

*Not published*

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

No. 19-2661

HERMAN O. BAILEY,

APPELLANT,

v.

DENIS McDONOUGH,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and PIETSCH and TOTH, *Judges*.

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

On January 6, 2021, the Court issued a precedential decision in the above-captioned appeal. On January 27, 2021, the Secretary filed a motion for panel reconsideration of that decision.

A motion for panel reconsideration "shall state the points of law or fact that the party believes the Court has overlooked or misunderstood." U.S. VET. APP. R. 35(e)(1). Because the Secretary has not demonstrated that the Court overlooked or misunderstood a point of law or fact that was properly before it, the Court will deny his motion for panel reconsideration. Accordingly, it is

ORDERED that the Secretary's motion for panel reconsideration is denied. It is further

ORDERED that, in accordance with Rule 36 of the Court's Rules of Practice and Procedure, judgment is entered and effective the date of this order.

DATED: February 11, 2021

PER CURIAM.

PIETSCH, *Judge*, dissenting: The Secretary raises many of the same concerns with the Court's extensive application of the law of secondary entitlement to 38 C.F.R. § 3.155(d)(2) that I set forth in my concurring statement. It remains my opinion the Court's interpretation of § 3.155(d)(2) is not entirely correct and may produce far-reaching results. Although the Court's intention may have been to construct a narrow rule, I suspect that savvy claimants will adopt a maximal interpretation and that a clarifying precedential decision will prove necessary. Rather than burden the Agency with unnecessary litigation while we wait for an appropriate case to appear, I would grant the Secretary's motion for reconsideration and address the matter immediately. For these reasons and the others that I set forth in my concurrence, I must dissent from this order.

Copies to:

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