No. 25-482

In the Supreme Court of the United States

JULIEN P. CHAMPAGNE, PETITIONER

v.

DOUGLAS A. COLLINS,
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

Veterans must use a form prescribed by the Department of Veterans Affairs (VA) to seek compensation for a service-connected disability or a pension. 38 U.S.C. 5101(a). The pertinent VA regulation provides that "[a] claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit." 38 C.F.R. 3.151(a). In 1987, petitioner completed the sections of the application related to eligibility for a non-service-connected pension and indicated that the sections related to compensation for a service-connected disability were not applicable. The VA treated petitioner's form as an application for a pension and granted pension benefits. The question presented is as follows:

Whether 38 C.F.R. 3.151(a) gives the VA discretion to determine whether a veteran is seeking a pension or compensation for a service-connected disability.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-15a) is reported at 122 F.4th 1325. The decision of the United States Court of Appeals for Veterans Claims (Pet. App. 16a-34a) is available at 2022 WL 2663589. The order of the Board of Veterans' Appeals (Pet. App. 35a-56a) is available at 2020 WL 8373200.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 2024. A petition for rehearing was denied on June 3, 2025 (Pet. App. 1a-2a). On August 6, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including October 2, 2025. On September 29, 2025, the Chief Justice further extended the time to and including October 16,

2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The Board of Veterans' Appeals (Board) granted petitioner service-connected compensation for cerebellar degeneration resulting from service-connected malaria, effective as of the date (July 14, 2003) when petitioner first sent the Department of Veterans Affairs (VA) correspondence that it construed as a service-connection claim for his cerebellar degeneration. Pet. App. 35a-56a. After petitioner appealed, seeking an earlier effective date, the United States Court of Appeals for Veterans Claims (Veterans Court) affirmed the Board's determination. *Id.* at 16a-34a. The United States Court of Appeals for the Federal Circuit (court of appeals) then affirmed the decision of the Veterans Court. *Id.* at 3a-15a.

1. Congress has provided that (with the exception of survivor benefits) "in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary" of Veterans Affairs, the applicant must file "a specific claim in the form prescribed by the Secretary." 38 U.S.C. 5101(a)(1)(A). For more than four decades, the VA has implemented that statutory directive through regulations such as 38 C.F.R. 3.151, which sets out the process by which the VA will receive and evaluate claims for pensions or compensation for service-connected disabilities. As relevant here, Section 3.151(a) provides that "[a] claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit." 38 C.F.R. 3.151(a).

Consistent with its regulation, the VA issued a form entitled "Veteran's Application for Compensation or Pension." *E.g.*, C.A. App. 21-24. That form included questions relevant to each type of benefit offered, such as "income received and expected from all sources" (for pension purposes) and "hospitals where you were treated for any sickness, injury or disease" (for service-related-disability purposes). *Id.* at 21, 23 (capitalization altered). The form also directed the applicant to complete (or not to complete) certain sections depending on the type(s) of benefit for which he claimed eligibility. *Id.* at 22-23.

2. a. From December 1953 until December 1956, petitioner served honorably on active duty in the United States Marine Corps. Pet. App. 4a. At one point during that term of service, petitioner received treatment for malaria. C.A. App. 32. His examination upon separation from the Marine Corps did not reveal any "residuals" (*i.e.*, persistent symptoms or aftereffects) of malaria. *Ibid.*

b. In September 1987, petitioner submitted a Veteran's Application for Compensation or Pension. Pet. App. 4a, 41a; C.A. App. 21-24. Petitioner provided the "net worth of veterans and dependents" on a section (Item 33) that the form instructed "should be completed ONLY if you are applying for non-service-connected pension." C.A. App. 23. In a separate section (Item 24) that inquired into the "nature of the sickness, disease or injuries for which the claim is made and date each began," petitioner responded "ce[r]e[b]ellar d[e]generative disorder" but did not list any dates. *Id.* at 22. Petitioner also included a July 1986 statement from a physician attesting that he "has a cerebellar degenerative

disorder and has slurred speech [and] balance problems due to that." Pet. App. 18a.

Lower on the form, Items 26, 27, and 28 requested information about treatment the applicant had received for disability or sickness, either "during or since your service." C.A. App. 22-23. The form explained that "Items 26, 27 and 28 need NOT be completed unless you are now claiming compensation for a disability incurred in service." *Id.* at 22. Petitioner entered "N/A" as to each of those items. *Id.* at 22-23.

Like the current regulation, the version of Section 3.151(a) that was in effect at that time stated that "[a] claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit." 38 C.F.R. 3.151(a) (1987). The VA Regional Office construed petitioner's submission as an application for pension only, not as additionally seeking compensation for a service-connected disability. Pet. App. 5a. Accordingly, in September 1987, the VA informed petitioner that it had received his "application for pension benefits." C.A. Supp. App. 2. And in December of that year, the VA granted petitioner's claim for a $517 monthly pension. C.A. App. 29; Pet. App. 5a. That decision made no reference to cerebellar degeneration or to compensation for any other disability. C.A. App. 29. Petitioner did not appeal the VA's decision. Pet. App. 18a.

c. In September 1999, petitioner filed a claim seeking a determination of service connection for malaria and any residuals caused by malaria. Pet. App. 18a. In July 2002, the VA Regional Office granted service con-

nection for petitioner's malaria but assessed a non-compensable rating, explaining that there was no evidence of disabling malaria residuals. *Id.* at 5a, 19a, 42a-43a; C.A. App. 31-33. On July 14, 2003, petitioner filed a Notice of Disagreement with the non-compensable rating, asserting that doctors had told him that his malaria and high fever could have caused his speech and balance disorders. Pet. App. 19a, 43a.

Over the next several years, the VA "issued several decisions and conducted significant development" on petitioner's disability claim. Pet. App. 20a. Ultimately, in September 2013, the Board determined that petitioner's cerebellar degeneration qualified as service-connected. C.A. App. 51. The Board explained that the available evidence was "in a state of equipoise" as to whether petitioner's cerebellar degeneration had in fact resulted from the malaria he contracted during service, and that the agency was resolving that question in petitioner's favor. *Ibid.* The VA Regional Office then implemented the Board's decision, assigning a 100% disability rating and an effective date of February 3, 2005. *Ibid.* Consistent with that determination, petitioner received a $250,000 retroactive benefit payment. C.A. Supp. App. 4-5.

d. Petitioner disputed the February 3, 2005, effective date, contending that he should be compensated beginning as early as September 1987, when he had first submitted his Application for Compensation or Pension. Pet. App. 5a-6a. The VA Regional Office granted petitioner's request in part, revising his effective date to July 14, 2003—the date he had submitted a Notice of

Disagreement as to the non-compensable rating.* *Id.* at 6a; C.A. App. 40-43.

In October 2020, the Board denied petitioner's request for a September 1987 effective date. Pet. App. 6a. The Board determined that petitioner's original 1987 application had not included an unadjudicated service-connected-disability-compensation claim, but rather had sought only pension benefits. *Id.* at 6a, 17a. Specifically, the Board found that, "[i]n light of the sections [petitioner] did complete and the ones in which he only entered 'N/A' there is no suggestion of an intention on [petitioner's] part to make a claim for service connected disability benefits [*i.e.*, compensation] in addition to the non-service connected pension benefits." *Id.* at 41a.

e. The Veterans Court affirmed the Board's denial of an earlier effective date. Pet. App. 16a-34a. The court determined that, under 38 C.F.R. 3.151(a), the "VA *may* consider a claim for pension to include a claim for compensation, but it is not *required* to do so." Pet. App. 23a. The court relied on its earlier decision in *Stewart* v. *Brown*, 10 Vet. App. 15 (1997), which had read Section 3.151(a)'s permissive language to mean that "the Secretary has to exercise his discretion under the regulation in accordance with the contents of the application and the evidence in support of it," *id.* at 18. The court concluded that "[t]he Board did so here" when the Board determined that petitioner's 1987 application had indicated that he was seeking only a pension and not any service-connected-disability benefits. Pet. App. 23a.

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* In this Regional Office decision, as well as in the Board and Veterans Court decisions, petitioner's condition is referred to as "cerebral" (rather than "cerebellar") degeneration. C.A. App. 40-43; Pet. App. 17a, 35a.

3. The court of appeals affirmed. Pet. App. 3a-15a. The court rejected petitioner's assertion that 38 C.F.R. 3.151(a) required the VA to treat his 1987 application as a claim for both pension benefits and disability compensation. Pet. App. 8a. The court explained that the language of 38 C.F.R. 3.151(a)—specifically, the word "may" used in its second sentence—"is a permissive word, not a command." Pet. App. 10a. Accordingly, the court determined that "[t]he plain language of [Section] 3.151(a) * * * establishes that the VA is allowed, but not required, to consider a pension claim as a compensation claim, and vice versa." *Id.* at 11a.

Petitioner's contrary reading "relie[d] primarily on the third sentence of the regulation"—which states that "'[t]he greater benefit will be awarded, unless the claimant specifically elects the lesser benefit'"—to deprive the VA of the discretion conferred by the second sentence. Pet. App. 11a-12a (citation omitted). The court of appeals rejected that argument, noting that petitioner's reading "would effectively have us rewrite the plain language of [Section] 3.151(a) from 'may be considered' to 'will be considered.'" *Id.* at 12a. That atextual gloss was not warranted, the court explained, because the third sentence's "specific[] elec[tion]" language served a "simpl[e] function[]" consistent with the plain text: "provid[ing] the veteran with the ability to choose which benefit he wishes to elect *when* the VA evaluates his claim for both pension and compensation." *Ibid.* (brackets and citation omitted).

The court of appeals also found support for its interpretation in "[t]he overall regulatory scheme." Pet. App. 13a. An adjacent VA regulation governs "claim[s] by a surviving spouse or child for compensation or dependency and indemnity compensation." 38 C.F.R.

3.152(b)(1). Section 3.152(b)(1) mirrors the structure of Section 3.151(a) except that the former uses the word "will" rather than "may," directing that a survivor's compensation or dependency claim "will also be considered to be a claim for death pension and accrued benefits," and vice versa. *Ibid.* In the court's view, the different language used in these otherwise-parallel provisions demonstrates that "if the VA intends to impose a requirement on itself, it does so with compulsory language." Pet. App. 13a.

Finally, the court of appeals identified "no basis to apply" the "pro-veteran canon of interpretation" because it could "find no 'interpretive doubt'" as to the import of the regulation's plain language. Pet. App. 14a. The court accordingly applied the plain text of Section 3.151(a), and it upheld the VA's decision to treat petitioner's 1987 application as an application for pension. *Ibid.*

ARGUMENT

Petitioner challenges (Pet. 18-36) the Federal Circuit's interpretation of 38 C.F.R. 3.151(a), which permits the VA, when reviewing a veteran's Application for Compensation or Pension, to determine whether the veteran is requesting consideration for disability-related compensation or for a pension unrelated to a service-connected disability, or for both. The court of appeals correctly interpreted the regulation, and its decision does not conflict with any decision of this Court or of another court of appeals. In addition, the petition for a writ of certiorari rests on a new legal theory that petitioner did not advance below and that the Court should not consider in the first instance. In recent years, moreover, the VA has modified the relevant benefits applica-

tion in a manner that diminishes the prospective importance of the question presented. Further review is not warranted.

1. The court of appeals correctly interpreted 38 C.F.R. 3.151(a) to afford the VA discretion in construing veterans' applications for benefits. That determination was faithful to the plain text of the regulation and consistent with the broader regulatory context. See *Leocal* v. *Ashcroft*, 543 U.S. 1, 9 (2004) ("[W]hen interpreting a statute * * * we construe language * * * in light of the terms surrounding it."). None of petitioner's contrary arguments—including those raised for the first time here—demonstrates an error in the decision below.

a. Section 3.151(a) provides, *inter alia*, that "[a] claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation." 38 C.F.R. 3.151(a). "The word 'may' *clearly* connotes discretion." *Biden* v. *Texas*, 597 U.S. 785, 802 (2022) (citation omitted); see *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 518 (1994) ("The word 'may' in [a statute governing attorney's fees] clearly connotes discretion in awarding such fees, and an automatic award would pretermit the exercise of that discretion."). The court of appeals correctly understood the regulation to provide that "the VA may exercise its discretion to consider a claim for a pension to also be a claim for compensation, and vice versa, but the VA is not required to do so." Pet. App. 10a.

As the court of appeals correctly recognized, Pet. App. 13a, that interpretation of Section 3.151(a) is consistent with the broader regulatory context. Specifically, 38 C.F.R. 3.152(b)(1), which relates to survivors' claims arising after a veteran's death, states that "[a]

claim by a surviving spouse or child for compensation or dependency and indemnity compensation *will* also be considered to be a claim for death pension and accrued benefits" and vice versa. 38 C.F.R. 3.152(b)(1) (emphasis added). Given the similar subject matter, close proximity, and parallel structure of Sections 3.151(a) and 3.152(b)(1), the court correctly inferred from the mandatory term "will" in the latter provision that, "if the VA intends to impose a requirement on itself, it does so with compulsory language." Pet. App. 13a. And "'where [the drafting body] includes particular language in one section of a [regulation] but omits it in another section of the same [regulation], it is generally presumed that [the drafter] acts intentionally and purposely in the disparate inclusion or exclusion.'" *Duncan* v. *Walker*, 533 U.S. 167, 173 (2001) (brackets and citations omitted).

The court of appeals' determination is also consistent with another nearby provision, 38 C.F.R. 3.303(a). Section 3.303(a) requires that service connection (when unrelated to a statutory presumption of connection) must be established "by evidence" "affirmatively showing inception or aggravation during service." *Ibid.* Because an "affirmative[] showing," *ibid.*, requires evidence "[s]upporting the existence of [the requisite] facts," *Black's Law Dictionary* 72 (12th ed. 2024) (defining "Affirmative"), Section 3.303(a) is sensibly understood to require the claimant to make a threshold claim of service connection in order to receive an evaluation of eligibility for a service-connected benefit, such as disability compensation. That regulation accordingly buttresses the court of appeals' determination that "the VA is not required to" construe every application as both "a claim for a pension * * * [and] a claim for compensation." Pet. App. 10a.

b. Petitioner's counterarguments do not identify any error in the court of appeals' understanding of 38 C.F.R. 3.151(a).

i. The petition for a writ of certiorari reflects an interpretation of Section 3.151(a) that petitioner did not advance at any previous stage of this litigation. Petitioner argued below that the VA *must* consider every application for either pension or service-connected disability compensation as an application for both benefits, contending that 38 C.F.R. 3.151(a) "gives no 'discretion' to the Secretary 'in determining how to construe such claims.'" Pet. C.A. Br. 11 (citation omitted). Before this Court, however, petitioner asserts only that the VA lacks "*unbounded* discretion," and that the agency "must * * * process[] a disability claim as a claim for both pension and compensation if the veteran has a possible entitlement to both pension and compensation eligibility." Pet. 19. Petitioner now concedes (*ibid.*) that "[t]his does not mean the VA is required to conduct a compensation and pension benefits analysis in *every* case."

Petitioner thus appears to agree with the court of appeals' conclusion that the VA has discretion when construing applications for benefits. To be sure, the Federal Circuit also appropriately recognized the "possibility that the Veterans Court could find certain exercises of VA discretion under [Section] 3.151(a) [to] constitute an abuse of [its] discretion," if (for example) "'the record was replete with evidence showing that the veteran qualified for disability compensation.'" Pet. App. 11a n.3 (quoting *Stewart* v. *Brown*, 10 Vet. App. 15, 18-19 (1997)). But petitioner's new argument boils down to a disagreement with the court's application of that standard to his case—the type of factbound contention that would not warrant this Court's review even if it had

been preserved below. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."); *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (This Court's "traditional rule * * * precludes a grant of certiorari * * * when the question presented was not pressed or passed upon below.").

ii. To the extent petitioner renews some form of the argument he made below, his contention lacks merit. In particular, the court of appeals correctly rejected petitioner's assertion that the third sentence of Section 3.151(a) should be interpreted to mandate the VA's consideration of every claim for pension to also be a claim for compensation, and vice versa. Pet. App. 11a-12a. That sentence provides that "[t]he greater benefit will be awarded, unless the claimant specifically elects the lesser benefit." 38 C.F.R. 3.151(a). The court interpreted the election-of-benefits provision in harmony with the rest of the regulation by "read[ing] the third sentence * * * as providing the rule of decision for those instances *when* the VA considers both types of benefits." Pet. App. 12a. The court's reading was consistent with the "cardinal rule" that, "if possible, effect shall be given to every clause and part of a [provision]." *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U.S. 204, 208 (1932). The court thus appropriately declined petitioner's invitation to "rewrite the plain language of [Section] 3.151(a) from 'may be considered' to 'will be considered.'" Pet. App. 12a.

Petitioner asserts (Pet. 16) that the court of appeals implausibly construed Section 3.151(a)'s third sentence "as speaking only to the highly-unlikely scenario in which a destitute and disabled veteran applies for both compensation and pension benefits and then specifically

elects the lesser monetary award at the end of a years-long VA claims process." That is wrong twice over. First, the court of appeals did not limit the third sentence to situations in which the veteran applies for both compensation and pension benefits. Rather, the court recognized the VA's discretion to determine whether the veteran intended to seek only one particular benefit or both benefits. Second, there is nothing inherently implausible—much less "so absurd or contrary * * * as to call into question [the court's] construction of the plain meaning," *United States* v. *John Doe, Inc. I*, 481 U.S. 102, 110 (1987)—about giving a veteran who is eligible for both benefits the right to elect between them. For example, a veteran might prefer to receive a pension if an award of VA disability benefits would limit his receipt of disability benefits from another source.

iii. Finally, petitioner contends (Pet. 6-7, 20) that the court of appeals should have construed "the third sentence [a]s a specific application of the VA's duty to affirmatively assist veterans in developing all available claims, and to maximize the benefit awarded." In support of that theory, petitioner invokes (*ibid.*) the VA's duty to maximize benefits under 38 C.F.R. 3.103(a) and its duty to assist veterans in substantiating claims under 38 U.S.C. 5103A and 38 C.F.R. 3.159. Each of those provisions, however, is triggered by a veteran's submission of a claim; they do not require the VA to evaluate eligibility for benefits that the veteran has not sought. See 38 U.S.C. 5103A(a)(1) ("The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary."); 38 C.F.R. 3.159(b)(1) ("[W]hen VA receives a complete or substantially complete initial or supplemental claim,

VA will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim."); 38 C.F.R. 3.159(c) ("VA has a duty to assist claimants in obtaining evidence to substantiate all substantially complete initial and supplemental claims."); 38 C.F.R. 3.103(a) ("[I]t is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.").

In the proceedings below, moreover, petitioner failed to develop any argument premised on the VA's duty to assist veterans in specified circumstances. See Pet. App. 26a n.62 (Veterans Court's finding that this "argument is undeveloped" and would not be "consider[ed] further" because petitioner "only makes generic citations to the laws establishing VA's duties to notify and assist" without "apply[ing] any specific part of [S]ections 5103 or 5103A, or [Section] 3.159, to the facts of his claim"); *id.* at 11a n.3 (court of appeals' finding that, while "the VA's statutory duty to assist, as set out in [Section] 5103A, may *require* the VA to consider a pension claim as a claim for both pension and compensation benefits" "under certain circumstances," petitioner "does not argue that such circumstances are present here"). Petitioner offers no reason for this Court to depart from its "normal practice * * * to refrain from addressing issues not raised in the Court of Appeals." *EEOC* v. *Federal Labor Relations Auth.*, 476 U.S. 19, 24 (1986) (per curiam).

2. Petitioner also urges (Pet. 33-36) this Court to grant certiorari to "resolv[e] the role of the veterans canon in the interpretation of veterans' benefit laws" in light of the Court's decisions in *Kisor* v. *Wilkie*, 588 U.S.

558 (2019), and *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024). That course is not warranted.

In the proceedings below, the government did not invoke, and the court of appeals did not apply, any form of deference to the VA's interpretation of Section 3.151(a). Instead, the court resolved the interpretive question for itself, in reliance on the regulation's "plain language" and its place in "[t]he overall regulatory scheme." Pet. App. 11a, 13a. Indeed, the court of appeals cited this Court's decision in *Kisor* only for the proposition that a "'court cannot wave the ambiguity flag just because it [finds a] regulation impenetrable on first read.'" *Id.* at 12a (citation omitted; brackets in original). Consistent with this Court's admonition that "there is no plausible reason for deference" where "uncertainty does not exist," *Kisor*, 588 U.S. at 574-575, the court of appeals thus did not defer to the VA's interpretation of Section 3.151(a).

The court of appeals likewise did not err in declining to apply the pro-veteran canon to unambiguous regulatory text. The pro-veteran canon, which holds that "provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor," *Henderson* v. *Shinseki*, 562 U.S. 428, 441 (2011) (citation omitted), has no relevance where the case can be "resolve[d] * * * on statutory text alone," *Rudisill* v. *McDonough*, 601 U.S. 294, 314 (2024); see *Arellano* v. *McDonough*, 598 U.S. 1, 14 (2023) (declining to apply pro-veteran canon to unambiguous statutory language because "the nature of the subject matter cannot overcome text and structure"). Because "the statutory text and traditional tools of statutory interpretation" are adequate to resolve most cases, members of this Court

have recognized "the canon's seemingly nonexistent impact on this Court's decisions." *Rudisill*, 601 U.S. at 316 (Kavanaugh, J., concurring); *id.* at 329 (Thomas, J., dissenting). But whatever utility the pro-veteran canon may have in a case where the relevant provision is genuinely ambiguous, it cannot carry the day where, as here, text and context clearly point the other way. *Arellano*, 598 U.S. at 13-14; see *Chickasaw Nation* v. *United States*, 534 U.S. 84, 94 (2001) ("[C]anons are not mandatory rules," but instead "guides * * * designed to help judges determine the Legislature's intent as embodied in particular statutory language."). The court of appeals thus correctly concluded that "no basis [exists] to apply the pro-veteran canon of interpretation" to Section 3.151(a), whose "plain language and * * * context in the regulatory scheme as a whole unambiguously establish that the VA has discretion to determine that a veteran is solely seeking pension or compensation benefits." Pet. App. 14a.

3. Even if petitioner could identify some error by the court of appeals, this case would not satisfy any of the Court's traditional certiorari criteria. Sup. Ct. R. 10. Petitioner does not contend that the decision below conflicts with any decision of this Court or of another court of appeals. And as discussed above (see pp. 11-12, *supra*), the petition proposes an interpretation of the regulation that was neither pressed nor passed upon below.

Petitioner asserts (Pet. 3) that the question presented warrants review because it will affect a "significant number[] of disabled veterans" who are potentially eligible for both compensation and pension benefits. But there is no reason to assume that veterans who believe their disabilities are connected to their prior military service will fail to indicate as much (and provide

accompanying evidence) when applying for benefits. When a particular veteran does not assert such an entitlement, neither Section 3.151(a) nor any other regulatory or statutory provision requires the VA to develop a potential claim to service connection that the veteran has not pursued. And if a veteran believes that the VA has misunderstood the benefit that he was seeking through his application, he can alert the VA to that fact—something petitioner failed to do. See p. 4, *supra*.

Finally, the VA's revision of its benefits application in the decades since petitioner submitted his form is likely to diminish the prospective importance of the question presented. In 2009, the VA retitled the relevant form "Application for Compensation and/or Pension," and it added a new Item 1 asking "for what benefit are you applying," with the options of "compensation," "pension," and "both compensation and pension." VA Form 21-526 (Sept. 2009). And by 2023, the VA had adopted separate applications for pension (VA Form 21P-527EZ) and compensation for a service-connected disability (VA Form 21-526EZ). Accordingly, to the extent petitioner believes that the VA's previous use of the same application for both types of benefits created "a 'trap for the unwary,'" Pet. 18 (citation omitted), subsequent agency action has obviated any such concerns.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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