

Gregory O. Block
Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

August 20, 2020

**Re: CAVC Case No. 18-4349, Appellant Paul G. Wait
Supplemental Citation of Authority**

Dear Mr. Block:

Pursuant to U.S. Court of Appeals for Veterans Claims' Rule of Practice and Procedure 30(b), Appellant provides the following supplemental authority: *Martinez-Bodon v. Wilkie*, --- Vet.App. ---, No. 18-3721 (Vet.App. Aug. 11, 2020) (slip opinion).

In *Martinez-Bodon*, the Court recognized that in *Saunders v. Wilkie*, 886 F.3d 1356 (Fed.Cir. 2018) the Federal Circuit, in looking at VA's rating schedule, determined "that various rating regulations 'treat pain as a form of functional impairment' and that 'these regulations indicated how VA interprets the role of pain in assessing disability, and thus they are relevant to the question of whether pain can be a disability.'" *Id.*

The Court in *Martinez-Bodon* went on to note that the Federal Circuit "gave no indication that it was defining that term differently for pain than it would have for any other condition, and we can think of no reason why the definition of the statutory term 'disability' would vary depending on the condition at issue." *Id.* at *6. Therefore, it held, "*Saunders* is not limited to pain." *Id.* Additionally, it held, "implicit (or perhaps explicit) in *Saunders* is the principle that the rating schedule provides important indications about how VA interprets the role of certain types of impairments in assessing disability and thus informs whether those impairments can be compensated as a disability." *Id.*

In this case, the Appellant argued that VA's rating regulations contemplate a level of functional impairment of earning capacity necessary to establish a disability under *Saunders*, such that reference to relevant regulations is sufficient to show that a veteran's pain and its resulting effects constitutes a disability for VA purposes. *Saunders v. Wilkie*, 886 F.3d 1356, 1364 (Fed. Cir. 2018); see Appellant's Opening Br. at 8-11; Appellant's Reply Br. at 1-7; Appellant's Mot. for Panel at 1-5 (filed Nov. 1, 2019); Appellant's Resp. to Appellee's Resp. to Court Order (filed Feb. 18, 2019).

The Court's discussion of the holding in *Saunders*, along with its finding that the rating schedule informs whether impairments can be compensated as a disability is therefore pertinent to this appeal. *Martinez-Bodon*, No. 18-3721 at *5-6

Very truly yours,

/s/ Alyse E. Galoski

Alyse E. Galoski

Chisholm, Chisholm & Kilpatrick

321 S Main St # 200

Providence, RI 02903

(401) 331-6300 Telephone

(401) 421-3185 Facsimile

Counsel for Appellant