

MOTION GRANTED

For the Panel


Margaret Bartley
Chief Judge

March 24, 2020

THE UNITED STATES COURT OF APPEALS FOR VETERANS

STANLEY L. DAVIS,
Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,
Appellee.

VET. APP. NO. 18-4371

APPELLANT'S MOTION FOR ORAL ARGUMENT

Pursuant to U.S. Vet. App. Rule 34, Appellant, by and through his undersigned counsel moves this Court for oral argument.

Oral argument in this case would assist the Court in deciding the issues presented in this case. This case involves two important questions of law.

First, Mr. Davis has argued that the standard of review in this case, for determining whether evidence is new and material, should be de novo. Normally, the standard of review for new and material evidence is clearly erroneous. See *Elkins v. West*, 12 Vet.App. 209 (1999). However, the *Elkins* Court noted that in some cases a de novo review is used to determine whether evidence is new and material. See *Elkins*, at 2018. As argued in our opening brief, this presents such a case. As this is an issue of first impression with the Court, oral argument would be helpful.

Secondly, Mr. Davis has argued that lay evidence that expands the scope of a claim is material as a matter of law. This argument involves the intersection of several

areas of VA law to include: the definition of a claim, the definition of a benefit, the definition of disability, the scope of a claim, and the application of new case law from the Federal Circuit. See *Shea v. Wilkie*, 926 F.3d 1362 (Fed. Cir. 2019). The arguments presented here are likewise issues of first impression; therefore, oral argument would be helpful.

The undersigned has contacted Secretary's counsel and the Secretary does not take a position on this motion; however, he reserves the opportunity to respond in writing after reviewing this pleading.

Respectfully submitted,

/s/ Kenneth H. Dojaquez
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