

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

GERALD A. LECHLITER,

Petitioner,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,

Respondent.

Vet. App. No. 23-2587

PETITIONER'S *SOLZE* NOTICE

Pursuant to *Solze v. Shinseki*, 26 Vet. App. 299 (2013), Petitioner Gerald A. Lechliter, respectfully informs the Court of two issues¹ potentially relevant to its decision in this case: (1) The Department of Veterans Affairs ("VA") Information Technology ("IT") systems to which Col. Lechliter requests remote, read-only access; and (2) Col. Lechliter's filing of a new claim.

I. ACCESS TO OTHER VA IT SYSTEMS

Briefing and oral argument of this focused on remote access to Col. Lechliter's electronic claims file in the Veterans Benefits Management System ("VBMS"). The Court should also be aware that Col. Lechliter requested remote access to other VA IT systems to pursue his claim(s) at the BVA. These are remote access IT systems that attorneys and

¹ The duty of both parties to inform the Court of developments that could deprive it of jurisdiction or affect its decision is heightened when a petitioner seeks a writ of mandamus. *Id.*

VSO representatives have access to², but which Col. Lechlitter (or any veteran representing him/herself) does not. These other systems include eFolder Express and Queue IT products in the Board of Veterans Appeals (“BVA”) Caseflow IT management system.³ *See* Pet. at ¶¶ 1, 14, 29, 31; Reply Br. at Section II and ¶ 8.

Caseflow replaced the Veterans Appeals Control and Locator System (“VACOLS”) at the BVA as the IT system of record for appeals. It enables the processing and tracking of appeals and related processes; it has a number of IT “products.” Within them, *inter alia*, are eFolder Express and Queue. The former allows a user to bulk-download documents from a veteran’s eFolder, thereby eliminating the need to manually click and save these documents one by one. The latter tracks and manages appeals through the appeals process, *i.e.*, who does what and when.⁴ Access to eFolder Express would allow Col. Lechlitter to determine whether the record before the BVA is complete.

The absolute inability to access the BVA Caseflow products at an RO prevents Col. Lechlitter from competently and efficiently pursuing his appeal at the BVA. It is impossible for him to ascertain if the record before the BVA is complete and accurate. Therefore, contrary to the Secretary’s position presented during oral argument, Col. Lechlitter’s

² *See* 87 FR 37745 (June 24, 2022) ¶ A (complete listing of those who have remote access, referred to herein as “representative”).

³ *See id.* ¶ 37746-37747 (succinct explanation of Caseflow and the two products to which a representative has access).

⁴ *See* Privacy Impact Assessment for Casseflow, dated September 29, 2022, at 3, <https://department.va.gov/privacy/wp-content/uploads/sites/5/2023.05/FY23CaseflowAssessingPIA.pdf> (last accessed on February 5, 2024).

possession of a December 27, 2023, CD⁵ with all the VBMS claims documents is *not* sufficient for him to pursue his BVA appeal.

II. PETITIONER'S NEW CLAIM

On February 2, 2024, Col. Lechlitter filed a claim with the VBA requiring development for atrial fibrillation secondary to his longstanding hypertension. *See* Ex. A. Col. Lechlitter is now in the same position he was in when pursuing his claim for prostate cancer and submitted his Petition to this Court. He chose to represent himself and submitted the requisite VA form appointing himself as his own representative before the VA. *See* Ex. B.

The VA has scheduled him for a contractor Compensation & Pension (“C&P”) examination for this claim and notified him that the VA has requested copies of his private medical records from the two physicians for whom he provided a release form. The VA also informed Col. Lechlitter that, although the VA requested the records, the claimant is responsible for ensuring the VA receives these records. Without access to VBMS, Col. Lechlitter cannot timely determine if the VA has all the pertinent records, whether he must request copies from the physicians, and if he must then submit them to the VA. Col. Lechlitter will have his contractor C&P examination for this new claim during the second week of April 2024. He will not have access to the report, however, unless he submits a

⁵ At Oral Argument, VA’s counsel stated the CD is dated December 27, 2023; in fact, it is dated “12/26/2023.” Pursuant to Petitioner’s Privacy Act Amendment Request to the VA for removal of unauthorized documents from his VBMS, this CD was returned to the Central Privacy Office at the St. Louis RO on February 13, 2024, in a pre-paid UPS envelope sent to Petitioner from this RO. Petitioner’s a new CD with his VBMS documents is dated “02/09/2024.”

FOIA/PA request, which takes months for a VA response, or drives to the Philadelphia RO to view it in VBMS and obtain a copy of it.⁶

If he had remote access to VBMS he could easily see if they were entered into the system. By denying his remote access to VBMS (and the other VA IT systems referenced herein), the VA is preventing him from pursuing this claim efficiently and in real time for the same reasons presented in his Petition. The VA is not meeting its obligation to do all in its power to help Col. Lechlitter perfect this claim.

Respectfully submitted this 16th day of April, 2024.

/s/ Thomas W. Stoever, Jr.
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⁶ Contractor C&P examination reports, unlike those from Veterans Health Administration medical examiners, are not populated in a veteran's "My HealtheVet" portal which a veteran can access after signing on to his or her "va.gov" IT account. *See* Pet. ¶ 18.