

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH SPRINGS, *et al.*,

Plaintiffs,

v.

CARLOS DEL TORO, *et al.*,

Defendants.

Civil Action No. 1:20-cv-03244 (RDM)

JOINT STATUS REPORT

On November 27, 2023, the Court entered a Memorandum Opinion and Order denying the Navy’s motion for voluntary remand. ECF No. 63. In that Opinion, the Court ordered the parties to inform the Court about “how they propose to address the implications of the *Sissel* decision on this case.” *Id.* at 7–8. In their joint status report of December 15, 2023, the parties agreed that the current stay should remain in place for an additional 90 days for the Navy to consider the possibility of awarding class wide relief in light of the D.C. Circuit’s decision in *Sissel v. Wormuth*, 77 F.4th 941 (D.C. Cir. 2023). ECF No. 65. On December 19, 2023, the Court maintained the current stay and ordered a further status report on March 26, 2024. Minute Order of Dec. 19, 2023. Upon further consideration the Navy has determined that *Sissel* warrants individual reconsideration of the records of an estimated 3,308¹ former Sailors and Marines and seeks a

¹ During the stay the Navy conducted a preliminary review to distinguish between veterans receiving a Category II rating who were medically separated from veterans who were medically retired. The former group is included in the class while the latter group is not. *See* ECF No. 40 at 16 (defining the class as “veterans of the United States Navy or Marine Corps who were *separated* by the Department of the Navy between November 10, 2014 and June 27, 2019 after being found unfit for continued military service by the Department of the Navy’s Physical Evaluation Board.”) (emphasis added); *see also* 10 USC § 1201 (defining medical retirement); 10 USC § 1203 (defining medical separation). Prior class estimates of approximately 13,000 were inaccurate because they

voluntary remand for the Navy Physical Evaluation Board (“PEB”) to conduct this individualized re-review. Accordingly, the parties jointly move for a remand encompassing the following criteria:

1. To implement *Sissel v. Wormuth*, 77 F.4th 941 (D.C. Cir. 2023), for the Springs class members the Department of the Navy (DoN), consistent with below, will apply Department of Veterans Affairs (VA) disability ratings for each class member’s Category II condition, unless doing so is otherwise prohibited by law or regulation (i.e. 38 C.F.R. 4.14).

2. During the remand DoN (via the Secretary of the Navy Council of Review Boards) will:

- a. For Integrated Disability Evaluation System (IDES) cases, and unless prohibited by law or regulation, apply disability ratings to Category II conditions using the proposed disability ratings provided by the VA’s Disability Rating Activity Site (D-RAS) to the DoN’s Physical Evaluation Board (PEB). (In doing so, the PEB will be mindful of DoDM 1332.18, Volume 2 (2014), Appx. 10 to enclosure 4, paragraph 2.b. “if the PEB identifies a condition to the D-RAS as schizophreniform disorder, but the D-RAS rates the condition as psychotic disorder not otherwise specified (VASRD 9210), then the PEB will apply the rating as ‘schizophreniform disorder rated as psychotic disorder not otherwise specified (VASRD 9210).’) If the VA’s D-RAS did not provide a disability rating for a Category II condition, the DoN will determine a disability rating pursuant to the requirements contained in 10 USC 1216a(a).

included both groups. *See, e.g.*, ECF No. 35 at 10 n. 4. Accordingly, the Navy’s current estimate of 3,308, which includes only veterans who were medically separated from the Navy, more accurately reflects the class size than prior estimates.

- b. For Legacy Disability Evaluation System (LDES) cases, because the VA did not provide a proposed disability rating for the DoN's use, the DoN will determine the disability ratings pursuant to 10 USC 1216a(a).
3. For class member cases where the review yields no change the DoN will send a letter to the class member advising them that their case has been reviewed pursuant to the voluntary remand in *Springs v. Del Toro*, that DoN has determined that no relief is warranted, and no further action is required. Class members who disagree with the DoN's determination may seek relief with the Board for Correction of Naval Records.
4. For class member cases where a disability rating is provided to a Category II condition(s), the DoN will apply the VA rating, and change the disposition as appropriate (i.e. medical separation to medical retirement). The DoN will send a letter to the class member advising them that their case has been reviewed pursuant to the voluntary remand in *Springs v. Del Toro* and that DoN has determined that relief is warranted. The class member will be provided with 60 days to opt-out of the relief.
5. The DoN's notice to class members will include the name and contact information for class counsel at NVLSP and a proviso that neither the DoD nor DoN endorses any attorney, legal aid service, attorney referral, or veteran service organization.
6. The DoN, with the assistance of the Department of Justice, will obtain the most recent address for each class member from the VA. DoN correspondence to class members regarding this remand will be sent to the class member via the United States Postal Service, First Class Mail.
7. Status reports will be filed with the Court every 180 days.

Respectfully Submitted,

March 23, 2024

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[Proposed] Order

Upon consideration of the parties' Joint Status Report it is hereby ORDERED that this case is REMANDED to the Secretary of the Navy Council of Review Boards for further proceedings consistent with the criteria outlined in the parties Joint Status Report. A further Joint Status Report is ORDER in 180 days.

Dated: _____
Washington, DC

RANDOLPH D. MOSS
U.S. DISTRICT JUDGE