

Vet. App. No. 19-4135

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

JOHNNY R. MARTINEZ
Pro-se Appellant

v.

ROBERT L. WILKIE
Secretary, of Veterans Affairs
Appellee

APPELLANT RULE 35(B) MOTION FOR PANEL
NONPREJUDICIAL DECISION AND RECONSIDERATION OF
CASE DECIDED BY SINGLE JUDGE PURSUANT TO 38 USC
SECTION 7292A

JOHNNY R. MARTINEZ
16861A W. FM 117
DILLEY, TEXAS 78017

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS
625 INDIANA AVENUE, NW SUITE 900
WASHINGTON, D.C. 20004**

JOHNNY R. MARTINEZ

Appellant

v.

Vet. App. #19-4135

ROBERT L. WILKIE

Secretary, of Veterans Affairs,
Appellee

**APPELLANT RULE 35(B) MOTION FOR PANEL NON-
PREJUDICIAL DECISION AND RECONSIDERATION OF CASE
DECIDED BY SINGLE JUDGE PURSUANT TO 38 USC 7292A**

Appellant (Johnny R. Martinez) pursuant to Rule of Practice and Procedures file the following Rule 35(b) Motion for a Panel Non-prejudicial Decision and Reconsideration of case decided by single judge [MEREDITH] April 28, 2020 unfavorable memorandum decision, Affirming in part Board's decision finding No CUE in the March 1980, February, 2009 and October 2012 rating decision that denied Veteran entitlement to [presumption of service-connection] contrary with 38

CFR section 3.307 where record of proceedings verify RO receipt of Veteran Military Service DA Form 664, dated February 14, 1980 [R.at pg.600] satisfied provision of 38 CFR section 3.155 informal receipt of Veteran filed application for compensation from the Veterans Administration sent to VA Regional Office, 2515 Murworth Drive, Houston, Texas 77054 that included: [R.at pg. 706 & 709]

*VA Form 21-526e; *Reproduced copy #3
DD Form 214; * Health Records: SF 88
(Report of Medical Examination [entry & separation]; SF 99 Report of Medical History [entry]; SF 600 Health Record-Chronical Report of Medical Care; SF 603 Health Record-Dental; Stamp dated as received by Houston, R.O. on February 22, 1980 – VA Form 60-4582.

where the Court decision failed to determine RO & Board compliance with provisions found at 38 CFR section 3.150 furnished appropriate application form [38 USC 5102] required before deciding the following [Court pg.1 Memo.Dc.] “a March 1980; February 2009, and October 2012 rating decision(s) that denied Veteran entitlement to disability compensation for right wrist pain and dislocation, and failed to


adjudicate disability compensation claims for: spondylosis of the thoracic spine without radiculopathy; right hip degenerative joint disease (DJD); left knee (DJD); left ankle (DJD); asthma; gastroesophageal reflux disease (GERD); erectile dysfunction; and a dental condition affecting {jaw} due to tooth #3 conditions; WHERE Court [Dc.at pg.2] Background concede that: "Upon separation he filed a formal application for disability compensation for a "[d]islocated...right wrist;" "On the same date, VA received DA Form 664 which reflects that the appellant's service medical records (SMR's) were also sent;" WHERE Court {Dc. at pg. 2-6 Background} prejudicially failed to determine how RO or Board complied with 38 CFR section 3.150 {Forms to be furnished} to any person applying for benefits under the laws administered by the Department of Veterans Affairs; not shown to have been provided Appellant, where an {Application} or "claim for benefits remains pending until it is finally adjudicated. "If a claim is left pending the effective date for any award of benefits will be the effective date

applicable to the original claim. See, *Adams v. Shinseki*, 568 F.3d 956, 960 (Fed. Cir. 2009); in addition, an {Application} or “claim in which evidence is submitted during the appeal period remains pending until VA provides a responsive determination as to whether the evidence is new and material. See, *Beraud v. McDonald*, 766 F.3d 1402, 1407 (Fed. Cir.2014).

WHEREFORE the Federal Circuit Court has jurisdiction to review decisions of the veterans court on Issues of the validity of a decision of the court on a rule of law or of the validity of any statute or regulation, or any interpretation of a statute or regulation, relied upon by the veterans court in making its decision; WHERE to determine when a claim was received, the Board must review all communications in the claims file that may be construed as an application or claim. See, *Quarles v. Derwinski*, 3 Vet. App. 129, 134 (1992). Upon receipt of an informal claim, if a formal claim has not been filed, the RO will forward an application form to the claimant for execution; thus the Court failed

to give Appellant a sympathetic reading by “determin[ing] all potential claims raised by the evidence, applying all relevant laws & regulations” (quoting Roberson v. Principi, 251 F.3d 1378, 1384 (Fed. Cir. 2001)); Calma v. Brown, 9 Vet. App. 11, 15 (1996); De Perez v. Derwinski, 2 Vet. App. 85, 86 (1992); THUS the Panel of Judges cannot except single Judge affirmance of Board’s decision finding No CUE in the March 1980, February 2009, or October 2012 rating decision(s) denying Veteran entitlement to service-connection for the following claims: spondylosis of the thoracic spine without radiculopathy; right hip degenerative joint disease (DJD); left knee (DJD); left ankle (DJD); asthma; gastroesophageal reflux disease (GERD); erectile dysfunction; and a dental condition affecting {jaw} due to tooth #3 condition.

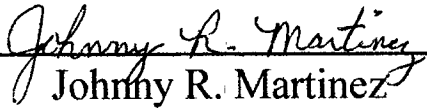
Respectfully Submitted


Johnny R. Martinez
16861 W. FM 117, Unit A
Dilley, TX. 78017

CERTIFICATE OF SERVICE

I certify that on this 15th day of May 2020 Veteran file the following Motion for Panel Review and Consideration of single judge April 28, 2020 Memorandum Decision filed with the U.S. Court of Appeals for Veterans Claims, 625 Indiana Avenue, N.W., Suite 900, Washing, D.C. 20004, with copy to the Office of the General Counsel, 810 Vermont Avenue, N.W., Washington, D.C. 20420 sent by certified mail.

Respectfully Submitted


Johnny R. Martinez
16861 W. FM 117, Unit A
Dilley, TX. 78017

Johnny R. Martinez
16861A W. FM 117
Dilley, Tx. 78017

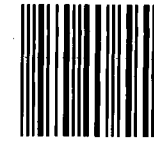
CERTIFIED MAIL®



7019 1640 0001 8480 7989



1000



20004

U.S. POSTAGE PAID
FCM LG ENV
DILLEY, TX
78017
MAY 15, 20
AMOUNT

\$7.60

R2305H130826-08

U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, N.W. Suite 900
Washington, D.C. 20004