

United States Court of Appeals for the Federal Circuit

KARL ERVIN MILLER, JR.,
Claimant-Appellant

v.

**DOUGLAS A. COLLINS, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2024-1790

Appeal from the United States Court of Appeals for
Veterans Claims in No. 22-7390, Judge Joseph L. Toth.

Decided: August 21, 2026

KENNETH DOJAQUEZ, Carpenter Chartered, Topeka,
KS, argued for claimant-appellant. Also represented by
KENNETH M. CARPENTER.

EVAN WISSER, Commercial Litigation Branch, Civil Di-
vision, United States Department of Justice, Washington,
DC, argued for respondent-appellee. Also represented by
BRIAN M. BOYNTON, ELIZABETH MARIE HOSFORD, PATRICIA
M. MCCARTHY; BRIAN D. GRIFFIN, RICHARD STEPHEN
HUBER, Office of General Counsel, United States Depart-
ment of Veterans Affairs, Washington, DC.

Before LOURIE, BRYSON, and REYNA, *Circuit Judges*.

REYNA, *Circuit Judge*.

Mr. Karl E. Miller, Jr. appeals a decision of the United States Court of Appeals for Veterans Claims affirming the Board of Veterans' Appeals' denial of an earlier effective date for his service-connected post-traumatic stress disorder. Mr. Miller argues that the Board's application of 38 C.F.R. § 3.156(c)(2) (2006) was an impermissible retroactive application of the regulation. We determine that the Board's application of the regulation was prospective and thus proper. We affirm the judgment of the Veterans Court.

BACKGROUND

I.

At issue here is the U.S. Department of Veterans Affairs' ("VA" or "agency") regulation at 38 C.F.R. § 3.156(c), that provides that the VA will reconsider a veteran's original filed, denied claim ("original claim") upon the VA's receipt or association of relevant service department records of the veteran that were unavailable at the time of prior decision. *See* 38 C.F.R. § 3.156(c); *see also* 27 Fed. Reg. 11,886, 11,887 (Dec. 1, 1962). Specifically, reconsideration provides a path for the veteran to receive disability benefits back to the date of the original claim. *See Mayhue v. Shinseki*, 24 Vet. App. 273, 278–79 (2011) (recognizing the "VA's well-established practice of reconsidering claims based on newly discovered service department records and assigning an effective date as early as the date that the initial claim was filed"). The VA's reasoning for providing recovery of disability benefits to the date of the original claim is "that a claimant should not be harmed by an administrative deficiency of the government," such as an oversight of service department records that would have supported the veteran's original claim for benefits. 70 Fed.

Reg. 35,388, 35,389 (June 20, 2005). For example, service department records can provide evidence of the veteran's in-service stressor of post-traumatic stress disorder ("PTSD"), such as documentation of the deployment of the veteran's unit and the combat experienced by the unit.

In October 2006, the VA amended the regulation, restructuring it into four subparts, 38 C.F.R. § 3.156(c)(1)–(c)(4).¹ Subpart (c)(1) substantively mirrors in relevant part the old regulation, and provides that:

[n]otwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section.

38 C.F.R. § 3.156(c)(1) (2006). Subpart (c)(2), however, places a limitation on reconsideration not previously included in the old regulation. This limitation provides that:

[p]aragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided *the claim* because the records did not exist when VA decided the claim, or *because the claimant failed to provide sufficient information for VA to*

¹ We refer to 38 C.F.R. § 3.156(c)(1)–(c)(2) introduced through the October 2006 amendment as the “new regulation” or as “38 C.F.R. § 3.156(c)(1), (c)(2) (2006).” Subparts (c)(3) through (c)(4) are not at issue in this appeal, and thus, we do not refer to them moving forward. Finally, we refer to the version of the regulation in place prior to the October 2006 amendment as the “old regulation.”

identify and obtain the records from the respective service department or from any other official source.

38 C.F.R. § 3.156(c)(2) (2006) (emphasis added). Thus, under subpart (c)(2), automatic reconsideration upon receipt or association of new and relevant service department records is no longer available if the veteran did not “provide sufficient information for [the] VA to identify and obtain the records from the respective service department or from any other official source” at the time the VA “decided the claim.” *Id.*

In *Cline v. Shinseki*, the United States Court of Appeals for Veterans Claims (“Veterans Court”) addressed the interplay between the old and new regulations. 26 Vet. App. 18 (2012). There, the Board of Veterans’ Appeals (“Board”) applied the new regulation to a veteran’s 1999 “claim to reopen”² when determining whether the veteran was entitled to reconsideration. *Id.* at 20–21.³ On appeal, the Veterans Court considered the “*Princess Cruises* factors” and concluded that the Board’s application of the new regulation to the 1999 claim to reopen was an impermissible retroactive application of the regulation. *Id.* at 25–26. The “*Princess Cruises* factors” are three factors for determining whether the retroactive application of a statute or regulation is impermissible. *Princess Cruises v. United States*, 397 F.3d 1358, 1362–63. (Fed. Cir. 2005)

² A “claim to reopen” refers to a claim seeking to reopen a previously denied claim based on “new and material” evidence, which is evidence broader than service department records. 38 C.F.R. § 3.156(a). The effective date for a claim to reopen is the date of the most recent claim to reopen or the date entitlement arose, whichever is later. 38 C.F.R. § 3.400(r).

³ The VA associated new and relevant service department records with the veteran’s claims file in 2005. *Cline*, 26 Vet. App. at 20.

(explaining that “[r]etroactivity is not favored in the law and, therefore, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result” (internal quotation marks and citation omitted)).

Considering *Princess Cruises* factor one, the “nature and extent of the change of the law,” the Veterans Court found there was a substantial change in the law in the new regulation, i.e., the “VA was no longer required to reconsider claims where the claimant failed to provide sufficient information to identify and obtain the service department records.” *Cline*, 26 Vet. App. at 26. As to *Princess Cruises* factor two, “the degree of connection between the operation of the new rule and a relevant past event,” the Veterans Court found a high degree of connection, i.e., “retroactive application of § 3.156(c)(2) would necessarily impose a penalty on [the veteran] for conduct that was not previously prohibited.” *Id.* And for *Princess Cruises* factor three, “familiar considerations of fair notice, reasonable reliance, and settled expectations,” the Veterans Court found such considerations weighed in favor of the veteran, who “was not given notice of any kind that the Secretary intended to create a new bar to reconsideration before he ultimately provided information sufficient to verify his stressor.” *Id.* at 26–27. Thus, on the basis that the three factors weighed against giving retroactive effect to the new regulation, the Veterans Court concluded that the Board’s application of the new regulation to the veteran’s 1999 claim to reopen was impermissibly retroactive. *Id.* at 27. The Veterans Court remanded with instructions that the old regulation be applied when determining whether reconsideration was appropriate. *Id.*

II.

Mr. Miller served in the U.S. Army from 1969 to 1972 and deployed to Vietnam during this time. J.A. 99. Mr. Miller sought disability benefits for service-connected

PTSD stemming from his time in Vietnam through a series of four claims.

In April 1987, Mr. Miller filed his first claim (the “1987 claim”). J.A. 12. In his “Statement in Support of Claim,” Mr. Miller alleged that he “had received treatment for PTSD . . . [and] was treated in Boise Idaho for this . . . in 1983-84.” The VA then requested that Mr. Miller report for an examination and that failure to report could result in a disallowed claim. J.A. 283. Mr. Miller did not appear for his examination, prompting the VA to deny his claim, which became final. J.A. 285.

In April 1990, Mr. Miller filed a second claim with the VA (“1990 claim”). J.A. 13; J.A. 17. This time, Mr. Miller provided the VA with more details concerning his service, including that: (1) he was assigned to the 25th Infantry Brigade around the timeframe of 1970, (2) there was an instance where he or members of his unit shot a child, and (3) he saw “guys blown up on the perimeter many times.” J.A. 276. The VA denied Mr. Miller’s April 1990 claim because “[t]here [wa]s no evidence of an acceptable stressor or any diagnosis of post-traumatic stress disorder.” J.A. 19. The denial of the 1990 claim became final. J.A. 30.

In August 2000, Mr. Miller filed a third claim (“2000 claim”), which the VA denied for lack of a confirmed stressor or diagnosis of PTSD. J.A. 20–25. The denial of the 2000 claim became final.

In March 2007, Mr. Miller filed his fourth claim (“2007 claim to reopen”),⁴ along with a VA Form 21-0781, entitled “Statement in support of claim for service connection for post-traumatic stress disorder (PTSD).” J.A. 45–46. In the VA form, Mr. Miller described two stressor incidents

⁴ The parties refer to this claim as a “claim to reopen.” See Appellant Br. 4; Appellee Br. 1. Thus, we do here as well.

during his deployment at the Cu Chi Base Camp with the 65th Engineer Battalion, which was a part of the 25th Infantry Brigade, and with the 54th Engineer Company. *Id.*

In June 2007, the VA denied Mr. Miller's 2007 claim to reopen ("June 2007 Decision").⁵ J.A. 47. In June 2008, Mr. Miller filed a notice of disagreement, the first step in appealing the June 2007 Decision. J.A. 51–55.

On August 13, 2008, Mr. Miller requested service department records from the Department of the Army, U.S. Army and Joint Services Records Research Center ("AJSRRC") concerning Mr. Miller's time with the 65th Engineer Battalion from May 14 to October 23, 1970. J.A. 60. On August 27, 2008, the AJSRRC sent Mr. Miller copies of service department records for the 65th Engineer Battalion and other military units for the requested period. J.A. 60–89. In November 2008, during the pendency of Mr. Miller's appeal of the VA's June 2007 Decision, Mr. Miller submitted the evidence he received from the AJSRRC to the VA to support his claimed PTSD stressors. J.A. 56–59; *see also* J.A. 62–89.

In June 2010, the VA awarded Mr. Miller disability benefits for service-connected PTSD with an effective date of Mr. Miller's 2007 claim to reopen. J.A. 99–105. Mr. Miller appealed to the Board. J.A. 107–11.

In 2022, after a series of remands and appeals, the Board granted Mr. Miller an earlier effective date of April 1990, the date of Mr. Miller's 1990 claim (the "Board 2022 Decision"). J.A. 273–78. The Board determined that reconsideration was appropriate and applied the new regulation. J.A. 277–78. The Board determined that at the time of Mr. Miller's 1990 claim, Mr. Miller had provided the VA

⁵ The VA, however, granted service-connection for diabetes, the grant of which is not at issue in this appeal. J.A. 47.

with sufficient information to identify and obtain the 2008 service department records, and thus, Mr. Miller was entitled to an effective date of 1990. *Id.* The Board determined, however, that Mr. Miller failed to provide sufficient information to identify and obtain the 2008 service department records at the time of his 1987 claim and thus, he was not entitled to an earlier effective date of 1987. J.A. 278.

Mr. Miller appealed to the Veterans Court, arguing entitlement to an effective date of 1987. J.A. 1–4. Mr. Miller argued that the Board’s application of the new regulation was impermissibly retroactive, in contravention of *Cline*. J.A. 3. According to Mr. Miller, the Board should have applied the old regulation, which required automatic reconsideration once the VA received the new and relevant service department records, without any consideration of whether the veteran failed to provide information to identify the service records at the time of original claim filing. *Id.*

In 2024, the Veterans Court affirmed the Board 2022 Decision, concluding that because the new regulation was in effect at the time of Mr. Miller’s 2007 claim to reopen, the Board’s application of the new regulation was not impermissibly retroactive (“Veterans Court 2024 Decision”). J.A. 1–4. The Veterans Court distinguished *Cline* because there, the Board applied the new regulation to the veteran’s 1999 claim to reopen, a claim which was filed prior to the new regulation. J.A. 3. The Veterans Court noted that in this case, the Board applied the new regulation to Mr. Miller’s 2007 claim to reopen because the claim was filed after the new regulation became effective. *Id.*

Mr. Miller appeals. We have jurisdiction under 38 U.S.C. § 7292(c).

STANDARD OF REVIEW

We have exclusive jurisdiction to review decisions of the Veterans Court involving questions of law. 38 U.S.C.

§ 7292. Questions of statutory and regulatory interpretation are questions of law. *Breland v. McDonough*, 22 F.4th 1347, 1350 (Fed. Cir. 2022). As such, “[w]e review statutory and regulatory interpretations of the Veterans Court *de novo*.” *Parrott v. Shulkin*, 851 F.3d 1242, 1247 (Fed. Cir. 2017) (internal quotation marks and citation omitted).

DISCUSSION

The issue on appeal is whether the Board legally erred in its application of the new regulation when concluding that reconsideration of Mr. Miller’s original 1987 claim for service-connected PTSD was barred under subsection (c)(2). For the reasons stated below, we hold that the Board did not err in its application of the new regulation to Mr. Miller’s original 1987 claim for service connection. We thus affirm the judgment of the Veterans Court.

We start our analysis by noting that the parties agree that the new regulation is forward-looking and must be applied prospectively. The focus of the dispute, then, is the identity of the event or action that triggers the application of the new regulation. *See* Oral Arg. at 1:38–1:56 (“Everyone agrees that the new regulation is forward looking. The question is forward from what event.”).

According to Mr. Miller, the new regulation applies prospectively from the date of the veteran’s original claim. Stated differently, Mr. Miller asserts that the new regulation only applies to veterans’ original claims filed on or after October 6, 2006, the effective date of the new regulation. Appellant Br. 9–12; Oral Arg. at 0:50–1:01, 4:18–4:56, 8:10–8:33, 20:50–21:07. Mr. Miller asserts that since the date of his original claim was well before October 2006, the Board erred when it applied the new regulation

and instead should have applied the old regulation. In support, Mr. Miller relies on *Cline*.⁶

The government argues that the new regulation is applied prospectively from the date of a veteran's claim to reopen. This means that the new regulation would apply only to claims to reopen that were filed on or after October 6, 2006. The government reasons that since Mr. Miller's claim to reopen was filed after October 2006, the new regulation would apply.

The issue on appeal boils down to one of regulatory interpretation: based on the language of the new regulation, what event, or action, triggers its application? We begin with the text of the regulation. *See Rep. of Sudan v. Harrison*, 587 U.S. 1, 8 (2019) (noting that when the issue concerns the meaning of a statute, the court “begin[s] where all such inquiries must begin: with the language of the statute itself” (citation modified)); *Kisor v. Wilkie*, 588 U.S. 558, 628 (2019) (Gorsuch, J., concurring) (“When we interpret a

⁶ We are not bound by *Cline*, a decision issued by the Veterans Court. *See, e.g., Elkins v. Gober*, 229 F.3d 1369, 1375 (Fed. Cir. 2000) (noting that decisions by the Veterans Court are “not binding on us”). But we note that no party challenges the portion of *Cline* that held that neither the VA nor a tribunal may give the new regulation retroactive effect in light of the *Princess Cruises* factors. *See* Appellant Br. 7–13; Appellee Br. 6–11. Neither the validity of this portion of *Cline*, nor *Cline*'s application and weighing of the *Princess Cruises* factors was briefed in this appeal. *See* Appellant Br. 7–13; Appellee Br. 6–11. On that basis, we do not address those issues. *See SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (citing *Anderson v. City of Bos.*, 375 F.3d 71, 91 (1st Cir. 2004) (“When a party includes no developed argumentation on a point . . . we treat the argument as waived under our well established rule.”)).

regulation, we typically . . . proceed in the same way we would when interpreting any other written law: We begin our interpretation of the regulation with its text.” (citation modified)). Subsection (c)(1) of the new regulation provides that:

[n]otwithstanding any other section in this part, at any time after VA issues a decision on a claim, *if VA receives or associates with the claims file relevant official service department records* that existed and had not been associated with the claims file when VA first decided the claim, *VA will reconsider the claim*, notwithstanding paragraph (a) of this section.

38 C.F.R. § 3.156(c)(1) (2006) (emphases added). Subsection (c)(2) of the new regulation provides that:

[p]aragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department or from any other official source.

38 C.F.R. § 3.156(c)(2) (2006). When read together, these two provisions plainly indicate that subsection (c)(2) is invoked upon the VA’s receipt or association of new and relevant service department records. 38 C.F.R. § 3.156(c)(1)–(c)(2) (2006). If the VA never receives or associates new and relevant service department records with the veteran’s claims file, subsection (c)(2) remains inactive. And while the veteran’s original claim does play a role in the operation of subsection (c)(2), the original claim does not by itself invoke application of subsection (c)(2). Again, it is not until the VA receives or associates new and relevant service department records that subsection (c)(2) applies. For this reason, we hold that the action that invokes

the application of the new regulation is the VA's receipt or association of new and relevant service department records.

We reject the government's position that a claim to reopen is the necessary trigger here.⁷ Appellee Br. 7–11. Subsection (c)(1) states that it applies “notwithstanding paragraph (a) of this section.” 38 C.F.R. § 3.156(c)(1) (2006). “[P]aragraph (a) of this section” allows a veteran to “reopen” a previously denied claim by submitting more generally “new and material evidence.” 38 C.F.R. § 3.156(a) (2006). In other words, reconsideration under subsection (c)(1), and by extension (c)(2), may proceed “notwithstanding” a veteran's claim to reopen. Additionally, as Mr. Miller's counsel correctly observed at oral argument, “this regulation does not require any filing or claim [to reopen] by the veteran.” Oral Arg. at 2:02–2:51; *see also* 38 C.F.R. § 3.156(c)(1) (2006). Rather, the regulation self-initiates once the VA receives or associates new and relevant service department records. 38 C.F.R. § 3.156(c)(1) (2006). In other words, the VA could receive or associate new and relevant service department records without the veteran knowing such records were received. Oral Arg. at 2:02–2:51. Thus, the new regulation could be triggered without the veteran ever filing a claim to reopen. *See* 38 C.F.R. §§ 3.156 (a), (c)(1)–(c)(2) (2006).

We also disagree with the government that the portion of *Cline*, which looked to the claim to reopen as the triggering event, dictates the analysis here. Appellee Br. 8–9. As previously noted, we are not bound by *Cline*. In addition,

⁷ A claim to reopen may potentially trigger reconsideration under the new regulation, if, for example, the veteran submits new and relevant service department records with his claim to reopen. However, a claim to reopen is not, by itself and without any connection to new and relevant service department records, the triggering event.

Cline's reference to the claim to reopen as the triggering event is not instructive. *Cline*, 26 Vet. App. at 21. In *Cline*, the Veterans Court did not explain why it looked to Mr. Cline's 1999 claim to reopen, as opposed to Mr. Cline's 1993 original claim or the VA's 2005 receipt of new and relevant service department records, when concluding that the Board's application of the new regulation was retroactive. *Id.* Nor did it provide any support for relying on the claim to reopen apart from the fact that Mr. Cline's claim was pending appeal when the Board applied the new regulation. *See id.* But, that the 1999 claim to reopen was pending appeal does not answer the regulatory interpretation issue before us: what action triggers application of the new regulation? We hold that the plain language of the regulation, which guides this analysis, makes clear that the VA's receipt or association of a veteran's new and relevant service department records is the triggering event.

We recognize Mr. Miller's argument that the Board's application of the new regulation included consideration of facts relating to his original 1987 claim. *See* J.A. 278. For example, the Board considered whether, in 1987, Mr. Miller provided "sufficient information" to the VA to locate new and relevant service department records. *Id.* To be clear, this obligation to provide sufficient information did not exist at the time Mr. Miller filed his 1987 claim. *See* J.A. 3 (citing *Cline*, 26 Vet. App. at 26). However, "a statute is not made retroactive merely because it draws upon antecedent facts for its operation." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 n. 24 (1994) (internal quotation marks and citation omitted). If this were the case, then "every time a man relied on existing law in arranging his affairs, he [would be] made secure against any change in legal rules [and] the whole body of our law would be ossified forever." *Id.* (citation modified) (quoting L. Fuller, *The Morality of Law* 60 (1964)) (explaining that "[e]ven uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct [such as] a new

property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property” (citation modified)).

Mr. Miller contends that to apply the 2006 version of the regulation in his case would have an unfairly retroactive effect, because that version of the regulation did not exist in 1987 when Mr. Miller filed his first claim for benefits. But the application of the regulation in this setting is neither impermissibly retroactive nor unfair. Unlike the situation in the *Cline* case before the Veterans Court, Mr. Miller was on notice of the 2006 amendment to section 3.156 when he submitted his claim to reopen his case in 2007. As the Veterans Court explained, the initial claim stream had ended long before the 2006 amendment, and the new claim stream stemming from the claim to reopen was subject to the version of the regulation at the time the claim to reopen was filed. J.A. 3. Moreover, when Mr. Miller submitted his initial 1987 claim without supporting information, he could not reasonably have assumed that the procedures for adjudicating claims that were outlined in the 1987 version of section 3.156 would not be modified over time. *See Landgraf*, 511 U.S. at 270; *Rodriguez v. Peake*, 511 F.3d 1147, 1156 (Fed. Cir. 2008); *Princess Cruises*, 397 F.3d at 1365–66.

In sum, the action that invokes the application of the new regulation is the VA’s receipt or association of a veteran’s new and relevant service department records. That action in this case is the VA’s receipt or association of new and relevant service records that occurred in 2008, *after* the new regulation took effect. No party disputes the Board’s finding that the VA received or associated new and relevant service records with Mr. Miller’s claim in 2008, and, thus, we accept this finding as true. Appellant Br. 8–13; Appellee Br. 4, 7–11; Veterans Court 2024 Decision, J.A. 2 (noting that “[t]he Board found that the service department records associated with the claims file in 2008 were new and relevant and that [Mr. Miller’s] grant of

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service connection was based at least partly on those records.”); Board 2022 Decision, J.A. 273 (noting under “Findings of Fact” that “[i]n August 2008, official service department records were obtained, such that reconsideration of the finally denied claim was warranted”). Because the new regulation was invoked in 2008, the Board’s application of the new regulation in its 2022 Decision was prospective and proper. There is no legal error here. We affirm the Veterans Court.

CONCLUSION

We have considered Mr. Miller’s remaining arguments and find them unpersuasive. Accordingly, we affirm the decision of the Veterans Court.

AFFIRMED

COSTS

No costs.