

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JIMMY D. WOODS, Pro Se - PETITIONER

vs.

KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether under Article III Sect. 2. The judicial Power extends to all Cases, in Law and Equity, arising under the Constitution, Laws of the United States, and the United States government are a party.
2. Whether under Article XIV. Section 1.; petitioner's rights of Due Process of Law and Equal Protections of the Laws were violated by state officials.
3. Whether Article VI. Clause 2., (Supremacy Clause) removes the possibility of all state action being taken in complete absence of all jurisdictions.
4. Whether petitioner has a right under Fed. Rules Civ. Proc. Rule 60(b)(4), when a court lacked jurisdiction of the subject matter, and parties, denied due process, therefore the issuing court's judgment is VOID.
5. Whether the petitioner rights under Article IV Section 2. Section 3.2. Const. were denied by defendants prior to state court judgment.
6. Whether the petitioner's rights a (veteran) under (38 U.S.C. 5301(a), (38 U.S.C 511(a), does in fact jurisdictionally prohibit all state court orders (equitable or legal) and all such orders are preempted.
7. Whether 5th Amend. ruling of due process violations, Board of Veterans Appeals, should have also included deny equal protection under the laws.
8. Whether the petitioner is entitled to monetary damages for civil rights violation by state officials under 18 U.S.C. 241; 242, 245. (42 U.S.C. 1983)
9. Whether the petitioner is entitled to monetary damages under (42 U.S.C. 1983) claim for constitutional rights violations and federal law violations by federal officials acting along the side of state officers.

LIST OF PARTIES UNDER RULE 12.6.

Party not on the caption of the cover page before this Court, the Arizona Superior Court judgment, which is the subject of this Petition.

RELATED CASES

There are no other Superior Court cases, in a State of the United States, directly related to this case before the Supreme Court of the United States.

RULE 29. 4.(b).

When in this Court proceeding in which the constitutionality of an Act of Congress affecting the public interest is drawn into question, 28 U.S.C. 2403(a), may apply and be served on Solicitor General, United States, Room 5616, Dept. of Justice, 950 Pennsylvania Ave., N.W. Washington, D.C. 20530-0001. The petitioner was not able to locate any document to validate that prior to the Superior Court proceedings, pursuant to 28 U.S.C. 2403(a), that was certified to the Office of United States Attorney General, of the fact that the constitutionality of an Act of Congress was drawn into question, and to allow the United States to intervene in the Superior court case where the constitutionality of state laws is challenged and to present evidence and argument in defense of Federal law. (Title 38 U.S.C.) VA Disability Benefits, (5 U.S.C. 8101 et seq.) Federal Workers Compensation Act. (FECA).

TABLE OF CONTENTS

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT.....

CONCLUSION

INDEX TO APPENDICES

APPENDIX A. Decision of the Arizona Court of Appeals, Division One, 1

CA-CR O6-O840; July 29, 2008.

APPENDIX B. Superior Court of Arizona, Maricopa County; CR2004-

020922-001 DT; 09/22/2006.

APPENDIX C. UNITED STATES COURT OF APPEALS FOR THE NINTH

CIRCUIT; No. 23-15787.

APPENDIX D. THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF ARIZONA; D.C. No.2:23-cv-00681-PHX-DLR (DMF).

APPENDIX E. B. V. A. RULING, 16 July 2010.

APPENDIX F. See: State Court trial transcripts (1) TESTIMONY by the VA

Inspector General, (2) TESTIMONY by POST OFFICE. INSP., (3)

TESTIMONY by EMPL, San Francisco Ofc. (OWCP), the petitioner VA

files, Dept. of Labor files submitted in state court violating petitioner

Federal rights under, Title 38 USC 511, 38 USC 5301, (CFR) Title 20

Employee's Benefits, 5 USC 8101 Federal Workers Compensation

Benefits. (4) State violations of Constitutional Rights, Article XIV. Sect 1.

Sect.5. Article III, 2., Article IV. 2.1, 3.2. see State Memorandum.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 21 Nov 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was Jul 29 2008.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

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

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

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

The opinion of the United States district court appears at Appendix d to the petition and is

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

For cases from **state courts**:

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

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

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

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

STATEMENT OF THE CASE

Now comes petitioner jimmy woods pro se, respectfully petitions the Court for a Writ of Certiorari, for review of a Superior Court judgment, State of Arizona Maricopa County, the petitioner a Veteran, Federal employee, was found guilty of two counts of theft and fraudulent schemes and artifices in a jury trial. There's no other case law or legal precedent in a State court of the United States, to guide Arizona State officials to pursue criminal charges against a veteran for golfing, under Title 38 USC VA disability benefits, and 5 USC 8101, Fed. Employee Comp. Act. The Court has made it clear the ADA statute is intended as a response to what Congress identified as a clear and comprehensive national mandate to eliminate discrimination against disabled veterans under Title 38, the ADA right of access to public accommodations a golf course. (PGA v. Martin, 552 U.S. 661, 615 (2001) (42 U.S.C. 12182(a)). Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgment and orders are regarded as nullities. (Fed. Rules Civ. Proc. Rule 60(b)(4).

REASONS FOR GRANTING THE PETITION

The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. (Article III. Section 1). Where a statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of it being repugnant to the United States Constitution, or Laws of the United States, to Controversies to which the United States is a party, and trial of alleged federal crimes. (Article III. Section 2). The federal district court would

have original subject matter jurisdiction of offences against laws of the United States. (18 USC 3231), (38 CFR 3.901), (18 USC 1920). There is no question that Superior Court of Arizona exceeded its jurisdiction and authority in this case, under Title 38 USC 511(a); VA disability benefits are protected by affirmative and positive federal legislation. See: 38 USC 5301(a)(1). Federal Rights violations: 38 USC 511 establishes a Right to the complete Privacy of every VA claim file. States have no jurisdiction to use the information, therefore no jurisdiction to probe the file. Also 38 USC 511 establishes a Right to protection from review of the fact of Disability established by VA decisions. Fed. Rules Civ. Proc., (Rule 60 (b)(4), (28 U.S.G.A.). The Veterans for Common Sense *supra* (38 U.S.C. 511), dictates that the Board of Veterans Appeals, and the VA makes the ultimate decision on claims for benefits therefore provides one and only one, reviewing body. *Moore v. Peake*, 2008 US App Vet. Claims Lexis 1640 (2008). See: *Slaughter-House Cases*, 16 Wall. 36 (1873), also *McDonald v. Chicago*, 561 U.S. 742, 850, n. 19 (2010).

The Post Office, VA, issued directives to state officers asking them to address this situation under state law and requested state officers to administer or enforce a federal regulatory matter in Superior court, rather than Federal court. Such commands by federal government officials are fundamentally incompatible with our constitutional system of dual sovereignty. *Veterans Judicial Review Act*. *Mack v. U.S.* 07-27-97. Justice Antonin Scalia. The VA, a government agency acting in the color of federal authority violated petitioner federal rights under Title 38 USC, (1) denied 5th. Amend. due process of law, denied equal protection under the laws, (2) violated rights under 38 USC 5301, from assignment or attachment by any legal or equitable process whatever, (3) violated rights under

38 USC 511, which are protected by expressed preemption of state court jurisdiction to review any part of VA decisions or undermine the authority of the Secretary of Veterans Affairs.; (4) violated rights under 38 USC 511, for privacy of petitioner VA medical records, 38 USC 7332, also violate rights established by the ADA, 42 USC 12101, and HIPAA, (5) testimony by VA personnel as witnesses had to be ordered by the court of competent jurisdiction (federal court), (38 C.F.R. 14.802), The Federal Circuit's rule has the added virtue of giving the VA a strong incentive to comply with notice obligations, that go to very essence of the non-adversarial pro-claimant nature of the VA adjudication system. *Shinseki v. Sanders*, 556 US 1 (2009). The VA is bound by its own regulations and are not free to ignore those regulations. See 38 U.S.C. 7104(A)(C). Federal officials can also be sued in federal court despite any statutory basis, or when they acted alongside state officials in the state case. (42 U.S.C. 1983).

The Supremacy Clause, federal preemption removes the possibility of all state jurisdiction, the Clause removes every conflict between state and federal law. Res Judicata and Laches do not apply because there is no Statute of Limitations on violations of rights protected federal preemption and positive law. *Traynor v. Turnage*, 485 U.S. 535 (1988), The Congress passed the Veterans Judicial Act. (VJRA) Pub L. 100-687 (1988), making it clear that Title 38 U.S.C. 5301(a), VA disability benefits are exempt from state jurisdiction. See *U.S. v. Oregon*, 366 US 643, 648-649, 81 S. Ct. 31, 1278 (1961). As this Court has recognized the doctrine of primary jurisdiction applies to federal agencies that have been tasked with exercising the full scope of Congress enumerated powers under the Constitution. The U.S Congress excluded the state courts from second guessing the VA's individual benefits determinations and subsequent adjudications, these

decisions are deemed by Congress within the exclusive jurisdiction of the VA and a state court judgment is vulnerable to any manner of collateral attack. Fed. R. Civ. Proc. 60 (b)(4). Fitts v. Krugh, Supreme Court of Michigan, 92 N.W.2d 604, (10/13/58). Federal preemption goes to the subject matter jurisdiction of the state courts because where federal preemption applies, the Federal Govt. has retained its sovereign authority over this issue before the Court. Whether the state actors did knowingly and willfully use fraud during the proceeding to hide the clear and unmistakable federal preemption expressed and implied by positive law federal statutes, thereby to hide the de facto violation of federal rights in the complete absence of all jurisdictions. These actions of state officers are in violation of my right to protection from review of my VA decisions established by **FEDERAL PREEMPTION OF STATE JURISDICTION** explicitly expressed by Congress in 38 USC 511. The violations of Civil Rights Statutes (Conspiracy Against Rights) (1) Title 18 U.S.C. Section 241, its unlawful for two or more persons to conspire to injury, deny enjoyment of any right, or privilege secured to him in the Constitution, or Federal law. (2) Title 18 U.S.C. Section 242, it's a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. (3) Title 18 U.S.C. 245-Federal protected activities, (1)(b). participating in or enjoying any benefit, service, privilege, program administered by the United States. 1 (e) or activity receiving Federal financial assistance; Part 2. rights to public accommodations (golf course); Part 3. Prohibits interference by force of a class of person from participating, while affording the others opportunities.

IN CONCLUSION

IN this case the petitioner, does have standing to sue in the federal court, because he suffered a concrete particularized and actual imminent injuries by state defendant who intimidate him, humiliate him, threatening him with incarceration and contempt. The defendants' actions were deliberate disregard of an unjustifiably substantial risk of significant harm to the plaintiff in the state case. Which was caused by state defendants conduct and is redressable by a favorable decision of this Court. The Court, in an opinion by Justice Brennan, lay down a rule that it will infer a private right of action for money damages where no other federal remedy is provided for the vindication of a constitutional right, based on the principle that for every wrong there's a remedy. The Court reasoned based upon a presumption that where a violation of a right, the plaintiff can recover whatever he could recover under any civil action, and Justice Harlan concurring that federal courts have the power to award damages for violations of constitutionally protected interest. See: Carlson v. Green, 446 U.S. 14 (1980). The petitioner seeks 10 million dollars from State of Arizona, 14th Amend. rights violated, 18 U.S.C. 241, 242, 245 violations. (42 U.S.C. 1983) 10 million dollars from Federal Govt. agency for violations of Federal laws, Constitutional violations, a (1983), acting along the side of state officers. Asking the Court to restore my rights to VA benefits, Fed. Workers Comp. benefits, from date of their Termination, and the rights to ADA/HIPPA protection, and Void of Arizona Superior Court judgment under the (Fed. R. Civ. Proc. Rule 60 (b)(4).

WHEREFORE, petitioner prays for a writ of certiorari to be granted by this Court.

Respectfully submitted, 12 FEB 24 *Jimmy Wark*
Date 12 FEB 24

see g. APPENDIX F.

1 jury?

2 May this witness be excused?

3 MS. SCHESNOL: Yes, Your Honor.

4 MR. BLUMBERG: Yes, Your Honor.

5 THE COURT: Thank you very much. You're
6 excused.

7 (WHEREUPON, the witness exited the
8 courtroom.)

9 THE COURT: The State may call its next
10 witness.

11 MS. SCHESNOL: The State calls Annette
12 Nowak.

13 (WHEREUPON, the witness entered the
14 courtroom.)

15 THE COURT: Please step forward to the
16 clerk. Please give the clerk your name and she will
17 swear you in.

18 THE CLERK: State your name and spell your
19 last name.

20 THE WITNESS: Annette Nowak, N-O-W-A-K.

21 THE CLERK: Raise your right hand.

22 (WHEREUPON, the witness was duly sworn by
23 the clerk.)

24 THE COURT: Please have a seat here on the
25 witness stand. Please make yourself comfortable

1 there on the witness stand. Please pull the
2 microphone close to you. Please remember to speak up
3 loudly and clearly so that everyone can hear you.

4 Also, please wait before the question is
5 completed before you answer the question. Please
6 make sure that you give a verbal response. Don't
7 just shake your head or say uh-huh or un-huh. Make
8 sure that you give a verbal response.

9 Is that all agreeable to you?

10 THE WITNESS: Yes.

11 THE COURT: Ms. Schesnol, you may proceed.

12 MS. SCHESNOL: Thank you, Your Honor.

13

14 ANNETTE NOWAK,
15 having been first duly sworn to tell the truth, the
16 whole truth, and nothing but the truth, testified as
17 follows.

18

19 DIRECT EXAMINATION

20 BY MS. SCHESNOL:

21 Q. Please state your name and spell your last
22 name for the record.

23 A. Annette Nowak, N-O-W-A-K.

24 Q. What is your job?

25 A. I'm a special agent with the Department of

1 Veterans Affairs, Office of Inspector General.

2 Q. How long have you been employed as a special
3 agent?

4 A. Three and a half to four years.

5 Q. What is the Office of Inspector General?

6 A. We are the internal control for the
7 Department of Veterans Affairs. We do their criminal
8 investigations.

9 Q. And where are your offices?

10 A. We're located on Central Avenue in downtown
11 Phoenix.

12 Q. Is that here in Maricopa County?

13 A. Yes, it is.

14 Q. Before you began as a special agent for the
15 Department of Veterans Affairs, what did you do?

16 A. I was an FBI agent.

17 Q. How long were you an FBI agent?

18 A. Thirteen years.

19 Q. Can you briefly describe your training and
20 experience in the FBI?

21 A. I was a ground --

22 MR. BLUMBERG: Relevance, Your Honor.

23 THE COURT: Overruled.

24 Go ahead and answer the question.

25 THE WITNESS: I graduated from the FBI

1 A. We use various resources from interviews to
2 gathering documented evidence. We run criminal
3 checks on people. We put together a case and give it
4 to a prosecutor for prosecution.

5 Q. Do you ever have to use a veteran's claim
6 file?

7 A. Yes, I do.

8 Q. Can you describe what kind of information is
9 kept in the veteran's claim file?

10 A. The veteran's claim file is a history of VA
11 physical examinations. If a veteran is claiming that
12 he would like disability compensation or some kind of
13 a compensation from the VA, we maintain all of the
14 documents in that file.

15 Q. Are there medical records in that file?

16 A. There are.

17 Q. Where are those files kept?

18 A. They are kept at the VA Regional Office in
19 Phoenix.

20 Q. And as a matter of course, in your
21 investigative duties, you have access to those files?

22 A. I do.

23 Q. Can you explain what the Department of
24 Veterans Affairs is?

25 A. We are a service organization for veterans

1 and their relatives.

2 Q. What kind of services are provided?

3 A. We provide disability compensation benefits,
4 home loans. We can do different grants for homeless
5 vets, organizations, just a variety of different
6 programs.

7 Q. You mentioned one of those programs is
8 disability benefits. Can you tell us under what
9 circumstances a vet is entitled to disability?

10 A. Disability compensation is paid to a veteran
11 who has suffered an injury or a disease while in
12 active military duty.

13 Q. So did the injury have to be incurred while
14 the person was in active military duty?

15 A. It could be incurred or aggravated by that.

16 Q. Who makes a claim for -- who's responsible
17 for making a claim for disability benefits?

18 A. The veteran is ultimately responsible for
19 his claim to the VA.

20 Q. And what -- how does the vet go about making
21 such a claim?

22 A. The veteran can contact the VA over the
23 telephone, come to our office, or designate a
24 representative to come in.

25 Q. And does the vet have to fill out a form of

1 MS. SCHESNOL: Your Honor, it's the State's
2 position that there is enough evidence to go to the jury
3 on all counts.

4 Not only was there testimony presented, but we
04:44 5 have several documents in evidence from both -- that go
6 both to the Department of Labor/Post Office counts, and
7 with regard to the Department of Veterans Affairs account.

8 We have several documents from the Department of
9 Labor, including the report of a doctor, and the rating
04:45 10 decision from the Department of Affairs rating team.

11 So there are several documents in evidence with
12 regards to the Department of Veterans Affairs, not just
13 the testimony of Agent Nowak.

14 It's the State's position that the State isn't
04:45 15 required to present a doctor. That the jury can -- if
16 it's within their purview to make that determination on
17 their own.

18 THE COURT: Anything further from Mr. Blumberg?

19 MR. BLUMBERG: Nothing, Your Honor.

04:45 20 THE COURT: Okay. The Court finds that there is
21 substantial evidence to warrant a conviction on each
22 count. It is ordered denying the defendant's Rule 20
23 Motion as to each count.

24 Give me a road map of where we're headed
04:45 25 tomorrow.

1 would have to get approval from the Department of
2 Labor.

3 Whether or not any of his doctors requested
4 physical therapy for a certain date, I'm not sure.

5 His doctor would request it, and then they would have
6 to approve it.

7 Q. All right. Now, you -- your agency, through
8 the Department of Labor, knew about my client's golf
9 as early as 1995; is that right?

10 A. No, not that I'm aware of.

11 Q. And I believe this is already in evidence.
12 It's Dr. Joyner's letter to the claims examiner at
13 the United States Department of Labor. Did you get
14 to view that?

15 A. Dr. Joyner?

16 Q. The one that says, I did not query
17 Mr. Golf -- Mr. Golf. I did not query Mr. Woods
18 about his golf. Did you see that?

19 A. Yes.

20 Q. And that might lead someone to believe that
21 somebody like Mr. Woods is playing golf; isn't that
22 right?

23 A. It's just that one sentence from a doctor to
24 the Department of Labor. I don't see any other
25 documentation that they're inquiring about it. It

1 A. Yes, I did.

2 Q. You did not tape-record the interview?

3 A. No, I did not.

4 Q. It does not say in your interview that no
5 doctor has ever prescribed golf for Mr. Woods. It
6 says it was self-prescribed physical therapy, as you
7 related moments ago?

8 A. Yes. He said no doctor ever
9 prescribed physical -- or no VA doctor prescribed
10 physical therapy for him to golf.

11 Q. Did you ask him about doctors that he has
12 informed that he plays golf?

13 A. No, I did not.

14 Q. Do you have access to Mr. Woods' file at the
15 Department of Veterans Affairs?

16 A. Yes, sir.

17 Q. And I'm going to show you what is marked as
18 proposed Exhibit 67 and ask that you look at page 2
19 at the bottom and take a look at the last paragraph
20 or so.

21 A. This --

22 Q. Does -- I'm sorry, ma'am.

23 Does the last paragraph indicate that as
24 early as October of 1985, Mr. Woods informed the
25 Department of Veterans Affairs by and through his

1 doctor, that occasionally the veteran would play golf
2 and this would result in some mild discomfort?

3 A. Yes.

4 Q. And did it say before that, that, in fact,
5 there's no residual limitation of motion in
6 Mr. Woods' shoulder that would prevent him from
7 playing golf?

8 A. Yes.

9 Q. Have you, in your view of Mr. Woods' records
10 in his file, ever found any instructions to Mr. Woods
11 by a doctor to not play golf?

12 A. No.

13 Q. Have you ever found in your file any
14 instructions from any of the administrative staff or
15 otherwise --

16 A. No.

17 Q. -- any instructions --

18 THE COURT: Wait until the question is
19 completed.

20 Q. BY MR. BLUMBERG: -- any instructions to
21 Mr. Woods not to play golf?

22 A. No.

23 Q. Not to partake in any type of physical
24 therapy of his own or as prescribed?

25 A. No.

4 THE CLERK: State your name and spell your
5 last name, please.

6 THE WITNESS: Diana Cahill, C-a-h-i-l-l.

7 THE CLERK: Raise your right hand.

8 (WHEREUPON, the witness was duly sworn by
9 the clerk.)

18 Is that agreeable to you?

19 THE WITNESS: Yes, it is.

20 THE COURT: Ms. Schesnol, you may proceed.

21 MS. SCHESNOL: Thank you.

22

23 DIANA CAHILL,

24 having been first duly sworn to tell the truth, the
25 whole truth, and nothing but the truth, testified as

1 follows:

2

3 DIRECT EXAMINATION

4 BY MS. SCHESNOL:

5 Q. Please state your name and spell your last
6 name for the record.

7 A. My name is Diana Rivera Cahill, C-A-H-I-L-L.

8 Q. What is your job?

9 A. I'm a special agent with the United States
10 Postal Service, Office of Inspector General.

11 Q. What did you do before that?

12 A. I was a United States postal inspector.

13 Q. So how long have you been an investigator
14 with the postal service?

15 A. A little over four years.

16 Q. Where are your offices?

17 A. Here in Phoenix.

18 Q. As an investigator for the past four years,
19 can you describe the types of cases you investigate?

20 A. I have investigated cases such as mail
21 theft, identity theft, child exploitation, drugs in
22 the mail, fraud cases, internal theft cases,
23 financial investigations and fraudulent workers'
24 comp.

25 Q. Over the past four years, approximately how

1 as of the date of the initial myocardial event?

2 A. On the basis of having suffered a cardiac arrest,
3 irreversible heart damage, and an echocardiogram showing a
4 thrombus or clot in his heart, I considered him disabled.

03:49 5 MR. BLUMBERG: Nothing further, Your Honor.

6 THE COURT: Any further questions of this witness
7 by the jury? If so, please raise your hand.

8 No one has raised their hand.

9 May this witness be excused.

03:50 10 MR. BLUMBERG: He may, Your Honor.

11 MS. SCHESNOL: Yes, Judge.

12 THE COURT: Thank you very much. You're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Yesterday when we recessed, we had
03:50 15 Diana Cahill on the witness stand. We took two witnesses
16 out of order.

17 We're going to continue with Ms. Cahill at this
18 time?

19 MS. SCHESNOL: Yes, Your Honor.

03:50 20 My recollection was that Mr. Blumberg was
21 cross-examining her.

22 THE COURT: Right. Let's have Ms. Cahill retake
23 the witness stand, then.

24 MS. SCHESNOL: All right.

03:50 25 THE COURT: Diana Cahill is back on the witness

P R O C E E D I N G S

2 THE COURT: This is Cause No. 1

3 CR 2004-020922-001, State of Arizona vs. Jimmy Woods.

4 The record will reflect the presence of the
5 defendant and counsel. We're outside the presence of
6 the jury.

7 Counsel, a couple of things. My clerk has
8 informed me that Exhibit No. 39 is missing. And so
9 if we can't find it, then you need to make
10 arrangements with the clerk to have a duplicate.

11 MS. SCHESNOL: We have made a photocopy --

12 THE COURT: Okay.

13 MS. SCHESNOL: -- and the parties agree that
14 this copy is exactly the same as what was
15 in evidence. It is a substitution.

16 THE CLERK: Do you want to ask Ms. Dille if
17 she took it?

18 MS. SCHESNOL: I can't ask her right now.

19 She's in San Francisco. She's not here today.

22 Mr. Blumberg, are you agreeable to that?

23 MR. BLUMBERG: What's the inquiry, Judge?

24 THE COURT: We just want to make sure we
25 know where Exhibit No. 39 disappeared to.

1 MR. BLUMBERG: Okay.

2 THE COURT: So the clerk just asked
3 Ms. Schesnol to find out from Ms. Dille whether she
4 had it.

5 MR. BLUMBERG: All right.

6 THE COURT: In the meantime, we'll have the
7 duplicate marked as Exhibit No. 39.

8 That's agreeable to you; correct,
9 Mr. Blumberg?

10 MR. BLUMBERG: It is, Judge.

11 THE COURT: Another housekeeping measure.
12 You know, we have the jurors walking through the
13 hallway here to get to the jury room. I don't
14 want counsel and I don't want any parties or
15 participants standing in this hallway or standing
16 near the door with the door open.

17 If you have witnesses, they can use the room
18 where there's a telephone. Okay? Shut the door.
19 And I don't want Mr. Woods, counsel, or anyone just
20 standing in the hallway because there are jurors
21 walking around sometimes. Okay?

22 MS. SCHESNOL: Yes, Judge.

23 THE COURT: Okay. Are we ready for the
24 jury?

25 MS. SCHESNOL: I believe we are.

1 package Exhibit No. 39. Deborah Dille had
2 accidentally scooped up Exhibit 39 in the midst of
3 all the other paperwork, and she Fed X'd it back. It
4 still has the exhibit tag on it and it has been given
5 to the clerk.

6 THE COURT: Thank you.

7 MS. SCHESNOL: Thanks.

8 THE COURT: Let's have the jury. Then I'll
9 turn to you, and you can ask the Court's permission
10 to recall Ms. Nowak, and I'll grant the permission in
11 front of the jury.

12 MS. SCHESNOL: Thank you.

13 Does Ms. Nowak have to be resworn?

14 THE COURT: No, she does not have to be
15 resworn.

16 (WHEREUPON, an off-the-record discussion
17 ensued.)

18 THE COURT: We'll have to reswear her
19 because she was excused.

20 MR. BLUMBERG: May -- may I just -- this was
21 recently made, this motion. I just came to open it
22 up and have come to a realization. So may I add to
23 my objection?

24 THE COURT: Go ahead before the jury gets
25 here.

1 he was determined to be disabled; isn't that right?

2 A. Yes.

3 Q. And in order to be disabled, the actual
4 agency has to pass upon the disability, do they not?

5 A. Can you explain further what you mean, they
6 have to pass upon?

7 Q. Are there hearings? Are there hearings?

8 Do you know what a hearing is?

9 A. We don't -- no, there is not a hearing to
10 decide whether he is disabled.

11 Q. Okay. Does somebody decide behind closed
12 doors?

13 A. No. The doctor determines whether he is
14 eligible to work or not.

15 Q. Well, but Mr. Woods doesn't decide whether
16 or not he is disabled and whether or not he'll
17 receive a check from you, does he?

18 A. No, he does not.

19 Q. And so a doctor writes up a report; is that
20 right?

21 A. Correct.

22 Q. And that report goes to your agency; is that
23 right?

24 A. Well, the CA-17; correct.

25 Q. All right. And then it goes on to the

1 Department of Labor?

2 A. Yes.

3 Q. And they can say, yes, we recognize this
4 disability or we do not recognize this disability?

5 A. Correct.

6 Q. And they can send a person for further
7 evaluation or not send them for further evaluation?

8 A. That is correct.

9 Q. Okay. But Mr. Woods doesn't make the
10 agency's decision for it, does he?

11 A. No. The Department of Labor does that.

12 Q. Now, he went back to work after his first
13 injury and then he was determined to be
14 permanently -- I'm sorry. Strike that.

15 He was determined to be totally disabled by
16 the Department of Labor?

17 A. Correct.

18 Q. Mr. Woods didn't make his own determination
19 and submit it? It was submitted by the doctors and
20 then decided by the Department of Labor?

21 A. Yes.

22 Q. I think you referred to there was a job
23 offer that Mr. Woods signed as -- I think it's -- I
24 don't know whether it's in evidence or not -- but is
25 it Exhibit 64? Do you know?

Progress Notes

Printed On May 04, 2015

LOCAL TITLE: MENTAL HEALTH PHYSICIAN NOTE
STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE
DATE OF NOTE: MAR 18, 2013@14:06 ENTRY DATE: MAR 18, 2013@14:06:49
AUTHOR: WOERNER, SHABNAM I EXP COSIGNER:
URGENCY: STATUS: COMPLETED

*** MENTAL HEALTH PHYSICIAN NOTE Has ADDENDA ***

Subjective:

Pt is a 65yo African American male without a prior anxiety disorder comes to walk in clinic for medication management.

Veteran reports that he has been feeling depressed since 2006. He states that he has been homeless from 2006-2010. He states that when he turned 62 he got into HUD VASH housing through the VA. He states that he has a heart condition and he has been to cardiology multiple times and ER visits. He states that he gets chest pains and he is not sure if it is anxiety or if MI. He states that he is also distressed because he is being charged with Fraud through the VA because he was out walking and playing golf and the VA thinks he can't do that while he is on disability for knee and shoulders. He states that he is really distressed about it because his cardiologist told him that he should be out walking and getting exercise as it is healthy for his heart.

He states that he is sleeping with current sleep aids. He reports energy level is low, he is eating okay, his concentration is not that great. He reports no SI or HI. He states that he believes in the Lord and that is not an option. He reports there is always hope.

He denies any psychosis.

Denies any mania.

no PTSD

He quit alcohol 3 years ago

He uses tobacco occasionally

He does not use drugs-used MJ in the past.

He denies any prior psychiatric hospitalization

no hx of SA.

Benzo use for anxiety.

Objective:

Allergies/adverse med reactions: Patient has answered NKA

Active Outpatient Medications (including Supplies):

AMLODIPINE BESYLATE 10MG TAB TAKE ONE TABLET BY MOUTH ACTIVE

PATIENT NAME AND ADDRESS (Mechanical Imprinting, If available)

WOODS, JIMMY D
APT C306
7138 N 45TH AVE
GLENDALE, ARIZONA 85301
DOB: [REDACTED]

VISTA Electronic Medical Documentation

Printed at Phoenix VA Health Care System

1006

Claim Number:

Car #150

6550

Service Date: 11/10/2006

Concentra Medical Centers (AZ)

1818 E Sky Harbor Cir #150 PHOENIX, AZ 85034

Phone: (602) 244-9500 Fax: (602) 244-9543

Service Date: 11/10/2006

Case Date: 11/10/2006

Physician Activity Status Report

Patient: Woods, Jimmy

SSN: 000-00-0000

Address: PO Box 11442

TEMPE, AZ 85283

Home: (602) 561-8217

Work: (480) 213-5818 Ext.: 1

Employer Location: Command Center

Address: 2810 S 24th St #114

PHOENIX, AZ 85034

Auth. by: Chris Frien

Contact: Jeremy Dunlap

Role: Primary Contact

Phone: (208) 773-7450 Ext.: 1

Fax: (208) 773-7472

This Visit: Time In: 03:23 pm

Time Out: 05:40 pm

Recordable: N/A

Visit Type: New

Treating Provider: Aaron R. DeGroot, DO

Diagnosis: 959.01 Head Injury, Unspecified

922.31 Contusion of Back

Medications:

- Dispensed Prescription Medication to Patient
- Dispensed Over-The-Counter Prescription
- Written Prescription given to Patient

Patient Status:

No Activity - Transferred Care

Remarks: PATIENT WAS SENT TO E.R.

Employer Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement:

Actual Date of Maximum Medical Improvement: 11/10/2006

Next Visit(s): Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.



ATTORNEY GENERAL
Criminal Division
Criminal Prosecutions Section

MEMORANDUM

TO: Presentence Report Writer, Adult Probation Department

FROM: Jacqueline N. Schesnol, Assistant Attorney General

DATE: August 28, 2006

RE: JIMMY WOODS, CR2004-020922-001 DT
Sentencing Recommendation

FACTS:

Defendant, Jimmy Woods, was found to be totally disabled by the Department of Labor (DOL). This finding was based, in part, on Defendant's subjective reporting to his doctor. The Defendant had worked at the United States Post Office (USPO), so that agency was responsible for reimbursing DOL for monies paid out. Defendant resigned from the USPO in 1994 and collected disability ever since that time. Once Defendant moved to Arizona, he was put under surveillance. Defendant was frequently seen playing golf -- walking 18 holes, using a pull cart for his clubs, using the driving range or putting green before and after playing the 18 holes. Additionally, records obtained indicate that Defendant was playing golf on additional occasions (other than the times he was caught on tape). The documentation that shows Defendant was playing golf ranged from October 2003 through June 2004. The State believes Defendant was playing golf during the entire period of the indictment (July 2002 through August 2004). The treating doctor (Dr. Soscia) viewed a videotape of Defendant playing golf and stated that Defendant was not totally disabled based on what he saw on that tape. A witness from DOL testified that Defendant could have received vocational rehabilitation (had he informed DOL that he was capable of working). Further, Defendant was not required to work full time -- he could have worked part time. Finally, Defendant was not required to work at a government agency. Defendant was allowed to get a job anywhere. If a private employer could not pay him as much as he was receiving from disability, then DOL would pay the difference.

Defendant was also receiving benefits from the Department of Veteran's Affairs (VA).

JURY VERDICT:

Defendant was convicted of Count One, Theft, a class 3 Felony (victim is the VA).

Defendant was convicted of Count Two, Fraud Schemes, a class 2 Felony (victim is the VA).

Defendant was convicted of Count Three, Theft, a class 3 Felony (victim is the PO).

Defendant was convicted of Count Four, Fraud Schemes, a class 2 Felony (victim is the PO).

e.g. Appendix A.

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

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED JUL 29 2008

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PHILIP G. URRY, CLERK
By L. M.

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

Appeal from the Superior Court in Maricopa County

Cause No. CR2004-020922-001 DT

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

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

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

OBIGZCO, Judge

06/105

e.g. Appendix B.

10/11/06 8:30 Am

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2004-020922-001 DT

09/22/2006

HONORABLE BRIAN K. ISHIKAWA

CLERK OF THE COURT

J. Bower
Deputy

STATE OF ARIZONA

JACQUELINE N SCHESNOL

v.

JIMMY B. WOODS (001)

BRUCE E BLUMBERG

DOB: [REDACTED]

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

SUSPENSION OF SENTENCE - PROBATION GRANTED

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

9:51 a.m.

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

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

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

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

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

etg Appendix C.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 13 2023

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

JIMMY D. WOODS,

Plaintiff - Appellant,

and

DEPARTMENT OF VETERANS
AFFAIRS; et al.,

Plaintiffs,

v.

STATE OF ARIZONA; et al.,

Defendants - Appellees.

No. 23-15787

D.C. No. 2:23-cv-00681-DLR-DMF
U.S. District Court for Arizona,
Phoenix

MANDATE

The judgment of this Court, entered November 21, 2023, takes effect this

date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 21 2023

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

JIMMY D. WOODS,

Plaintiff-Appellant,
and

DEPARTMENT OF VETERANS
AFFAIRS; et al.,

Plaintiffs,

v.

STATE OF ARIZONA; et al.,

Defendants-Appellees.

No. 23-15787

D.C. No. 2:23-cv-00681-DLR-DMF
District of Arizona,
Phoenix

ORDER

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On May 31, 2023, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's May 31, 2023 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as

frivolous, pursuant to 28 U.S.C. §1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

e.g. Appendix D

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Jimmy D. Woods,

Plaintiff,

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United States Department of Veterans Affairs, et al.,

Defendants.

No. CV 23-00681-PHX-DLR (DMF)

ORDER

Plaintiff Jimmy D. Woods, who is not in custody, has filed a pro se document styled as a “Motion For A Collateral Attack To Set Aside The Void Arizona Superior Court Judgment” (Doc. 1). In order to facilitate consideration of the document, the Clerk of Court has docketed it as a civil rights Complaint. Plaintiff has also filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3). The Court will dismiss this action.

I Application to Proceed Without Prepayment of Filing Fees

Plaintiff's Application to Proceed indicates that he lacks funds to pay for this action. Accordingly, the Court will grant the Application to Proceed. 28 U.S.C. § 1915(e). Plaintiff is not required to pay the filing fees for this action.

II. Statutory Screening of In Forma Pauperis Actions

Pursuant to 28 U.S.C. § 1915(e)(2), in a case in which a plaintiff has been granted in forma pauperis status, the Court

1 shall dismiss the case at any time if the court determines that— (A) the
 2 allegation of poverty is untrue; or (B) the action or appeal— (i) is frivolous or
 3 malicious; (ii) fails to state a claim on which relief may be granted; or
 4 (iii) seeks monetary relief against a defendant who is immune from such
 5 relief.

6 28 U.S.C. § 1915(e)(2).

7 A pleading must contain a “short and plain statement of the claim *showing* that the
 8 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 9 not demand detailed factual allegations, “it demands more than an unadorned, the-
 10 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 11 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 12 conclusory statements, do not suffice.” *Id.*

13 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 14 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 15 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 16 that allows the court to draw the reasonable inference that the defendant is liable for the
 17 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 18 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 19 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 20 allegations may be consistent with a constitutional claim, a court must assess whether there
 21 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

22 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 23 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 24 (9th Cir. 2010). A “complaint [filed by a *pro se* litigant] ‘must be held to less stringent
 25 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 26 U.S. 89, 94 (2007) (per curiam)).

27 If the Court determines that a pleading could be cured by the allegation of other
 28 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
 29 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 Plaintiff’s Complaint will be dismissed for failure to state a claim, without leave to amend,

1 because the defects cannot be corrected.

2 **III. Complaint**

3 Plaintiff has on multiple prior occasions brought this same action in this court, most
4 recently in 2020. *Woods v. Arizona*, CV 20-2375-PHX-DLR; *see also Woods v. Arizona*,
5 No. CV-17-3046-PHX-DLR; *Woods v. Arizona*, No. CV-15-1341-PHX-SRB, 2015 WL
6 1293892 (D. Ariz. Oct. 15, 2015) (referencing *Woods v. State of Arizona, et al.*, CV-13-
7 02247-PHX-SRB; *Woods v. Brnovich*, CV-15-01094-PHX-DLR-MHB). Plaintiff now
8 seeks, improperly and for the sixth time, appellate relief from his state court conviction in
9 federal court.

10 As Plaintiff has been repeatedly informed, under the *Rooker-Feldman* doctrine, a
11 federal district court does not have subject matter jurisdiction to hear a direct appeal from
12 the final judgment of a state court. *Noel v. Hall*, 341 F.3d 1148, 1154-55 (9th Cir. 2003).
13 Absent subject matter jurisdiction, federal district courts lack the power to consider
14 Plaintiff's claims. *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 333-34 (9th Cir.
15 2015). In 2006, Plaintiff was convicted of several counts of fraud in connection with his
16 receipt of disability benefits from the Department of Veterans Affairs in Maricopa County
17 Superior Court. (Doc. 1 at 13-15.) In 2008, Plaintiff appealed his criminal convictions to
18 the Arizona Court of Appeals and lost. Appearing pro se, Plaintiff now again alleges that
19 the State of Arizona violated his constitutional rights by prosecuting him. Plaintiff seems
20 to allege that the Court should overturn his convictions because the State of Arizona did
21 not have authority to prosecute him and the state court lacked subject matter jurisdiction.
22 The *Rooker-Feldman* doctrine, however, still applies where a plaintiff in federal court
23 claims that the state court did not have jurisdiction to render a judgment. *Doe v. Mann*,
24 415 F.3d 1038, 1043 n.6 (9th Cir. 2005); *see also Hall*, 341 F.3d at 1164 (“If a federal
25 plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks
26 relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject
27 matter jurisdiction in federal district court.”). As such, the Court lacks subject matter
28 jurisdiction over the claim, and therefore is unable to provide Plaintiff any relief.

1 When dismissing a complaint under § 1915(e)(2), the court “should grant leave to
2 amend even if no request to amend the pleading was made, unless it determines that the
3 pleading could not possibly be cured by the allegation of other facts.” *Lopez*, 203 F.3d at
4 1127 (citations omitted). Here, no additional facts could cure the jurisdictional defect in
5 Plaintiff’s complaint. Dismissal therefore will be without leave to amend.

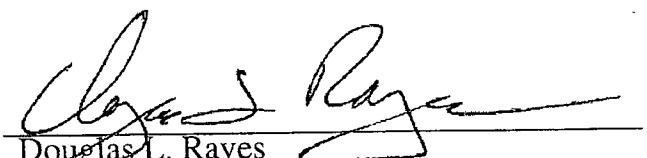
6 **IT IS ORDERED:**

7 (1) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees
8 or Costs (Doc. 3) is **granted**. Plaintiff is not required to pay the fees for this action.

9 (2) The Complaint (Doc. 1) and this action are **dismissed**, and the Clerk of Court
10 must enter judgment accordingly.

11 (3) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)
12 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal
13 of this decision would be taken in good faith and certifies that an appeal would not be taken
14 in good faith for the reasons stated in the Order and because there is no arguable factual or
15 legal basis for an appeal.

16 Dated this 9th day of May, 2023.

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21 Douglas L. Rayes
22 United States District Judge
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IN THE UNITED STATES DISTRICT COURT
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FOR THE DISTRICT OF ARIZONA
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9 Jimmy D Woods, et al.,
10 Plaintiffs,
11 v.
12 State of Arizona, et al.,
13 Defendants.
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NO. CV-23-00681-PHX-DLR (DMF)

**JUDGMENT OF DISMISSAL IN A
CIVIL CASE**

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed May
18 10, 2023, judgment of dismissal is entered. Plaintiff to take nothing, and the complaint
19 and action are dismissed .

20 Debra D. Lucas
21 District Court Executive/Clerk of Court

22 May 10, 2023

23 By s/ W. Poth
24 Deputy Clerk

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26
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e.g. Appendix E.

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
JIMMY D. WOODS

DOCKET NO. 08-30 070A

) DATE

)

)

16 July 2009

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

THE ISSUE

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

REPRESENTATION

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

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

K. M. Schaefer, Associate Counsel

IN THE APPEAL OF
TIMMY D. WOODS

INTRODUCTION

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

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

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

FINDINGS OF FACT

1. Prior to February 1, 2007, the Veteran was service-connected for and assigned a 30 percent disability evaluation for tendinitis of the left shoulder; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the right knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with instability in the left knee; a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the right knee; and, a 10 percent disability evaluation for Osgood-Schlatter's disease with degenerative changes in the left knee. His combined evaluation was 60 percent.

2. The Veteran was found guilty of two counts of theft and two counts of fraudulent schemes and artifices in a jury trial at the Superior Court for the State of Arizona in Maricopa County, and he was sentenced to seven years of probation, ordered to pay \$6,953 in restitution to VA (as well as separate restitution to the Department of Labor), and ordered to perform 400 hours of community service.

IN THE APPEAL OF
JIMMY D. WOODS



3. The VA Office of the Inspector General (IG) requested that the Phoenix RO establish an overpayment of \$6,593 and terminate the Veteran's VA disability compensation based on the criminal conviction. The RO subsequently sent a letter to the Veteran on February 15, 2007, indicating that his VA compensation benefits were being terminated effective from February 1, 2007.
4. The Veteran was not provided a period of 60 days to submit evidence for the purpose of showing that the adverse action should not be taken.

CONCLUSION OF LAW

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

REASONS AND BASES FOR FINDINGS AND CONCLUSION

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

IN THE APPEAL OF
JIMMY D. WOODS

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

Law and Analysis

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

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

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

IN THE APPEAL OF
JIMMY D. WOODS

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

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

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

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

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

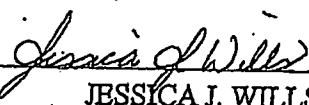
JIMMY D. WOODS

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

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

ORDER

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


JESSICA J. WILLS

Acting Veterans Law Judge, Board of Veterans' Appeals