NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ANTHONY ARMAND POLICH,
Claimant-Appellant

v.

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

2025-1299

Appeal from the United States Court of Appeals for Veterans Claims in No. 23-3069, Senior Judge William A. Moorman.

Decided: October 29, 2026

KENNETH DOJAQUEZ, Carpenter Chartered, Topeka, KS, argued for claimant-appellant.

TANYA KOENIG, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent-appellee. Also represented by WILLIAM JAMES GRIMALDI, PATRICIA M. MCCARTHY, BRETT SHUMATE; CARLING KAY BENNETT, DEREK SCADDEN,

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

Before CHEN, STOLL, and STARK, *Circuit Judges*.

CHEN, *Circuit Judge*.

Anthony Polich appeals a decision of the United States Court of Appeals for Veterans Claims (Veterans Court). *Polich v. McDonough*, 2024 WL 4002743 (Vet. App. Aug. 30, 2024) (*Decision*). The Veterans Court affirmed the decision of the Board of Veterans' Appeals (Board) denying an increase in Mr. Polich's disability rating for symptoms related to traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). Here, Mr. Polich does not raise a legal issue over which we have jurisdiction. We *dismiss*.

BACKGROUND

Mr. Polich served honorably on active duty in the United States Army from 1967 to 1969. *Decision*, 2024 WL 4002743, at *1. He was medically retired due to injuries he sustained in Vietnam. *Id.* In 1997, Mr. Polich sought benefits for his PTSD symptoms. The Department of Veterans Affairs (VA) awarded him service connection for PTSD with a rating of 30%. *Id.* By 2002, his PTSD disability rating increased to 50%. *Id.*

In 2010, Mr. Polich claimed service connection for residuals of a TBI. *Id.* In 2013, VA granted the claim, which included Mr. Polich's symptoms of "short-term memory loss and confusion." *Id.* VA, however, assigned a 0% disability rating for residuals of a TBI, noting that Mr. Polich's memory loss was "unlikely due to his TBI" and it was "likely that PTSD-type symptoms, slower cognitive processing speed, and poor sleep contributed to his memory impairment at that time." *Id.* (alterations adopted).

Reports from later VA examinations concurred. Those examinations, conducted in 2019, concluded that

Mr. Polich had reported progressively worsening short-term memory loss problems since the 1990s, but because of the "date of onset provided by the veteran, [they] [are] less likely as not due to his TBI because TBI residuals begin around the time of the injury, not decades later." *Id.* at *2 (internal quotation marks omitted). The 2019 TBI examiner was aware of Mr. Polich's diagnoses of PTSD and TBI. *Id.* She was, however, "unable to opine on what portion of the soldier's reported . . . symptoms are due to the residuals of his TBI alone without resorting to pure speculation due to the common overlapping of symptoms identified for both conditions." *Id.* (alteration adopted).

VA subsequently continued Mr. Polich's 50% rating for PTSD and 0% rating for TBI residuals based on its evaluation of which diagnosis "provide[d] the greater benefit." *Id.* This evaluation represented a 50% rating "for the combined effects of PTSD and TBI" because under the rating criteria for TBI, Mr. Polich's symptoms would warrant a 40% rating. *Id.* at *3 (alterations adopted). VA thus kept the 50% rating for PTSD instead of the potential 40% rating for TBI because the higher rating provided a greater benefit to Mr. Polich.

The Board agreed with that conclusion, *id.*, and the Veterans Court affirmed. *Id.* at *1. Mr. Polich timely appealed.

DISCUSSION

Mr. Polich's arguments do not raise a legal issue over which we have jurisdiction. *See* 38 U.S.C. § 7292(d)(2).

First, we disagree with Mr. Polich that the Veterans Court interpreted 38 C.F.R. § 4.124a, DC 8045. *See* Appellant Br. 10. Rather, the court applied that regulation to the record before it. Under that regulation, "[i]f the manifestations of two or more conditions cannot be clearly separated," VA is to "assign a single evaluation under

whichever set of diagnostic criteria allows the better assessment of overall impaired functioning due to both conditions." 38 C.F.R. § 4.124a, DC 8045 note 1. The Veterans Court found that Mr. Polich had failed to identify any evidence demonstrating that his "memory impairments are separable from his PTSD." *Decision*, 2024 WL 4002743, at *5. In fact, it explained that "the record . . . directly contradicts his theory." *Id.* at *6. For support, the Veterans Court quoted the VA examiner report that concluded Mr. Polich's memory impairment was unlikely "due to his TBI" because his symptoms began decades after the triggering injury. *Id.* That same examiner, moreover, deemed it "pure speculation" to attempt to definitively assign the source of Mr. Polich's memory impairment to either PTSD or TBI. *Id.* Mr. Polich's disagreement with Veterans Court's analysis is a factual issue that we lack jurisdiction over. *See Amberman v. Shinseki*, 570 F.3d 1377, 1381 (Fed. Cir. 2009) (determining that the Veterans Court's findings of whether the "manifestations of one mental disorder" are "also manifestations of . . . [an]other" is a factual finding outside our jurisdiction).

The remainder of Mr. Polich's arguments are predicated on his contention that the Board favorably determined that his memory impairment resulted from TBI, and TBI alone. *See, e.g.*, Appellant Br. 24 ("On appeal the Board confirms that his TBI causes the said memory impairments."). The Veterans Court found, however, that "[t]his is not correct." *Decision*, 2024 WL 4002743, at *5. "The Board simply did not make the finding [Mr. Polich] suggests it did." *Id.* "The Board found that the evidence did not show that the appellant's memory symptoms could be separated from his PTSD." *Id.* Mr. Polich's contentions to the contrary are factual issues we cannot review. Relatedly, to the extent Mr. Polich argues that the VA, Board, or Veterans Court erred in selecting the correct diagnosis code under which to classify his symptoms, that too is a question

of application of law to fact we cannot review. *Delisle v. McDonald*, 789 F.3d 1372, 1374 (Fed. Cir. 2015).

CONCLUSION

We have considered Mr. Polich's remaining arguments and find them unpersuasive. For the foregoing reasons, we dismiss.

DISMISSED