No. 25-482

IN THE
Supreme Court of the United States

JULIEN P. CHAMPAGNE,
Petitioner,

v.

DOUGLAS A. COLLINS, SECRETARY OF VETERANS AFFAIRS
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

Julien Champagne served abroad where he contracted malaria that caused cerebellar degeneration disorder—a debilitating condition that the VA now acknowledges is service-connected. Yet he has been denied over $400,000 in disability benefits because the VA narrowly construed his initial claim based on an erroneous interpretation of a VA claims-processing regulation. That interpretation, which has already affected hundreds of veterans, first emerged as a litigation-driven position and conflicts with the agency's prior interpretation and decades of practice.

The Government's position renders effectively obsolete a regulation designed to protect disabled veterans. Under 38 C.F.R. § 3.151(a) and the statutory and regulatory duties to help veterans seeking benefits develop their claims, the VA is generally required to consider a pension claim as a compensation claim and award "[t]he greater benefit." Instead, the VA claims unfettered discretion to divine a veteran's subjective intent in filling out a claim form and limit benefits accordingly. This approach betrays the foundational promise of our veterans-benefits system: that those who served will not lose entitlements because of adversarial bureaucracy.

The Solicitor General's arguments against certiorari are meritless: this is an ideal vehicle to address the question presented and its salience is unaffected by the VA's periodic variation of its application forms. This Court's intervention is necessary to restore the pro-veteran, non-adversarial system Congress established.

ARGUMENT

I. The Solicitor General's certworthiness arguments are unpersuasive.

The Solicitor General does not contest that the question presented is enormously important—involving life-changing amounts in benefits for our country's most vulnerable former servicemembers. He nonetheless offers several deeply flawed arguments opposing certiorari.

First, the Solicitor General contends that the petition presents an argument not pressed below. Opp. 11-12, 16-17. That is wrong. Mr. Champagne has consistently argued that 38 C.F.R. § 3.151(a) requires the VA to treat his 1987 application as a claim for both pension and compensation. In support, he contended that the VA erred—ever since *Stewart v. Brown*, 10 Vet. App. 15 (1997)—in interpreting § 3.151(a) as conferring "unfettered discretion to the Board to determine which benefit will be awarded." Pet. C.A. Br. 5; *see, e.g., id.* at 1. In his case (where there was a potential for both benefits), he maintained that "both pension and service connection should have been adjudicated to determine the greater benefit." *Id.* at 9. And he explained that "the permissive nature of the first half of the statute was put in place to allow the VA to inure the greater benefit to the Veteran." *Id.* at 12; Pet. C.A. Reply Br. 5.

The Solicitor General nonetheless construes the petition's acknowledgment (at 19) that the VA need not consider both benefits when there is *no conceivable entitlement* to both as a concession that the regulation confers "discretion" on the VA. Opp. 11. Nonsense. The petition simply undertakes a contextual

and common-sense reading of the regulation: it *requires* the VA to affirmatively assist veterans in developing all available claims and to maximize the benefit awarded, but at the same time does not create make-work for VA employees when entitlement to pension or compensation is impossible. Pet. 19-20.

It is also the same position Mr. Champagne advanced in his en banc petition, which highlighted that the issue presented was "whether VA regulation 38 C.F.R. § 3.151(a) … requires VA to evaluate disability claims for any potential pension *and* compensation eligibility to ensure that each veteran receives the greater available amount by default." Pet. C.A. Pet. for Reh'g 1; *id.* at 7. He acknowledged that § 3.151(a) "does not require VA to treat *every* pension claim as a compensation claim, and vice versa—for example, pension claims based on old age rather than a disabling condition need not be evaluated for compensation." *Id.* at 12. The Solicitor General is simply wrong to say Mr. Champagne offers a new argument in this Court.[1]

Second, the Solicitor General observes that the petition does not implicate a circuit split. Opp. 16. Of course it doesn't; the Federal Circuit has exclusive jurisdiction over veterans' appeals. 38 U.S.C. § 7292. As a result, now that the Federal Circuit has opined

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[1] The Solicitor General's suggestion (at 14) that Mr. Champagne did not previously "develop" his arguments about the VA's duty to assist veterans likewise ignores the briefing below. Pet. C.A. Br. 14; Pet. C.A. Reply Br. 6, 8-11; Pet. C.A. Pet. for Reh'g 2, 4, 11-12, 16-18. Regardless, nothing forecloses litigants from further "developing" their legal arguments in this Court; the Solicitor General does precisely that in numerous respects.

on the issue in a published decision and denied rehearing en banc, there will be no further percolation. Pet. 4. This highlights, rather than detracts from, the need for this Court's oversight.

Relatedly, the Solicitor General argues that the petition does not point to a conflict with this Court's decisions. Opp. 16. Wrong again. As the petition explains, the Federal Circuit's decision conflicts with this Court's directive that veteran-benefit provisions be read as part of an "organic whole" in harmony with the "singular characteristics of the review scheme that Congress created for the adjudication of veterans' benefits claims." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946); *see Henderson v. Shinseki*, 562 U.S. 428, 440 (2011). The Federal Circuit, in contrast, relied on a single word in isolation. Pet. 6-7, 18-24, 26-28.

The petition similarly explains that the Federal Circuit's approach to the veteran's canon—as a tool of last resort only after finding grievous ambiguity—conflicts both with this Court's decisions explaining that the canon is a "guiding principle," *Ala. Power Co. v. Davis*, 431 U.S. 581, 584 (1977), and "basic rule[] of statutory construction," *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220-221 & n.9 (1991) (citation omitted), and with this Court's recent admonition that courts have an obligation to use "all [the] interpretive tools" of construction to find the best meaning of a statute of a regulation, rather than search for ambiguity, *Kisor v. Wilkie*, 588 U.S. 558, 576 (2019); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 393 (2024). *See* Pet. 22-24, 33-36.

Third, the Solicitor General contends that the question presented is of diminished importance because of revisions to VA benefits applications since 2009. That is wrong too. As discussed at length, Pet. 8-9, the VA's forms have changed repeatedly and previously included separate compensation and pension forms. The crux of § 3.151(a)'s protection is to ensure that veterans receive their proper entitlements irrespective of the vagaries in the VA's ever-changing forms and veterans' inevitable mistakes and misunderstandings. Indeed, separate forms risk creating an even greater trap, as veterans may not realize multiple options exist.

Moreover, the VA's changes do nothing for the myriad veterans, like Mr. Champagne, who fell into the trap decades ago and are now seeking to recover their rightfully earned entitlements. This type of retroactive benefit adjustment happens frequently, including when information emerges regarding the root causes of medical issues. *See* Hugh B. McClean, *Delay, Deny, Wait Till They Die*, 72 SMU L. Rev. 277, 286-287 (2019) (noting ability to reopen claims in light of new evidence and long delays in recognizing PTSD and service-connection of Agent-Orange-related illnesses). The question presented will continue to affect claims that were initially made in the past few decades. The change in forms has no impact on those claims—many of which are still percolating, and many more of which may not yet have been raised.

Furthermore, the Solicitor General's "assum[ption]" that veterans can indicate their service-connection clearly on claim forms (Opp. 16) ignores that many veterans with significant disabilities do not have the "mental competence, the ability to recount

specific traumatic details, maintain medical records, [or] comprehend procedural rules prescribed by the Secretary." NLSVCC Amicus Br. 4; *id.* at 2-3. His narrow reading of the regulation penalizes veterans for the neurological consequences of their service. *Id.*

Finally, despite spending most of his brief disagreeing with Mr. Champagne's interpretation of § 3.151(a), the Solicitor General suggests (at 11) that there is actually no *legal* disagreement between the parties but rather only disagreement about the application of an undisputed legal standard to the facts. That makes no sense, and the Federal Circuit did not see it that way—it viewed the dispute as one of interpretation, and sided with the Government. Pet. App. 10a-14a. If this Court adopts Mr. Champagne's interpretation, it would be outcome-determinative.

II. The Solicitor General's merits arguments underscore the need for this Court's review.

A. The Solicitor General's defense of the decision below bears no resemblance to our nation's pro-veteran, non-adversarial system.

1. Even though the VA now acknowledges that Mr. Champagne's cerebellar degeneration disorder ("CDD") is related to his wartime service in Korea, the VA withheld over $400,000 in benefits because of Mr. Champagne's supposed error in filling out an application form or his failure to understand the root cause of his CDD. And while that perverse outcome is *precisely* what § 3.151(a) is supposed to prevent, the Solicitor General defends it as a reasonable exercise of the VA's "discretion."

The regulation's plain text, along with its context and history, guards against exactly such traps for unwary veterans by requiring the VA to consider a claim for one kind of disability benefit as a request for the benefit the veteran *did not claim* in order to maximize the veteran's benefits. 38 C.F.R. § 3.151(a). It states 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." *Id.* In other words, the regulation does *not* put the onus on the veteran to apply for the correct type of benefit. *See* Pet. 18-24.

The Solicitor General does not dispute that the VA took Mr. Champagne's view for many decades. Pet. 24-26. But following an abrupt about-face first taken by the VA in litigation, the Solicitor General now embraces the notion that the VA need not maximize veterans' benefits and, instead, can deny benefits based on perceived errors made by veterans when filling out benefit-application forms or if veterans misunderstand the benefits they are entitled to pursue. The Solicitor General contends that the VA's duty begins only when a "threshold claim" is presented to the agency and that it is the responsibility of each veteran to correctly tee up the appropriate "claim" and present the right "evidence" that "affirmatively show[s]" an entitlement to relief. Opp. 9-10 (citing 38 C.F.R. § 3.303(a)). At bottom, the Solicitor General's position is that the VA need not *assist* veterans in developing all possible claims, but rather need only "construe[]" a veteran's application to determine which benefits the veteran subjectively intended to seek, and courts must then defer to the "discretion" exercised by the VA in construing a veteran's intent in filling out a claim form. Opp. 4, 6; *see* Opp. 8 (arguing that § 3.151(a)

"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" (emphasis added)).

The Solicitor General fundamentally misperceives the constellation of duties owed to veterans, and his position is completely at odds with the text and context of the regulation. The VA's obligation under § 3.151(a) is not conditioned on the veterans' subjective belief of entitlement to any specific benefit and consequent intent to apply for that benefit. If that were the case, it would make no sense for the regulation to provide that "[a] claim by a veteran for compensation may be considered to be a claim for pension" and vice versa, much less that "[t]he greater benefit will be awarded, unless the claimant specifically elects the lesser benefit." § 3.151(a).

Indeed, a rule that turns on a determination of the subjective intent of the claimant has no place in the veterans-benefits context, which is uniquely *pro*-claimant and *non*-adversarial. *Henderson*, 562 U.S. at 440. Instead, once the veteran has identified his disability and made a claim based on his condition, it is the VA's duty to identify the benefits to which the veteran may be entitled, develop the appropriate evidence, and maximize the veteran's entitlement. *See* 38 U.S.C. § 5103A (statutory duty to assist); 38 C.F.R. § 3.103(a) (duty to maximize).

To be sure, it *used to* be the rule that claimants had to establish a "well-grounded claim" before they were entitled to VA assistance. But Congress expressly overturned that rule in enacting 38 U.S.C. § 5103A,

which places the affirmative duty *on the VA* to assist claimants in obtaining the evidence necessary to support a potential claim whenever any "reasonable possibility" exists that the assistance would help to substantiate the claim. 38 U.S.C. § 5103A; *Paralyzed Veterans of Am. v. Sec'y of Veterans Affs.*, 345 F.3d 1334, 1339 (Fed. Cir. 2003) (The "new § 5103A(a) imposes on VA a duty to assist a claimant by making reasonable efforts to assist him or her in obtaining evidence necessary to substantiate a claim for benefits."); *De Hart v. McDonough*, 37 Vet. App. 371, 380 (2024) (duty to assist "reflect[s] the pro-claimant nature of veterans law and acknowledge[s] that it 'is the Secretary who knows the provisions of title 38 and can evaluate whether there is potential under the law to compensate an averred disability based on a sympathetic reading of the material in a pro se submission'"). Limiting veterans to the specific claims they filed—and, even worse, to the VA's "discretion" to determine what claims a veteran subjectively intended to file—defies § 5103A, as well as the VA's duties to sympathetically construe pro se filings, duty to maximize benefits, and the specific duty to award veterans seeking compensation or pension with "[t]he greater benefit …, unless the claimant specifically elects the lesser benefit," 38 C.F.R. § 3.151(a). *See* Pet. 6-7.

2. The stark reality faced by wartime veterans facing service-connected disabilities makes a contrary interpretation untenable. The Solicitor General breezily posits that "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." Opp. 16-17. But the hundreds of administrative and Veterans Court decisions that

have relied on the VA's current interpretation proves otherwise, Pet. 29-30, and Amicus National Law School Veterans Clinic Consortium explains why: veterans seeking benefits almost always act pro se, without knowledge of the benefits framework, without expert medical knowledge, and at times with profound mental disabilities. NLSVCC Amicus Br. 4-10, 22. In many situations even *the medical community* does not understand the connection between certain disabilities and military service for many years. *See* Pet. 30-31.

Mr. Champagne's experience is a perfect example. As the Solicitor General tells it, the VA reasonably exercised its discretion to determine that Mr. Champagne sought pension benefits and not service-connected benefits. Opp. 3-4. But a closer examination shows that Mr. Champagne was reasonably uncertain about how to complete his application and regardless, he was understandably uncertain about the service-connection of his CDD.

Starting with his application, the Solicitor General suggests that if Mr. Champagne wanted to seek service-connection benefits, then he should have completed Items 26, 27, and 28 on the 1987 claim form. *Id.* at 3-4. 6. But Items 26, 27, and 28 each instruct a claimant seeking benefits for disabilities to provide information only about sicknesses for which they received "treatment while in service." C.A. App. 22-23 (all referring to sicknesses shown in item 26A). Mr. Champagne received no treatment for CDD while in service—that condition only manifested many years later. Pet. 11. Accordingly, he answered "N/A." The implication of the Solicitor General's argument—that Mr. Champagne should have understood both that

these questions referred to *any* service-related sickness, and also that his CDD was service-connected even before his physicians had that understanding—would wrongly turn the veterans-benefits system into "a trap for the unwary, or a stratagem to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him." *Comer v. Peake*, 552 F.3d 1362, 1369 (Fed. Cir. 2009).

That Mr. Champagne has now lost over $400,000 in benefits for a disability that the Solicitor General acknowledges (at 5) was *service-related* shows how far the VA has strayed from Congress's intentionally pro-veteran system, which must assist veterans in obtaining their entitlements. The Solicitor General's position cries out for this Court's intervention.

B. The Solicitor General renders the centuries-old veterans canon obsolete.

Contrary to the Solicitor General's suggestion (at 15), the role of the veterans canon has even greater salience when the government declines to invoke (or cannot invoke) agency deference.

Because courts must independently determine the meaning of veterans' benefits provisions, the question of when the veterans canon applies has become pivotal. The Federal Circuit errs in viewing the canon as a tool of last resort contingent on "ambiguity," rather than a traditional tool of construction that informs the best meaning of a statute or regulation. Pet. 22-24, 32-36. That approach has long been flawed, but it is now untenable given this Court's recent decisions on agency deference. *Id.*

The Solicitor General responds only that § 3.151(a) is unambiguous. Opp. 14-16. But that simply repeats the Federal Circuit's flawed approach by rendering the veterans canon irrelevant absent ambiguity—which, under *Kisor* and *Loper Bright*, may never exist. This Court should reject that approach. Pet. 32-36. As explained by Military-Veterans Advocacy, Inc., the veterans canon is a long-standing tool of interpretation—one that should be used to determine a provision's best meaning—that this Court has endorsed for over 80 years. MVA Amicus Br. 17-25. Without this Court's intervention, that tool will become obsolete. Courts should not be allowed to routinely side-step this interpretive tool by declaring a veterans' benefits provision "unambiguous" while ignoring the pro-veteran context to which the canon points.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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