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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-5236

LOUIS FRANTZIS,

APPELLANT,

v.

DENIS McDONOUGH,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and PIETSCH, GREENBERG, ALLEN,
TOTH, FALVEY, LAURER, and JAQUITH, *Judges*.¹

ORDER

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

On June 21, 2022, in a panel decision, a majority affirmed the September 11, 2019, decision of the Board of Veterans' Appeals that denied entitlement to (1) a compensable disability rating for service-connected tension headaches effective from October 15, 2009, to February 10, 2010, and a disability rating greater than 10% effective from February 11, 2010, to November 12, 2014; and (2) an effective date before October 15, 2009, for service-connected tension headaches. On July 1, 2022, the appellant filed a timely motion for full Court review.

"Motions for full Court review are not favored. Ordinarily they will not be granted unless such action is necessary to secure or maintain uniformity of the Court's decisions or to resolve a question of exceptional importance." U.S. VET. APP. R. 35(c). In this matter, the appellant has not shown that either basis exists to warrant full Court review.

Upon consideration of the foregoing, it is

ORDERED that the motion for full Court review is denied.

DATED: July 28, 2022

PER CURIAM.

BARTLEY, *Chief Judge*, with whom JAQUITH, *Judge*, joins, dissenting: I write to express profound disagreement with the Court's denial of en banc review in this case. Few rights are more fundamental to our judicial system in general, and the veterans benefits system in particular, than the right to a full and fair hearing before the individual who will decide your case. For VA benefits claimants, that right was not purely statutory, but is also grounded in constitutional due process and basic tenets of fair play that permeate and undergird nearly every aspect of VA's

¹ Judge Meredith recused herself from this matter.

nonadversarial benefits system. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976); *Bryant v. Wilkie*, 33 Vet.App. 43, 46-47 (2020). Yet the majority in this case effectively abrogated that essential right without addressing whether those bedrock principles of fair process demand a different result. And, as my colleague Judge Jaquith explained in his dissenting opinion, a system that allows one Board member to conduct a hearing and another to decide an appeal offends the most basic notions of fair process, as it undermines the very reasons for having a hearing in the first place.

Judicial restraint may be a virtue, but it is misguided here. The Court expressly ordered and heard argument on "how the fair process doctrine may apply with respect to situations in which different Board members conduct a hearing and render a decision in the appeal." *Frantzis v. McDonough*, No. 20-5236, 2022 WL 2208386, at *8 (Vet. App. June 21, 2022). Nevertheless, the majority declined to address that issue even though it was ripe for decision. I see no value in leaving that issue for another day; there is simply no principled reason to delay consideration of this exceptionally important question and in the interim allow veterans at the Board to be deprived of their right to fair process. Therefore, I must respectfully dissent from the Court's order to deny en banc review in this case.

Copies to:

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VA General Counsel (027)