



Kenneth M. Carpenter, Esq., Chief Executive Officer
Glenda S. Herl, Chief Operating Officer
Kenny Dojaquez, Esq.
Sara N. Huerter, Esq.
Shannon K. Holstein, Esq.

June 30, 2020

Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Washington, DC 20004

Re: *Davis v. Wilkie*
Vet. App. No. 18-4371

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), Appellant respectfully advises the Court of pertinent and significant authority which the undersigned become aware of after oral argument had been done.

The additional authority is the General Counsel's Opinion, 9-97. In this opinion, the General Counsel held

if VA receives additional material evidence within the time permitted to perfect an appeal, 38 U.S.C. § 7105(d)(3) requires VA to issue a supplemental statement of the case even if the one-year period following the mailing date of notification of the determination being appealed will expire before VA can issue the supplemental statement of the case. Furthermore, 38 C.F.R. § 3.156(b) requires that such evidence be considered in connection with the pending claim.

In his brief, Mr. Davis argued that the presentation of new and material evidence foreclosed the finality of the 2002 RO decision. Brief for the Appellant, at 5-9.

P.O. Box 2099
1525 SW Topeka Blvd., Ste D
Topeka, KS 66601
Phone: 785-357-5251 Fax: 785-357-4902

In his reply brief, Mr. Davis argued that because a NOD was filed, and then the new and material evidence was submitted, only a SSOC could finalize the decision. See Reply Brief for the Appellant, at 6. Mr. Davis likewise argued at oral argument that the 2004 rating decision could not finalize the claim because only a SSOC could do so.

The above referenced OGC opinion is binding on the Board, and is pertinent to these arguments presented by Mr. Davis.

/s/ Kenneth H. Dojaquez

Kenneth H. Dojaquez, Esq.
Attorney for Appellant
Carpenter Chartered
P.O. Box 2099
Topeka, KS 66601
Telephone: 785-730-2821