NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

DANNY DAVIS,
Claimant-Appellant

v.

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

2024-1960

Appeal from the United States Court of Appeals for Veterans Claims in No. 22-4863, Judge Amanda L. Meredith.

Decided: March 10, 2025

DANNY DAVIS, Memphis, TN, pro se.

JOSHUA N. SCHOPF, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR., PATRICIA M. MCCARTHY; MATTHEW ALBANESE, DEREK SCADDEN, Office

of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before LOURIE, TARANTO, and STOLL, *Circuit Judges*.

PER CURIAM.

Danny Davis left active military service in April 1993 and began applying to the U.S. Department of Veterans Affairs (VA) for awards of or increases in already-awarded disability benefits, under 38 U.S.C. ch. 11, based on assertedly service-connected injuries. In 2015 and 2017, Mr. Davis filed three claims requesting increased disability ratings for service-connected conditions of the lower back and right ankle, benefits for deep venous thrombosis in his left leg, benefits for degenerative arthritis in his right shoulder, an earlier effective date and a rating of compensable disability for service-connected hypertension, and other matters not relevant to the present appeal. After VA's relevant regional office denied those claims, the VA's Board of Veterans' Appeals (Board) (1) remanded the matters of entitlement to a higher disability rating for the back and right-ankle conditions, (2) found that the deep venous thrombosis and the right-shoulder condition were connected to Mr. Davis's service, (3) granted a disability rating of 10% (not higher) for hypertension, and (4) dismissed the claim of entitlement to an earlier effective date for the award of benefits for service-connected hypertension. Mr. Davis appealed.

The Court of Appeals for Veterans Claims (Veterans Court) ruled that it lacked jurisdiction over the remanded matters, as well as the Board's favorable findings of service connection and favorable grant of a 10% disability rating for service-connected hypertension. *Davis v. McDonough*, No. 22-4863, 2024 WL 935642, at *1, *8 (Vet. App. Mar. 5, 2024) (*2024 Opinion*). For service-connected hypertension, it also affirmed the denial of a disability rating higher than

10% and dismissed Mr. Davis's appeal regarding an earlier effective date. *Id.* at *1–2, *8. Mr. Davis asks this court to review the Veterans Court's determination. We affirm in part and dismiss in part.

I

Mr. Davis served on active duty from November 1979 to April 1993. *Id.* at *2. Since his departure from active duty, he has sought compensation for several disabilities. *Id.* We describe the history of the proceedings specifically relevant to the issues now before us.

A

In a June 1994 rating decision, VA found service connection for hypertension and for residuals of injuries to his back (lumbar strain) and right ankle, effective April 20, 1993, the day following his separation from service. *Id.*; *see* 38 U.S.C. § 5110(b)(1). For hypertension, VA found the disability not to warrant compensation, but for the other two conditions, VA assigned a 10% disability rating. *2024 Opinion*, at *2. In February 1999, VA increased Mr. Davis's disability ratings for the lumbar-strain and right-ankle conditions to 40% and 20%, respectively, effective May 19, 1998, but denied his request for a positive-compensation rating for hypertension. *Id.*

In 2015, Mr. Davis sought increased ratings for his back and right-ankle conditions and benefits for a blood clot in the left leg, but VA denied those requests. *Id.* In April 2017, Mr. Davis again requested positive compensation for hypertension, but VA denied the request in October 2017. *Id.* In August 2017, Mr. Davis filed a claim for benefits for degenerative arthritis of the right shoulder, which VA denied in March 2018. *Id.* Mr. Davis filed notices of disagreement with the 2015, 2017, and 2018 decisions, appealing those decisions to the Board. *Id.*

B

On April 8, 2022, the Board issued its decision. S. Appx. 35–68;[1] *see 2024 Opinion*, at *3. The Board remanded the matters of entitlement to higher disability ratings for mechanical low-back pain with a herniated disc and residuals of a right-ankle fracture, stating that Mr. Davis "should be afforded new VA examinations to determine the current nature and severity of his service-connected low back, [and] right ankle" disabilities. S. Appx. 66–68; *see* S. Appx. 36; *2024 Opinion*, at *1. The Board found service connection for residuals for deep venous thrombosis of the left leg (including pulmonary embolism and atrial fibrillation) and for strain and degenerative arthritis of the right shoulder. S. Appx. 35; *2024 Opinion*, at *1.

Regarding Mr. Davis's entitlement to benefits for hypertension (already found to be service connected), the Board dismissed as a matter of law his request for an effective date earlier than April 20, 1993 (the day after his active service ended). S. Appx. 35, 38. The Board explained that "[s]ervice connection cannot be established earlier than the first day following separation from active service." S. Appx. 43. The Board further reasoned that Mr. Davis did not file a notice of disagreement challenging VA's June 1994 rating decision (which assigned that effective date and found the disability not to warrant compensation) and was not now arguing for clear and unmistakable error of that decision. S. Appx. 36, 43–44; *see* 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.202.

Regarding Mr. Davis's April 2017 request for a positive-compensation rating for hypertension, the Board agreed with Mr. Davis in part. *See* S. Appx. 36. It found that a 10% rating under 38 C.F.R. § 4.104, Diagnostic Code

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[1] "S. Appx." refers to the Supplemental Appendix submitted by the government.

7101, was warranted, explaining that, although blood pressure readings between May 2016 and September 2019 exhibited diastolic blood pressure predominantly below 100, "September 1993 and October 1998 VA examination reports clearly show[ed] that historically, he exhibited diastolic blood pressure elevation to predominantly 100 or more" and his "hypertension require[d] the continuous use of medication for control." S. Appx. 63–65 (citing *Wilson v. McDonough*, 35 Vet. App. 75 (2021)). The Board added that, in evaluating Mr. Davis's service-connected hypertension for disability-rating purposes, it could properly rely on blood-pressure readings taken while Mr. Davis was taking blood-pressure medication. S. Appx. 63–64 (citing *McCarroll v. McDonald*, 28 Vet. App. 267 (2016)). The Board found that the record did not show that Mr. Davis met the criteria for a 20% disability rating. S. Appx. 36, 65. Mr. Davis appealed the Board's decision.

C

The Veterans Court issued its opinion on March 5, 2024. S. Appx. 10–21; *2024 Opinion*, at *1. The Veterans Court concluded that, because remands by the Board are not final decisions, the Veterans Court lacked jurisdiction over the matters related to the disability rating assigned to the conditions of the lower back and right ankle. *2024 Opinion*, at *1. The Veterans Court similarly concluded that it lacked jurisdiction to review or disturb the Board's "fully favorable" findings of service connection for the right-shoulder condition, service connection for deep venous thrombosis, and a 10% disability rating for his service-connected hypertension. *Id.* at *1, *5.

The Veterans Court reviewed and affirmed the Board's denial, based on its "longitudinal review of the record," of a 20% rating for the service-connected hypertension. *Id.* at *2, *6–7. The Veterans Court noted that Mr. Davis did not challenge, on appeal, the Board's dismissal of his request for an effective date earlier than April 20, 1993, for service-

connected hypertension. *Id.* at *1. Furthermore, "to the extent that [Mr. Davis] contend[ed] that he is entitled to an effective date as early as 2005 for the [eventual] award of the 10% rating for hypertension," the Veterans Court held that this matter was not before it because "the Board did not assign an effective date for the higher rating in the decision on appeal." *Id.* at *7.

The Veterans Court also addressed whether it could consider a letter that Mr. Davis purportedly sent to VA's Office of the Inspector General (OIG letter) in July 2018. *Id.* at *3 n.3. Mr. Davis included the OIG letter in his informal brief to the Veterans Court to support his argument that VA fraudulently closed claims he purportedly filed in 2001 and 2002 for benefits for left-knee and ankle conditions. *Id.*; S. Appx. 24–34.[2] The Veterans Court explained that it was precluded by 38 U.S.C. § 7252(b) from considering the OIG letter because Mr. Davis "d[id] not assert that this document was before the Board at the time of the decision on appeal, nor d[id] this document appear in the record of proceedings filed with the Court." *2024 Opinion*, at *3 n.3.

On March 26, 2024, Mr. Davis moved for single-judge reconsideration. S. Appx. 5–9. He made six arguments relevant to the present appeal.[3] First, he argued that the

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[2] The OIG letter refers to Mr. Davis's "right ankle and knee for arthritis from injuries," S. Appx. 33, but the parties agree that the OIG letter was referring to degenerative arthritis in the left knee and ankle. *See* Informal Opening Brief at 5; Appellee Response Brief at 2 n.4 (noting Mr. Davis's "slip of the pen" in the letter); Informal Reply Brief at 1.

[3] He also urged the Veterans Court to reconsider its decision to vacate the Board's denial of benefits for acid reflux and remand the matter for further proceedings, but

Board's remand of the matters relating to his lower back and right ankle were not "favorable" given VA's previous denial of benefits without an examination. S. Appx. 8. Second, he argued that his right-shoulder condition warranted a 20% disability rating. *Id*. Third, he disagreed with the Veterans Court's characterization of the Board's grant of service connection for deep venous thrombosis as "favorable" because he had not yet received "a settlement and[/]or benefits." *Id*. Fourth, he argued that, regarding hypertension, he deserved a rating higher than 10%, asserting that the blood-pressure readings VA obtained during examinations were inaccurate for several reasons, including that the readings were taken while Mr. Davis was taking his blood-pressure medication, which he said brings his blood pressure down. S. Appx. 5–7. Fifth, he argued that the effective date for benefits for service-connected hypertension and deep venous thrombosis "should be early February 2006." S. Appx. 7–8. Sixth, he argued that the OIG letter was in the record because OIG is "under the chain of command of the Secretary of the VA" and because he purportedly mentioned the letter to the Board in an October 2021 hearing. S. Appx. 8.

In an order issued April 2, 2024, the Veterans Court denied single-judge reconsideration, explaining that it would not consider arguments Mr. Davis was raising for the first time and that Mr. Davis had failed to show that the Veterans Court had "overlooked or misunderstood a point of fact or law prejudicial to the outcome of the appeal." S. Appx. 2–4. The Veterans Court's decision became

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did not identify a specific error in the Veterans Court's decision to vacate and remand, which we note is not a decision adverse to Mr. Davis, or his desired outcome. S. Appx. 8. He has not raised this acid-reflux matter in the present appeal. Informal Opening Brief at 1–7.

final on April 2, 2024, and Mr. Davis timely appealed to this court.

II

Our authority to review decisions by the Veterans Court is "limited by statute." *Perciavalle v. McDonough*, 101 F.4th 829, 835 (Fed. Cir. 2024); *see generally* 38 U.S.C. § 7292. We have authority to review "the validity of a decision of the [Veterans] Court on a rule of law or of any statute or regulation . . . or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the [Veterans] Court in making the decision." 38 U.S.C. § 7292(a). In particular, the scope of the Veterans Court's jurisdiction under 38 U.S.C. § 7252 is a legal issue. *See Goss v. McDonough*, 122 F.4th 1332, 1336 (Fed. Cir. 2024). But where, as here, no constitutional question is presented, we "may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." 38 U.S.C. § 7292(d)(2); *see Perciavalle*, 101 F.4th at 835.

We understand Mr. Davis to be making six arguments. First, he argues that he should be awarded a disability rating for degenerative arthritis in his back and right ankle. Informal Opening Brief at 4, 6, 7. Second, he argues that he should be awarded a disability rating for his deep venous thrombosis and a higher disability rating for his right-shoulder condition. *Id.* at 5–7. Third, regarding his service-connected hypertension, Mr. Davis argues that he is entitled to a disability rating higher than 10%, at least in part because the Board, in limiting the rating to 10%, relied on blood-pressure readings he deems inaccurate. *Id.* at 4, 6–7. Fourth, he argues that he is entitled to an earlier effective date, seemingly back to 2006, for the finding of service connection and benefits for hypertension and deep venous thrombosis. *Id.* at 6–7. Fifth, he argues that he is entitled to benefits for conditions of his left knee and ankle, citing his OIG letter as evidence in support. *Id.* at 6–7.

None of these contentions, we conclude, supplies a basis for us to set aside the Veterans Court's decision.

We conclude that the Veterans Court correctly ruled that it lacked jurisdiction over the issue in Mr. Davis's appeal related to the disability ratings for conditions of the lower back and right ankle. The Board's remand of those matters is not a grant or denial of a higher disability rating and, thus, is not a "decision" under 38 U.S.C. § 7252(a) that the Veterans Court has authority to review. *Kirkpatrick v. Nicholson*, 417 F.3d 1361, 1363–64 (Fed. Cir. 2005); *see* 38 U.S.C. § 7104(d)(3). The Board (or VA regional office if warranted) is where Mr. Davis must present his factual arguments about how his purported degenerative arthritis in his lower back and right ankle should affect his disability rating. *See*, *e.g.*, S. Appx. 8; Informal Reply Brief at 1, 3, 6. He may also file new claims to the extent he asserts conditions outside the scope of the claims already presented.

We also conclude that, to the extent that the Board found service connection for deep venous thrombosis and for strain and degenerative arthritis in the right shoulder, and to the extent it granted a disability rating of 10% for service-connected hypertension, those rulings were decisions favorable to Mr. Davis. S. Appx. 35–36; *2024 Opinion*, at *5; *see Monk v. Shulkin*, 855 F.3d 1312, 1316, 1319–20 (Fed. Cir. 2017). Because those decisions are not adverse decisions, the Veterans Court correctly concluded that it lacked jurisdiction to review them under 38 U.S.C § 7266(a). *2024 Opinion*, at *1, *5; *Monk*, 855 F.3d at 1316, 1319–20.

Mr. Davis argues that he should receive an effective date in 2006 for his service-connected deep venous thrombosis and his service-connected hypertension. Informal Opening Brief at 6–7. We conclude that the Veterans Court correctly ruled that those issues were not before it. *2024 Opinion*, at *1, *5, *7; S. Appx. 3. Regarding deep venous thrombosis, the Veterans Court explained that

"downstream" issues like an effective date are decided after service connection is found; thus, the Board had not addressed the issue of the effective date for benefits for deep venous thrombosis and that issue was not before the Court. *2024 Opinion*, at *5 (citing *Grantham v. Brown*, 114 F.3d 1156, 1158 (Fed. Cir. 1997)); S. Appx. 3. Similarly, regarding a rating of compensable disability for hypertension, the Board had not "assign[ed] an effective date for the higher rating in the decision on appeal, and therefore that matter [was] not before the [Veterans] Court." *2024 Opinion*, at *7; S. Appx. 3.

Mr. Davis challenges the accuracy of the blood-pressure readings on which the Board relied, when assigning a 10% rating, in finding that a rating of 20% was not warranted under 38 C.F.R. § 4.104, Diagnostic Code 7101. Informal Opening Brief at 4–5. We do not have authority to review that challenge, which amounts to no more than a challenge to the Board's findings of fact or application of law to the facts. *See King v. Shinseki*, 700 F.3d 1339, 1346 (Fed. Cir. 2012). Mr. Davis has not identified a legal error in the Veterans Court's allowance, at least in this case, of using blood-pressure readings that Mr. Davis deems inaccurate at least in part because he was medicated when those readings were taken. The Veterans Court explained in *McCarroll* that use of blood-pressure readings taken while a veteran is medicated is allowed under Diagnostic Code 7101, 28 Vet. App. at 271–75, and Mr. Davis has not argued that *McCarroll* committed legal error in so concluding. *See 2024 Opinion*, at *7 (noting absence of challenge); Informal Opening Brief (no challenge to *McCarroll*); S. Appx. 3.

Finally, Mr. Davis contends that he is entitled to disability benefits for claims he purportedly presented to VA in 2001 and 2002. Informal Opening Brief at 7. He relies on the OIG letter, which he argues was properly before the Board at the time of its 2022 decision. *Id.* at 5–7; Informal Reply Brief at 1–2, 6–7. The Veterans Court determined

that it was precluded from considering the letter because it was not in the record before the Board. *2024 Opinion*, at *3 n.3; *see* 38 U.S.C. §§ 7252(b), 7261(b); *Kyhn v. Shinseki*, 716 F.3d 572, 575–77 (Fed. Cir. 2013) (holding that reliance on extra-record evidence exceeds the Veterans Court's limited jurisdiction); *see also Bowling v. McDonough*, 38 F.4th 1051, 1057 (Fed. Cir. 2022); *Tadlock v. McDonough*, 5 F.4th 1327, 1333, 1335–36 (Fed. Cir. 2021). Mr. Davis's contention that he had mentioned the letter and raised the issue to the Board in October 2021, "without more," the Veterans Court explained, "d[id] not demonstrate that the Court overlooked or misunderstood any point of law or fact." S. Appx. 3. Mr. Davis makes no argument in the present appeal that the Veterans Court legally erred in so concluding, and thus we lack jurisdiction to decide whether the OIG letter was in the record. And even if the OIG letter was in the record, it discusses claims related to his left knee and ankle, which were not before the Board or, therefore, the Veterans Court or us. *See Ledford v. West*, 136 F.3d 776, 782 (Fed. Cir. 1998); *Skaar v. McDonough*, 48 F.4th 1323, 1332–33 (Fed. Cir. 2022); *Calvert v. Peake*, 285 F. App'x 751, 753 n.1 (Fed. Cir. 2008). These conclusions do not foreclose Mr. Davis from raising arguments advanced in the OIG letter in pursuing claims he has pending or may yet properly file.

III

We have considered Mr. Davis's other arguments and find them unpersuasive. We affirm in part and dismiss in part, as set forth above.

The parties shall bear their own costs.

AFFIRMED IN PART, DISMISSED IN PART