NOTE: This disposition is nonprecedential.

# United States Court of Appeals for the Federal Circuit

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**BILLY M. BUTENHOFF,**
*Claimant-Appellant*

**v.**

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

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2025-1868

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Appeal from the United States Court of Appeals for Veterans Claims in No. 24-4868, Judge Coral Wong Pietsch.

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Decided: September 14, 2026

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BILLY MICHAEL BUTENHOFF, Oklahoma City, OK, pro se.

SEAN KELLY GRIFFIN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by ERIC P. BRUSKIN, PATRICIA M. MCCARTHY, BRETT SHUMATE; MATTHEW ALBANESE, BRIAN D. GRIFFIN, Office of General

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

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Before MOORE, *Chief Judge*, PROST and TARANTO, *Circuit Judges*.

PER CURIAM.

Billy M. Butenhoff is a Marine veteran who served in Vietnam. He left active duty in 1970, and later that year the Veterans' Administration—now the Department of Veterans Affairs (VA)—found that Mr. Butenhoff had service-connected foot and knee disabilities and awarded him disability benefits. In 2017, Mr. Butenhoff submitted a new claim requesting that VA increase the disability ratings for his foot and knee conditions as well as find that he had compensable service-connected disabilities related to several other health conditions. The relevant VA regional office (RO) denied most of the sought benefits, and Mr. Butenhoff appealed to the Board of Veterans' Appeals. For each condition on which the RO had made express findings, the Board directed the RO to consider additional evidence and make new findings; for several conditions that, according to Mr. Butenhoff, the RO had failed to address, the Board directed the RO to further develop the record, declining to decide whether those issues were truly pending. *See In re Butenhoff*, No. 20-29 010, 2024 WL 1999334, at *1–6 (Bd. Vet. App. Mar. 27, 2024) (*Board Decision*). Mr. Butenhoff appealed to the Court of Appeals for Veterans Claims (Veterans Court), which dismissed for lack of a reviewable decision of the Board. *Butenhoff v. Collins*, No. 24-4868, 2025 WL 1057063, at *3–7 (Vet. App. Apr. 9, 2025) (*CAVC Decision*). Mr. Butenhoff appeals to this court, and we now affirm.

## I

Mr. Butenhoff served honorably on active duty in the United States Marine Corps from February 1969 to September 1970. Deployed in Vietnam, he contracted malaria, hepatitis, and immersion foot (*i.e.*, trench foot). He was also wounded by a booby trap, which left him with shrapnel embedded in his left knee. Mr. Butenhoff was awarded a Purple Heart and several other decorations for his service.

Following his discharge, Mr. Butenhoff sought disability compensation related to his wounded left knee, continuing effects of trench foot, and residuals of malaria and hepatitis. In late 1970, he was granted a 20% disability rating for his knee disability and a 10% rating for his foot disabilities, for a combined 30% disability rating, with determinations on malaria and hepatitis deferred for collection of relevant records. Mr. Butenhoff, the following year, sought findings of service-connected disability related to a nervous disorder as well as for residuals of malaria and hepatitis, but his claim was denied and the 30% rating was maintained.

Years passed until, in 2017, Mr. Butenhoff filed a new claim for disability benefits with a VA RO seeking increased ratings for his foot and knee disabilities and findings of compensable service-connected disabilities for ankle, hand, and hip conditions; edema; vascular disease; and other conditions. Appx. 92–96.[1] The RO increased the rating for trench-foot disabilities to 20%, for a total of 40%, but otherwise denied the claim. *Id.* RO-level reviews of Mr. Butenhoff's claim in 2018 and 2020 maintained the 40% rating. Appx 97–101, 109–16.

Mr. Butenhoff appealed the 2018 RO decision to the Board. In a 2023 Board hearing, Mr. Butenhoff maintained

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[1] "Appx." refers to the appendix submitted by Mr. Butenhoff docketed at ECF No. 27.

that, in addition to the conditions expressly addressed by the RO, "issues of service connection for hepatitis, malaria, hearing loss, and a breathing disorder [were] pending adjudication"—none of which had been mentioned in the challenged decision. *Board Decision*, at *1; *see* Appx. 100–01. He also alleged that the 1970 and 1971 rating decisions were infected with clear and unmistakable error (CUE). *Board Decision*, at *1.

The Board, in a March 2024 decision, did not expressly grant or deny any of the sought disability benefits; instead, it directed the RO to augment the record and then reconsider its findings. *See Board Decision*, at *1–6. As to the malaria, hepatitis, and other conditions not mentioned in the rating decision, the Board instructed the RO to engage in "additional development," expressly reserving the question of whether "there [was] a pending claim for one or more of those issues" for a future Board decision. *Id.* at *1. And as to the remaining allegedly service-connected conditions and Mr. Butenhoff's CUE allegations, the Board directed the RO to make new findings after first considering various evidence submitted by Mr. Butenhoff, ensuring the completeness of the relevant records, and obtaining medical examinations. *Id.* at *1–6.

Mr. Butenhoff appealed to the Veterans Court. *CAVC Decision*, at *1. The Secretary moved to dismiss, arguing that the Board's order was not a final decision reviewable by the Veterans Court. *Id.* The Veterans Court agreed. Though Mr. Butenhoff alleged due process violations owing to allegedly omitted and altered evidence, the court ruled that those contentions were for the RO and Board to evaluate in the first instance. *Id.* at *4. The Veterans Court also rejected Mr. Butenhoff's arguments that the Board had rendered a final decision on his CUE allegations by failing to address them, as the Board had expressly directed that they first be adjudicated by the RO. *Id.* at *5–6. Accordingly, the Veterans Court dismissed Mr. Butenhoff's appeal. *Id.* at *1, 7.

Mr. Butenhoff timely appealed to this court. We have jurisdiction under 38 U.S.C. § 7292(a), (c).

II

We may 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 Court in making the decision." 38 U.S.C. § 7292(a); *see id.* § 7292(c). To the extent that a dismissal for lack of jurisdiction turns solely on interpretation of the Veterans Court's jurisdictional statute, it presents a legal issue that we decide de novo. *See Skaar v. McDonough*, 48 F.4th 1323, 1331 (Fed. Cir. 2022); *Bean v. McDonough*, 66 F.4th 979, 987 (Fed. Cir. 2023).

Mr. Butenhoff makes two primary arguments on appeal: (1) that an incomplete—indeed, fraudulently erroneous—record before the Board and Veterans Court creates a question of constitutionally required due process as to which we may resolve Mr. Butenhoff's factual challenges, and (2) that the Board's decision did not adequately address, so implicitly denied and was final with respect to, the benefits sought related to malaria and hepatitis, among others. We reject Mr. Butenhoff's arguments and affirm the Veterans Court's dismissal.

The Veterans Court has "exclusive jurisdiction to review decisions of the Board." 38 U.S.C. § 7252(a). "A 'decision' of the Board, for purposes of the Veterans Court's jurisdiction under [§] 7252, is the decision with respect to the benefit[s] sought by the veteran [where] those benefits are either granted . . . or they are denied." *Maggitt v. West*, 202 F.3d 1370, 1376 (Fed. Cir. 2000); *see Young v. Collins*, 164 F.4th 869, 876 (Fed. Cir. 2026); *Skaar*, 48 F.4th at 1333. A Board remand or comparable directive to the RO for further consideration that leaves the denial or grant of the benefit sought still open is not reviewable by the Veterans Court. *Wright v. Collins*, 157 F.4th 1379, 1381 (Fed.

Cir. 2025) (explaining that Board directives that do not grant or deny relief are not reviewable by the Veterans Court); *Mote v. Wilkie*, 976 F.3d 1337, 1341 (Fed. Cir. 2020) ("[A] Board 'decision' [under § 7252(a)] does not mean a mere remand."); *see Kirkpatrick v. Nicholson*, 417 F.3d 1361, 1364–65 (Fed. Cir. 2005).

The first of Mr. Butenhoff's arguments, about allegedly fraudulent and erroneous evidence in the records of the Board and Veterans Court, provides no basis for a ruling that there was a Board decision reviewable by the Veterans Court. Although Mr. Butenhoff is correct to note that *this court* has authority to review factual determinations to the extent that "an appeal . . . presents a constitutional issue," 38 U.S.C. § 7292(d)(2), that provision does not help Mr. Butenhoff: There is no factual determination relevant to a constitutional issue to review in this case, and the statutory provision addressing this court's jurisdiction does not address the Veterans Court's jurisdiction. Thus, Mr. Butenhoff's allegations of fraud and error have not yet been adjudicated, so there is no factual determination to review. *See CAVC Decision*, at *4; *Board Decision*, at *1. Even assuming that Mr. Butenhoff is right that the Board's and Veterans Court's records were tainted to the extent that he was deprived of due process, it remains a prerequisite for Veterans Court jurisdiction that the Board have first rendered a final decision on his claim—which it has not. *See CAVC Decision*, at *6; *Board Decision*, at *1–6. Instead, the Board directed the RO to "[o]btain complete . . . records," *Board Decision*, at *6, which the Veterans Court understood to be an instruction to the RO to address Mr. Butenhoff's evidentiary allegations, as they pertain to his claim, in the first instance, *CAVC Decision*, at *6. That a due-process issue, if first finally adjudicated by the Board, and then by the Veterans Court, might give this court jurisdiction to review Mr. Butenhoff's factual challenges is not in this case relevant to whether the Board rendered a

decision within the meaning of 38 U.S.C. § 7252's grant of jurisdiction to the Veterans Court.

Mr. Butenhoff's second argument, that the Board inadequately addressed and therefore denied some of the sought benefits, is also unpersuasive. It is true that the Board's failure to discuss a claim, at least where the claim was denied by the RO and clearly presented to the Board, may constitute a final decision within the Veterans Court's jurisdiction as an implicit denial of the claimed benefit. *See Hepler v. Collins*, 184 F.4th 1343, 1348 (Fed. Cir. 2026); *Bean*, 66 F.4th at 983–84, 988–90. This is not such a case of Board silence regarding a claim. Rather than failing to discuss malaria-related disability and other issues that are the subjects of Mr. Butenhoff's argument in this respect, the Board acknowledged those issues and directed the RO to engage in "additional development" as "necessary," reserving the question whether a request for benefits related to those conditions had been adequately presented. *Board Decision*, at *1. Nor did the Board finally dispose of Mr. Butenhoff's claim in any respect. It instead directed the RO to reconsider every aspect of its decision after consulting the appropriate evidence. *Id.* at *1–6. In these circumstances, it cannot be said that the Board denied—implicitly or otherwise—any part of Mr. Butenhoff's claim. We therefore agree with the Veterans Court that there was no final Board decision and that dismissal for lack of jurisdiction was appropriate.

## III

We have considered Mr. Butenhoff's remaining arguments and find them unpersuasive. The judgment of the Veterans Court is affirmed.

The parties shall bear their own costs.

**AFFIRMED**