

2022 WL 129504 (U.S.)

WESTLAW BULLETIN
U.S. Supreme Court
January 14, 2022


Veterans: Challenging denial of disability benefits after invalidation of VA's regulation addressing statutory presumption of soundness -- Certiorari Granted

The United States Supreme Court has granted a veteran's certiorari petition, which presents the question whether the denial by the Department of Veterans Affairs (VA) of a veteran's claim for benefits, in reliance on an agency interpretation that is later deemed invalid under the plain text of the statutory provisions in effect at the time of the denial, is the kind of “clear and unmistakable error” that the veteran may invoke to challenge the VA's decision.

The petitioner, a Marine Corps veteran, sought disability benefits for schizophrenia, but the claim was denied, based on lack of service connection. Under a statutory presumption of soundness, 38 U.S.C.A. § 1111, a veteran is presumed to have been in sound condition, at entry to service, as to disorders that are not identified on the veteran's entrance medical examination, but the presumption can be rebutted by clear and unmistakable evidence that the disorder existed before acceptance and enrollment and was not aggravated by service.

At the time of the denial of benefits, the VA's implementing regulation, 38 C.F.R. § 3.304(b), had allowed the statutory presumption of soundness to be rebutted based on clear and unmistakable evidence that the disorder existed prior to service, without requiring clear and unmistakable evidence of lack of aggravation by service. In 2003, the VA invalidated the regulation because it conflicted with the language of § 1111, and in 2004, the Federal Circuit confirmed the correctness of the VA's changed understanding of the statute. In 2005, the VA amended the regulation, to require evidence of both a preexisting condition and no aggravation.

A veteran who shows clear and unmistakable error in the denial of benefits may be entitled to benefits retroactive to the date of the original claim.

In the decision below, the Federal Circuit cited circuit precedent for the proposition that clear and unmistakable error must be analyzed based on the law as it was understood at the time of the original VA decision, and it cannot arise from a subsequent change in the law, or interpretation thereof. (Case below:  *George v. McDonough*, 991 F.3d 1227 (C.A.Fed. 2021).)

George v. McDonough

2022 WL 129504
(U.S.)

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

Reprinted from Westlaw with permission of Thomson Reuters.