

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

JOAN NAILOS
Appellant,

v.

No. 19-0517

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

CITATION OF SUPPLEMENTAL AUTHORITY UNDER RULE 30(b).

With 9:24 remaining in Mrs. Nailos's opening argument (the -38:53 mark in the argument video recording currently online at <https://www.youtube.com/watch?v=1ARsThaDSIY>) Judge Meredith posed the following question:

“When [38 C.F.R. §3.402(c)(1)] was promulgated, VA noted that DIC at that time could already be – and pension and compensation – could already be awarded retroactively in certain circumstances and pointed to two specific examples in 3.400(b)(1) and (c)(2) that both contain a 1-year retroactive period, meaning you can get benefits for up to 1 year prior to the date of the claim for those benefits. And so, given that reference to those 1-year periods in the Federal Register, how would you square – under your reading of the regulation – more than a 1 year period could be allowed retroactively for aid and attendance. How do you square it with those references?”

Counsel responded that there was a statute that controlled the effective in 38 C.F.R. §3.400(b)(1), but could not recall the citation to the specific statute. The statute to which he referred is 38 U.S.C. §3010(b)(1), 87 Stat. 694 (December 11, 1973).

DATE: June 17, 2021

Respectfully Submitted,
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