

No. 22-6915

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

FEB 01 2023

OFFICE OF THE CLERK

Leon H. McCormick Pro Se — PETITIONER  
(Your Name)

vs.

Denis McDonough, Sec. of the Dept. of Vet. Affairs — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Federal Circuit Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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## LIST OF PARTIES

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

## RELATED CASES

*Appendix C*

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 A to the petition and is

reported at U.S. Federal Circuit; 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 is unpublished.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 B to the petition and is

reported at Court of Appeals for Veterans Claims, or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

(CAVC) (BVA) Related Cases 2 pages

Appendix C

For cases from state courts:

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

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 is unpublished.

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

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 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 3, 2022.

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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

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

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Marbury v. Madison U.S. (Cranch) 137 (1803) where a specific duty is assigned and an individual consider himself injured has a right to resort to his Country for a remedy.**

**38 C.F.R. 3.159 (c) (4) 2020 the third Melendon element “Requires only that the evidence “indicates” and this is a low threshold Melendon, 20 Vet app. At 83 (emphasis added) (quoting 38 U.S.C. § 5103A (d) (2) (B).**

**38 U.S.C. 7104 (d) (i) and absent a finding of non-prejudicial error, vacature and Remand are Warranted. When it fails to do so. Memorandum (RBA)**

**38 U.S.C. 7261 (b)(2) Shinseki V. Sanders, 556 U. S. 396, 409 (2009)**

**38 U.S.C. 7112 Expedited Treatment of Remanded Claims**

**38 U.S.C 5103 (A) Duty to Assist the Veteran in the development of his Claims**

**38 U.S.C. 4212 Prohibits discrimination against protected Veterans**

**38 CFR § 3.103 Procedural Due Process and other rights**

**M21-1 part viii, 7.B. 1. B Asbestosis Exposure**

**38 U.S.C. Basic Entitlement 38 U.S.C. 1110 (Wartime) 1131(Peacetime) to establish a right  
A right to a disability benefits a veteran must show**

- 1. Existence of a present disability**
  
- 2. In Service occurrence or aggravation of a disease or injury.**
  
- 3. A casual relationship between incidents**

**Pulmonary Nodules were listed separately on the Rating Decisions on 5-18-19 and on 8-28-15**

**The February Decision should have been before the Court of Appeals for Veteran Claims, and the Federal Circuit.**

**There is a lot more to add but time does not permit.**

## STATEMENTS OF THE CASE

The Petitioner appeals the United States Federal Circuit Court decisions by a 3 panel merit Judge(s) (PERCURM) for Writ of Certiorari to the United States Supreme Court. The Petitioner prays that the U.S. Supreme Court will be lenient and sympathetic to the Pro Se Petitioner concerning the truth and undisputed facts in this case.

It was before Hon. DYK, TARANTO, and HUGHES, Federal Circuit Judges (PERCURIAM) in their opinion states the Petitioner “a Veteran of the Korean War, was diagnosed with Asbestosis with Pulmonary Nodules and sought compensation for his disability from the Department of Veterans Affairs. The Board of Veterans’ Appeals (“Board”) found that Mr. McCormick’s condition, though service connected did not entitle him to compensation, and the United States Court of Appeals for Veterans Claims (“Veterans Court”) affirmed. Because Mr. McCormick raises no colorable constitutional questions on appeal, and all his other challenges would require us to review factual determinations, the application of law to facts, or decisions in other proceedings not properly part of this appeal, we lack jurisdiction. See 38 U.S.C. § 7292(a). (d)(2). We dismiss.”

The 3 Panel Judge(s) from the United States Federal Circuit Court, the 8 Judges from the Court of Appeals for Veterans Claims Court, and the Board of Veterans’ Appeals (BVA) Board, and the Department of Veterans’ Affairs decision(s) were erroneous and have made many Administrative Error(s), Prejudicial Error(s), Procedural Error(s), Clear and Unmistakable Error(s), Duty to Assist Error(s), and last but not least Constitutional Error(s). 38 CFR § 3.103 Procedural Due Process and other rights, 38 U.S.C 5103 Duty to Assist the Veteran in the development of his claims, 38 U.S.C. § 4212 Prohibits Discrimination against a



Protected Class, 38 U.S.C. 7112 Expedited Treatment of Remanded Claims, 38 U.S.C. 7104 section 511(a) decision of the Board shall be based on the entire record, in all instances the Courts refused to view the whole entire record which is Unconstitutional to deny the Veteran Equal Rights, Equal Treatment and Equal Protections under the Color of Law.

The Case was Remanded by (CAVC) Judge Marjorie A. Auer on July 13, 2017 that included Asbestosis with Pulmonary Nodules under docket no. 16-5317. The Case was Remanded again under docket no. 16-5317 on April 25, 2018 Remanded again for Asbestosis with Pulmonary Nodules and hearing loss for Aid and Attendance. As you can see Asbestosis with Pulmonary Nodules was the Case before the Federal Circuit that had Jurisdiction docket no. 2022-1752, it also was the Case that was before CAVC docket no. 21-3242 that had Jurisdiction and appealed to the Federal Circuit, and now properly before the United States Supreme Court which has Jurisdiction over all these Claims. 38 U.S.C 7112 Expedited Treatment of Remanded Claim(s). Unreasonable Delay

The Board has a statutory obligation to review the whole record in its entirety 38 U.S.C 7104 section 511(a) of this title. The Secretary and or Board had unlawfully closed the Veteran file that was a part of the CAVC and on the docket no. 16-5317 which listed 9 conditions(s) to be Remanded. 1. Insomnia, 2. Arthritis, 3. Cervical spine, 4. Lumbar Spine, 5. Bilateral eye disorder, 6. Coronary disorder, 7. GERD, 8. Special Monthly Compensation, 9. Asbestosis with Pulmonary Nodules. **38 U.S.C. 7112 Expedited Treatment of Remanded Claims**, This is a Clear and Unmistakable Error. Unreasonable Delay.

The Judge(s) are incorrect to conclude that the decision in other proceedings is not properly part of this appeal. On the contrary, the Claim for Asbestosis comes from one claim filed application on 21-526 in 2014 along with other presumptive conditions due to Asbestosis

Exposure and not of one claim separate and alone as the court has stated and would want the Supreme Court Justice(s) to believe. The Petitioner has repeatedly and consistently requested that the claim file be viewed and decided all together as it is from 1 claim that was wrongfully separated but, my request has been repeatedly rejected and denied. The Petitioner was harmed.

Before (CAVC) Judge Meredith, in her Memorandum dated July 24, 2020 on docket 19-8541 in part states "Moreover, because the Board determined that the appellants has a current disability and failed to discuss whether there was an in-service injury, including the appellant's allegations that his conditions were caused by Asbestos Exposure R. at 608, the Court is unable to find this error harmless, see 38 U.S.C 7261 (b)(2); *Shinseki v. Sanders*, 556 U.S. 396 409 (2009) Remand is thus required. *Duenan*, 18 Vet. App. At 517-18. Although the appellant asks the Court to reverse the Board's decision and award 100% disability compensation, appellant's informal Br. At 8, "reversal is the appropriate remedy when the only permissible view of the evidence is contrary to the Board's decision." Remanded the decision of August 1, 2019. See 38 U.S.C 7104 and absent a finding of non-prejudicial error, vacatur and Remand are Warranted. When it fails to do so Memorandum (RBA) and Remand (RBA) to include Asbestos Exposure". The Judge also requested expedited treatment under 38 U.S.C 7112. Unreasonable Delay

In the Case *McCormick v. Wilkie* docket no. 19-7600 (unpublished) the Petitioner was represented by the National Veterans Legal Services Program, in which we signed an agreement with 23 Lawyers' to represent the Petitioner for Asbestosis with Pulmonary Nodules. The (NVLSP) prevailed and got a Joint Motion Partial Remand because "The parties agree that vacatur and remand are warranted because the Board erred when it failed to provide an adequate statement of reasons and bases for its determination that a compensable rating for Asbestosis with Pulmonary Nodules was not warranted. The Board must analyze the credibility and

probative value of the evidence, account for the evidence that it finds persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant Washington v. Nicholson, 19 Vet. App. 362, 367 (2005) (citations omitted). In addition, the board's statement of the reasons or bases must adequately enable an appellant to understand the precise basis for its decision 38 U.S.C. §7104 (d)(1); Allday v. Brown, 7 Vet. App. 517, 527 (1995). Specifically, the Board's rejection of seemingly favorable medical evidence was not supported by an adequate explanation." In conclusion, "the parties agree that the Board's decision that denied Appellant an initial compensable rating for Asbestosis with Pulmonary Nodules, should be vacated and the matter remanded for development and re adjudication in accordance with the foregoing discussion". The Petitioner was not a part of the conference or negotiations. The NVLSP got paid twice and my husband received nothing.

The Board may remand an appeal to the AOJ only "for correction of [a pre-decisional] error on the part of the [AOJ] to satisfy its duties under 38 U.S.C. 5103A" or "for correction of any other error by the [AOJ] in satisfying a regulatory or statutory duty, if correction of the error would have a reasonable possibility of aiding in substantiating the appellant's claim." 38 C.F.R. § 20.801(a).

Binding Determinations under 38 CFR 3.104 a decision of a Department of Veterans Affairs (VA) rating agency is binding on all VA field offices as to the conclusions based on the evidence on file at the time VA issues notification in accordance with 38 U.S.C. 5104. The Veterans rating decision was rated 0% for Asbestosis and 30% for Pulmonary Nodules but his combined rating is 0% for Asbestosis with Pulmonary Nodules? since 2015?

The Secretary's has a heightened Duty to Assist the Veteran in developing his claim(s) for Asbestosis with Pulmonary Nodules, which was not the only claims that were on the original claim file 21-526 in fairness there were a total 26 conditions listed and filled out by the Department of Veterans Services not the Veteran. The Secretary also has an obligation to explain its findings and conclusions and carefully consider the Benefit-of-the-Doubt rule especially when his Service Treatment Records were burned up in a fire in 1973. The DVS failed its Duty to Assist. **McLendon V. Nicholson 38 U.S.C. 5103 A (d) (2)**. This is a Clear and Unmistakable Error.

My husband and I were notified on November 30, 2016 that on "September 29, 2016 a large number of documents including veterans' claims files, were discovered in a storage unit by a former Virginia Department of Veterans Services (DVS) employee". "Additionally, the Office of the Attorney General contacted the Virginia State Police and requested they initiate a criminal investigation. The letter also stated "We deeply regret this incident and will take all necessary steps to assist you in obtaining the benefits you have earned through your service" It was signed by a Commissioner (name omitted) the veteran was harmed when they tampered with his case file and wrongfully separated his claim files so that secondary conditions or presumptive conditions would not be associated with his claim files. This should be considered a Clear and Unmistakable Error and a violation of the Veterans Due Process rights.

The Petitioner was referred by the Department of Veterans Services and had signed a retainer agreement with 23 lawyers for representation for Asbestosis with Pulmonary Nodules with the National Veterans Legal Services Program. The (NVLSP) in docket # 19-7600. McCormick V. Wilkie argued the basis for REMAND "the Board must analyze the credibility and probative value of the evidence, account for the evidence that it finds persuasive, or

unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant” Washington v. Nicholson, 19 Vet. App. 362, 367 (2005) (citations omitted). In addition, the Board statement of the reasons or bases must adequately enable an appellant to understand the precise basis for its decision. 38 U.S.C. § 7104 (d)(1); *allday v. Brown*, 7 Vet. App. 517, 527 (1995). Specifically, the Board’s rejection of seemingly favorable medical evidence was not supported by an adequate explanation. The NVLSP prevailed in the appeal and got a Joint Motion for Partial Remand. The Lawyers got paid twice and the Veteran received nothing.

My husband will soon be 90 years old with Asbestosis and multiple medical conditions including presumptive conditions that the VA states that he meet the requirement for presumptive conditions but still denied his claims. The Petitioner recently filed the Notice of disagreement to the CAVC as of 1-27-23 for the presumptive conditions that were from the original docket no. 16-357. The disagreement is also from the CAVC docket no. 21-3242 that was before the appeal to the Federal Circuit Court by the Secretary rightfully included but denied the review on appeal.

The Federal Circuit Judges decision is erroneous. The Petitioners’ has had in total 11 Judges, counting the 3 panel Federal Circuit Judges that did not, and would not review his records in its’ entirety, which brings the Petitioner to the United States Supreme Court for a Writ of Certiorari.

The Pro Se Petitioner would like to reserve the right to clarify any issues that may not be clear or understood.

**TABLE OF AUTHORITIES CITED**

CASES	PAGE NUMBER
Shinseki v. Sanders 556 U.S. 396 409 (2009) -----	page 3
Duenan, 18 Vet App at 517-18-----	page 3
Washington v Nicholson 19 Vet. App 362, 367 (2005) -----	page 4-5
Allday v Brown, 7 Vet. App 517, 527 (1995) -----	page 4
Melendon v Nicholson 38 U.S.C. 5103 A (d) (2) -----	page 5

**STATUES AND RULES**

38 C.F.R. 3.103 -----	page 1
38 C.F.R. 7112 -----	page 1
38 U.S.C. 5103 A -----	page 1
38 U.S.C. 4212 -----	page 1
38 U.S.C. 7112 -----	page 2
38 U.S.C. 7104 section 511(a) -----	page 2
38 U.S.C. 7261 (b) (2) -----	page 3
38 U.S.C. 5104 -----	page 4
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**RULES**

38 U.S.C. Basic Entitlement 1110 (Wartime) 1131 (Peacetime) to establish a right to a disability benefits a Veteran must show 1. Existence of a present disability 2. In Service occurrence or aggravation of a disease or injury. 3. A casual relationship between incidents.

M21-1 part viii, 7. B. 1. B Asbestos Exposure

## REASONS THE COURT SHOULD GRANT WRIT OF CERTIORARI

**Reason #1.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that it involves a pattern of Clear and Unmistakable Errors (CUE) and it would have National Significance.

**Reason #2.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that it involves a pattern of mal-treatment and abuse of the Veteran individual rights that would have National Significance.

**Reason #3.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that No Veteran should have to appeal so many times that there would be 5 Remands that were not complied with, and in total 11 judicial Judges decisions wrongfully denying the Veterans claims. This case might harmonize conflicting decisions in the Federal Circuits Courts and even lower Courts such as the Court of Appeals for Veterans Claims. It also would have National Significance.

**Reason #4.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that there are a number of Administrative errors. This would have National Significance.

**Reason #5.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that Congress intended for the Veteran to receive his benefits. This would have an impact of National Significance.

**Reason #6.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that the Veteran has been defrauded by the Department of Veterans Affairs by given the Veteran the lesser benefit. This would have National Significance.

**Reason #7.** The United States Supreme Court Justices should hear this case and grant the Writ of Certiorari is the fact that this case could have Precedential value.

**Reason # 8.** The Petitioners would like the Court to take action to prevent further harm that has been pleaded in all appeals.



## LEGAL QUESTIONS FOR REVIEW

### **Legal Question 1.**

Whether the Duty to Assist the Veteran in the development of his claims for Asbestosis was unconstitutionally denied him by Department of the Veterans Affairs when they intentionally and willfully and admittedly failed its Duty to Assist the Veteran even when it was properly filed on 21-526 in 2014 and properly raised at the Board of Veterans Appeals, Court of Appeals for Veterans Claims, and at the Federal Circuit Court? 38 U.S.C 5103(A) (B) section 5110

### **Legal Question 2.**

Whether the Department of Veterans Affairs took unreasonable delays in adjudicating and deciding the Veterans claims for benefits when he was over 80 years of age when the initial 21-526 in 2014 and was under many hardships when it was filed and his file was flagged for hardship? The Veteran will soon be 90 years of age GOD'S WILL. 38 U.S.C. 7112 Expedited Treatment of Remanded Claims

### **Legal Question 3.**

Whether the Department of Veterans Affairs acted adversarial against the Veteran when it did not comply with the 5 remands that was remanded by the Court of Appeals for Veterans Claims Court?

### **Legal Question 4.**

Whether the Department of Veterans Affairs intentionally did not hire a medical expert in the field of Asbestosis when it hired a gynecologist, that specialized in childbirth when my husband is a male? The examiner should have been a pulmonologist or specialized in Asbestosis.

**Legal Question 5.**

Whether the Veterans rights were violated when the Department of Veterans Affairs, Board of Veterans Appeals, Court of Appeals for Veterans Claims Court did not view the Veterans record in its entirety under 38 7104?

**Legal Question 6.**

Whether the Veteran was harmed when his files were unlawfully found in a storage bin? The Veterans It was to be criminally investigated and the Veterans that were affected were supposed to get their claims adjudicated quickly? The incident was in 2016.

**Legal Question 7.**

Whether the Veteran was entitled to Due Process of claims when he repeatedly requested that the claims be heard all together when the claims are from 1 claim filed 21-526 in 2014?

**Legal Question 8.**

Whether the Veteran was unlawfully denied the Benefit-of-Doubt rule when his service records were fire-related in 1973?

**Legal Question 9.**

Whether the Department of Veterans Affairs acted in Bad Faith when it forced a competency decision and hired a fiduciary Hub to oversee his benefits that was not before the Courts or under any Judicial Review especially when the record should have indicated that the Veteran spouse has Power of Attorney over all his affairs including a hand written letter by him on a Statement in Support of claim 21-4138, and again stipulated privately to the C&P examiner?

**Legal Question 10.**

Whether the Department of Veterans Affairs committed Fraud when it deceived the Veteran as to his benefits that would include Aid and Attendance that was repeatedly denied before the Court of Appeal for Veterans Claims. It also was offensively stated and denied on his Rating Decision "Not at Government Expense".

**Legal Question 11.**

Whether the Department of Veterans Affairs is currently committing Fraud to the Veteran, when its agency continuously have been denying the Veteran the greater benefit.

**Legal Question 12.**

Whether the Department of Veteran Affairs is willfully and intentionally denying the Veteran Service Connection.

**Legal Question 13.**

Whether the Veteran should be getting paid pension when he is 50% Service Connected which is the greater benefit.

**CONCLUSION**

The petitioner prays that the Supreme Court Justices will grant this petition for Writ of Certiorari due to the fact that the Veteran will be 90 years old this year, and has been unjustly and unfairly denied his benefits for many years to which he is entitled.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Deann M. McCombs*

Date: 2-1-23