

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-3218

LEWIS BROWN,

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.*

On October 27, 2023, appellant notified the Court of a critical development that could affect the Court’s jurisdiction and decision.¹ Appellant noted that, on October 25, 2023, the Board of Veterans’ Appeals (Board) granted him an earlier effective date of May 2, 1977, for his: (1) 40% rating for left lower extremity radiculopathy, (2) 10% rating for right lower extremity radiculopathy, and (3) total disability rating based on individual unemployability. The Board also granted appellant special monthly compensation at the housebound rate from September 13, 2011. The October 25, 2023, Board decision readjudicated appellant’s effective dates under the Court’s May 28, 2021, memorandum decision in appellant’s related appeal.²

At issue in this appeal is the legal effect of VA’s August 19, 2019, rating decision that assigned an effective date of September 13, 2011, for appellant’s 40% rating for left lower extremity radiculopathy and 10% rating for right lower extremity radiculopathy.

Given appellant’s success on the merits and the Board’s grant of earlier effective dates for his bilateral lower extremity radiculopathy, the Court requests additional information to better assess its jurisdiction. The Court asks the parties to address whether the appeal presents a continuing case or controversy.³ When informing the Court about any remaining case or controversy, the parties should also identify the precise harm experienced by appellant.

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

² *Brown v. McDonough*, No. 19-8563, 2021 WL 2169764, at *1 (May 28, 2021), *appeal dismissed*, No. 2021-2238, 2023 WL 2491329 (Fed. Cir. Mar. 14, 2023).

³ *Cardona v. Shinseki*, 26 Vet. App. 472, 474 (2014) (reviewing the Court’s established jurisdictional practice requiring a case-or-controversy and that “when benefits on a claim have been paid, a case generally is moot.”).

Based on the above, it is

ORDERED that within 21 days of this order, the parties respond to the Court's order, address the Court's jurisdiction, and provide any documents necessary to support their contentions.

DATED: November 2, 2023

PER CURIAM.

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)