

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 96-1226

HERVE J. KEPTNER, APPELLANT,

v.

TOGO D. WEST, JR.,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before NEBEKER, *Chief Judge*, and FARLEY and GREENE, *Judges*.

ORDER

The appellant argues that "the issue before [the] court in this appeal is . . . whether there is new and material evidence [to support the reopening of an earlier, previously denied claim for educational assistance benefits under chapter 34 of Title 38]." Appellant's Response at 5-6. The decision denying the earlier claim became final when the appellant did not perfect an appeal. *See Cuevas v. Principi*, 3 Vet.App. 542, 546 (1992). In order to reopen that claim, new and material evidence in support of the claim must be presented to the Secretary. *See Winters v. West*, 12 Vet.App. 203 (1999) (en banc); 38 U.S.C. §§ 5108, 7105. Any action that arguably could be construed as an attempt to reopen was not initiated until June 1992. However, section 3462 provides an absolute bar to benefits under Chapter 34 after December 1989. *See* 38 U.S.C. § 3462(e) ("No educational assistance shall be afforded [to] any eligible veteran under [Chapter 34] or chapter 36 of [Title 38] after December 31, 1989."); *see also Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984) ("If the intent of Congress is clear, that is the end of the matter . . ."). Therefore, the Secretary could not have reopened the previously denied claim under section 3462, and the submittal of new and material evidence under section 5108 would have been to no avail.

Based on the foregoing analysis, the order of the Board denying benefits is AFFIRMED, for as a matter of law granting those benefits is prohibited after December 31, 1989.

DATED: June 20, 2000

PER CURIAM.