No. 20-1148

In the Supreme Court of the United States

ROBERT M. SELLERS, PETITIONER

v.

DENIS R. MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Department of Veterans Affairs must give a claim for disability benefits the effective date of an earlier-filed claim that asserted an entitlement to benefits based on different allegedly disabling medical conditions.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and regulations:

Statutes and regulations—Continued: Page

Miscellaneous:

Miscellaneous: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 965 F.3d 1328. The decision of the Court of Appeals for Veterans Claims (Pet. App. 23a-38a) is reported at 30 Vet. App. 157. The decision of the Board of Veterans' Appeals (Pet. App. 39a-74a) is unreported but is available at 2016 WL 3161639.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 2020. A petition for rehearing was denied on October 1, 2020 (Pet. App. 76a). The petition for a writ of certiorari was filed on February 12, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress has established a system of benefits for veterans whose disabilities "result[ed] from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty." 38 U.S.C. 1110 (wartime service), 1131 (non-wartime service). When a veteran files a claim for such benefits, the Department of Veterans Affairs (VA) must "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit," 38 U.S.C. 5103A(a)(1), but the "claimant has the responsibility to present and support a claim for benefits," 38 U.S.C. 5107(a).

The VA Secretary is authorized to prescribe all necessary or appropriate rules and regulations regarding "the forms of application by claimants" who seek such benefits. 38 U.S.C. 501(a)(2). Congress has long required that a "specific claim in the form prescribed by" the agency "must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the [VA]." 38 U.S.C. 5101(a)(1)(A); see Act of Sept. 2, 1958, Pub. L. No. 85-857, § 3001(a), 72 Stat. 1225. Except as otherwise "specifically provided" in Chapter 51 of Title 38, "the effective date of an award" of benefits based on a claim "shall not be earlier than the date of receipt of application therefor." 38 U.S.C. 5110(a)(1).

Since at least 1944, VA has required claimants to complete Form 526 or one of its variants. See 38 C.F.R. 2.1026 (Supp. 1944) ("A properly completed and executed Form 526, 526a or 526b * * * constitutes an application for benefits indicated below and will be adjudicated under the applicable laws."); see also C.A. App.

142 (VA Form 8-526 (1946)); *id.* at 137 (VA Form 21-526 (1993)); 63 Fed. Reg. 49,155, 49,155 (Sept. 14, 1998) ("Section 5101(a) provides that a specific claim in the form provided by [VA] must be filed in order for benefits to be paid * * * VA Form 21-526 is the prescribed form for disability claims."). VA Form 526 has always instructed claimants to identify the nature of the symptoms or medical conditions on which the claim of disability is premised. See, *e.g.*, C.A. App. 142 (VA Form 8-526, block 33 (1946) ("nature of disease or injury for which claim is made") (capitalization omitted)); *id.* at 137 (VA Form 21-526, block 17 (1996)) (similar).[1]

If a veteran submits a claim form that does not identify the relevant medical condition or complaint, the application may be considered incomplete. See 38 U.S.C. 5103(a) (1994) (application lacking the "evidence necessary to complete the application" is incomplete); see also 66 Fed. Reg. 45,620, 45,630 (Aug. 29, 2001) (revising 38 C.F.R. 3.159(a)(3) (2000) to define a "[s]ubstantially complete application" as identifying, *inter alia*, "the benefit claimed and any medical condition(s) on which it is based"). A veteran's claim must be on VA's prescribed form and must "contain[ ] specified information * * * as called for by the blocks on the application form." *Fleshman* v. *West*, 138 F.3d 1429, 1431-1432 (Fed. Cir.), cert. denied, 525 U.S. 947 (1998); see *Rodriguez* v. *West*, 189 F.3d 1351, 1353 (Fed. Cir. 1999)

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[1] This case concerns the requirements for "formal claims," not "informal claims," Pet. App. 3a-4a & n.3, or veterans' use of the "similar" "intent to file a claim process" that has now replaced the informal-claim process. See 79 Fed. Reg. 57,660, 57,661 (Sept. 25, 2014).

(claimant "must eventually file a form providing specified information that the Secretary has adopted"), cert. denied, 529 U.S. 1004 (2000).

Form 526 requires only "minimal" specificity. Pet. App. 14a. Consistent with the nonadversarial nature of the claim process, VA has a "longstanding practice of accepting claimants' description of observable symptom(s) or experiences," or even a mere "reference to a part of the anatomy," as sufficient to identify the source of the asserted disability. 79 Fed. Reg. 57,660, 57,671-57,672 (Sept. 25, 2014); see *id.* at 57,672 (explaining VA's "general practice of identifying and adjudicating issues and claims that logically relate to and arise in connection with a claim pending before VA"). For example, if a claim uses the term "mental," or "stress," or "PTSD," VA will view it as encompassing all potential psychiatric disabilities noted in medical records. See *id.* at 57,672-57,673. VA will not, however, add to a claim "entirely separate conditions" that the claimant "never identified" as giving rise to a service-connected disability. See *id.* at 57,671-57,672; see also 38 C.F.R. 3.103(a) (1996) ("[I]t is the obligation of VA to assist a claimant in developing the facts pertinent to the claim."); 66 Fed. Reg. at 45,621 (rejecting comment asserting that "it should be VA's burden to determine all the benefits to which a claimant is entitled," and noting that the claimant is responsible for presenting and supporting a claim under Section 5107(a)).

2. Petitioner served on active duty from April 1964 to February 1968 and from January 1981 to February 1996. Pet. App. 2a. In March 1996, he filed with VA a formal application for disability compensation (VA Form 21-526). *Id.* at 2a-3a, 98a. In block 17 of the application, which requires an applicant to list the "nature

of sickness, disease or injuries for which this claim is made," he listed (1) left-knee injury, (2) back injury, (3) right-hand injury, (4) hearing loss, and (5) right-leg numbness. *Id.* at 104a (capitalization altered). Petitioner also listed those five conditions in block 12 (date of occurrence of disabilities), and in block 19 he provided treatment dates and locations for three of those conditions. *Id.* at 102a, 105a. In block 40 (entitled "Remarks"), he wrote: "Request s/c [service connection] for disabilities occurring during active duty service." *Id.* at 116a (capitalization altered).

In a July 1996 decision, the VA regional office granted petitioner disability compensation, listing left-knee, back, right-hand, hearing-loss, and right-toe disabilities. C.A. App. 132-136. It did not award compensation for any other disabilities. See *ibid.* Petitioner did not appeal this decision. See *id.* at 38.

In September 2009, petitioner filed a claim for benefits for post-traumatic stress disorder (PTSD). Pet. App. 26a. In September 2011, VA granted petitioner a 70% disability rating for a psychiatric disability (diagnosed as Major Depressive Disorder), effective May 13, 2011. *Ibid.* Petitioner appealed, and in 2016 the Board of Veterans' Appeals (Board) granted an earlier effective date of September 18, 2009. *Ibid.* The Board explained that "VA received no claim (informal or otherwise) for service connection for any psychiatric disability prior to September 19, 2009." *Id.* at 27a.

3. Petitioner appealed, and the United States Court of Appeals for Veterans Claims (Veterans Court) set aside the Board's decision. Pet. App. 23a-38a. The Veterans Court agreed with VA that "a general statement of intent to seek benefits for unspecified disabilities standing alone is insufficient to constitute a claim." *Id.*

at 29a. But the court considered petitioner's comment on block 40 of VA Form 21-526 ("Request s/c for disabilities occurring during active duty service") to "play[] a major role" in the case. *Id.* at 26a, 116a. The court held that such a statement requires VA to search the veteran's service records in its possession for "diagnoses that are reasonably identifiable" and could support a disability claim in order to "cure an insufficient general statement of intent to seek benefits." *Id.* at 33a; see *id.* at 29a-33a. Given the general reference on petitioner's 1996 benefits application to "disabilities occurring during active duty service," and notwithstanding his specific identification on that form of five conditions unrelated to mental illness, the court remanded to VA to "determine, based on the totality of the service medical record, both qualitatively and quantitatively, whether the condition" that petitioner now asserts entitles him to benefits "would be sufficiently apparent to an adjudicator." *Id.* at 29a, 31a.

"To assist the Board" in conducting the required review of petitioner's medical record, the Veterans Court offered its "thoughts on the types of factors that may be relevant to the Board's inquiry." Pet. App. 31a. "Qualitatively," the court stated, the Board might consider whether the service records note "trivial conditions" or "significant illnesses," and whether the records "describe certain conditions in great detail or, in contrast, in only a passing manner." *Ibid.* "Quantitatively, the sheer volume of medical records may potentially be a factor in determining whether a condition would have been reasonably identifiable to a VA adjudicator." *Id.* at 32a. "For example, the Board could decide that a single diagnosis reflected in a single page of a 2,000-page service record is not reasonably identifiable." *Ibid.*

4. The Secretary appealed, and the Federal Circuit reversed. Pet. App. 1a-22a. The court of appeals emphasized the minimal nature of the information that VA requests from claimants, noting that "[i]dentifying [an allegedly disabling] condition even at a high level of generality will suffice." *Id.* at 14a. The court examined Section 501(a)(2)'s grant of authority to VA to promulgate rules governing "the forms of applications by claimants," Section 5101(a)(1)(A)'s requirement that a veteran must file a "specific claim in the form prescribed by" VA, and Section 5107(a)'s language directing the veteran to "present and support" his claim. *Id.* at 14a-15a (citations omitted); see *id.* at 14a-16a & n.7 (noting various implementing regulations).

The court of appeals explained that a veteran's claim must "be *on* the VA's prescribed form" and must "'contain[] specified information * * * as called for by the blocks on the application form.'" Pet. App. 15a (quoting *Fleshman*, 138 F.3d at 1431-1432) (brackets in original). The court further explained that the agency's longstanding practice of requiring claimants to identify the symptoms or conditions supporting their disability claims—after which VA identifies and adjudicates logically related claims—"reflect[s] a reasonable interpretation of the statute." *Id.* at 17a-18a (quoting *Veterans Justice Grp., LLC* v. *Secretary of Veterans Affairs*, 818 F.3d 1336, 1356 (Fed. Cir. 2016)). The court of appeals further observed that, like the current version of Section 5107(a) that the court had discussed in *Veterans Justice Group*, the version that had been in effect when petitioner filed his 1996 disability claim "imposed on the veteran the same duty to present and support his claim." *Id.* at 18a & n.9; see *id.* at 15a (noting that Sec-

tion 5101(a)'s requirement that the veteran file a "specific claim in the form prescribed by" VA was previously codified at 38 U.S.C. 3001(a) (1988)).

Accordingly, the court of appeals concluded that a veteran's claim must "identify the sickness, disease, or injuries for which compensation is sought, at least at a high level of generality." Pet. App. 21a. The court held that VA's duty to assist veterans in developing their claims did not support a different result, explaining that both in 1996 and now, that duty is "triggered by receipt of a legally sufficient claim." *Id.* at 20a. The court observed that, "[u]ntil the Secretary comprehends the current condition on which the claim is based, the Secretary does not know where to begin to develop the claim to its optimum." *Ibid.* Because petitioner's 1996 disability claim had not identified his later-asserted depressive disorder, the court held that petitioner was not entitled to an earlier effective date for benefits based on that claim. *Id.* at 21a.

ARGUMENT

Although Congress designed the veterans-benefits system to be pro-claimant and nonadversarial, it set a common-sense starting point by making veterans responsible for presenting and supporting their claims for disability benefits. Congress also authorized VA to prescribe the forms through which veterans must present their claims, and it linked the effective date of payment to the date a claim is submitted. For many decades, VA has required veterans to identify on their claim forms—at least in very general terms—the medical conditions giving rise to their asserted service-connected disabilities. Courts have long recognized VA's authority to impose this minimal requirement, which reflects the importance of such information in determining veterans'

entitlement to a benefit that Congress conditioned on a service-related injury or disease.

In petitioner's view, a veteran need only identify the type of benefit sought, *e.g.*, compensation for disability or education, at which point VA must obtain and search the veteran's records for anything that could support his claim. The Federal Circuit correctly rejected this argument, which would upend longstanding precedent and significantly burden VA's claims process. Further review is not warranted.

1. The Federal Circuit correctly held that a veteran's disability claim must "identify the sickness, disease, or injuries for which compensation is sought, at least at a high level of generality." Pet. App. 21a.

This conclusion is firmly rooted in the text of the statutory provisions that govern disability-benefits claims. Pet. App. 14a-17a. "Congress granted the VA authority to prescribe all necessary or appropriate rules and regulations regarding 'the forms of applications by claimants.'" *Id.* at 14a-15a (quoting 38 U.S.C. 501(a)(2)). And Section 5101(a) authorizes VA to determine the form that benefit claims must take "in order for benefits to be paid." *Id.* at 15a (quoting *Mansfield* v. *Peake*, 525 F.3d 1312, 1317 (Fed. Cir. 2008), cert. denied, 555 U.S. 1101 (2009)); see *ibid.* (noting that "the veteran is obligated to 'present and support' his claim") (quoting 38 U.S.C. 5107(a)); 38 U.S.C. 5101(a)(1)(A); see also 38 U.S.C. 3001(a) (1988). Based on these statutory provisions, the court of appeals correctly held that a benefits claim must take the form VA prescribes, including a brief identification of the assertedly disabling medical condition.

The court of appeals' holding finds further support in VA's regulations. In 2015, after notice-and-comment

rulemaking, VA adopted a final rule that reflected the agency's longstanding practice regarding disabling-condition identification. Pet. App. 16a-18a (citing 38 C.F.R. 3.160); see 79 Fed. Reg. at 57,660 (effective date March 24, 2015). That regulation defines a "[c]omplete claim" as "[a] submission of an application form prescribed by the Secretary" that includes "[a] description of any symptom(s) or medical condition(s) on which the benefit is based * * * to the extent the form prescribed by the Secretary so requires." 38 C.F.R. 3.160(a)(4).

The court of appeals had previously rejected an argument that this regulation is "in conflict with the Secretary's duty" under Section 5107 "to 'consider all information and lay and medical evidence of record in a case.'" Pet. App. 17a (quoting *Veterans Justice Grp., LLC* v. *Secretary of Veterans Affairs*, 818 F.3d 1336, 1356 (Fed. Cir. 2016) (quoting 38 U.S.C. 5107(b))). In *Veterans Justice Group*, challengers contended that the rule was inconsistent with a purported statutory requirement that VA "develop evidence outside the scope of a pending claim," even for medical conditions that the veteran "fails to mention in his application." 818 F.3d at 1355, 1356 (citation omitted). The court rejected that argument, concluding that the regulations "reflect a reasonable interpretation of the statute," and that Section "5107 places responsibility on the *claimant* for presenting and supporting a claim." *Id.* at 1356. "[S]ection 5107(b) ensures consideration of all 'relevant' evidence but does not answer the question of whether the Secretary is obligated to develop evidence outside the scope of a pending claim." Pet. App. 17a (citation omitted).[2]

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[2] Contending that the *Veterans Justice Group* court improperly relied on a "non-existent" rule, Pet. 12, 14, petitioner disputes that court's observation that the 2015 regulation did "not substantively

Although this regulation was not in effect at the time of petitioner's 1996 benefits claim, the court's conclusion that it reflects a reasonable reading of Section 5107 is relevant here. The Federal Circuit explained that "[t]he version of the same statute [38 U.S.C. 5107] in effect" in 1996 had "imposed on the veteran the same duty to present and support his claim." Pet. App. 18a & n.9. And then, as now, VA had required veterans to identify at least in general terms the condition giving rise to an asserted disability. See 79 Fed. Reg. at 57,671-57,672; see pp. 2-3, *supra* (discussing history of VA Form 526). If that understanding of the modest duty that Section 5107 imposes on veterans is reasonable now, there is no basis for deeming it unreasonable as of 1996.

2. Petitioner's contrary arguments lack merit.

a. Petitioner argues (Pet. 13-15) that "a claim application need only identify the type of benefit sought"—*e.g.*, "disability compensation" or "education benefits." Petitioner contends (Pet. 18-19) that such a request for a specific type of benefit is by statute a "claim" that VA must develop and support.

This view cannot be reconciled with the statutory provisions discussed above. It effectively negates the

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diverge from the VA's prior regulation." 818 F.3d at 1356. The court was simply noting, however, that the 2015 amendment to 38 C.F.R. 3.160 did "not alter the VA's general practice of identifying and adjudicating issues and claims that logically relate to the claim pending before the VA." *Veterans Justice Grp.*, 818 F.3d at 1356. VA had previously promulgated a regulation manifesting its view that claims must identify any disabling condition. See 38 C.F.R. 3.159(a)(3) (defining a "[s]ubstantially complete application" as one that includes "the benefit claimed and any medical condition(s) on which it is based"); 66 Fed. Reg. at 45,630 (revising Section 3.159(a)(3)).

requirement that a veteran must submit "a specific claim in the form prescribed by [VA]" in order to be paid. 38 U.S.C. 5101(a)(1)(A). Compliance with this provision requires submission of all information that VA requests on the form the agency has created pursuant to Congress's directive. A proper disability benefits claim therefore is a *completed* Form 526, which under longstanding agency practice must identify the "nature of sickness, disease or injuries for which this claim is made." Pet. App. 104a (capitalization omitted).

Petitioner asserts (Pet. 15-16) that "[t]he statute consistently describes and categorizes 'claims' as being 'for' a type of benefit * * * rather than 'for' a particular disabling condition." Petitioner identifies statutory references to different types of benefits that veterans can seek. See Pet. 16 (citing 38 U.S.C. 5101(b)'s reference to "a claim for death pension" and 38 U.S.C. 5101's reference to "a claim for Government life insurance benefits"). But no statutory provision defines the necessary elements of a compliant "claim." Rather, Congress directed the agency to "prescribe[]" the "form" that claims for various types of benefits must take. 38 U.S.C. 5101(a)(1)(A); see 38 U.S.C. 501(a)(2). Petitioner's barebones understanding of the "claim" that a veteran must submit would also subvert the statutory requirement that veterans "present *and support*" their claims. 38 U.S.C. 5107(a) (emphasis added).

Nor does the Federal Circuit's decision "def[y] VA's duty to assist veterans to develop their claims to the optimum." Pet. 34 (invoking 38 U.S.C. 5103A). "The Secretary's duty to assist is not untethered," but rather is triggered by the submission of a legally sufficient claim. Pet. App. 20a; see 38 U.S.C. 5103A(c)(1)(A); 38 C.F.R. 3.103(a), 3.159. "Until [VA] comprehends the current

condition on which the claim is based, [it] does not know where to begin to develop the claim to its optimum." Pet. App. 20a.

b. Although the Veterans Court ruled in petitioner's favor, its decision was based on reasoning different from the approach that petitioner advocates. See Nat'l Law Sch. Veterans Clinic Consortium Amicus Br. 17-19 (urging adoption of the "Veterans Court test"); Nat'l Veterans Legal Services Program Amicus Br. 17-21 (similar); Pet. 35 (noting the "Veterans Court's 'reasonably identifiable' test"). Unlike petitioner, that court did not consider a bare request for a "type" of benefit, *e.g.*, a "disability" benefit, sufficient to make a claim. Rather, the Veterans Court emphasized petitioner's "comment" on his 1996 benefits-claim form that he was seeking benefits based on disabilities acquired during his time in service. Pet. App. 26a. While recognizing that this kind of "general statement of intent to seek benefits for unspecified disabilities standing alone is insufficient to constitute a claim," the court considered that statement potentially adequate when "coupled with" in-service diagnoses that "are reasonably identifiable from a review of" the veteran's service records. *Id.* at 29a-30a.

This rule lacks any foundation in the governing statutes. But petitioner's approach would lead to even more sweeping disruption of the benefits-claims process. While the Veterans Court would have limited VA's search obligation to records "in VA's possession at the time" of the benefits decision, petitioner's theory would require VA to obtain and search such records based on any claim for an unspecified "disability." Pet. App. 30a; see Pet. 18-20.

c. Petitioner's reliance (Pet. 27-28; see Nat'l Org. of Veterans' Advocates Amicus Br. 4-9) on the pro-veteran canon of statutory interpretation is misplaced. Such "interpretive principles" may assist in resolving statutory ambiguities, *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 221 n.9 (1991), but they cannot justify "distort[ing] the language" of the governing statute, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). The statutory scheme at issue here unambiguously provides that VA may prescribe the form of disability claims; that compensation may not be paid until such claims are submitted; and that VA can require veterans to support their entitlement to benefits premised on an "injury" or "disease" by identifying that injury or disease. 38 U.S.C. 1110, 5101(a)(1)(A), 5107(a).

That modest requirement is fully consistent with the pro-veteran orientation of the overall statutory scheme. "VA's claim assessment process requires * * * that veterans' claims be read sympathetically," Pet. App. 14a, and veterans need only identify the conditions they are claiming at a "high level of generality," *id.* at 19a (citation omitted). Thus, a veteran could raise a claim for mental illness with claim-form language as simple as "mental," "stress," or "nervous." See 79 Fed. Reg. at 57,671-57,672 (noting that VA will "accept[] claimants' description of observable symptom(s) or experiences," or even a mere "reference to a part of the anatomy," as sufficient to identify the source of the asserted disability); see also *id.* at 57,671 ("The regulatory language, both as proposed and as here revised, is clear that VA is not requiring claimants to provide a medical diagnosis."). Consistent with that principle, VA identified and evaluated an injury to petitioner's right toe when his

1996 form referred to problems with his "[r]ight [l]eg." Pet. App. 104a; C.A. App. 134-135.

Limiting the scope of a disability claim to conditions related to those a veteran identifies does not "extinguish[]" an entitlement to benefits based on any other "unclaimed condition." *Veterans Justice Grp.*, 818 F.3d at 1356. Even if a veteran's original benefits claim does not identify a particular disability, he may later "file a new claim directed to the unrelated evidence." *Ibid.* To be sure, any award of benefits based on a new claim of that sort will not be effective until the date the new claim was submitted, even if the newly identified service-related disability was present all along. See Pet. 9, 37. That delay in benefits, however, is the clear consequence of Congress's decisions to make benefit payments contingent on the filing of a claim in the VA-prescribed form, 38 U.S.C. 5101(a)(1)(A), and to limit the effective date of an award to no "earlier than the date of receipt of application therefor," 38 U.S.C. 5110(a)(1).

d. Contrary to petitioner's argument (Pet. 16-17, 24-25), VA has never indicated by regulation or practice that a stand-alone assertion of an entitlement to a type of benefit—without any further information about the condition on which that asserted entitlement is based—constitutes a claim.

Consistent with Section 5101(a)(1)(A), VA's regulations both now and in 1996 have required veterans to file a "specific claim *in the form prescribed by the Secretary*" in order to receive benefits. 38 C.F.R. 3.151(a) (1996) (emphasis added); see 38 C.F.R. 3.151(a) (2020) (same). Petitioner points (Pet. 16 & n.3) to the 1996 version of 38 C.F.R. 3.1(p), which related to VA's then-existing "informal claim" process. But that regulation defined an "[a]pplication," not a "[c]laim," *ibid.*, and the

1996 regulations separately made clear that "[c]laims for disability benefits" must take the "form" prescribed by VA, see 38 C.F.R. 3.151(a) (1996).[3]

VA's past practices—which for decades have required veterans to identify the medical conditions supporting their claims—do not assist petitioner. The portion of the VA internal manual that petitioner cites (Pet. 24-25) makes clear that, while VA adjudicators are free to "solicit[] claims for unclaimed, chronic disabilities shown by the evidence," "[t]he mere presence of medical evidence does not constitute a claim because there is no intent to apply for benefits shown." Veterans Benefits Admin., U.S. Dep't of Veterans Affairs, *Adjudication Procedures Manual (Adjudication Resources)*, M21-1, Part III, Subpart iv, Chapter 6, Section B, (Aug. 6, 2019), Topic 5, https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000014205/M21-1,-Part-III,-Subpart-iv,-Chapter-6,-Section-B---Determining-the-Issues#5 (noting that the veteran must decide whether to "pursue the unclaimed disabilities (or 'issues') by submitting a claim on a prescribed VA form").

Petitioner contends (Pet. 24-25) that VA previously directed "agency officials to review all of a veteran's records and to evaluate all of the disabilities noted therein—not just those listed on an application form." But the prior agency-manual provisions that petitioner

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[3] In 2014, VA revised the "informal claim" process, implementing a "similar" "intent to file a claim process." See 79 Fed. Reg. at 57,661 (discussing revisions to 38 C.F.R. 3.1(p)). "Neither party argue[d]" below that the earlier version of 38 C.F.R. 3.1(p) "answers the question of the degree of specificity required of a formal claim." Pet. App. 15a-16a n.7.

cites do not direct adjudicators to conduct whole-record reviews for additional potential disabilities unstated in a claim application. Section 5.06(b) of the *Adjudication Procedures* (1991), https://perma.cc/EZ2S-FJWE, describes the evidence necessary to establish an entitlement to benefits for a chronic or tropical disease; it has nothing to do with claim identification. See Pet. 25. Similarly, Section 46.02(a) of the *Adjudication Procedures* (1985), https://perma.cc/J6M6-RV5J, does not address a duty to search records or to assist with claim development. Rather, it provides coding instructions for the "Disposition of Disabilities Noted or Claimed," directing that "[a]ll disabilities claimed will be given consideration as to service connection and be coded," and then discussing coding for "additional disabilities noted." See Pet. 25. The provision does not suggest that VA adjudicators are required to search all service records for unclaimed disabilities and *sua sponte* consider whether they are service connected.

Finally, petitioner is wrong to suggest (Pet. 16-17) that VA's regulations and practices in 1996 did not clearly apprise veterans of the need to identify the medical condition on which an asserted disability entitlement was based. Long before 1996, the pertinent statutes and regulations required veterans to submit their claims in the form VA prescribed, and VA has by form required disclosure of such information since the 1940's. See pp. 2-3, *supra*; see also *Fleshman* v. *West*, 138 F.3d 1429, 1432 (Fed. Cir.) (concluding that "omissions in [a] 1987 application prevented that application from being 'in the form prescribed by the Secretary,' as required by 38 U.S.C. § 5101(a)"), cert. denied, 525 U.S. 947 (1998). Indeed, petitioner's 1996 claim identified five separate specific conditions—right leg numbness and

tingling, hearing loss, left knee injury, back injury, and finger injury—as sources of his disability. Pet. App. 102a. Nothing in VA's then-prevailing regulations or practices suggested that such a claim would extend to an unrelated mental-health condition.

3. The court of appeals' decision in this case did not introduce any change in longstanding law or agency practice, nor did it "narrow" the veterans-benefits program. Pet. 30. Since at least 1944, the agency has required veterans to briefly identify the source of their disabilities. The Federal Circuit has repeatedly upheld VA's unbroken understanding that it is authorized to impose that limited but important requirement. See *Mansfield*, 525 F.3d at 1317; *Fleshman*, 138 F.3d at 1431-1432; see also *Rodriguez* v. *West*, 189 F.3d 1351, 1353 (1999), cert. denied, 529 U.S. 1004 (2000). And while petitioner and his amici express concern that the disability-benefits system can prove difficult to navigate, particularly for veterans with mental illnesses, the agency has not departed from its practice of sympathetically and broadly construing any condition noted on a veteran's claim form. This regime strikes an appropriate balance between VA's duty to assist and the claimant's duty to present and support his claim, while ensuring that the agency does not waste valuable resources "conduct[ing] an unguided safari through" service medical records that can stretch to thousands of pages "to identify all conditions for which the veteran may possibly be able to assert entitlement to a claim for disability compensation." *Brokowski* v. *Shinseki*, 23 Vet. App. 79, 89 (2009).

Petitioner's more expansive interpretation of the statutory term "claim" would have startling effects. As

demonstrated by the facts of this case, petitioner's proposed reading would permit veterans to effectively reopen years- or even decades-old disability determinations —long after the time to appeal them has run, see 38 U.S.C. 7105(b)(1)—simply by filing a new claim for a previously unspecified disability. Under petitioner's approach, any new disability determination regarding a medical condition reflected in the veteran's service record at the time of an earlier claim then would date back to the earlier claim, no matter how disconnected from the asserted basis for that claim. Petitioner contends (Pet. 32) that this rule should apply to "millions" of veterans who previously filed claims. While it is unclear whether petitioner has accurately gauged the number of veterans who fail to identify disabling, service-connected medical conditions in their claim forms, the administrative burden of searching for such claims could be substantial.

Contrary to petitioner's suggestion (Pet. 32-33), the Federal Circuit's adherence to its precedent does not close off benefits to veterans who do not immediately realize or assert that they might be disabled due to particular medical conditions, or that the conditions are service-related. A veteran may bring such claims and (if the claims are found to have merit) receive benefits from the date they are submitted. The only question is whether any award must be backdated to cover a period during which the veteran had not indicated that he considered the relevant condition disabling and service-related.

Finally, at least part of petitioner's argument is of limited prospective importance. Petitioner suggests that claims decided before VA's 2015 regulation went into effect are on a different footing from those decided

after. See Pet. 23, 32. That is incorrect; both before and after the 2015 regulation, VA clearly and permissibly required claimants to identify their disabling medical conditions. But to the extent that petitioner's argument turns on a purported ambiguity in VA's pre-2015 rules and practices, the regulation now in effect unambiguously directs that a proper claim for disability benefits must identify at least in general terms the medical condition giving rise to the asserted disability. Granting review to determine whether the 1996 regulatory scheme had a different import would not be a sound use of this Court's resources.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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