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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 18-6780

ANA T. RODRIGUEZ, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before GREENBERG, *Judge*.

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

GREENBERG, *Judge*: The appellant, Ana T. Rodriguez, widow of U.S. Army veteran Miguel A. Guzman-Martinez,¹ appeals pro se that part of an October 30, 2018, Board of Veterans' Appeals decision that denied her special monthly pension (SMP) for a surviving spouse based upon the need for regular aid and attendance of another person, or by reason of being housebound.² Record (R.) at 3-9. The appellant argues that the Board erred when it failed to consider all her disabilities and medical expenses. Appellant's Informal Brief at 1. For the following reason, the Court will affirm that part of the October 2018 Board decision on appeal.

Justice Alito noted in *Henderson v. Shinseki* that our Court's scope of review in this appeal is "similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U.S.C. § 706." 562 U.S. 428, 432 n.2 (2011); *see* 38 U.S.C. § 7261. The creation of a special court solely for veterans, and other specified relations such as their widows, is consistent with congressional intent as old as the Republic. *See Hayburn's Case*, 2 U.S. (2 Dall.)

¹ The latest Board decision refers to the veteran (that is, his given name) as "Michael," not "Miguel"; other evidence of record, however, including the veteran's DD Form 214 and marriage and death certificates, reflect his name as "Miguel Angel Guzman-Martinez." R. at 1224 (DD Form 214); *see also* R. at 546, 1174-75.

² The Board also vacated that part of an August 2018 Board decision that denied SMP benefits. The Court will not disturb this favorable finding. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007).

409, 410 n., 1 L. Ed. 436 (1792) ("[T]he objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress."). "The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court." 38 U.S.C. § 7254. Accordingly, the statutory command of Congress that a single judge may issue a binding decision, pursuant to procedures established by the Court, is "unambiguous, unequivocal, and unlimited." *Conroy v. Aniskoff*, 507 U.S. 511, 514 (1993); *see generally Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

From the beginning of the Republic, statutory construction concerning congressional promises to veterans has been of great concern. "By the act concerning invalids, passed in June, 1794, vol. 3. p. 112, the secretary at war is ordered to place on the pension list, all persons whose names are contained in a report previously made by him to congress. If he should refuse to do so, would the wounded veteran be without remedy? Is it to be contended that where the law, in precise terms, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?" *Marbury v. Madison*, 5 U.S. 137, 164, 2 L. Ed. 60, 69 (1803).

The veteran served on active duty service in the U.S. Army from October 1954 to July 1956 as a light weapons infantryman. R. at 1224 (DD Form 214), 6.

The veteran died in October 2013. R. at 546. That same month, the appellant applied for SMP benefits, asserting that she earned \$300 per month in Social Security Administration (SSA) benefits, with "0"s indicating no other source of income; the portion of the form related to expenses was not filled out. *See* R. at 548-53.

In August 2018, the appellant underwent a VA examination for housebound status or the need for aid an attendance. R. at 36-37. The examiner stated that the appellant required a walker to ambulate and an at-home nursing assistant, and that the appellant "could not leave [her] home or immediate premises." *Id.*

That same month, the Board issued a decision that, in part, denied the appellant SMP benefits because it found that the appellant was not "permanently housebound," but the Board did not discuss the appellant's expenses. R. at 19-33.

In October 2018, the Board issued its decision denying the appellant SMP. R. at 3-9. As an initial matter, the Board vacated the part of the August 2018 Board decision that denied SMP

benefits because the appellant had submitted relevant evidence that was not before the Board at the time of its decision. R. at 5. Regarding SMP, the Board found that the veteran served during the Korean War and satisfied the first criterion for SMP.³ R. at 6. Regarding the appellant's expenses, the Board found that her income exceeded the maximum annual death pension rate (MAPR). R. at 9. The Board found that effective December 2013, the appellant's monthly SSA benefits of \$1,411.90 (\$16,942.80 per year)⁴ exceeded the MAPR limit (\$13,794 per year) from December 1, 2013,⁵ that the appellant "has not otherwise reported any income or net worth information, and has not provided any evidence of eligible unreimbursed medical expenses or any other expenses that may be deducted from her income for purposes of calculating her countable income for SMP purposes." R. at 8. This appeal ensued.

The Court discerns no clear error in the Board's denial of SMP. *See* 38 U.S.C. § 7261(a)(4) (The Court reviews findings of fact for clear error). Although the appellant argues that the Board failed to properly consider her medical expenses, the appellant has not submitted any of her expenses to VA. Further, VA properly notified the appellant of which expenses it could consider to offset her income for SMP pension purposes. *See* R. at 407-15, 516-19. The Court has no choice but to affirm the Board decision. *See* 38 U.S.C. § 7261(a)(4).

For the foregoing reason, that part of the October 30, 2018, Board decision on appeal is AFFIRMED.

DATED: April 29, 2020

Copies to:

Ana T. Rodriguez

VA General Counsel (027)

³ *See* 38 U.S.C. § 101; 38 C.F.R. § 3.2; 38 C.F.R. § 3.3(a)(3)(i), (ii), and (iii). The Court will not disturb this favorable finding. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007).

⁴ The Board noted the appellant's SSA benefits increased to \$1,435.90 per month (\$17,230.00 per year) in December 2014. R. at 8.

⁵ The Board noted that the appellant was in receipt of pension benefits, SSA benefits, and had deducted expenses associated with the veteran's sickness and burial before December 1, 2013. R. at 7-9.