicial punishment. That legal conclusion was incorrect; because the Appeals Court ignored the factual allegations which lead to him accepting the NJP and being placed on legal hold.

In particular, it was argued that prior to February 27, 2007, Mr. Woods refused the original request to be NJP'ed and demanded a summary court-martial. *Demand for trial by court-martial*. If the Servicemember demands trial by court-martial (when this right is applicable), the nonjudicial proceedings *shall* be terminated. It is within the discretion of the commander whether to forward or refer charges for trial by court-martial (see R.C.M. 306; 307; 401–407) in such a case. But in no event may punishment be imposed under Article 15 upon any member of the armed forces who has, before the imposition of nonjudicial punishment, demanded trial by court-martial in *lieu* of nonjudicial punishment, unless the demand is voluntarily withdrawn. R.C.M. Part V (3)(b).

Also, Mr. Woods argued in his petition to the Appeals Court that his demand to withdraw his trial by summary court-martial was not voluntarily, that argument is not before this Court. But what is before this Court when Mr. Woods refused the original request, as stated above, that refusal terminated the NJP prior to February 27, 2007, his EAS. So, when Mr. Woods was re-asked to drop his demand for a summary court-martial, which was on March 1, 2007, that request was inapposite at that time because his original contract expired at 2359 on February 27, 2007. Meaning, because Mr. Woods's Command did not convene the summary court-martial prior to his discharge, no jurisdiction attached.

R.C.M. 202(c). Persons subject to the jurisdiction of courts-martial. *Attachment of jurisdiction over the person*. (1) *In general*. Court-martial jurisdiction attaches over a person when action with a view to trial of that person is taken. Once court-martial jurisdiction over a person attaches, such jurisdiction shall continue for all purposes of trial,

sentence, and punishment, notwithstanding the expiration of that person's term of service or other period in which that person was subject to the code or trial by court-martial. When jurisdiction attaches over a servicemember on active duty, the servicemember may be held on active duty over objection pending disposition of any offense for which held and shall remain subject to the code during the entire period.

As the Appeals Court has stipulated to, Mr. Woods was placed on legal hold after his acceptance of the NJP which was March 1, 2007. Which was indirect contradiction to the Rule above. Meaning, the summary court-martial jurisdiction could have only attached over Mr. Woods when that action was a view to trial, not a view to NJP, was taken of Mr. Woods. And it should be beyond any reasonable doubt that action was taken after his EAS, and after he was already convicted at the illegal NJP proceeding. However, when Mr. Woods submitted his complaint to the Claims Court it was pursuant to 28 U.S. Code Section § 1491.

Where Mr. Woods erred in his pleading to the Claims Court, was that he failed to include 5 U.S. Code Section § 706, which gave the court jurisdiction to have reviewed whether the BCNR's failure to even address the legal hold, whether that hold was an error and/or unjust. Did that failure violate the Board's own statutory or regulatory policies. A final decision of the BCNR is subject to judicial review under § 706 of the Administrative Procedure Act, 5 U.S.C. § 706. *See Frizelle v. Slater*, 111 F.3d 172, 176 (D.C.Cir.1997). Under the APA, a reviewing court must "defer" to an agency's decision unless it "is arbitrary and capricious, contrary to law, or unsupported by substantial evidence." *Id.*; *see Kreis v. Sec'y of the Air Force*, 866 F.2d 1508, 1514 (D.C.Cir.1989).

Generally, "[t]he scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1983). Thus, a court "will not disturb the decision of an agency that has 'examined

the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *MD Pharm. v. Drug Enforcement Admin.*, 133 F.3d 8, 16 (D.C.Cir.1998) (quoting *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43, 103 S. Ct. 2856).

Because Mr. Woods failed to include section § 706 in his complaint to the Claims Court, a *pro se* pleading mistake, which led the court to dismiss the legal hold on a pleading technicality, was not only prejudicial, but contrary to the rule of law. This was the foundation as to the Appeals Court decision to affirm the Claims Court dismissing Mr. Woods's complaint pursuant to Fed. R. Civ. P. 12(b)(1). A court should not grant a motion to dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957) (footnote omitted); *Hamlet*, 873 F.2d at 1416. 14.

The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accepted the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. *Maty v. Grasselli Chemical Co.*, 303 U. S. 197. Because Mr. Woods has been operating as a *pro se* litigant, it took him a while to figure out his pleading error. As stated above, the Claims Court treated Mr. Woods's complaint as a game of skill, and his one misstep of failing to include section § 706 was decisive to the outcome, as to the legal hold, and the court dismissed the complaint contrary to the accepted principle that the purpose of pleading is to facilitate a proper decision on the merits.

Furthermore, the Claims Court stated in its Opinion and Order that, it may review the legitimacy of legal holds when relevant to determine a money-mandating claim. See *Fuller*, 127 Fed. Cl. at 645-46 (reviewing a legal hold that caused an abeyance in the plaintiff's retirement and thus effected retirement pay). But here, the hold had no effect on the underlying disability claim or Mr. Woods's compensation. Mr. Woods does not allege

that he was unpaid while on hold, and his statutory right to basic pay had no exception for members on legal hold at the relevant time. 37 U.S.C. § 204 (2001). The court lacks jurisdiction to consider this claim without a money-mandating foundation. Again, blame it on the fact Mr. Woods is operating as a *pro se* litigant, the Claims Court all but admitted that he was illegally held beyond his EAS.

But because Mr. Woods never alleged, he was not paid while being illegally held against his will, the legal hold had no effect on the underlying disability retirement pay claim. That legal conclusion must be one of the most asinine legal conclusions possibly made. For example, Mr. Woods requested his NJP be removed from his military record because it was unjust, and the Board agreed and ordered it removed. Yet, the legal hold, which happened after the unjust NJP. Making the legal hold "Inextricably intertwined" with the NJP. Should it not logically follow that the legal hold must have been declared unjust as well?

Meaning, without the NJP being vailed, the legal hold cannot stand on its own, making the legal hold invalid as well. Additionally, the Claims Court further acted in excess of its jurisdiction, for example, as stated above. Under the APA, the Claims Court (Reviewing Court) must have "deferred" to the BCNR's decision unless it "was arbitrary and capricious, contrary to law, or unsupported by substantial evidence." *Id.*; see *Kreis v. Sec'y of the Air Force*, 866 F.2d 1508, 1514 (D.C.Cir.1989). However, as to the legal hold question, the BCNR never decided as to the constitutionality, statutory and/or regulatory violations of the legal hold.

And again, it should logically follow, if the BCNR failed to decide as to the legal hold. Then the Claims Court could not have deferred to the BCNR's decision, because there was no decision to for the court defer to, which the court was required to do. To put it this way, without a determination by the BCNR as to the question whether the legal hold was in error and/or unjust, the Claims Court had nothing to defer to requiring remand back

to the BCNR. The Claims Court at no time reasonably read Mr. Woods's pleading to state a valid claim as to the legal hold on which he could prevail. It was this Court which stated, a pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972); *see also Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L.Ed.2d 251 (1976); *Gillihan v. Shillinger*, 872 F.2d 935, 938 (10th Cir.1989).

We believe that this rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. (Emphasis Added). And this is Mr. Woods's issue before this Court, as stated above, Mr. Woods failed to cite in his complaint to the Claims Court the proper legal authority, which was section § 706, which granted its review of the BCNR failure address the legal hold.

And because Mr. Woods made a factual allegation that he was illegally held beyond his EAS, this allegation was affirmed by the Claims Court. Specifically, the court stated, the hold had no effect on the underlying disability claim, and whether that was true are not, the Claims Court never addressed the nucleus of the question. Meaning, was Mr. Woods held beyond his EAS without a view to a summary court-martial? Notwithstanding the fact, it was unrelated to the disability retirement pay, because the summary court-martial was a condition precedent to have held Mr. Woods beyond his EAS, against his objection.

The Claims Court appeared to have answered that question, because Mr. Woods never alleged that he was not paid while being held, which again, was not Mr. Woods's argument. Meaning, his argument was he was illegally held beyond his EAS, not that he was unpaid while being illegally held. The Claims Court made the nexus of the legal hold and the disability retirement pay claim, which the two stood alone, despite the court attempting to combine the two. It is well-settled that the proper function of the court was

not to assume the role of advocate for Mr. Woods operating as a *pro se* litigant. The broad reading of Mr. Woods's complaint did not relieve him of the burden of alleging sufficient facts on which a recognized legal claim could be based. Not every fact must be described in specific detail, *Conley*, 355 U.S. at 47, 78 S. Ct. at 102-03, and the plaintiff whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint, *Reynoldson v. Shillinger*, 907 F.2d 124, 126-27 (10th Cir.1990).

And before the Claims Court dismissed Mr. Woods complaint, he should have been allowed to have amended his complaint. The 9th Circuit has held, this is the circuit Mr. Woods is in, stated before dismissing a *pro se* complaint the district court *must* provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively. *Noll v. Carlson*, 809 F. 2d 1446 (9th Cir. 1987). With that 9th Circuit's holding, it goes to the Claims Court allowing Mr. Woods an opportunity to amend his complaint, prior to dismissal, to be heard, in an effort for him to try and hurdle the subject-matter jurisdictional requirement.

For both placement on the PDRL and the legal hold, the 9th Circuit further held that courts should treat *pro se* litigants with great leniency when evaluating compliance with the technical rules of civil procedure. But to make clear, that is not to say, Mr. Woods, operating as a *pro se* litigant, was above satisfying jurisdictional requirements. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), such leniency does not relieve them of jurisdictional requirements, *Kelley v. Sec'y, U.S. Dep't of Lab.*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). However, as to the illegal termination of Mr. Woods's DES process, as to the legal hold, to have added section § 706 in his complaint, to have determined if both were legal errors.

The boards for correction of military records may be reviewed for failure to correct plain legal errors committed by the military. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed.Cir.1992); *Grieg v. United States*, 640 F.2d 1261, 1266, 226 Ct. Cl. 258 (1981); *San-*

ders, 594 F.2d at 813. Such legal error includes the military's "violation of statute, or regulation, or published mandatory procedure, or unauthorized act." *Skinner v. United States*, 594 F.2d 824, 830, 219 Ct. Cl. 322 (1979); see *Arens*, 969 F.2d at 1040; *Voge*, 844 F.2d at 779. The sole purpose of this writ is to address the Appeals Court decision to affirm the Claims Court granting the motion to dismiss his complaint pursuant to Rule 12(b)(1).

As stated above, the motion to dismiss pursuant to Rule 12(b)(1) should not be granted unless it appears beyond doubt that Mr. Woods could prove no set of facts in support of his claim which would entitle him to relief. It should be beyond disputed: (1) Mr. Woods kidney condition was cause for referral into the DES. (2) A duly convened MEB determined that the kidney condition interfered with his ability to perform the duties of his rating and made Mr. Woods unfit to have continued active duty. (3) That the kidney condition was to have been referred to the DON PEB, prior to his discharge, to have determine whether the kidney condition prematurely terminated his military service.

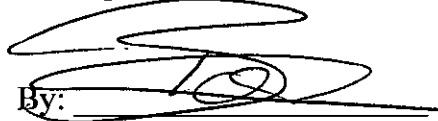
If so, at what percentage the kidney condition was to be rated at, and if Mr. Woods was entitled to disability retirement pay and placed on the PDRL. (4) That Mr. Woods's DES process was illegally terminated by the Navy, causing the DON PEB not to have made its statutorily entitlement determination for the Sectary of the Navy. (5) Because the DON PEB was never requested or refused, the BCNR was the next step in the entitlement process. (6) Mr. Woods's submission to the BCNR was mandatory, not permissive. (7) Mr. Woods's claim accrued as of September 24, 2020, when the BCNR decision became final, and unless everything above can be proven to the contrary.

The Claims Court should have dismissed the motion to dismiss and have allowed Mr. Woods complaint to have been heard on its merits as to both the PDRL request and the legal hold.

C. Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Byron O. Woods Sr.', written over a horizontal line.

By:

Byron O. Woods Sr. (*Pro Se*)

Date: November 27, 2022.