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APPENDIX A

United States Court of Appeals for the Federal Circuit

YVONNE CREWS,
Claimant-Appellant

v.

DENIS MCDONOUGH, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2021-2030

Appeal from the United States Court of Appeals for Veterans Claims in No. 19-6298, Judge Joseph L. Falvey, Jr.

Decided: March 16, 2023

KENNETH M. CARPENTER, Law Offices of Carpenter Chartered, Topeka, KS, argued for claimant-appellant.

TANYA KOENIG, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent-appellee. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY, LOREN MISHA PREHEIM; Y. KEN LEE, DEREK SCADDEN, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before REYNA, MAYER, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

Yvonne Crews appeals the final decision of the United States Court of Appeals for Veterans Claims denying her request to be substituted under 38 U.S.C. § 5121A as the claimant in place of her deceased spouse. Because we conclude that her allegation of a clear and unmistakable error is not part of a "pending" claim for which she could substitute under § 5121A, we affirm.

I

The veteran, Sylvester D. Crews, served in the U.S. Air Force from March 1954 to September 1958. In connection with his service, Mr. Crews was originally granted a 100% disability rating for schizophrenia. But in November 1960, his disability rating was lowered to 70%.

In December 2006, Mr. Crews filed a new claim for an increased schizophrenia rating, which the Regional Office denied in May 2007. In September 2009, Mrs. Crews—on behalf of her husband—submitted a letter stating that Mr. Crews was 100% disabled and requested further evaluation. The letter made no mention of an effective date for the requested 100% rating. The Regional Office responded that it would not consider the letter to be a notice of disagreement with the

May 2007 decision because it was filed more than one year after the May 2007 decision. Instead, the Regional Office construed the letter as a new "claim for an increased rating." J.A. 2. In March 2010, the Regional Office granted the new claim and increased his schizophrenia rating from 70% to 100% effective from September 29, 2009. Unfortunately, in October 2010, Mr. Crews passed away.

In March 2011, Mrs. Crews, Mr. Crews' surviving spouse, moved to be substituted as the appellant and filed a notice of disagreement with the September 2009 effective date. The basis for challenging the effective date was an allegation of clear and unmistakable error (CUE) in the November 1960 rating decision that terminated the 100% schizophrenia rating.

In January 2012, the Regional Office rejected her request for substitution because Mr. Crews had no claim or notice of disagreement pending at the time of his death. Mrs. Crews filed a notice of disagreement with that decision, but the Regional Office issued a statement of the case continuing to deny the substitution request because Mrs. Crews was not eligible to seek benefits on past decisions that had been finalized, and the November 1960 rating decision became final once the appeal window closed.

Mrs. Crews appealed to the Board. In December 2014, the Board granted her motion for substitution, but determined that it lacked jurisdiction over the CUE claim because the Regional Office had not adjudicated the issue and remanded the case to the

Regional Office. In March 2015, the Regional Office issued a statement of the case continuing to deny an effective date earlier than September 2009—the date Mr. Crews had filed the new increased rating claim. The Board agreed and issued a final decision stating that "a CUE motion cannot be filed by a survivor seeking accrued benefits if no CUE motion was pending at the time of the Veteran's death." J.A. 120. The Veterans Court affirmed. Mrs. Crews appeals.

II

Mrs. Crews argues that the Veterans Court misinterpreted § 5121A in denying her request to substitute as a CUE claimant because there was a claim pending at the time of Mr. Crews' death within the meaning of § 5121A. Under 38 U.S.C. § 7292(a) and (c), we have jurisdiction to review the Veterans Court's interpretation of the statute. We review the Veterans Court's interpretation of law de novo. *Bazalo v. West*, 150 F.3d 1380, 1382 (Fed. Cir. 1998).

As a general rule, when a veteran dies, the veteran's claim for benefits also terminates. *Phillips v. Shinseki*, 581 F.3d 1358, 1363 (Fed. Cir. 2009). Even so, a surviving spouse is entitled to be paid any accrued benefits following the veteran's death. 38 U.S.C. § 5121(a) (providing the veteran's spouse "monetary benefits . . . to which an individual was entitled at death . . . [that are] *due and unpaid* . . . upon the death of such individual" (emphasis added)). Prior to 2008, the surviving spouse could, with limited exceptions,

pursue those claims only by restarting from the beginning and filing a new accrued benefits claim. *See Phillips*, 581 F.3d at 1363–64 (citing *Zevalkink v. Brown*, 102 F.3d 1236, 1243 (Fed. Cir. 1996) (providing the general rule that substitution was not appropriate)); *but see Padgett v. Nicholson*, 473 F.3d 1364, 1368–71 (Fed. Cir. 2007) (acknowledging an exception for an accrued benefits claimant to receive *nunc pro tunc* relief following a veteran's death). But in 2008, to remedy the inefficiencies and delays from restarting the process, Congress enacted § 5121A to allow a surviving spouse to be substituted as a claimant in place of a deceased veteran.

Section 5121A reads:

> If a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is *pending*, [a surviving spouse] may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant *for the purposes of processing the claim to completion.*

38 U.S.C. § 5121A (emphases added). This provision now allows a surviving spouse (or other accrued benefits claimant) to be substituted rather than file a new accrued benefits claim. *Rusick v. Gibson*, 760 F.3d 1342, 1346–47 (Fed. Cir. 2014).

On its face, the statute limits the scope of substitution to "pending" claims "for the purposes of

processing the claim[s] to completion." 38 U.S.C. § 5121A. And, as we have explained, because § 5121A was intended to "address the problem of survivors who were . . . forced to 'restart the claim at the back of the line[,]' . . . " it did not create a mechanism for a surviving spouse to file a *new* claim. *Rusick*, 760 F.3d at 1346–47 ("If a veteran had never filed a claim, however, there would be nothing to 'restart,' and the perceived injustice Congress sought to remedy . . . would not exist.").

The import of § 5121A is that Mrs. Crews was entitled to be "substituted as the claimant for the purposes of processing *the [pending] claim* to completion." 38 U.S.C. § 5121A (emphasis added). Here, there was only one possible "pending" claim at the time of Mr. Crews' death: his September 2009 claim to increase his disability rating to 100%. Although this claim was granted in March 2010, the September 2009 claim could still have been considered "pending" at the time of Mr. Crews' death in October 2010 because the one-year window to appeal was not set to expire until March 2011.

Given the statutory language, Mrs. Crews may have been entitled to substitute on the September 2009 claim to process *that claim* to completion. But nothing in § 5121A allows Mrs. Crews to file a *new* claim, which is what she did by alleging CUE in the November 1960 decision and seeking a new effective date back to that decision. As the Veterans Court found, "Mr. Crews had never alleged CUE in the November 1960 decision" before his death. J.A. 7. Instead,

the September 2009 claim was a new, standalone claim for an increased disability rating and was independent of the November 1960 decision. Indeed, even if we were to ignore the Regional Office's decision to treat it as a new claim, the September 2009 claim was filed by Mr. Crews as a challenge to the *May 2007* decision—not a challenge to the November 1960 decision. Like the September 2009 claim, the claim that resulted in the May 2007 decision never alleged CUE in the November 1960 decision. It, too, was a new, independent claim for an increased disability rating.

Thus, *at most*, Mr. Crews' September 2009 claim stems from a disagreement with the May 2007 decision. In contrast, Mrs. Crews' allegation of CUE stems from the November 1960 decision. Because she is challenging a separate decision that was not challenged by the only pending claim, Mrs. Crews' CUE allegation constitutes a new claim. This new CUE claim is not allowed by the plain language of § 5121A.

This conclusion also reflects our previously stated understanding of § 5121A. In *Rusick*, we noted that § 5121A "did not undercut the critical portion of the decision in *Haines [v. West]*." 760 F.3d at 1346. In particular, we stated that:

> [e]ven though section 5121A might now allow a survivor to substitute on a pending CUE claim that the veteran had filed before his death, *Haines* still stands for the proposition that a survivor cannot initiate a freestanding CUE claim under section 5109A if the veteran had not already filed such a claim.

Id. (citing *Haines v. West*, 154 F.3d 1298, 1301 (Fed. Cir. 1998)). The facts here present the same scenario this court anticipated in *Rusick*, and we maintain the same view: Section 5121A only allows a survivor to substitute as a claimant for a previously raised CUE claim. *Id.* It does not allow a survivor to bring a CUE claim that was not previously raised. *Id.*

Mrs. Crews argues that, rather than being a new *claim*, her CUE allegation is merely a new *theory* of entitlement in support of the pending September 2009 claim. Appellant's Br. 7–9 (citing 38 C.F.R. § 3.1010(0(2)). We disagree. A CUE allegation is a claim for entitlement that must be tied to an error in some prior *decision*. *See Haines*, 154 F.3d at 1301–02 (stating that the CUE provision, 38 U.S.C. § 5109A, "provides nothing more than a procedure for a claimant to seek reconsideration of a limited type of error in a prior decision"). Thus, in considering whether Mrs. Crews' CUE allegation is part of the pending claim, we must consider whether the pending claim challenges the same *decision* as Mrs. Crews' CUE claim.

As explained above, Mr. Crews never challenged the November 1960 decision, either in his September 2009 claim or in his December 2006 claim. At most, the only prior decision the September 2009 claim can be said to challenge is the May 2007 decision. In contrast, Mrs. Crews' entire basis for CUE depends on the November 1960 decision. Because the September 2009 claim does not challenge this 1960 decision, Mrs. Crews' CUE claim cannot simply be a new theory of entitlement under the pending September 2009 claim.

III

Because we find that the Veterans Court did not misinterpret 38 U.S.C. § 5121A by denying a substituted claimant from raising a CUE allegation never raised by the deceased veteran, we affirm.

AFFIRMED

COSTS

No costs.

APPENDIX B

NOTE: PURSUANT TO PUB.L. 100-687, TITLE III, I 4067(D)(2), THIS DECISION WILL BECOME THE DECISION OF THE COURT THIRTY DAYS FROM THE DATE HEREOF.

Designated for electronic publication only
United States Court of Appeals for Veterans Claims.

Yvonne CREWS, Appellant,
v.
Denis MCDONOUGH, Secretary of Veterans Affairs, Appellee.

No. 19-6298
|
DATED: March 3, 2021

Before FALVEY, Judge.

MEMORANDUM DECISION

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

FALVEY, Judge:

Yvonne Crews, surviving spouse of Air Force veteran Sylvester D. Crews, appeals through counsel a June 6, 2019, Board of Veterans' Appeals decision denying an effective date earlier than September 29, 2009, for a 100% schizophrenia rating, including as due to clear and unmistakable error (CUE) in a November 1960 rating decision. The appeal is timely, the Court has jurisdiction to review the Board decision, and single-judge disposition is appropriate. *See* 38 U.S.C.

§§ 7252(a), 7266(a); *Frankel v. Derwinski*, 1 Vet.App. 23, 2526 (1990).

We are asked to decide whether the Board had jurisdiction over the CUE matter and whether the Board misinterpreted 38 U.S.C. § 5121A when it found that Ms. Crews was barred from alleging CUE in a final VA decision. Because the Board had jurisdiction to consider the CUE allegation and properly applied section 5121A under existing precedent, the Court will affirm the Board decision.

I. FACTS

Mr. Crews served on active duty from March 1954 to September 1958. *See* Record (R.) at 330. He had a 100% schizophrenia rating from September 25, 1958, and a 70% schizophrenia rating from January 23, 1961. *See* R. at 1098. In December 2006, Mr. Crews filed a claim for an increased schizophrenia rating, which a regional office (RO) denied in May 2007. R. at 1094, 1098-101 (the RO granting a 60% rating for a heart condition and a combined 90% rating from December 22, 2006), 1200.

In September 2009, Mr. Crews submitted a statement disagreeing with the 90% combined rating. R. at 1073-74. The RO informed the veteran that it could not accept the statement as a Notice of Disagreement (NOD) because it was filed more than one year after the May 2007 decision; instead, the RO construed the statement as a claim for an increased rating. R. at

1076. In March 2010, the RO granted a 100% schizophrenia rating from September 29, 2009. R. at 894.

Unfortunately, in October 2010, Mr. Crews passed away. R. at 633. In March 2011, Ms. Crews filed a motion to substitute, R. at 707-09, and an NOD with the effective date assigned for the veteran's schizophrenia, R. at 725-31 (filed by the same attorney who now represents Ms. Crews). Ms. Crews argued, for the first time, that a November 1960 RO decision terminating the veteran's 100% rating was based on CUE. R. at 725-31.

In January 2012, the RO rejected Ms. Crews's request to serve as a substitute claimant because the veteran had no claim or NOD pending at the time of his death. R. at 484. Ms. Crews filed an NOD, R. at 465, and in September 2014, the RO issued a Statement of the Case (SOC) continuing to deny the substitution request, R. at 383. The RO noted that Ms. Crews was not eligible to seek benefits on past decisions that had been finalized or, in other words, that she was barred from claiming CUE in the November 1960 decision. *Id.* In September 2014, Ms. Crews perfected her appeal. R. at 358-66.

In a December 2014 decision, the Board determined that it lacked jurisdiction over the issue of CUE in the November 1960 rating decision because the RO had not adjudicated the issue, so the Board referred that issue to the RO for appropriate action. R. at 49. The Board also determined that, because Ms. Crews had filed her application for substitution within one

year of both the veteran's death and the March 2010 decision, she met the requirements for substitution under 38 U.S.C. § 5121A, so the Board granted her substitution as the accrued benefits claimant. R. at 53. The Board also remanded the claim for an effective date earlier than September 29, 2009, for the 100% schizophrenia rating. R. at 48, 54.

In March 2015, the RO issued an SOC continuing to deny an earlier effective date for the schizophrenia rating. R. at 44. The RO stated that the March 2010 decision was correct in assigning September 29, 2009, as the effective date because that is the date Mr. Crews had filed the increased rating claim. *Id.* The RO noted that the May 2007 rating decision was the last decision about the schizophrenia rating and that the veteran did not file an NOD with this decision and it thus became final. *Id.* The RO again stated that Ms. Crews's 2011 NOD focused on CUE in the November 1960 rating decision, but that she was not eligible to seek benefits on final past decisions. *Id.* In May 2015, Ms. Crews perfected her appeal, stating that she sought revision of the November 1960 decision based on CUE in reducing the veteran's 100% rating. R. at 21.

In the June 2019 decision on appeal, the Board denied an effective date earlier than September 29, 2009, for the 100% schizophrenia rating, including as due to CUE in the November 1960 rating decision. R. at 5. The Board noted Ms. Crews's argument that the November 1960 decision contained CUE when it reduced the veteran's 100% rating to 70% effective January 23, 1961, because there was no examination that showed

a material improvement in the veteran's disability. R. at 7-9. But the Board found that a CUE motion cannot be filed by a survivor seeking accrued benefits if no CUE motion was pending at the time of the veteran's death. R. at 9. (citing *Haines v. West*, 154 F.3d 1298 (Fed. Cir. 1998)). The Board concluded that there was no CUE motion pending at the time of Mr. Crews's death and thus Ms. Crews could not file a CUE motion to correct the November 1960 decision. *Id.*

II. ANALYSIS

A. Jurisdiction

Ms. Crews first contends, without developing an argument, that the Board may have lacked jurisdiction based on *Jarrell v. Nicholson*, 20 Vet.App. 326 (2006). Appellant's Brief (Br.) at 6-8 (stating that she "submitted to this Court" the jurisdictional question). She posits that the Court could conclude either that (1) VA has never been presented with or adjudicated her CUE allegations submitted as a substituted claimant, or (2) that the issue is not the merits of her CUE allegations, but whether the Board correctly ref used to allow her, as a substituted claimant under section 5121A, to present her CUE allegations. *Id.*

The Secretary argues that the RO provided three adjudicatory determinations that informed Ms. Crews that it could not address final decisions absent a claim pending at the time of the veteran's death. Secretary's Br. at 9. The Secretary asserts that in March 2011, Ms. Crews both disagreed with the effective date the RO

assigned in its March 2010 decision and alleged CUE in the November 1960 decision. *Id.* at 9-10. The 2014 Board decision thus remanded the effective date issue and referred the CUE issue; as instructed, the RO issued an SOC, continuing the September 29, 2009, effective date and determining that Ms. Crews was barred from raising CUE in a final decision; and Ms. Crews then perfected her appeal. *Id.* at 10. The Secretary thus argues that Ms. Crews's jurisdictional contention ignores that the RO adjudicated the CUE claim. *Id.* The Secretary concludes that there is no jurisdictional defect. *Id.*

Ms. Crews did not file a reply brief to elaborate on this matter or make an argument. While the Court seldom addresses such underdeveloped assertions, *Evans v. West*, 12 Vet.App. 22, 31 (1998) (stating that the Court will disregard a "vague assertion" or an "unsupported contention"), because the Court needs to determine whether it has jurisdiction to consider a matter, we must now assess whether the Board had jurisdiction to consider the CUE claim.

We note that, in January 2012, the RO informed Ms. Crews that it could not accept her request to serve as a substitute claimant for the veteran because there was no claim or NOD pending at the time of the veteran's death. R. at 484. In a September 2014 SOC, the RO noted that Ms. Crews was not eligible to seek benefits on final decisions; that is, she was barred from claiming CUE in the November 1960 decision. R. at 383. After the Board granted Ms. Crews substitution as an accrued benefits claimant, in a March 2015 SOC

the RO again stated that her 2011 NOD focused on CUE in the November 1960 rating decision, but that she was not eligible to seek benefits on such final decisions. R. at 44 (citing *Haines*, 154 F.3d 1298). In May 2015, Ms. Crews appealed, again stating that she sought revision of the November 1960 decision based on CUE. R. at 21.

Because the RO in March 2015 considered whether, as a substituted claimant, Ms. Crews could raise a theory of CUE in the November 1960 decision and she then perfected her appeal of that issue, we find that the RO indeed adjudicated the CUE theory before the Board addressed it in June 2019. Thus, the Board had jurisdiction to consider the CUE issue and we have jurisdiction to consider whether the Board erred in its CUE determination.

B. CUE Claim

Ms. Crews next argues that, under the correct interpretation of section 5121A, she may allege CUE in a final VA decision. Appellant's Br. at 8-15. She asserts that, as a substituted appellant, she is not seeking accrued benefits in her own right. Instead, she is pursuing her husband's underlying claim. *Id.* at 10. She argues that she is seeking benefits as a substituted appellant under section 5121A and not as an accrued benefits claimant under 38 U.S.C. § 5121(a). *Id.* at 11. Ms. Crews claims that, as the substituted appellant, she may pursue any claim derivative and flowing from the claims pending at the time of the veteran's death

and that this does not create a new and separate substantive claim for benefits. *Id.* at 12-13. She argues that section 5121A and section 5121(a) provide separate procedural paths for pursuing accrued benefits. *Id.* at 13. The Secretary disputes Ms. Crews's arguments, asserting that she is trying to subvert settled precedent, and urges the Court to affirm the June 2019 Board decision. Secretary's Br. at 11-18.

Under section 5121A ("Substitution in case of death of claimant"):

> If a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.

38 U.S.C. § 5121A(a)(1). Under section 5121 ("Payment of certain accrued benefits upon death of a beneficiary"):

> periodic monetary benefits . . . under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions or those based on evidence in the file at date of death (hereinafter . . . referred to as 'accrued benefits') and due and unpaid, shall, upon the death of such individual be paid as follows: . . . (2) Upon the

> death of a veteran, to the living person first listed below: (A) The veteran's spouse.

38 U.S.C. § 5121(a)(2)(A).

In *Haines v. West*, the U.S. Court of Appeals for the Federal Circuit held that, even though the veteran in that case had a CUE claim pending at the time of his death, "a survivor has no standing to request review of a decision affecting the disability benefits of a veteran on the ground of CUE." 154 F.3d 1298, 1301 (Fed. Cir. 1998). In doing so, the Federal Circuit distinguished 38 U.S.C. § 5109A, which provides a procedure for veterans to seek benefits erroneously withheld, from section 5121, which governs the rights of survivors. *Id.* at 1301–02.

In *Rusick v. Gibson*, a surviving spouse argued before the Federal Circuit that *Haines* had been implicitly overruled in 2008 by the enactment of section 5121A, which allowed for a survivor to be substituted on a veteran's claim. 760 F.3d 1342, 1346 (Fed. Cir. 2014). Although the Federal Circuit found that section 5121A was inapplicable to Ms. Rusick's case because it applied only to veterans who died on or after October 10, 2008, the Federal Circuit stated that the portion of section 5121A relied on by Ms. Rusick did not undercut the critical part of the *Haines* decision. *Id.* It held that, "even though section 5121A might now allow a survivor to substitute on a pending CUE claim that the veteran had filed before his death, *Haines* still stands for the proposition that a survivor cannot initiate a free-standing CUE claim under section 5109A if the

veteran had not already filed such a claim." *Id.* (citing *Haines*, 154 F.3d at 1301).

The Secretary argues that Ms. Crews is seeking to circumvent these precedents. Secretary's Br. at 12. Ms. Crews asserts that the Board's reliance on *Rusick* is misplaced because that case did not arise under section 5121A. Appellant's Br. at 12. She contends that *Rusick*'s holding is not dispositive or controlling here because its facts predate the enactment of section 5121A[1] and the Federal Circuit did not interpret those provisions. *Id.* at 15. But, as the Secretary points out, Secretary's Br. at 16-17, Ms. Crews ignores the Federal Circuit's explicit interpretation of section 5121A. *See Rusick*, 760 F.3d at 1346. Again, Ms. Crews did not file a reply brief to dispute this observation. Without more of an explanation from Ms. Crews, the Court cannot determine how the Federal Circuit's express holding regarding section 5121A and CUE claims—that a survivor cannot launch a freestanding CUE claim if the veteran had not already filed a CUE claim—does not apply to her case. *See Evans*, 12 Vet.App. at 31.

And thus, we find that the Board did not error in determining that Ms. Crews was barred from filing a CUE claim here. *See* R. at 9 (the Board citing *Rusick* and *Haines*); *see also* 38 U.S.C. § 7261(a)(4) (providing that the Court may only set aside or reverse a Board's finding if it is clearly erroneous); *Gilbert v. Derwinski*, 1 Vet.App. 49, 53 (1990) (holding that if there is a

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[1] Ms. Crews references "§ 5211A" in her brief; but, this appears to be a typographical error.

plausible basis in the record for the Board's determination, the Court cannot overturn it).

As the Secretary notes, Ms. Crews also ignores *Patricio v. Shulkin*, 29 Vet.App. 38, 43 (2017). In *Patricio*, the Court stated that Ms. Patricio could not file a CUE motion as to an October 1986 RO decision because, as the Federal Circuit held in *Rusick*, section 5109A(c) specifies that a CUE challenge may be initiated only on the claimant's request and that she was not the claimant involved in the October 1986 RO determination. *Id.* at 40 (where the veteran had passed away in July 2009), 43. Although Ms. Patricio was not substituted as the appellant, *id.* at 40 (instead, she sought dependency and indemnity compensation (DIC) benefits), the Court nevertheless stated that *Rusick* clarified that, "notwithstanding the enactment of 38 U.S.C. § 5121A, which allows specified survivors to be substituted for the deceased VA claimant for accrued benefits purposes, '*Haines* still stands for the proposition that a survivor cannot initiate a freestanding CUE claim under section 5109A if the veteran had not already filed such a claim,'" *id.* at 43. Again, without an argument from Ms. Crews regarding this precedent, the Court is unable to determine why *Patricio* should not apply here. *See Evans*, 12 Vet.App. at 31.

Thus, although Ms. Crews was substituted as the appellant—" 'stepping into' her deceased husband's "legal shoes,'" Appellant's Br. at 12—Mr. Crews had never alleged CUE in the November 1960 decision before he died and thus Ms. Crews is barred from now initiating a freestanding CUE claim as to that decision.

See Rusick, 760 F.3d at 1346; *Patricio*, 29 Vet.App. at 43; *see also Jones v. West*, 136 F.3d 1296, 1299 (Fed. Cir. 1998) (holding that, for a surviving spouse to be entitled to benefits, the original VA claimant must have had a claim pending at the time of death).

Further, although Ms. Crews states that her case presents an issue of first impression for the Court, Appellant's Br. at 8, she is incorrect. If Mr. Crews had filed a CUE claim before his death, there might be a possible panel issue because, as *Rusick* noted but did not answer, "section 5121A *might now allow* a survivor to substitute on a *pending* CUE claim that the veteran had filed before his death. . . ." Rusick, 760 F.3d at 1346 (emphasis added). But the Federal Circuit explicitly answered whether a substituted claimant could allege CUE in a final decision if the veteran had not already done so: "a survivor cannot initiate a freestanding CUE claim under section 5109A if the veteran had not already filed such a claim." *Id.* And, although Ms. Crews hints that her allegation of CUE was part of a pending claim, *see* Appellant's Br. at 13, she does not explain how it was a part of Mr. Crews's September 2009 increased rating claim, *see* R. at 1073-76, nor does she argue that he had alleged CUE in the November 1960 decision before his death. Thus, we will not entertain this contention. *See Evans*, 12 Vet.App. at 31; *see also* Secretary's Br. at 13-14 (arguing that Ms. Crews is attempting to "circumvent the preclusion of freestanding CUE claims by shoehorning a distinct claim for CUE as simply a 'theory' for an earlier effective date" for the increased rating) Finally, to the extent

that she references 38 C.F.R. § 3.22(b)(1), Appellant's Br. at 14, this argument is also underdeveloped and we will not address it, *see Evans*, 12 Vet.App. at 31; *see also* Secretary's Br. at 16 (questioning Ms. Crews's citation to this regulation and its applicability).

HI. CONCLUSION

On consideration of the above, the June 6, 2019, Board decision is AFFIRMED.

APPENDIX C

[SEAL] **BOARD OF VETERANS' APPEALS**
FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF **XC 20 920 665**
YVONNE CREWS **Docket No. 14-31 948**
IN THE CASE OF
SYLVESTER D. CREWS
REPRESENTED BY
KENNETH M. CARPENTER, Attorney

DATE: June 6, 2019

ORDER

Entitlement to an effective date earlier than September 29, 2009 for the grant of a 100 percent rating for service-connected schizophrenia, to include as due to clear and unmistakable error (CUE) in a November 1960 rating decision, is denied.

FINDINGS OF FACT

1. The November 1960 rating decision that assigned a 70 percent rating for service-connected schizophrenia is final.

2. Following the final November 1960 rating decision, the Veteran did not submit any correspondence to VA regarding the rating assigned to his service-connected schizophrenia until he filed a claim for increased disability until September 22, 2006.

3. In a final and unappealed April 2007 rating action, the RO continued a 70 percent rating assigned to the service-connected schizophrenia.

4. Following the final April 2007 rating decision, the Veteran did not submit any correspondence to VA regarding the rating assigned to his service-connected schizophrenia. VA received his claim for increased compensation for schizophrenia on September 29, 2009.

5. In the appealed March 2010 rating action, the RO assigned an increased 100 percent disability rating to the service-connected schizophrenia, effective September 29, 2009.

6. The evidence of record dated during the one-year period preceding the September 29, 2009 claim does not make it factually ascertainable that the Veteran's schizophrenia warranted a rating in excess of 70 percent.

CONCLUSIONS OF LAW

1. The criteria for an effective date earlier than September 29, 2009, for a rating in excess of 70 percent for schizophrenia are not met. 38 U.S.C. §§ 5100, 5108, 5110(b)(2), 7104, 7105 (2012); 38 C.F.R. §§ 3.104, 3.156, 3.400(o), 20.200, 20.302, 20.1103 (2018).

2. The November 1960 rating decision that assigned a 70 percent disability rating for service-connected schizophrenia did not involve CUE. 38 U.S.C. § 5I09A; 38 C.F.R. § 3.105.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from March 1954 to September 1958. He died in October 2010. The appellant is his surviving spouse.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from March 2010 rating decision of a Regional Office (RO) of the Department of Veterans Affairs (VA) in Philadelphia, Pennsylvania.

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c). 38 U.S.C.A. § 7107(a)(2).

The Appellant seeks an effective date earlier than September 29, 2009 for the award of a 100 percent rating to the service-connected schizophrenia.

In general, the effective date of an evaluation and award of compensation based on an original claim, a claim re-opened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 C.F.R. § 3.400.

The date of an increased evaluation is the date of claim or the date entitlement arose (the date that the increase in shown), whichever is later. If an increase in disability is shown in the year preceding the date of claim, the date of an increased evaluation will be the earliest date that it *is factually ascertainable* that the increase occurred. 38 C.F.R. § 3.400 (o)(1),(2).

On September 29, 2009, VA received the Veteran's claim for increased compensation for his service-connected schizophrenia. By a March 2010 rating action, the RO assigned an increased 100 percent rating to the service-connected schizophrenia, effective September 29, 2009 – the date VA received the Veteran's claim for increased compensation for this disability. The Veteran was notified of that decision in a letter, dated March 31, 2010. The Veteran unfortunately died six months later and the widow filed a Notice of Disagreement on March 24, 2011. In her Notice of Disagreement, the appellant contends that the 100 percent rating assigned to the service-connected schizophrenia should be assigned earlier than September 29, 2009. Specifically, the appellant maintains that the effective date should be September 25, 1958 – the last date the 100 percent rating was in effect prior to it being reduced to 70 percent by the RO in a November 1960 rating action. In support of her contention, the appellant maintains, through her attorney, that the evidence of record at the time of the November 1960 rating action did not include an examination that showed a material improvement in the Veteran's disability. Thus, she argues that VA committed CUE in its November 1960 rating action wherein it reduced the Veteran's schizophrenia rating from 100 to 70 percent, effective January 23, 1961, by failing to apply and consider 3.170(a) (1960). She maintains that but for VA's clear and unmistakable error in its November 1960 rating action, the outcome would have been manifestly different and VA would not have reduced the Veteran's 100 percent schizophrenia rating.

The Rating Decision dated March 26, 2010 was correct in assigning the increase effective September 29, 2009. The effective date was the date the Veteran requested an increased evaluation and there was no continuously adjudicated claim prior to that date. The prior decision on the evaluation was released on May 11, 2007 and the Veteran was informed that he had one year to file a disagreement. No disagreement was received within that year and the decision became final.

As noted, the Veteran's claim for an increased rating was received on September 29, 2009. Therefore, an effective date earlier than September 29, 2009 for a rating higher than 100 percent may be assigned only if the Veteran filed a claim for an increased rating prior to that date, or if the evidence dated or received within one year prior to the September 2009 claim made it factually ascertainable that a rating in excess of 70 percent was warranted.

Review of the record reveals that the Veteran did not file a formal or informal claim seeking an increased rating for his service-connected schizophrenia prior to September 29, 2009. In fact, the evidence shows that, after he received notice of the April 2007 rating decision, wherein the RO continued a 70 percent rating to the service-connected schizophrenia, he did not submit any communication until he submitted his claim for an increased rating in September 2009.

In addition, the evidence dated one year prior to September 2009 does not contain any objective evidence

showing that the Veteran's schizophrenia warranted a 100 percent rating. In this regard, the only evidence dated within the period one year prior to September 2009 was a March 2009 VA report reflecting that the Veteran had been hospitalized for back pain.

Finally, the Board acknowledges the appellant's argument that VA committed CUE in its November 1960 rating action wherein it reduced the Veteran's schizophrenia to 70 percent, effective January 23, 1961 by failing to apply and consider 3.170(a) (1960). She maintains that but for VA's clear and unmistakable error in its November 1960 rating action, the outcome would have been manifestly different and VA would not have reduced the Veteran's 100 percent rating for his schizophrenia. The Board notes that the finality of any previous decision can be vitiated by a finding of CUE in that decision (*see Routen v. West*, 142 F.3d 1434, 1438 (Fed. Cir. 1998). However, the Federal Circuit has held that a CUE motion cannot be filed by a survivor seeking accrued benefits if no CUE motion was pending at the time of the Veteran's death. *See Haines v. West*, 154 F.3d 1298 (Fed. Cir. 1998); *aff'd, Rusick v. Gibson*, 760 F.3d 1342 (Fed. Cir. 2014). As a result, the appellant cannot submit a motion to correct a previous rating decision based on CUE as no such claim was pending at the time of the Veteran's death.

Consequently, the Board finds that an effective date prior to September 29, 2009, for the award of a 100

percent rating for schizophrenia is not warranted, and the appeal is denied.

/s/ Matthew W. Blackwelder
MATTHEW W. BLACKWELDER
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD Carole Kammel, 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

[SEAL]

DEPARTMENT OF VETERANS AFFAIRS
PHILADELPHIA REGIONAL OFFICE AND INSURANCE CENTER
5000 WISSAHICKON AVENUE
PO BOX 8079
PHILADELPHIA PA 19101

Sylvester D. Crews

VA File Number
20 920 665

Rating Decision
March 26, 2010

INTRODUCTION

The records reflect that you are a veteran of the Korean Conflict Era and Peacetime. You served in the Air Force from March 22, 1954 to September 24, 1958. You filed a claim for increased evaluation that was received on September 29, 2009. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of rheumatic heart disease, which is currently 60 percent disabling, is increased to 100 percent effective July 20, 2009.

2. Evaluation of schizophrenic reaction, undifferentiated type, which is currently 70 percent disabling, is increased to 100 percent effective September 29, 2009.

3. Entitlement to special monthly compensation based on housebound criteria being met is granted from July 20, 2009 to September 29, 2009.

4. Entitlement to special monthly compensation based on aid and attendance criteria being met is granted from September 29, 2009.

5. Entitlement to a higher level of special monthly compensation at the M level being met is granted effective September 29, 2009.

6. Basic eligibility to Dependents' Educational Assistance is established from July 20, 2009.

7. A finding of incompetency is proposed.

8. Service connection for back condition is denied.

9. Service connection for diabetes is denied.

10. Service connection for kidney failure is denied.

11. Service connection for prostate cancer is denied.

12. Entitlement to individual unemployability is moot.

EVIDENCE

- Service Treatment Records dated March 22, 1954 to September 24, 1958
- VA claim received September 29, 2009

- Duty to Assist letters dated November 16, 2009 and January 11, 2010
- Outpatient Treatment Records from Philadelphia VAMC dated March 13, 2009 to March 22, 2010
- VA examination results from Philadelphia VAMC dated March 7, 2010 and March 9, 2010

REASONS FOR DECISION

1. Evaluation of rheumatic heart disease currently evaluated as 60 percent disabling.

The evaluation of rheumatic heart disease is increased to 100 percent disabling effective July 20, 2009.

An evaluation of 100 percent is assigned from July 20, 2009. An evaluation of 100 percent is assigned if there is valvular heart disease (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in chronic congestive heart failure; or workload of 3 METs or less resulting in dyspnea, fatigue, angina, dizziness, or syncope; or left ventricular dysfunction with an ejection fraction of less than 30 percent. One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute.

Outpatient treatment records dated July 20, 2009 report heart failure due to fluid overload. Additional outpatient treatment records dated July 28, 2009 report a history of myocardial infarction.

During VA examination dated March 9, 2010, you report you were hospitalized for fluid overload since your last examination. You report rare chest pain. Upon examination, there was a soft murmur at the base as well as radiating to the left axilla. Estimated ejection fraction is 25 to 30 percent.

Current symptoms as noted above are consistent with the 100% disability evaluation level based on chronic congestive heart failure and left ventricular dysfunction with an ejection fraction of 25 to 30 percent.

Evaluation of rheumatic heart disease, which is currently 60 percent disabling, is increased to 100 percent effective July 20, 2009, the date the VA records show chronic congestive heart failure.

2. Evaluation of schizophrenic reaction, undifferentiated type, currently evaluated as 70 percent disabling.

The evaluation of schizophrenic reaction, undifferentiated type, is increased to 100 percent disabling effective September 29, 2009.

An evaluation of 100 percent is assigned from September 29, 2009. An evaluation of 100 percent is assigned whenever there is evidence of total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of

daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

Outpatient treatment record dated November 2, 2009 reports that you have chronic schizophrenia with prominent obsessive-compulsive features.

During VA examination dated March 7, 2010, you report that you continue to suffer from auditory and visual hallucinations. Your hallucinations drive you to engage in repetitive, compulsive behaviors. You stated that your voices tell you to repeat things, to do it again and again, to flip the light switch on and off. You state that the voices sometimes tell you to hurt yourself, but more often tell you to engage in repetitive things. You also state that you have paranoid delusions that people are trying to hurt you. You sometimes believe that your wife is against you. You report having extremely poor sleep at night. Your wife stated that you sleep only in brief periods of thirty to forty minutes at a time. Upon examination, you suffer from auditory and visual hallucinations and paranoid delusions. You did not engage in any inappropriate behavior during your interview. You have memory difficulties and trouble remembering recent common events.

Your global assessment score of functioning which measures impairment in reality testing or communication, major impairment in several areas, such as work or school, family, relations, judgment, thinking, or mood was 30.

Current symptoms as noted above are consistent with the 100% disability evaluation level based on persistent delusions and hallucinations.

Evaluation of schizophrenic reaction, undifferentiated type,, which is currently 70 percent disabling, is increased to 100 percent effective September 29, 2009, the date of receipt of claim.

3. Entitlement to special monthly compensation based on housebound.

The special monthly compensation provided by 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent and has additional service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability and involving different anatomical segments or bodily systems.

Entitlement to special monthly compensation is warranted in this case because criteria regarding housebound were met until September 29, 2009, the date you meet eligibility for aid and attendance.

4. Entitlement to special monthly compensation based on aid and attendance.

Aid and attendance may be awarded when the claimant is blind in both eyes having visual acuity of 5/200 or less, or has contraction of the visual field to 5 degrees or less; is a patient in a nursing home because of

mental or physical incapacity; or, when the evidence shows aid and attendance is required to perform routine activities of daily living.

VA examination dated March 7, 2010 reports that you are not able to complete any activities of daily living. Your personal hygiene, eating, dressing and toileting are all impaired. You need assistance and care from your wife for all of these activities. The examiner states this is due partly to your chronic schizophrenia and partly to your multiple medical difficulties.

Entitlement to special monthly compensation is warranted in this case because criteria regarding aid and attendance have been met from September 29, 2009, the date of receipt of claim.

5. Entitlement to a higher level of special monthly compensation at the M level.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (p) is met on account of the need for aid and attendance with rheumatic heart disease independently ratable at 100 percent from September 29, 2009.

6. Eligibility to Dependents' Educational Assistance under 38 U.S.C. chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a

permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power.

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has a total service-connected disability, permanent in nature.

Basic eligibility to Dependents' Educational Assistance is established from July 20, 2009, the date entitlement arose.

7. Competency to handle disbursement of funds.

A mentally incompetent person is defined as one who, because of injury or disease, lacks the mental capacity to control or manage his or her own affairs, including disbursements of funds without limitation. VA examiner noted that you are unable to manage your benefits. Where there is a doubt as to whether the beneficiary is capable of administering his or her funds, such doubt will be resolved in favor of competency. Since there is a definitive finding of incompetency by a physician in this case, and the claimant is not shown to be able to manage personal affairs to

include disbursement of funds, we propose to make a determination of incompetency for VA purposes. 38 CFR 3.353

8. Service connection for back condition.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not show any complaints, findings, or treatment for any back condition during service.

Outpatient treatment records dated June 29, 2009 report that you were hospitalized earlier in the year for lumbago.

Duty to assist letter dated November 16, 2009 asked you to submit evidence showing your condition existed from military service to the present time. To date, we have not received this information.

Service connection for back condition is denied since this condition neither occurred in nor was caused by service.

9. Service connection for diabetes.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not show any complaints, findings, or treatment for diabetes during service or to a compensable degree of 10% within one year of service.

Duty to assist letter dated November 16, 2009 asked you to submit evidence showing your condition existed from military time to the present or was diagnosed to a compensable degree of 10 percent within one year of discharge. To date, we have not received this information.

Outpatient treatment records dated March 20, 2010 report a diagnosis of diabetes mellitus.

Service connection for diabetes is denied since this condition neither occurred in nor was caused by service.

10. Service connection for kidney failure.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not show any complaints, findings, or treatment for kidney failure during service.

Duty to assist letter dated November 16, 2009 asked you to submit evidence showing your condition existed from military service to the present time. To date, we have not received this information.

Outpatient treatment records dated March 20, 2010 report end stage renal disease.

Service. connection for kidney failure is denied since this condition neither occurred in nor was caused by service.

11. Service connection for prostate cancer.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not show any complaints, findings, or treatment for prostate cancer during service or cancer to a compensable degree of 10% within one year of service.

Outpatient treatment records dated May 27, 2009 report that you were treated for prostate cancer in 2004.

Duty to assist letter dated November 16, 2009 asked you to submit evidence showing your condition existed from military service to the present time or was diagnosed to a compensable degree of 10 percent with one year of discharge. To date, we have not received this information.

Service connection for prostate cancer is denied since this condition neither occurred in nor was caused by service.

12. Entitlement to individual unemployability.

Entitlement to individual unemployability is moot based on a permanent and total evaluation assigned

for your service connected schizophrenic reaction and rheumatic heart disease.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

OFFICE AND INSURANCE CENTER

NAME OF VETERAN	VA FILE NUMBER	SOCIAL SECURITY NR	POA	COPY TO
Sylvester D. Crews	20 920 665	171-24-6096		

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
03/22/1954	09/24/1958	Air Force	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: Claim for Increase Received 09/29/2009

ASSOCIATED CLAIM(s): 020; Claim for Increase; 09/29/09

SUBJECT TO COMPENSATION (1. SC)

7000 RHEUMATIC HEART DISEASE
Service Connected, Korean Conflict, Aggravated
Static Disability
10% from 09/25/1958
60% from 12/22/2006
100% from 07/20/2009

9204 SCHIZOPHRENIC REACTION, UNDIFFERENTIATED TYPE,
Service Connected, Korean Conflict, Incurred
Static Disability
100% from 09/25/1958
70% from 01/23/1961
100% from 09/29/2009

COMBINED EVALUATION FOR COMPENSATION:

100% from 09/25/1958
70% from 01/23/1961
90% from 12/22/2006
100% from 07/20/2009

SPECIAL MONTHLY COMPENSATION:

S-1 Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (s) and 38 CFR 3.350(i) on account of schizophrenic reaction, undifferentiated type, rated 100 percent and additional service-connected disability of rheumatic heart disease, independently

ratable at 60 percent or more from 07/20/2009 to 09/29/2009.

P-2 Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (p) and 38 CFR 3.350(0(4) at the rate equal to subsection (m) on account of schizophrenic reaction, undifferentiated type, with additional disability, rheumatic heart disease independently ratable at 100 percent from 09/29/2009.

EFFECTIVE DATE	BASIC	HOSPITAL	LOSS OF USE	ANAT. LOSS	OTHER LOSS
07/20/2009	48	48	00	00	0
09/29/2009	19	48	00	00	4

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Korean Conflict, Peacetime)

5237 BACK CONDITION
Not Service Connected, Not Incurred/ Caused by Service

7528 PROSTATE CANCER
Not Service Connected, Not Incurred/ Caused by Service

7541 KIDNEY FAILURE
Not Service Connected, Not Incurred/ Caused by Service

7913 DIABETES
Not Service Connected, Not Incurred/ Caused by Service

ANCILLARY DECISIONS

Basic Eligibility under 38 USC Ch 35 from 07/20/2009

/s/ [Illegible] /s/ [Illegible]
JR

APPENDIX E

RATING DECISION		
TYPE OF RATING 3C	COPIES TO ☐ CO ☐ MEDICAL ☐ VR & E ☐ OTHER (SPECIFY)	RATING PURPOSE DISAB ☒ DEATH ☐ CCRUED ☐ MEMO ☐

KEY TO TYPE OF RATING	
INITIAL	INCREASED
1A - NONCOMPENSABLE 1B - COMPENSABLE	2C - RUNNING AWARD 2D - TERM AWARDED 2K - TERM SC-EST 2F - DISAB AWARDED 2I - DISAB SC-EST

DECEASED		CONFIRMED
3C - RUNNING AWARD CONT 3G - R A DISC AND SC-SEV 3X - TERMINATED 3J - DISALLOWED	*NOT FOR INPUT* 3X - R A DISCONTINUED	*FOR INPUT ONLY WHEN ANY EDF RECORD INFO IS CHANGED* 4*I* - RUNNING AWARD 4K - TERMINATED 4L - DISALLOWED

CLAIM NUMBER	STATION NUMBER	TYPE OF RATING
C 20 920 665	**10**	**3C**

SEX	INITIALS AND LAST NAME OF VETERAN
1 - MALE 2 - FEMALE	**S D CREWS**

BRANCH OF SERVICE	ACTIVE DUTY DATES (MO DAY YR)	
	EOD	EAD
1 - ARMY 2 - NAVY 3 - MARINE CORPS 4 - COAST GUARD 5 - U.S.P.H.S.	**3 22 54**	**9 24 58**

6 - AIR FORCE 7 - PHILIPPINE ARMY 8 - WAAC 9 - OTHER		

COMBAT DISABILITIES 1 - NONE 2 - COMPENSABLE 3 - NONCOMPENSABLE **1** 4 - BOTH	NUMBER OF SERVICE CONNECTED DISABILITIES 10 THROUGH [illegible] **2**
EMPLOYABILITY 1 - NOT A FACTOR 2 - UNEMPLOYABLE	DATE OF BIRTH (MO., DAY, YEAR)
DATE OF FUTURE MEDICAL EXAMINATION (MO., DAY, YR. IF NONE, TYPE NO EXAM) **10 20 62**	COMPETENCY 2 - 1 - COMPETENT INCOMPETENT OR NOT AN ISSUE **1**

DATE OF THIS RATING **11/23/60**	DATE OF LAST EXAMINATION **10/20/60**	DATE OF DEATH

CODING ONLY			KEY TO RATING HEADINGS J-JURISDICTION I-ISSUE / F-FACTS / D-DISCUSSION
DIAL CODE		%	
			VAR 1105 E J At once examination I Dis. Eval. of SC psychosis F At cited VA examination veteran appears obviously schizophrenic and is uneasy and evasive when questioned about hallucinations. He attends Benjamin Franklin High School and plans to take up a trade after graduation.

					Veteran's psychosis is in partial remission which he has maintained since his recent trial visit.
	9204		X0		1. SC Inc PTE, 38 USC 331
1	9004	-	70		from 9/25/58 from 1/23/61 SCHIZOPHRENIC REACTION UNDIFF. TYPE COMPETENT
2	7000	-	10		1. SC Agg PTE 38 USC 331 from 9/25/58 RHEUMATIC HEART DISEASE
	100				from 9/25/58
C	070				from 1/23/61
					10. Not entitled 38 USC 336

S T	SPECIAL MONTHLY COMPENSATION	FAHA CODE	LOSS USE	1 - PAR 29 2 - PAR 10 3 - VAR 142
		ANAL LOSS	OTHER LOSSES	4 - VAR 1159[A] 5 - ANALOGOUS RATING 6 - OTHER OR COMB

CLAIMANT REPRESENTED BY ☐ AL ☐ VFW ☐ DAV ☐ ARC ☐ AMVETS ☒ OTHER (SPECIFY)	RATING BOARD NUMBER **4 de**

RATING SPECIALIST *(U.S. Marshal)* /s/ H. Sobell H. SOBELL, M. D. CHM ☐	RATING SPECIALIST *(Legal)* /s/ J. Ostrow J. OSTROW CHM ☒

RATING SPECIALIST *(Occupational)*

/s/ T. Mitchell

T. MITCHELL CHM ☐

VA FORM 21-6796-1
AUG 1959

APPENDIX F

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

YVONNE CREWS,
Claimant-Appellant

v.

DENIS MCDONOUGH, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2021-2030

Appeal from the United States Court of Appeals for Veterans Claims in No. 19-6298, Judge Joseph L. Falvey, Jr.

ON PETITION FOR PANEL REHEARING

Before REYNA, MAYER, and HUGHES, *Circuit Judges*.

PER CURIAM.

ORDER

Yvonne Crews filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate will issue May 22, 2023.

FOR THE COURT

May 15, 2023
Date

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