

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

January 16, 2020

Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
Washington, D.C. 20004

Re: *Monk v. Wilkie*, No. 19-0217

Dear Mr. Block,

We write in response to the Secretary's submission on January 6, 2020. Contrary to the Secretary's representation, *Brown v. Wilkie*, __ Vet.App. __, No. 18-4508, slip. op. at 7 (December 30, 2019) is both legally and factually distinct from the current case.

In *Brown*, the appellant was an *officer* who voluntarily resigned for the good of the service. *See id.* at 6 ("The Board found, and there is no dispute, that the appellant was an officer who was discharged for the good of the service."). 38 U.S.C. § 5303(a) imposes a statutory bar to benefits for "*an officer* by the acceptance of such *officer's* resignation for the good of the service" (emphasis added). In fact, the bar to benefits for the good of service is the *only* bar listed in § 5303(a) or 32 C.F.R. § 3.12(c) that explicitly applies *solely* to officers, further indicating that the plain language of both subsections is unambiguous.

Mr. Monk held the enlisted rank of Private when discharged, R. at 4188, and never served as an officer. Furthermore, he was denied benefits based on an erroneous application of 32 C.F.R. § 3.12(d), R. at 3407 (3406-12), not 38 U.S.C. § 5303(a) or 32 C.F.R. § 3.12(c). Therefore, the statutory bar to benefits in § 5303(a)—the very bar that the CAVC relied on to deny benefits to the officer in *Brown*—is inapposite in this case.

For the reasons outlined in Appellant's Opening and Reply Briefs, no statutory or regulatory bar applies to Mr. Monk's application for benefits. The Court's decision in *Brown* to deny an officer benefits based on a resignation for the good of service has no bearing on the outcome of this case.

Sincerely,

/s/ Michael J. Wishnie

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* This letter does not purport to state the views of Yale Law School, if any.