

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

JESSIE B. LEWIS,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 18-2075
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

NOTICE OF CLARIFICATION TO THE COURT

On January 22, 2018, the Court held oral argument in this matter, and the undersigned counsel provided a confusing response when responding to a question from Judge Bartley. For purposes of clarification, the Secretary provides this Notice to resolve any potential ambiguity.

Judge Bartley asked whether the July 2014 statement from the Board constituted an implicit denial by the Board and referenced the case of *Ingram v. Nicholson*, 21 Vet.App. 232 (2007). Oral Argument at 44:32-44:57, *Lewis v. Wilkie*, U.S. Vet. App. No. 18-2075.

In response, the undersigned counsel stated, “to the extent that an implicit denial would be in play . . . , yes, that statement would, [umm], certainly be enough given the procedural history to reaffirm the fact that sinusitis had not been granted by the RO.” Oral Argument at 44:57-45:11, *Lewis v. Wilkie*, U.S. Vet. App. No. 18-2075. This latter portion of the response and follow-up statement that sinusitis was “overtly denied by the RO” may have obscured the Secretary’s position on the

question. Oral Argument at 45:13-45:20, *Lewis v. Wilkie*, U.S. Vet. App. No. 18-2075.

Thus, in an abundance of caution and to resolve any ambiguity in the Secretary's response, the Secretary clarifies that, yes, the Board's July 2014 decision, which included a full recitation of the procedural history and stated that the grant of allergic rhinitis by the Appeals Management Center (AMC) resolved the appeal of service connection for an upper respiratory condition (claimed as sinusitis), constituted an implicit denial of the claim of service connection for sinusitis.

Respectfully submitted,

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