

**IN THE UNITED STATES COURT
OF APPEALS FOR VETERANS CLAIMS**

DONALD A. DALLMAN,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 18-4075
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

APPELLANT’S NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to U.S. Vet. App. R. 30(b), Appellant DONALD A. DALLMAN hereby advises the Court of additional pertinent and significant authority the undersigned counsel has become aware of subsequent to his briefing in the instant appeal.

The additional authority consists of the Court’s recent precedential decision in *Philbrook v. Wilkie*, No. 18-5628 (May 19, 2020). Mr. Philbrook appealed a June 2018 Board decision that had denied entitlement to TDIU because his incarceration during the period on appeal rendered him ineligible for this benefit. Slip Op. at 2. Mr. Philbrook thereafter filed a *new* claim of entitlement to TDIU, which VA granted effective from the day after the Vetean’s release. *Id.* at 2. The Secretary averred that this grant of TDIU rendered the appeal of the June 2018 Board decision moot. *Id.*

The *Philbrook* Court held that a live case or controversy remained on appeal, because Mr. Philbrook did not merely seek entitlement to TDIU, but entitlement to TDIU

“for a specific period of time.” *Philbrook*, Slip Op. at 3. Even though the Veteran could appeal the effective date that VA had assigned for TDIU, the Board’s June 2018 determination that the Veteran had been incarcerated, and was therefore ineligible for TDIU during his period of incarceration, imposed a legal impediment to the effective date for TDIU that Mr. Philbrook sought. *See Id.* at 4. Moreover, the dispute between the parties regarding the Appellant’s eligibility for TDIU during the earlier period he sought “would arise again in any future administrative or judicial appeal.” *Id.* Given these considerations, the Court concluded that Mr. Philbrook’s appeal was not moot. *Id.*

Similar considerations adhere to Mr. Dallman’s appeal. The Secretary avers that the Board’s determination the December 1999 denial of service connection for right thigh hematoma became final is not appealable to the Court, because the Veteran remains free to appeal the effective date assigned for service connection, and has actually filed such an appeal. *See* Secretary’s Brief at 20; Secretary’s *Solze* Notice at 2. Mr. Dallman asserts that the Board’s finality determination, though the application of VA’s regulations and controlling precedential authority, precludes the assignment of an effective date for service connection based upon the April 1999 initial claim. *See* Appellant’s Brief at 14-15; Appellant’s Reply Brief at 9; Appellant’s Motion for Reconsideration at 4-5; Appellant’s April 29, 2020, Notice of Supplemental Authorities at 2. The Court’s decision in *Philbrook* is therefore pertinent to the briefs of both parties.

Respectfully submitted,

/s/ Ethan F. Maron

ETHAN F. MARON

LIEBERMAN & MARK

818 Connecticut Ave., N.W., Suite 502

Washington, D.C. 20006

(202) 393-3020

Attorney for the Appellant

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