

December 8, 2020

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

Re: *Andrews v. Wilkie*, No. 19-352
Citation of Supplemental Authority

Dear Mr. Block:

Pursuant to Rule 30(b), Appellant hereby advises the Court of potentially pertinent and significant additional authority.

The additional authority is *NOVA v. Sec. VA*, __ F.3d __, No. 2020-1321 (Dec. 8, 2020) (en banc). On pages 17-27, the en banc Federal Circuit discusses when a provision of VA's Adjudication Procedures Manual M21-1 constitutes a rule of general applicability and concludes that this occurs when a provision "limits VA staff discretion, and, as a practical matter, impacts veteran benefits eligibility for an entire class of veterans." Slip op. at 19. On pages 27-39, the opinion continues on to address when a change to the manual constitutes a final and binding action by the agency and concludes the challenged rule in that case was one of general applicability because it "'is properly attributable to the agency itself and represents the culmination of that agency's consideration of an issue.'" Slip op. at 29 (quoting *POET Biorefining, LLC v. EPA*, 970 F.3d 392, 404 (D.C. Cir. 2020)).

This decision is pertinent to the arguments regarding VA Adjudication Procedures Manual M21-1, pt. III, sbpt. iv, ch. 4, sec. H.2.e on pages 6-9 of Appellant's principal brief and pages 1-5 of Appellant's reply brief.

Sincerely,

/s/ James D. Ridgway
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