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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-4134

JAMES R. RUDISILL, APPELLANT,

v.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before BARTLEY, *Chief Judge*.

MEMORANDUM DECISION

Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.

BARTLEY, *Chief Judge*: Veteran James R. Rudisill served on active duty in the U.S. Army from January 2000 to June 2002, June 2004 to December 2005, and November 2007 to August 2011. Record (R.) at 5, 76, 107-09. After his first and second periods of service, he used 25 months and 14 days of education benefits under the Montgomery GI Bill, 38 U.S.C. § 3001 *et seq.*, to fund his undergraduate education. R. at 67; *see Rudisill v. McDonough*, 601 U.S. 294, 298 (2024). After his third period of service, he applied for education benefits under the Post-9/11 GI Bill, 38 U.S.C. § 3301 *et seq.*, to attend divinity school. R. at 125; *see Rudisill*, 601 U.S. at 298. Despite his having separate periods of active service that qualified him for education benefits under the Montgomery and Post-9/11 GI Bills, the Board of Veterans' Appeals (Board) determined on July 14, 2016, that Mr. Rudisill was only entitled to receive 10 months and 16 days of education benefits under the Post-9/11 GI Bill, an amount equal to the unused portion of his 36-month allotment of Montgomery GI benefits per 38 U.S.C. § 3013, because there was no provision of law that authorized an award of additional education benefits under the Post-9/11 GI Bill beyond that 36-month cap. R. at 3-11.

Mr. Rudisill appealed to this Court. In August 2019, a panel reversed the Board decision, concluding that applicable statutes authorized veterans with multiple periods of separately

qualifying service to receive entitlement under the Montgomery and Post-9/11 GI programs without exhausting or relinquishing entitlement under either program, subject to a 36-month cap on benefits under each program and a 48-month cap overall. *BO v. Wilkie*, 31 Vet.App. 321, 324 (2019).[1] The Secretary appealed to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), which in July 2021 affirmed this Court's decision. *Rudisill v. McDonough*, 4 F.4th 1297 (Fed. Cir. 2021). However, on rehearing en banc, the Federal Circuit issued a December 2022 decision reversing this Court's decision. *Rudisill v. McDonough*, 55 F.4th 879 (Fed. Cir. 2022).

Mr. Rudisill then petitioned for and was granted certiorari by the Supreme Court of the United States. *Rudisill v. McDonough*, 143 S.Ct. 2656 (2023). In an April 2024 decision, the Supreme Court reversed the Federal Circuit's en banc decision, holding that, when veterans have separate entitlements to both Montgomery and Post-9/11 GI benefits, they can use those benefits, in any order, up to the statutory 48-month cap without having to first relinquish or exhaust their entitlement under either program. *Rudisill*, 601 U.S. at 294. The case was then returned to the Federal Circuit, which remanded the case back to this Court in June 2024 to implement the Supreme Court's decision. *Rudisill v. McDonough*, No. 2020-1637, 2024 WL 2831549 (Fed. Cir. June 4, 2024).

In light of the foregoing, and consistent with the Supreme Court's holding that Mr. Rudisill, with separate periods of qualifying service under the Montgomery and Post-9/11 GI programs, may receive up to 36 months of education benefits under each program subject to a 48-month overall cap, the Court REVERSES the July 14, 2016, Board decision denying Mr. Rudisill entitlement to more than 10 months and 16 days of education benefits under the Post-9/11 GI Bill and REMANDS the matter for readjudication consistent with the Supreme Court's *Rudisill* decision.

DATED: July 26, 2024

Copies to:

Timothy L. McHugh, Esq.

VA General Counsel (027)

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[1] Mr. Rudisill's appeal before this Court was sealed; hence, the anonymous identifier in the case caption.