



May 5, 2021

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

Re: *Foster v. McDonough*, No. 19-7442
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 *Stern v. McDonough*, __ Vet. App. __, No. 18-4425 (April 20, 2021). In *Stern*, the Court addressed the appropriate remedy when the Board, in reducing a non-protected rating, fails to conduct the analysis required by *Brown v. Brown*, 5 Vet. App. 413, 421 (1993). *See* slip. op. 2. The Court held that “the Board’s failure entirely to address, as required by *Brown*, whether the improvement in the disability reflects an improvement in the ability to function under the ordinary conditions of life and work, also requires reversal of a rating reduction.” Slip. op. 11. Specifically, the Court explained that even where the provisions of 38 C.F.R. § 3.344(a) do not apply to a rating reduction, “*Brown* established that two factual findings must be made for a valid reduction of a non-protected disability rating: (1) actual improvement in the disability and (2) that improvement reflects ‘improvement in the . . . ability to function under the ordinary conditions of life and work.’” Slip. op. 11 (quoting *Brown*, 5 Vet. App. at 421).

This decision is pertinent to Appellant’s argument that the Board erred as a matter of law, necessitating reversal, when it found that the Regional Office’s action was not a rating reduction, and consequently, that the Board failed to make the factual findings required by *Brown*. *See* App. Br. at 10-18; App. Rep. Br. at 3-8.

Respectfully submitted,

/s/ J. Corey Creek

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