SUPREME COURT OF THE UNITED STATES

PHILIP SEIFLEIN, §
Petitioner, §
v. §
Douglas Collins, §
**Secretary of Veterans Affairs, CAFC No. 24-1090
et al., Respondents. §

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

Pursuant to Supreme Court Rule 13.5, Petitioner Philip Seiflein, pro se, respectfully applies for a 60-day extension of time, until March 5, 2026, to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Federal Circuit in *Seiflein v. McDonough*, No. 24-1090 (Fed. Cir. Aug. 8, 2025) (dismissal Appendix A 1), and its denial of rehearing and rehearing en banc (Oct. 6, 2025) (attached as Appendix A 2).

I. Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1), which authorizes certiorari review of final judgments from the courts of appeals.

II. Relevant Judgment

The Federal Circuit entered its order dismissing Petitioner's appeal on August 8, 2025, and denied his petition for rehearing and rehearing en banc on October 6, 2025 (Appendix A). The mandate issued on Oct. 17, 2025. The 90-day period for filing a certiorari petition expires on January 4,

2026. This application is filed more than 10 days in advance of that deadline.

III. Reasons for Extension

Good cause exists for the requested extension due to Petitioner's status as a 100% service-connected disabled veteran with documented mental health impairments (e.g., service-aggravated EPTS conditions rated 100% by the VA), filing pro se without resources for counsel or court-provided representation. These barriers, combined with the case's 50+ year complexity, limit his ability to compile the extensive record, research precedents, and draft a focused petition highlighting national importance under Rule 10 (e.g., systemic due process failures in VA proceedings for mentally afflicted veterans, affecting 1M+ claims annually per OIG/GAO reports). Petitioner requires additional time to:

- Gather and organize the joint appendix, including key documents from the BVA, CAVC, and Federal Circuit (estimated 200+ pages), such as 1969 VA-University of Miami hospital records establishing presumptive service connection (38 U.S.C. § 1110; 38 C.F.R. § 3.303) via inferred claims (*Shea v. Wilkie*, 926 F.3d 1362 (Fed. Cir. 2019)).
- Refine the petition to emphasize federal questions, such as whether arbitrary VCAA waivers (38 U.S.C. § 5103A) and evidence suppression (e.g., 2008 BVA ignoring submitted hospital records as "moot" despite conflicting 1969 denials) deny due process and ADA accommodations (29 U.S.C. § 794) for impaired claimants (*Bufkin v. McDonough*, 604 U.S. ___ (2025)).
- Address procedural dodges, including Judge Greene's three unreasoned denials (2011, 2023, May 16, 2025) creating an appearance of bias (*Young v. United States*, 535 U.S. 43 (2002)), false "missing response" citations, and failure to recuse or provide representation despite pro se/ADA requests—exemplifying CAVC's blame-shifting (e.g., "not being upset" about subsumption) and jurisdictional sidesteps on constitutional claims.
- Seek pro bono review from veterans' legal aid (e.g., NVLSP) and incorporate ongoing issues, like PCAFC ignoring BVA's 2025

caregiving clearance post-June 2025 fiduciary lift (binding under *Beaudette v. McDonough*, Fed. Cir. 2024). I would like to ask the Court for appointed representation if this is available, also.

Petitioner has acted diligently: Filing pro se throughout, including writ requests and rehearing, and securing the fiduciary lift via a clarifying doctor's letter and OIG involvement. A shorter extension would frustrate his intent to seek review on behalf of similarly situated disabled veterans, amid 134,000 backlogged claims (OIG 2025). No prejudice to Respondents, as the underlying existing approved VA benefits remain stayed.

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests a 60-day extension.

Respectfully submitted,

/s/

Philip Seiflein, Pro Se
10450 Darling Rd
Ventura, CA 93004

Dated: October 21, 2025

Certificate of Service

I hereby certify that on October 21, 2025, I served one copy of this application on counsel for Respondents via U.S. Mail (first-class, postage prepaid) to: TANYA KOENIG, United States Department of Justice Commercial Litigation Branch, Civil Division,1100 L Street, N.W., 9th Floor, Washington, 20530, DC for respondent-appellee, Douglas Collins, Secretary of the VA and et al. respondents **General Counsel** , Dept. of **Veterans** Affairs, 810 Vermont Avenue Northwest, Washington, DC 20420

/s/ Philip Seiflein

Attachments (Appendices):

- Appendix A2: Federal Circuit Order Denying Rehearing/En Banc (Oct. 6, 2025)—full copy.
- Appendix A1: Excerpt from CAVC/Fed. Cir. Dismissal (Aug. 8, 2025)—1-2 pages highlighting jurisdictional dodge/ignored constitutional claims.
- Appendix B1: from 2008 BVA/VA Decision (e.g., VCAA waiver and conflicting 1969 denials, without 1969 hospital records App B1 2008 BVA problem Hearing. complete summary).

  Additional support documents: Doctor's note describing the extreme exacerbation (and application of an incorrect diagnosis as EPTS) of the inoculation to the vet .

  A few archives showing lost records and claims which support the claim;

  AH1:Inoculation doc- medical proof of shots given

  AH6A &AH6b; conflictive decisions from first claim,

  AH8; hospital lost claim merger, if known at the time of rating, this case would be settled.

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NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

PHILIP J. SEIFLEIN,
Claimant-Appellant

v.

DOUGLAS A. COLLINS, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2024-1090

Appeal from the United States Court of Appeals for Veterans Claims in No. 21-6767, Senior Judge William P. Greene, Jr.

Decided: August 8, 2025

PHILIP J. SEIFLEIN, Ventura, CA, pro se.

TANYA KOENIG, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by MARTIN F. HOCKEY, JR., PATRICIA M. MCCARTHY, YAAKOV ROTH; DEREK SCADDEN, ANDREW J. STEINBERG, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

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Before REYNA, STOLL, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

Philip J. Seiflein appeals a decision of the United States Court of Appeals for Veterans Claims ("Veterans Court"), which affirmed a Board of Veterans' Appeals' ("Board") decision dismissing Mr. Seiflein's 2016 motion for revision. *Seiflein v. McDonough*, No. 21-6767, 2023 WL 6169073, at *1 (Vet. App. Sept. 22, 2023) ("*Decision*"), *appeal dismissed*, No. 24-1090, 2024 WL 49826 (Fed. Cir. Jan. 4, 2024), *opinion vacated, appeal reinstated*, No. 24-1090, 2024 WL 4820473 (Fed. Cir. Nov. 15, 2024). For the reasons discussed below, we *dismiss*.

I. BACKGROUND

Mr. Seiflein served in the U.S. Air Force for 29 days from November 6 to December 4, 1968. *Decision* at *1; S. App'x 29.[1] In December 1968, Mr. Seiflein sought Department of Veterans Affairs' ("VA") benefits, and the Regional Office ("RO") denied his application in 1969. *Decision* at *1; S. App'x 29.

On January 30, 1995, Mr. Seiflein again applied for VA benefits, and the VA awarded him service connection for a psychiatric disability effective on that date. *Decision* at *1; S. App'x 36. Mr. Seiflein subsequently filed a Notice of Disagreement seeking an earlier effective date and eventually appealed to the Board. *Decision* at *1; S. App'x 30.

In November 2009, the Board denied Mr. Seiflein's claim for an earlier effective date for his service-connected psychiatric disability. *Decision* at *1; S. App'x 30. In light

[1] We refer to the supplemental appendix filed with the government's informal response brief, ECF No. 38, as "S. App'x" throughout this opinion.

A1

of that denial, Mr. Seiflein appealed to the Veterans Court, which affirmed the Board's decision on September 30, 2011. *Decision* at *1; S. App'x 33.

Mr. Seiflein subsequently filed a motion for revision in late 2016, arguing that the November 2009 Board decision contained clear and unmistakable error ("CUE") in denying his entitlement to an earlier effective date before January 30, 1995. *Decision* at *1; S. App'x 15.

In October 2021, the Board dismissed Mr. Seiflein's 2016 motion for revision and determined that "the November 2009 Board decision concerning entitlement to an earlier effective date was appealed to and affirmed by the [Veterans] Court in September 2011." S. App'x 15; *Decision* at *1. Consequently, the Board concluded that "the November 2009 Board decision was subsumed by the [Veterans] Court's September 2011" decision and was "not capable of revision on the basis of CUE." S. App'x 15–16; *Decision* at *1. The Veterans Court affirmed the Board's decision, concluding that "[t]he Board correctly determined that the September 2011 [Veterans] Court decision subsumed the November 2009 Board decision on this issue; therefore the November 2009 decision is no longer subject to revision on this issue." *Decision* at *2.

Mr. Seiflein timely appealed.

II. DISCUSSION

"This court's jurisdiction to review decisions by the Veterans Court is limited." *Wanless v. Shinseki*, 618 F.3d 1333, 1336 (Fed. Cir. 2010). We "have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof . . . and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision." 38 U.S.C. § 7292(c). However, absent a constitutional issue, we lack jurisdiction to "review (A) a challenge to a factual determination, or (B) a challenge to a law or

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regulation as applied to the facts of a particular case." *Id.* § 7292(d)(2).

Mr. Seiflein argues that "[t]his case involves a series of procedural, medical, and administrative errors" that "justify a thorough de novo review of [his] case." Appellant's Br. 17–18.[2] Specifically, Mr. Seiflein argues that the VA failed to medically diagnose, treat, and assist him, failed to review existing or new evidence, and misapplied the law. *Id.* The government responds that Mr. Seiflein fails to raise any issues that fall within this court's jurisdiction. Appellee's Br. 7–12. We agree with the government.

We lack jurisdiction over Mr. Seiflein's appeal because Mr. Seiflein does not allege that the Veterans Court misinterpreted any statute or regulation. On appeal, Mr. Seiflein attempts to re-argue his underlying claim that there is CUE in the November 2009 Board decision but fails to point to any legal errors with respect to the relevant decision by the Veterans Court. *See* Appellant's Br. 6–18. His attempted re-argument amounts to "disagreements with how the facts were weighed or how the law was applied to the facts in this particular case, which we do not have jurisdiction to review." *Guillory v. Shinseki*, 669 F.3d 1314, 1320 (Fed. Cir. 2012); 38 U.S.C. § 7292(d)(2). As Mr. Seiflein fails to allege any issues of statutory or regulatory interpretation, we lack jurisdiction over his appeal.

Mr. Seiflein also argues that he was denied "the right to be heard, and a fair trial, with all of the evidence," Appellant's Br. 5 (emphasis in original), and that "VA law requir[es] a sympathetic view to all veterans," and especially "towards . . . mentally afflicted veteran[s]." *Id.* (cleaned up); *see also* Appellant's Reply Br. 2 (arguing that veterans suffering from mental afflictions are "left without adequate representation or due process safeguards." (emphasis

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[2] We cite to the ECF page numbers.

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omitted)). The government responds that "the Veterans Court did not decide any constitutional issues." Appellee's Br. 11. We agree with the government.

Despite Mr. Seiflein's arguments otherwise, the Veterans Court's decision does not address constitutional issues, as it merely rests on the application of settled law. *See Helfer v. West*, 174 F.3d 1332, 1335 (Fed. Cir. 1999) ("[An appellant's] characterization of [a] question as constitutional in nature does not confer upon us jurisdiction that we otherwise lack."). Therefore, Mr. Seiflein's alleged constitutional challenge does not change the fact that we lack jurisdiction over his appeal.[3]

III. CONCLUSION

We have considered Mr. Seiflein's remaining arguments and find that none of the arguments raises a nonfrivolous issue over which we can assert jurisdiction.[4] For the foregoing reasons, we *dismiss* for lack of jurisdiction.

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[3] Mr. Seiflein raises several other arguments including that the VA had "constructive possession of favorable evidence, lost and unanswered claims, [and] fail[ed] to waive CUE standards when requested." Appellant's Br. 11. Mr. Seiflein's remaining arguments are directed to questions of fact or the application of law to fact, which we do not have jurisdiction to review. *Guillory*, 669 F.3d at 1320; 38 U.S.C. § 7292(d)(2).

[4] Mr. Seiflein filed a "petition for writ of protection." *See* ECF No. 45. Subsequently, Mr. Seiflein moved to withdraw the petition for writ of protection and asks this court to "take judicial notice of the circumstances surrounding the filing of the [w]rit of [p]rotection and all supporting evidence." ECF No. 46 at 2. Upon consideration, the motion at ECF No. 46 is granted with respect to withdrawal of the petition for writ of protection and is otherwise denied.

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DISMISSED

COSTS

No costs.

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United States Court of Appeals for the Federal Circuit

PHILIP J. SEIFLEIN,
Claimant-Appellant

v.

DOUGLAS A. COLLINS, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2024-1090

Appeal from the United States Court of Appeals for Veterans Claims in No. 21-6767, Senior Judge William P. Greene, Jr..

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

FOR THE COURT

August 8, 2025
Date

Jarrett B. Perlow
Clerk of Court

A2

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

PHILIP J. SEIFLEIN,
Claimant-Appellant

v.

DOUGLAS A. COLLINS, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2024-1090

Appeal from the United States Court of Appeals for Veterans Claims in No. 21-6767, Senior Judge William P. Greene, Jr.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

PER CURIAM.

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[1] Circuit Judge Newman did not participate.

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ORDER

On August 14, 2025, Philip J. Seiflein filed a combined petition for panel rehearing and rehearing en banc [ECF No. 50]. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

September 17, 2025
Date

Jarrett B. Perlow
Clerk of Court

A2

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

PHILIP J. SEIFLEIN,
Claimant-Appellant

v.

DOUGLAS A. COLLINS, SECRETARY OF VETERANS AFFAIRS,
Respondent-Appellee

2024-1090

Appeal from the United States Court of Appeals for Veterans Claims in No. 21-6767, Senior Judge William P. Greene, Jr.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

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Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

September 17, 2025
Date

Jarrett B. Perlow
Clerk of Court

AH1

Standard Form 601
(Nov. 1952)
Bureau of the Budget
Circular A-52

LACKLAND TC OVERPRINT 19 (NOV 68)

HEALTH RECORD — IMMUNIZATION RECORD

All entries in ink to be made in block letters

VACCINATION AGAINST SMALLPOX (Number of previous vaccination scars)

	DATE	ORIGIN	BATCH NUMBER	RESULT* 3–5 DAYS	RESULT* 7–10 DAYS	STATION	PHYSICIAN'S NAME
1	2 NOV 1968	Wyeth Lab Freeze-Dried	25291			Lackland AFB, Texas	R. H. Brooks Col, USAF, MC
2							
3							
4							
5							
6							

*ENTER RESULTS AS: IMMEDIATE REACTION (or immunity); ACCELERATED REACTION (Vaccinoid); TYPICAL PRIMARY VACCINA

TRIPLE TYPHOID VACCINE

	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME		DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
1	2 NOV 68	0.5cc		R. H. Brooks	7				
2		0.5cc		R. H. Brooks	8				
3					9				
4					10				
5					11				
6					12				

TETANUS TOXOID AND DIPHTHERIA COMB.

	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME		DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
1	7 JAN 69	0.5cc		R. H. Brooks	4				
2		0.5cc		R. H. Brooks	5				
3					6				

SCHICK TESTING AND DIPHTHERIA IMMUNIZATION

	DATE	DOSE	REACTION	PHYSICIAN'S NAME		DATE	DOSE	REACTION	PHYSICIAN'S NAME
	TEST					TEST			
1					5				
2					6				
3					7				
4					8				

TYPHUS VACCINE

	DATE	DOSE	REACTION	PHYSICIAN'S NAME		DATE	DOSE	REACTION	PHYSICIAN'S NAME
1		1.0cc		R. H. Brooks	4				
2					5				
3					6				

CHOLERA VACCINE

	DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME		DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME
1					7				
2					8				
3					9				
4					10				
5					11				
6					12				

YELLOW FEVER VACCINE

	DATE	ORIGIN	BATCH NO.	STATION	PHYSICIAN'S NAME
1		National Drug Co.		Lackland AFB, Texas	R. H. Brooks, Col, USAF, MC
2					
3					

SEX	RACE	GRADE, RATING OR POSITION	ORGANIZATION UNIT	COMPONENT OR BRANCH	SERVICE, DEPT. OR AGENCY
					AF

PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME	DATE OF BIRTH (DAY-MONTH-YEAR)	IDENTIFICATION NO.
SEIBLIN PHILIP J		AF1841306

601-102

IMMUNIZATION RECORD
Standard Form 601

OTHER IMMUNIZATIONS

	DATE	TYPE	DOSE	REACTION	REMARKS	PHYSICIAN'S NAME
1	12 NOV 1968	Oral Polio #1-2-3				R. H. Brooks
2		Oral Polio #1-2-3				
3		Influenza	1cc			R. H. Brooks
4		Plague #1	1cc			R. H. Brooks
5		Plague #2	0.2cc			
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

SENSITIVITY TESTS (*Tuberculin, etc.*)

	DATE	TYPE	DOSE	ROUTE	RESULTS	PHYSICIAN'S NAME
1	12 NOV 1968	Tuberculin Tine				R. H. Brooks
2						Col, USAF, MC
3						
4						
5						
6						
7						
8						
9						
10						

REACTIONS (*To transfusions, drugs, sera, foods, allergens, etc.*)

	DATE	AGENT	TYPE OF REACTION	SEVERITY	PHYSICIAN'S NAME
1					
2					
3					
4					
5					

BLOOD TYPING

	DATE	TYPE (*International*)	RH FACTOR	PHYSICIAN'S NAME
1				
2				
3				

REMARKS AND RECOMMENDATIONS (*Including history of diseases for which any of the above immunizing agents were given with year and place of attack*)

ENTRIES WILL BE TRANSFERRED TO PHS FORM 731, INTERNATIONAL CERTIFICATE OF VACCINATION, AT PERNAMENT DUTY STATION.

THIS RECORD IS ISSUED IN ACCORDANCE WITH ARTICLE 99, WHO SANITARY REGULATION NO. 2.

U.S. GOVERNMENT PRINTING OFFICE 1961 O- 610886

A-H6-A

A-7505 Case
25193 761 Reft

December 12, 1968

301-231E

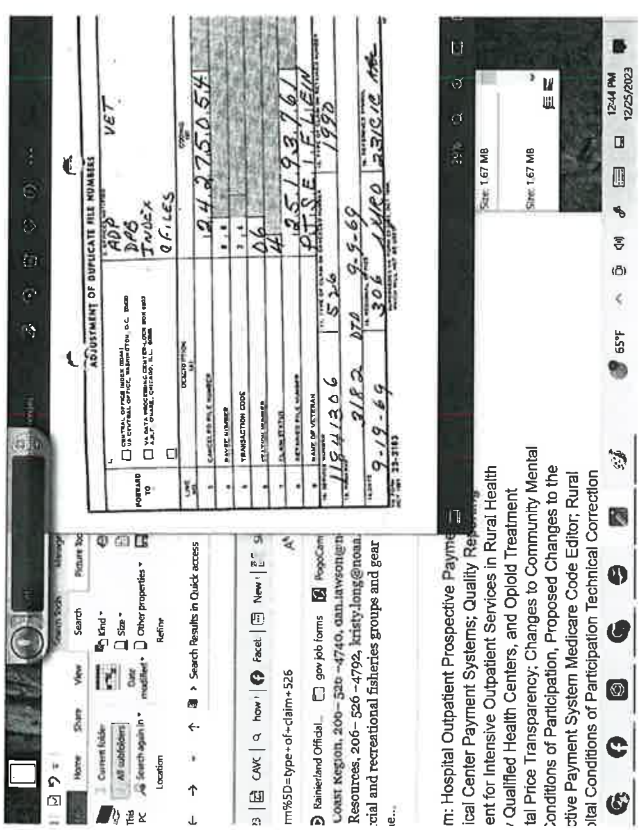
Philip J. Seiflein
135 Commonwealth Ave.
Boston, Mass.

RE: C# Pending
SN 11841306
SUSP: 12/26/68

Dear Mr. Seiflein:

WM. V. CAROSELLI
CHIEF, ADMIN., DIV.

AH8


ADJUSTMENT OF DUPLICATE FILE NUMBERS
FORWARD TO
ADP
DPB
INDEX
C-FILES
VET
CANCELED FILE NUMBER
PAYEE NUMBER
TRANSACTION CODE
STATION NUMBER
CLAIM STATUS
RETAINED FILE NUMBER
NAME OF VETERAN
24275054
06
25193761
1990
9-19-69
9-9-69
Search Results in Quick access
m%5D=type+of+claim+526
Rainierland Official...
gov job forms
Coast Region, 206-526-4740, dan.lawson@n
Resources, 206-526-4792, kristy.long@noaa.
cial and recreational fisheries groups and gear
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ical Center Payment Systems; Quality Re
ent for Intensive Outpatient Services in Rural Health
Qualified Health Centers, and Opioid Treatment
tal Price Transparency; Changes to Community Mental
Conditions of Participation, Proposed Changes to the
ctive Payment System Medicare Code Editor; Rural
pital Conditions of Participation Technical Correction
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12/25/2023

be contrary to the principle of finality set forth in 38 U.S.C.A. § 7105. *Rudd v. Nicholson*, 20 Vet.App. 296, 300 (2006).

The veteran testified at a Board Videoconference hearing in April 2008.

FINDINGS OF FACT

1. On January 30, 1995, the RO received the veteran's claim of entitlement to service connection for a psychiatric disability.

2. In a May 2001 rating decision, giving effect to an August 2000 Board decision, the RO granted entitlement to service connection for a psychiatric disability, evaluated as 100 percent disabling, effective from January 30, 1995.

The Vet was in a VA mental ward and under care of VA health personnel when he made claims he believed would pay for treatment. One claim is missing from a claim merger made in September 1969, all denied by VA.

3. The RO was not in possession of any communication or evidence prior to January 30, 1995, that can reasonably be construed as a formal or informal claim of entitlement to VA compensation benefits based on a psychiatric disability.

The RO had constructive possession of medical records, communications, and claims made from a VA mental ward The same records used to support 1&2 above but did not use them in the bases. Though Vet was mentally incapable of perfecting a claim for his condition his requesting help from their mental ward should be considered adequate inference when any leniency the case, especially when claims

CONCLUSION OF LAW

were made at the request of the VHA staff, which may also be considered an informal claim.

There is no legal basis for an effective date prior to January 30, 1995, for the grant of service connection for major depressive disorder with generalized anxiety disorder. 38 U.S.C.A. §§ 5107, 5110(a) (West 2002); 38 C.F.R. §§ 3.155, 3.400 (2007).

Incorrect: as a mental ward patient regulation permits waiver and leniency in regard to claims. Appellant attempted claims to pay for services at a VA Hospital, but incapable of articulating mental condition which was obvious to VA by diagnosis and admin. Inferred and secondary claims are evident but related facts are not reviewed by adjudicator.

REASONS AND BASES FOR FINDINGS AND CONCLUSION

Veterans Claims Assistance Act of 2000

The Board acknowledges the Veterans Claims Assistance Act of 2000 (VCAA), which has been codified at 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107,

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IN THE APPEAL OF
PHILIP J. SEIFLEIN

C 25 193 761

5126. Under the VCAA, VA has a duty to notify the veteran of any information and evidence needed to substantiate and complete a claim, and of what part of that evidence is to be provided by the claimant and what part VA will attempt to obtain for the claimant. 38 U.S.C.A. § 5103(a); 38 C.F.R. § 3.159(b)(1); *Quartuccio v. Principi*, 16 Vet.App. 183, 187 (2002).

Va did not notify Vet of any need to provide additional evidence to that already in the file which was used to grant " presumptive"service-connected proof. Vet was in VA mental ward trying to make claims is prima facie substantive proof.

In this case featuring the veteran's claim of entitlement to assignment of an earlier effective date for a grant of service connection, the Board finds that the VCAA is not applicable. Congress, in enacting the statute, noted the importance of balancing the duty to assist with 'the futility of requiring VA to develop claims where there is no reasonable possibility that the assistance would substantiate the claim.' *Mason v. Principi*, 16 Vet.App. 129, 132 (2002) (quoting 146 CONG.REC. S9212 (daily ed. Sept. 25, 2000) (statement of Sen. Rockefeller)). There is no dispute in this case as to the underlying facts as reflected by the evidence with regard to the correct assignment of effective dates. Even assuming that all of the veteran's factual assertions in this case can be accepted, his appeal must nevertheless be denied as a matter of law. When the law and not the evidence is dispositive of the claim, the VCAA is not applicable. *See Mason*, 16 Vet.App. at 132; *Smith (Claudus) v. Gober*, 14 Vet.App. 227 (2000, *aff'd*, 28 F.3d 1384 (Fed.Cir. 2002). As the law regarding assignment of an effective date for a claim is dispositive in resolving the appeal for an earlier effective date, the VCAA is not applicable in this case.

misuse of law. VA cannot whimsically suppress evidence to win cases

Incorrect. The VA had just awarded serv-con for this event. The facts support open and inferred claim, if viewed & considered

again, misuse of law, the Judge only reviewed law supporting his denial and did not use evidence already in the file; hospital admittance records, mental treatment, attempts at VA claims as ordered by VA hospital Dr & personnel, missing claims.

Analysis

In order to establish service connection for a claimed disability, the facts must demonstrate that a disease or injury resulting in a current disability was incurred in active service, or if pre-existing active service, was aggravated therein. *See* 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303. Service connection may be granted for a disease diagnosed after discharge when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Except as otherwise provided, the effective date for an evaluation and award of compensation based on an original claim or a claim reopened after final

The Judge used Vet's claim for "allergic reaction"-a claim denied in Feb 1969, which was unknown to the Vet until July 1969 while in the VA Hospital mental ward and trying to get benefits to pay for treatment. The Hearing Judge reprimanded Vet for not effecting a proper appeal for the earlier claim denial and for re-filing a mis-named claim for "allergic reaction" again while in the hospital. He concluded that the VA could not have known about his condition because he did not file a proper claim for it. Then he (the Judge) improperly used the earlier useless "Denied" "allergy claim to shut down any claims from the later Hospital case without considering any of the evidence from the hospital (6 months later).
The Judge did not use KEY pertinent evidence (Vet made pleas for help from a VA mental ward, communications, diagnosis, leniency waivers) in his adjudication, therefore the case was decided on a false foundation of missing evidence, negligence, bias and adversary against the Vet, which is contrary to the entire purpose of the Congressional intention of the VA.

disallowance will be the date of receipt of the claim or the date entitlement arose, whichever is later. *See* 38 U.S.C.A. § 5110(a); 38 C.F.R. § 3.400. Unless specifically provided, such determination is made on the basis of the facts found. 38 C.F.R. § 3.400(a). Correction: it should be the date of the incident, which was withing 1 year of release from service.

Under 38 C.F.R. § 3.400(b)(2)(i), the effective date for a grant of direct service connection will be the day following separation from active service or the date entitlement arose if the claim is received within one year after separation from service. Otherwise, the effective date is the date of receipt of claim, or date entitlement arose, whichever is later. Under 38 C.F.R. § 3.400(b)(2)(ii), the effective date for presumptive service connection will be the date entitlement arose, if a claim is received within one year after separation from active service. Otherwise, the effective date will be the date of receipt of the claim, or the date entitlement arose, whichever is later.

In addition, the effective date of a grant of benefits based on new and material evidence following a prior final denial, other than service department records, is the date of receipt of a new claim, or date entitlement arose, whichever is later. 38 U.S.C.A. § 5110(a); 38 C.F.R. § 3.400(q)(1)(ii), (r). December 5, 1968 was separation from service. Hospitalization 7 months later

The applicable law and regulations concerning effective dates state that, except as otherwise provided, the effective date for the assignment of an increased evaluation shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of the application therefor. 38 U.S.C.A. § 5110; 38 C.F.R. § 3.400.

The applicable statute specifically provides that the effective date of an award of increased compensation shall be the earliest date as of which it is factually ascertainable that an increase in disability had occurred, if an application is received within one year from such date. 38 U.S.C.A. § 5110(b)(2). However, if the increase became ascertainable more than one year prior to the date of receipt of the claim, then the proper effective date would be the date of the claim. In a case where the increase became ascertainable after the filing of the claim, then the effective date would be the date of increase. *See generally Harper v. Brown*, 19 Vet.App. 125 (1997).

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A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. *See* 38 U.S.C.A. § 5101(a); 38 C.F.R. § 3.151.

Any communication or action indicating an intent to apply for one or more benefits under the laws administered by VA, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for completion. If received within one year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim. *See* 38 C.F.R. § 3.155. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits if the report relates to a disability which may establish entitlement. Once a formal claim for pension or compensation has been allowed or a formal claim for compensation has been disallowed for the reason that the service-connected disability is not compensable in degree, receipt of a report of examination or hospitalization by VA or the uniformed services will be accepted as an informal claim for benefits. The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission. 38 C.F.R. § 3.157.

at the V.A. Hospital

The Vet tried to make benefits claims for payment of treatment from the VA mental ward. Even if incorrectly worded, it is still informal and inferred as supported by file records.

ALL APPLY if applies

does applies Exempt?

38 C.F.R. § 3.157 (b)(2), specifically indicates that the date on which evidence is received from a private physician or layman is the date which will be used for effective date purposes.

Constructive possession. VA had it at all times, and did not use it for whatever reason.

In a May 2001 rating decision, the RO granted entitlement to service connection for major depressive disorder with generalized anxiety disorder, evaluated as 100

percent disabling, effective from January 30, 1995. This grant gave effect to the Board's August 2000 decision which found that the probative medical evidence of record showed that the veteran's acquired variously diagnosed psychiatric disorder cannot satisfactorily be dissociated from his active service. The RO found that the date of the veteran's claim for this benefit was January 30, 1995. The veteran alleges, including in his May 2001 letter to a Congressman, that the effective date should be assigned "to the time I received the disability in service."

The Board notes that applicable law provides that the effective date of an award of disability compensation shall be the day following separation from active service only if the claim is received within one year after separation from service. Otherwise, the effective date shall be the date of receipt of the claim or the date entitlement arose, whichever is later. *See* 38 U.S.C.A. § 5110(a); 38 C.F.R. § 3.400. The law does not allow a date prior to a veteran's separation from service.

The incident and claim in question happened AFTER original claim but within the one year period. The two cannot be enjoined, cancelation of the earlier one does not void a claim which hadn't occurred yet .

A review of the record reflects that the veteran separated from service in December 1968. The veteran's discharge followed a November 1968 medical board finding that the veteran was "a poor risk for continued military service" because of his allergic rhinitis and asthma which "may be progressive."

A December 1968 application for compensation notes "Allergic to many basic allergy tests – asthma – I feel these conditions were aggravated by the location I was in during service." No mention of any psychiatric symptoms is contained in the December 1968 application nor any other pertinent document of record received prior to January 30, 1995.

This is false. The VA, RO, and BVA Hearing Judge had the complete medical record and claims in their possession as proven by the BVA2001 "Presumptive Award" records. inclusive of medical diagnosis for psychiatric symptoms, and treatment

On January 30, 1995, the RO received an application from the veteran advancing a claim of entitlement to service connection for "PTSD that was cased by my erroneous discharge from the Air Force." At this time, the veteran claimed that his discharge from the service was improper because "I was not impeded by my pervious condition of allergies and [the medical board] showed no documentation of asthma." The veteran argued that his "being rejected by the service" caused the onset of a mental disability. This claim ultimately resulted in the grant of service connection for the veteran's psychiatric disorder effective from January 30, 1995.