

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

FRANKLIN A. GREEN,
Appellant,

v.

No. 21-4193

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

APPELLANT’S RESPONSE TO THE COURT’S APRIL 11, 2023, ORDER

The Court has asked Appellant to respond to the Secretary’s April 3, 2023, notice filed with the Court, including what effect, if any, recent developments have on this appeal.

This case has been fully briefed and is set for oral argument on April 19, 2023.

On May 10, 2022, the Secretary filed a *Solze* notice which included a December 2021 VA rating decision granting entitlement to TDIU from April 21, 2021 and a January 2022 VA Form 10182 selecting the direct review lane.

On April 3, 2023, the Secretary filed a *Solze* notice with an attached VA rating decision from May 4, 2021. That decision assigned various ratings for an acquired psychiatric disorder from August 11, 2017. A notice of disagreement was filed on VA Form 10182 selecting the direct review lane.

The Court requires all parties to a case “to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect

its decision.”¹

This Court has exclusive jurisdiction to review decisions of the Board.² Merits review of Board decisions in this Court are based on the record before the Secretary and the Board.³

Mr. Green does not know how to respond to the Secretary’s notice. The Secretary did not explain why the May 2021 VARD could deprive the Court of jurisdiction or affect the Court’s decision. These documents were available to the Secretary at the time he filed his response brief and first *Solze* notice, but they were not mentioned or included in the response brief or notice.

The Board decision on appeal denies entitlement to TDIU as a matter of law before February of 2021. The May 2021 and December 2021 rating decisions concern various ratings for the acquired psychiatric disorder and entitlement to TDIU after April of 2021. The Court is not deprived of jurisdiction because the May 2021 VARD did not grant or mention entitlement to TDIU prior to February 2021. Since the issue before the Court is the Board’s denial of TDIU as a matter of law prior to February 2021, neither the May 2021 VARD nor the appeal challenging the schedular ratings affect or moot that issue, and the Court still retains jurisdiction over the error in the Board’s final February 2021 decision.

¹ *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013) (per curiam order).

² 38 U.S.C. § 7252(a).

³ 38 U.S.C. § 7252(b).

Further, the May 2021 rating decision and subsequent notice of disagreement do not affect this Court's decision because they do not overcome the error in the Board's February 2021 decision: the Board denial of TDIU as a matter of law prior to February of 2021. Mr. Green is still harmed: because the February 2021 Board decision denied TDIU as a matter of law during the rating period on appeal, there is no evidence Mr. Green could ever enter to overcome a decision that he is not entitled to TDIU as a matter of law.

DATE: April 17, 2023

Respectfully Submitted,
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Certificate of Conference & Service

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that on April 17, 2023, I served this motion on the Secretary by and through the Court's E-Filing system:

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