

Recent Court Opinions Sept. 2025-Apr. 2026



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Learning Objectives

- **Learn about the federal courts over VA:**
 - Identify the different courts above VA.
 - Learn about a few recent court decisions.
 - Learn arguments to make based off the recent decisions.

Brief Overview of VA's Judicial Review

- The **Board of Veterans' Appeals** (Board) is the highest appellate body **within VA**.
- Denials from Board can be appealed to the **U.S. Court of Appeals for Veterans Claims** (CAVC).
 - CAVC handles only Board appeals from VA.
 - Claimants cannot take appeals from the Board to any other court.
- Denials from CAVC can be appealed to the **U.S. Court of Appeals for the Federal Circuit** (Fed. Cir.).
 - Only decides questions of law.
 - The next and highest court is the U.S. Supreme Court.



CAVC Vacancies



- The CAVC is authorized to have ten judges.
- The Court has eight judges, one of whom is leaving active status this summer.
- There are three vacancies that need to be filled.
- Currently, there are no nominations for these vacancies even though the first vacancy has existed since the end of 2024.
- Wait times at the CAVC are very likely to rise if these positions are not filled.

Ingram v. Collins

38 Vet.App. 130
(2025)



Quiz

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Veteran Carlton Ingram applied for increased ratings for his back and left ankle. His medical records indicate that he takes a variety of prescription medications to alleviate his pain and inflammation of these joints. The Board rated his conditions based upon an examination that considered only the severity of his condition while taking these medications. Should the Board have evaluated based upon how bad his conditions would be if he were not taking those medications?

- ☐ Yes. Ratings should not consider the effect of medication on a disability unless the diagnostic codes specifically says so.
- ☐ No. Ratings are based only upon the observed effect of a disability.

Ingram v. Collins

Yes. Ratings should not consider the effect of medication on a disability unless the diagnostic codes specifically says so.

- The CAVC held that the default rule, which it had announced in cases more than a decade ago, applies to ratings of orthopedic conditions.
- Nothing in the diagnostic codes for orthopedic conditions mentions medications.
- The Court also held that a VA examination should seek information on the Veteran's unmedicated state just as it must for flare ups under *Sharp v. Shinseki*.

Ingram v. Collins

- VA appealed *Ingram* to the Federal Circuit and asked that court to overturn the CAVC.
- While that appeal was pending, VA published a rulemaking purporting to abrogate *Ingram*, i.e., nullify it by changing the underlying law.
- That rulemaking resulted in a huge uproar and was withdrawn.
- Subsequently, VA withdrew its appeal of *Ingram*.
- Presently, *Ingram* is good law.

Nothing prevents VA from trying a rulemaking in the future or challenging *Ingram* in a future Federal Circuit appeal.

Stewart v. Collins

38 Vet.App. 407
(2025)



Quiz

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Veteran Richard Stewart appealed a decision severing his award of special monthly compensation. The RO found that his award of TDIU for PTSD did not satisfy the requirement that he have a single disability rated at 100%. On appeal, the Board found that his PTSD did satisfy the 100% criteria, but that he did not meet the criteria for a separate 60% rating.

Did the Board have the authority to change the basis for the severance?

- ☐ Yes. The Board's review is de novo so it gives no deference to the RO findings.
- ☐ No. The Board cannot ignore a favorable finding made by the RO that the Veteran has separate disabilities that satisfy the 60% requirement.

Stewart v. Collins

No. The Board cannot ignore a favorable finding made by the RO that the Veteran has separate disabilities that satisfy the 60% requirement.

- The CAVC recognized that “**any** finding favorable to the claimant made by either a VA adjudicator . . . or by the Board . . . is binding on all subsequent [AOJ] and Board . . . adjudicators, unless rebutted by evidence that identifies a [CUE].” 38 C.F.R. § 3.104(c).
- This includes favorable findings that were made **previously** rather than in the decision on appeal.

***Witkowski v.
Collins***
38 Vet.App. 459
(2025)



Quiz

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Veteran Witkowski's combined ratings did not meet the schedular criteria for TDIU until June 17, 2021. He appealed the denial of TDIU to the Board and specifically waived referral to the Director of Compensation Service for the period before June 17, 2021. The Board granted TDIU from June 17, 2021, but refused to consider extraschedular TDIU before that date. The Board stated it lacked authority to grant extraschedular TDIU in the first instance and that the Veteran had waived Director review.

Was the Board's decision correct?

- ☐ Yes. All extraschedular TDIU requests must be reviewed by the Director of Compensation Service at VBA first.
- ☐ No. Referral to the Director of Comp Service is not a legal requirement.

Witkowski v. Collins

No. Referral to the Director of Comp Service is not a legal requirement.

- The CAVC held that the Board **does** have jurisdiction to decide extraschedular TDIU in the first instance.
- This decision overturned an earlier CAVC decision in *Bowling v. Principi* which had required Director review before the Board could act.
- Waiving referral to the Director may lead to a quicker decision.

Reynolds v. Collins
2025 U.S. App. Vet.
Claims LEXIS 1749
(Dec. 16, 2025)



Quiz

Click the **Quiz** button to edit this object

Veteran Reynold's claim for service connection for hearing loss was denied in 1991. The record at the time included his DD 214 showing he had received a Purple Heart and a VA exam opining his STRs were "negative" for hearing loss.

In 2020 he filed a new supplemental claim and submitted copies of a new service record reflecting he received a Bronze Star Medal. Service connection was granted after a new VA examiner said that his hearing loss was due to acoustic trauma in combat during service.

Should 3.156(c) apply to award an effective date back to 1991?

- ☐ Maybe. It depends on what role the records played in the adjudication process.
- ☐ No. The new records of the Bronze Star were not cited in the August 2020 rating decision that granted service connection.
- ☐ Yes. His claim was granted after VA received new service records.

Reynolds v. Collins

Maybe. It depends on what role the records played in the adjudication process.

- The CAVC held that the Board was wrong to require the grant of benefits to cite the new service records for 38 C.F.R. § 3.156(c) effective date exception to apply.
- The CAVC held the new service records need only “form a link in the chain of reasoning that supports an award of benefits.”
- The CAVC then remanded the case back to the Board for them to apply this “link in the chain” analysis.

Cash v. Collins
2026 U.S. App.
LEXIS 3596 (Feb. 5,
2026)



Quiz

Click the **Quiz** button to edit this object

Veteran Cash's claim for service connection for COPD was denied in a July 2021 rating decision. In February 2022, he submitted medical articles linking lead exposure to COPD in support of his claim. Then in June 2022 he filed a 10182 selecting the evidence docket. He also included an addendum asking the Board to review the evidence that he submitted in February 2022. The Board denied his claims without reviewing the evidence submitted in February 2022.

Was the Board correct not to review the February 2022 evidence?

- ☐ Yes. The evidence was received after his rating decision but before his 10182.
- ☐ No. Mr. Cash directed the Board's attention to this evidence during a valid AMA evidentiary window.

Cash v. Collins

No. Mr. Cash directed the Board's attention to this evidence during a valid AMA evidentiary window.

- The Fed. Circ. reversed “Because we determine that Mr. Cash satisfied the statutory evidentiary submission requirement by clearly and timely referring to his prior submission to the Board in his Notice of Disagreement addendum.”
- In appealing to the Board **specifically identify** evidence already in the file you would like them to review during a valid AMA evidentiary window.

Westphal v. Collins

2026 U.S. App. Vet.
Claims LEXIS 72
(Jan. 22, 2026))



Quiz

Click the **Quiz** button to edit this object

Veteran Sharon Westphal receives SMC(k) benefits for loss of use of creative organ for her uterus. She is now seeking entitlement to an additional SMC(k) award for loss of use of creative organ for her vagina.

Can veterans be entitled to more than one award of SMC(k) for loss of use of more than one creative organ?

- ☐ Yes. She has lost use of more than one creative organ so should receive more than one award.
- ☐ No. The law at 1114(k) only authorizes VA to grant one award of SMC(k) based on loss of use of creative organ.

Westphal v. Collins

No. The law at 1114(k) only authorizes VA to grant one award of SMC(k) based on loss of use of creative organ.

- The CAVC held that the phrase “one or more” in 1114(k) means that veterans may only receive a single award of SMC(k) based on loss of use of creative organ even if the use of more than one creative organ is lost.
- The statute is structured in a confusing way.
- There are many ways to get multiple awards of SMC(k), but this is not one of them.

Hamill v. Collins

166 F.4th 1030
(Fed. Cir. 2026)



Quiz

Click the **Quiz** button to edit this object

In the past, David Hamill was denied benefits for PTSD because of an unfavorable character of discharge. In 2021, he filed a new claim to excuse his character of discharge and receive compensation for PTSD. The RO granted service connection for PTSD for treatment purposes only. It did not mention his character of discharge.

Did the RO implicitly deny the character of discharge issue?

- ☐ Yes. The grant put him on notice that had not been changed.
- ☐ No. There is no indication that this was considered.
- ☐ No. Implicit denial no longer exists under the AMA.

Hamill v. Collins

No. Implicit denial no longer exists under the AMA.

- **“Under the AMA, a veteran’s claims can no longer be implicitly denied.”**
- The Fed. Circ. found the legislative history and notice provisions of the AMA means that implicit denial cannot survive under the AMA.
- The consequences of this are unclear, but it seems most likely this will arise in effective date appeals in the future.

Ortega v. Collins
___ Vet.App. ___
2026 U.S. App. Vet.
Claims LEXIS 568
(Apr. 13, 2026)

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Quiz

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Veteran Stephanie Ortega mailed an NOD to the Board and selected the evidence docket. At the time, she did not submit any additional evidence. Her NOD was received by the Board a week later. Four months after receiving the NOD, the Board sent her a notice of docketing letting her know when the NOD was received and explaining that she had 90 days from that date to submit additional evidence. However, when the letter was sent, the 90-day period was already over. Stephanie never submitted any evidence. Instead she appealed to the CAVC for a new opportunity to submit evidence. Will the Court remand her case with a reopened evidence window?

- ☐ Yes. The untimely notice denied her the opportunity to use the 90-day window established by law.
- ☐ No. Regardless of the notice letter, she had ample time to submit evidence.
- ☐ Maybe, but only if there is evidence that she actually tried to submit evidence and was not able to get it considered.

Ortega v. Collins

Maybe, but only if there is evidence that she actually tried to submit evidence and was not able to get it considered.

- The CAVC suggested that this kind of notice error could be a problem, but found that it was harmless error in this case because there was no indication that the veteran had tried to submit any evidence.
- A Supplemental Claim is still available and should be filed within a year of the Board decision.
- Separately, the Court clarified that “favorable” findings that are not actually favorable are not binding.

Jones v. Collins
____ Vet.App. ____
2026 U.S. App. Vet.
Claims LEXIS 570
(Apr. 14, 2026)

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Quiz

Click the **Quiz** button to edit this object

In 2020, Lawrence Jones received a rating decision. He did not dispute it within one year. In 2025, he filed an NOD at the Board. With his NOD, he submitted an argument that the 2020 RO decision was not final because it did not comply with AMA notice requirements and, therefore, he could still appeal it. The administrative staff at the Board replied with a letter stating that if, within 60 days, he filed an argument that there was good cause to excuse his untimely NOD, then a Board judge would review the matter. Otherwise, the appeal would be closed. If he does not respond to this letter, can he appeal to the CAVC to have the Court review the argument?

- ☐ No. An administrative letter is not a final decision and the veteran did not comply with the Board's process.
- ☐ Yes. There is no legal authority for the Board to create a process requiring additional argument and the letter effectively ended his appeal.

Jones v. Collins

No. An administrative letter is not a final decision and the veteran did not comply with the Board's process.

- The CAVC found that this letter was not appealable because it was not from a Board judge and did not include a notice of appellate rights.
- The Court was unclear whether there was a way to have the finality of an RO decision reviewed other than filing an NOD and following this process.

If a Veteran gets one of these letters, be sure to file a timely response. Otherwise, there may be no court review!

Freund v. Collins
___ Vet.App. ___
2026 U.S. App. Vet.
Claims LEXIS 435
(Mar. 18, 2026)



Freund Background

- As far back as 1990, the Board's legacy computer system (VACOLS) automatically closed appeals "on the first day of the month following" the expiration of the appeal period if a Form 9 was not entered into the system.
- Thousands were closed erroneously, for example if the mail was received but just not logged in time.
- No notice was sent to these Veterans.

Freund History

- In 2021, Mr. Freund's attorney petitioned to certify a class of Veterans whose appeals were improperly closed.
- CAVC originally denied the class motion in 2022 as moot because Mr. Freund's appeal was reopened.
- In August 2024, the Federal Circuit found that the CAVC erred and remanded the case.
- In December of 2025, the parties filed a Joint Motion to Approve the Proposed Settlement.

Expected *Freund* Notice

- The class is based upon the period from December 12, **1990**, to February 6, **2025**.
- **Phase 1** – 28,000+ appeals with a timely Form 9 in VBMS
 - VA will individually review and automatically reactivate.
 - These Veterans will receive notice of the date of the SOC and appeal that has been reactivated.
- **Phase 2** – 64,000+ appeals with a VA Form 21-4138 in VBMS
 - VA will attempt to screen out blank 21-4138s.
 - Remaining Veterans will receive generic notice that they may have had an appeal improperly closed.
 - If they respond within one year, VA will review for reactivation.

Timing and process

- The CAVC still needs to decide who will get letters.
- VA posted notice of the settlement on April 15th. Anyone affected has until May 15th to object to how class will be handled.
- After the Court resolves any objections, actual letters to veterans should go out this summer.
- On individual cases, representatives may need to examine what was filed within the relevant timeframe and submit argument that there was a valid appeal.
- Once the legacy appeal is reopened, the claimant will need help with the merits.
- VBA will likely send a Supplemental Statement of the Case and there will be an opportunity to opt into the AMA system at that point.

Look for Pending Appeals

- Regardless of whether a veteran gets a *Freund* letter, be on the lookout for unprocessed substantive appeals.
- If a substantive appeal was filed within 60 days of an SOC or within the remainder of one year of the rating decision.
 - If no action was taken this may be a case where VACOLS improperly closed the appeal.
- Help the client contact VA and ask for their appeal to be reactivated.

**Freund is not the only pending class action
where courts are ordering notice letters!**

**Supreme
Court case
we are
closely
watching**



Pending Decision

- ***Johnson v. United States Congress***

- Decision of the 11th Circuit Court of Appeals (Alabama, Florida, Georgia).
- Does the CAVC have exclusive jurisdiction over all VA benefits issues?
- Held that federal district court lacked jurisdiction over constitutional challenge to law reducing benefits to veterans while they are incarcerated.
- Review granted in April. Will likely be argued next autumn and decided late this year or early next.

Pending Decision

- Prior to VJRA, the Supreme Court held that U.S. courts of general jurisdiction could hear claims involving constitutional violations.
- This is how *Nehmer* was decided prior to the VJRA.
- Beginning with *Veterans for Common Sense* in 2012, some courts have held that the VJRA eliminated all jurisdiction over veterans benefits in courts other than the CAVC.
- However, the CAVC is not a trial court, so it has no ability to receive evidence and make factual findings.
- If the Supreme Court affirms, a veteran trying to make a constitutional challenge must go through VA for evidence development and initial fact finding.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the school for future reference.