



Office of General Counsel
Washington DC 20420

In reply refer to: 027K1

April 21, 2020

Mr. Gregory O. Block

Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004

Re: *Breland v. Wilkie*, U.S. Vet. App. No. 18-5980

Dear Mr. Block:

Pursuant to U.S. Vet. App. R. 30(b), the Secretary hereby advises the Court of pertinent and significant authority of which the undersigned became aware after the Secretary filed his brief in this appeal on August 19, 2019. This case is currently scheduled for oral argument before the Court on April 28, 2020. The Secretary would like to add the following supplemental authorities: *Singleton v. Shinseki*, 23 Vet.App. 376 (2010), *aff'd*, *Singleton v. Shinseki*, 659 F.3d 1332 (Fed. Cir. 2011); *Reizenstein v. Shinseki*, 583 F.3d 1331 (Fed. Cir. 2009).

In *Reizenstein v. Shinseki*, 583 F.3d 1331 (Fed. Cir. 2009), the Federal Circuit found there was no conflict between the VA practice of staging ratings and 38 C.F.R. § 3.343(a) and granted deference to VA's interpretation that section 3.343(a) does not apply to retrospective staged ratings. *Id.* at 1335. This case represents the subsequent history of *Reizenstein v. Peake*, 22 Vet.App. 202 (2008), which the Secretary cited on pages 7 through 10 and is relevant to the Secretary's arguments therein.

In *Singleton v. Shinseki*, 23 Vet.App. 376 (2010), this Court held that VA's interpretation that 38 C.F.R. § 3.344 was not applicable in the staged disability rating context was reasonable and entitled to deference. *Id.* at 379. The Federal Circuit affirmed this Court's decision. *Singleton*, 659 F.3d at 1336. These cases

pertain to the Secretary's arguments regarding the proper application of the Note in 38 C.F.R. § 4.114, Diagnostic Code 7343, on pages 6-11 of his brief.

Sincerely,

/s/ Alex L. Kutrolli
ALEX L. KUTROLLI
Counsel for the Secretary