

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

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|--------------------------------|---|-----------------------|
| DOUGLAS J. ROSINSKI, |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 17-1117 |
| |) | |
| DAVID J. SHULKIN, M.D., |) | |
| Secretary of Veterans Affairs, |) | |
| Appellee. |) | |

NOTICE OF CLARIFICATION TO THE COURT

On September 20, 2017, the Court held oral argument in this matter, and the undersigned counsel believes that he misspoke when responding to one of Judge Greenberg's questions. Judge Greenberg asked whether claimants have a property interest in rating decisions, and counsel misunderstood the question. Below is that colloquy.

J. Greenberg: Does the Secretary disagree that this is an important property right given by Congress, the right to a correct rating under the system by the VA.

Secretary's counsel: We agree with that point

Oral Argument at 1:15:08-1:15:20, *Rosinski v. Shulkin*, U.S. Vet. App. No. 17-1117.

The undersigned counsel understood the question to be whether entitlement to veterans' benefits was a property interest protected by the Due Process Clause of the Fifth Amendment of the United States Constitution. The United States Court of Appeals for the Federal Circuit has held that they are, a point the Secretary made in his brief. See Sec'y Br. at 7 (citing *Cushman v. Shinseki*, 576 F.3d 1290, 1298 (Fed. Cir. 2009)). A review of the oral argument recording, however, reveals that this was not what the judge was asking. The judge instead appeared to be asking whether applicants for veterans' benefits have a property interest in

a particular adjudication process. The Secretary does not concede that they do.

In his brief, the Secretary argued that no property interests had been affected by the Secretary's pre-decision-review procedure. Sec'y Br. at 7. The Secretary stands by that argument and did not intend to take a contrary position during the oral argument.

Respectfully submitted,

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