

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

HARVEY LEE MALONE,
Claimant-Appellant

v.

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

2024-2128

Appeal from the United States Court of Appeals for
Veterans Claims in No. 23-2246, Chief Judge Michael P.
Allen.

PER CURIAM.

O R D E R

Dr. Harvey L. Malone appeals from a decision of the United States Court of Appeals for Veterans Claims that affirmed-in-part and remanded-in-part a decision by the Board of Veterans' Appeals. *See Malone v. McDonough*, No. 23-2246, 2024 WL 1827133, at *10 (Vet. App. 2024). On appeal, the government suggests that a remand to the Veterans Court may be appropriate because the Veterans Court erred in declining to address any arguments related

to clear and unmistakable error (CUE) on the basis that the Board did not address Dr. Malone's CUE claim in its decision. Appellee Br. 15–17. We agree. In its decision, the Veterans Court concluded that “any arguments concerning CUE are not appropriate for [its] review and [it] will not address them” because “[t]he Board did not address any motion to revise a previous decision based on CUE in its decision.” *Malone*, 2024 WL 1827133, at *3. However, our precedent clearly states that “[d]enial of a claim, which includes the failure of the Board to consider a claim that was reasonably raised before it, constitutes a decision of the Board—reviewable by the Veterans Court.” *Bean v. McDonough*, 66 F.4th 979, 988 (Fed. Cir. 2023). Here, the Veterans Court was required to analyze its own jurisdiction with respect to Dr. Malone's alleged CUE claims and to determine, for example, whether Dr. Malone's CUE claim was appropriately raised and remained unadjudicated.

Accordingly,

IT IS ORDERED THAT:

- (1) The Veterans Court's decision is remanded for further proceedings consistent with this order. The Veterans Court may, if it deems appropriate, remand this case to the Board for fact-finding purposes.
- (2) Costs are awarded to Dr. Malone.

FOR THE COURT

May 12, 2026
Date



Jarrett B. Perlow
Clerk of Court