

CALDWELL v. DERWINSKI

United States Court of Appeals for the Federal Circuit

July 28, 1992, Decided

92-7016

Reporter

1992 U.S. App. LEXIS 17369 *

EDD D. CALDWELL, Petitioner-Appellant, v. EDWARD J. DERWINSKI, Secretary of Veterans Affairs, CHARLES L. CRAGIN, Chairman of the Board of Veterans Appeals and ALONZO M. POTEET, III, Director, Department of Veterans Affairs Regional Office, Waco, Texas, Respondents-Appellees.

Notice: [*1] RULE 47.8. OPINIONS AND ORDERS DESIGNATED AS UNPUBLISHED SHALL NOT BE EMPLOYED AS PRECEDENT BY THIS COURT, AND MAY NOT BE CITED BY COUNSEL, EXCEPT IN SUPPORT OF A CLAIM OF RES JUDICATA, COLLATERAL ESTOPPEL, OR LAW OF THE CASE. ANY PERSON MAY REQUEST THAT AN UNPUBLISHED OPINION OR ORDER BE REPREPARED AND REISSUED FOR PUBLICATION, CITING REASONS THEREFOR. SUCH REQUEST WILL BE GRANTED OR DENIED BY THE PANEL THAT RENDERED THE DECISION.

Subsequent History: Petition for Rehearing Denied August 27, 1992, Reported at 1992 U.S. App. LEXIS 20566. Reported as Table case at 1992 U.S. App. LEXIS 30814

Disposition: We affirm.

Case Summary

Procedural Posture

Plaintiff claimant appealed a decision of the Court of Veterans Appeals, which denied his petition for writ of mandamus. Respondents were the Secretary of Veterans Affairs, the Chairman of the Board of Veterans Appeals, and the Director of a Veterans Affairs Regional Office.

Overview

The claimant appealed a Veterans Administration regional office rating decision to the Board of Veterans Appeals and requested a hearing in Dallas, Texas before the traveling section of the Board. The regional office informed the claimant that his hearing might not be scheduled for a year or two. The claimant filed a petition for writ of mandamus with the Court of Veterans Appeals requesting that the Court of Veterans Appeals (1) direct the regional office to submit the record on appeal in his case to the Board of Veterans Appeals, (2) require the Board to assign a traveling section of the Board to conduct a hearing in Dallas, and (3) render its decision within a reasonable time. The writ was denied, and the claimant appealed, arguing, inter alia, that the lower court misinterpreted 38 U.S.C.S. § 7261 as to the conclusions of laws and determinations as to factual matters. The court affirmed the judgment, holding that it could not say the lower court misinterpreted § 7261. The Secretary was not required to render a decision as quickly as possible after the hearing because there had been no hearing yet.

Outcome

The court affirmed the judgment.

Judges: Before NIES, Chief Judge, SHELTON, Senior Circuit Judge, and LOURIE, Circuit Judge.

Opinion by: PER CURIAM

Opinion

DECISION

Edd D. Caldwell appeals from the July 3, 1991 order of the Court of Veterans Appeals (rehearing denied August 29, 1991, review en banc denied October 18, 1991), No. 91-662, denying his petition for writ of mandamus. We *affirm*.

BACKGROUND

This matter stems from Caldwell's appeal of a Veterans Administration regional office rating decision to the Board of Veterans Appeals and his request for a hearing in Dallas, Texas before the traveling section of the Board. * In its February and April 1991 correspondence, the regional office informed Caldwell that the traveling section generally visits the regional office in Waco, Texas annually [*2] and because of the large number of requests, Caldwell's hearing might not be scheduled until 1992 or 1993. On April 15, 1991, Caldwell filed a petition for writ of mandamus with the Court of Veterans Appeals requesting that the Court of Veterans Appeals (1) direct the regional office to submit the record on appeal in his case to the Board of Veterans Appeals, (2) require the Board to assign a traveling section of the Board to conduct a hearing in Dallas, and (3) render its decision "within a reasonable time."

[*3] While his petition was pending at the Court of Veterans Appeals, the regional office informed Caldwell that a hearing had been scheduled for July 24, 1991 in Waco before a traveling section of the Board. Shortly thereafter, Derwinski, in his opposition to the writ, pointed out that a hearing before the traveling section of the Board had already been scheduled and moreover, that if Caldwell could not travel to Waco, a

* A claimant filing an appeal to the Board of Veterans Appeals may request any one of three types of Board-level hearings: (1) a Board hearing held at the regional office before a regional office hearing officer, (2) a Board hearing before a traveling section of the Board held at the regional office, and (3) a Board hearing held at the Board of Veterans Appeals in Washington, D.C. Options one and two involve the creation of a hearing transcript that is later reviewed by the Board of Veterans Appeals. *Veterans Benefits Manual* § 6.8.5 (1991).

telephonic conference between Caldwell and the Board in Washington could be arranged.

On July 3, 1991, the Court of Veterans Appeals denied Caldwell's petition for a writ of mandamus. The Court of Veterans Appeals determined that in view of the scheduled hearing and suggested alternative, Caldwell had received almost all of the relief requested. The Court of Veterans Appeals considered Caldwell's request to direct the Board to render its decision in a reasonable time premature because the Board-level hearing had not yet occurred. Rehearing was denied on August 29, 1991 and review en banc was denied on October 18, 1991.

In his informal brief, Caldwell argues, inter alia, that the Court of Veterans Appeals erred (1) by not acknowledging, referring, or responding "to any [*4] evidence, argument or document submitted by appellant," (2) by failing to state its conclusions of law, determinations as to factual matters, and designate those specific records of the government on which it relied, as required by 38 U.S.C. § 7267, and (3) by failing to compel the Board pursuant to 38 U.S.C. § 7261(a)(2) to immediately issue its final decision.

DISCUSSION

Although we have jurisdiction to review final decisions of the Court of Veterans Appeals, we are barred from reviewing decisions with respect to matters not delineated by 38 U.S.C. § 7292. *Johnson v. Derwinski*, 949 F.2d 394 (Fed. Cir. 1991). Section 7292 provides in relevant part:

(a) After a decision of the United States Court of Veterans Appeals is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of any statute or regulation . . . or any interpretation thereof (other than determination as to a factual matter) that was relied on by the Court in making the decision. . . .

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute [*5] or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions to the extent presented and necessary to a decision. . . .

Caldwell is essentially seeking review of the Court of Veterans Appeals' application of the law to his case. Caldwell states that the Court of Veterans Appeals failed to comply with the mandatory provisions of 38 U.S.C. § 7261 (a)(2) and § 7267. Specifically, Caldwell states that the Court of Veterans Appeals should have stated "its conclusions of laws and determinations as to factual matters" and should have compelled the Board to "immediately issue its final decision."

Although the issue is a matter of law, that is not enough to render the matter subject to this court's review. In the absence of a challenge to the validity of a statute or a regulation, or the interpretation of a constitutional or statutory provision or regulation, we have no authority to review the issues presented in Caldwell's appeal. *Livingston v. Derwinski*, No. 91-7066, slip op. at 5-6 (Fed. Cir. Mar. 17, 1992). Accordingly, to the extent that Caldwell is seeking review of the application of the law to his case, review [*6] is precluded.

To the extent that Caldwell seeks review of the Court of Veterans Appeals's order with respect to the interpretation of 38 U.S.C. § 7261, the order should be affirmed. Caldwell argues that the Court of Veterans Appeals misinterpreted § 7261.

Section 7261 provides:

(a) In any action brought under this chapter, the Court of Veterans Appeals, to the extent necessary to its decision and when presented, shall-

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed

Caldwell argues that his petition met the "requirements" of § 7261, and hence that the Court of Veterans Appeals should have compelled the Secretary to render a decision as quickly as possible after the hearing. Caldwell further argues that "Congress' use of the words 'shall compel' deprived the court of any discretionary power to take an alternative action."

The Court of Veterans Appeals did not reach the issue of whether the Secretary should be compelled to render a decision as quickly as possible after the hearing, because the Board had not yet held a hearing. We cannot say that the Court of Veterans Appeals reasoning that Caldwell's request was premature was a misinterpretation [*7] of § 7261. Accordingly, the Court of Veterans Appeals' order is affirmed.