

*Not published*

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

No. 20-8637

EMILIO ESTEVEZ,

APPELLANT,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

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

**ORDER**

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

Veteran Emilio Estevez appeals, through counsel, a July 23, 2020, Board of Veterans' Appeals decision that, among other things, denied (1) a disability evaluation higher than 20% for a right shoulder disability under 38 C.F.R. § 4.71a, Diagnostic Code (DC) 5201; (2) an evaluation for a left knee disability based on limitation of extension under § 4.71a, DC 5261, separate from an evaluation under § 4.71a, DC 5258; and (3) an evaluation higher than 10% for a skin disability prior to February 8, 2016. On December 6, 2021, Mr. Estevez submitted a motion for initial review by panel, arguing that each of the appealed claims involved a legal issue warranting panel consideration. The Court granted that motion on February 14, 2022, and stayed proceedings on February 28, 2022, pending resolution of *Wallemann v. McDonough*, U.S. Vet. App. No. 20-7299. The Court issued a precedential decision in *Wallemann* on June 9, 2022, *see Wallemann v. McDonough*, 35 Vet.App. 294 (2022), and lifted the stay of proceedings in this case on July 6, 2022. Oral argument is now scheduled for October 6, 2022.

Currently pending before the Court is the Secretary's August 18, 2022, unopposed motion to clarify the issues to be addressed at oral argument. The Court will grant that motion and direct that, in addition to the issues raised in their briefs and subsequent filings, the parties shall be prepared to discuss (1) for the shoulder claim, whether an evaluation under § 4.71a, DC 5201, is to be based solely on limitation of arm flexion and abduction and, if not, how to compensate internal and external shoulder rotation under that DC in a manner consistent with 38 C.F.R. § 4.71; and (2) for the left knee claim, whether a veteran may be separately compensated under § 4.71a, DCs 5258 and 5261, for dislocation of the semilunar cartilage that results in pain at rest, among other manifestations, and limitation of extension based on painful motion, respectively.

In addition, because the Court decided *Wallemann* after briefing in this case was completed, and given the *Wallemann* Court's holding that the assignment of a disability evaluation under DC 5259 does not preclude a separate evaluation under DC 5257 for lateral instability of the same

knee, the Court will direct the Secretary to file a supplemental memorandum of law, not to exceed 10 pages, notifying the Court whether, and if so how, his position as to the left knee claim has changed. *Walleman*, 35 Vet.App. at 307. Accordingly, it is

ORDERED that the Secretary's motion to clarify the issues to be addressed at oral argument is granted. The parties should be prepared to address the above issues at oral argument. It is further

ORDERED that the Secretary, within 14 days after the date of this order, file and serve on Mr. Estevez a supplemental memorandum of law, not to exceed 10 pages, addressing the effect, if any, of *Walleman* on his position as to the left knee claim, as directed above.

DATED: August 30, 2022

PER CURIAM.

Copies to:

John Niles, Esq.

VA General Counsel (027)