



Kenneth M. Carpenter, Esq., Chief Executive Officer  
Glenda S. Herl, Chief Operating Officer  
Kenny Dojaquez, Esq.  
Sara N. Huerter, Esq.  
Shannon K. Holstein, Esq.

January 18, 2022

Mr. Gregory O. Block  
Clerk of the Court  
U.S. Court of Appeals for Veterans Claims  
625 Indiana Avenue, NW  
Washington, DC 20004

Re: *Gumpenberger v. McDonough*  
    *Vet. App. No. 20-4155*

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), Appellant respectfully advises the Court of pertinent and significant authority.

In *Mil.-Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110 (Fed. Cir. 2021), the Federal Circuit address several rule challenges to regulation promulgated by the Secretary as part of the AMA. One of these was 38 C.F.R. § 14.636(c)(1)(i), which governs when a representative can charge and earn a fee.

In that case the Secretary argued, before the Federal Circuit, that it had a long standing practice of restricting fees by treating claims to reopen a previously denied claim as a new and different claim. See *MVA*, at 1137-1138. The Court, as pertinent to the instant case, explained that 38 U.S.C. § 5904(c)'s prohibition on charging and earning fees was limited solely to work performed after the triggering event of a n initial decision by the AOJ. *MVA*, at 1138. The Court emphasized "[o]n its face, the provision [§ 5904(c)] recites no other restriction on attorney's fees." *Id.* Rather, the Court concluded, paid representation is "compensable" for any and all work performed after the initial AOJ decision. *Id.*

---

P.O. Box 2099  
1525 SW Topeka Blvd., Ste D  
Topeka, KS 66601  
Phone: 785-357-5251 Fax: 785-357-4902

What's more, the Court anchored this reading in its interpretation of prior versions of the statute that "*allow*, rather than *deny*, paid representation for reopening work under the then-existing fee provision, which required a "final decision" for attorneys' fees to be charged." *Id.*, at 1141; citing *Stanley v. Principi*, 9 Vet.App. 203 (1996). Or where the prior version of the statute allowed for attorneys to charge a fee "because the fee provision 'was designed to authorize compensation for attorney services rendered after the initial proceedings, undertaken by the veteran, have failed.'" *Id.*; quoting *Carpenter v. Nicholson*, 452 F.3d 1379, 1384 (2006).

In the instant case, Mr. Gumpenberger argues that § 5104(c) only requires that a notice of disagreement be filed before an agent may charge and earn a fee. This is supported by the Federal Circuit's rulings, and explanation about the history of this statute, in *MVA*.

    /s/ Kenneth H. Dojaquez    

Kenneth H. Dojaquez, Esq.  
Attorney for Appellant  
Carpenter Chartered  
P.O. Box 2099  
Topeka, KS 66601  
Telephone: 785-730-2821