



Steve Leimberg's Estate Planning Email Newsletter - Message #847

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From: Steve Leimberg's Employee Benefits and Retirement Planning Newsletter

Subject: Bufkin v. Collins: What Is the "Benefit of the Doubt Rule" and How Does It Apply to a Veterans Administration Disability Claim

“It is very rare that a Veterans Disability Claim makes it all the way to the U.S. Supreme Court, but in *Bufkin v. Collins*, Secretary of Veterans Affairs, No. 23–713, 604 U. S. ____ (2025) that is exactly what occurred. *Bufkin* involved the arguments of two veterans, Joshua Bufkin (‘Bufkin’), and Norman Thornton (‘Thornton’) who each had filed a disability claim for post-traumatic stress disorder (‘PTSD’). The cases involved the ‘benefit of the doubt rule’ which requires the Department of Veterans Affairs to ‘consider all information and lay and medical evidence of record,’ and ‘[w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the [VA] shall give the benefit of the doubt to the claimant.’ §5107(b). In a 7-2 decision, the U.S. Supreme Court ruled that the U.S. Court of Appeals for Veterans Claims is not required to review the Department of Veterans Affairs’ application of the ‘benefit of the doubt’ rule in most decisions.”

Marc Soss, J.D., LL.M., provides members with commentary on the “benefit of the doubt rule” and its application to VA disability claims.

Marc Soss’ practice focuses on estate planning, probate and trust administration, and corporate matters in Southwest Florida. Marc is a frequent contributor to *LISI* and has published articles in the *Florida Bar*, *Rhode Island Bar*, *North Carolina Bar* and *National Contract Management Association* magazine. Marc is also a retired United States Navy Supply Corps Officer.

Here is his commentary:

EXECUTIVE SUMMARY:

Bufkin involved the arguments of two veterans, Joshua Bufkin, who served in the Air Force from 2005 to 2006, and Norman Thornton, who served in the Army from 1988 to 1991. Bufkin filed a disability claim for post-traumatic stress disorder (“PTSD”) seven (7) years after he left the service and claimed his issues were service-related. VA doctors disagreed over his diagnosis of PTSD as well as his service connection, and his claim was rejected. Thornton, who received a fifty (50%) percent disability rating for PTSD, argued that his rating should have been higher. In both cases, the Veterans Board of Appeals weighed the evidence and determined that no errors were made by the claim’s adjudicators or the board. However, it did not conduct a benefit-of-the-doubt review. Both the Federal Circuit Court of Appeals and U.S. Supreme Court agreed that a benefit-of-the-doubt review was not necessary.

COMMENT:

Congress provides veterans with a wide range of benefits, including compensation for disabilities caused or aggravated by active-duty military service. §§1110, 1131. The VA administers the laws that provide for those benefits. §§301, 303. A veteran may make a claim for disability benefits by submitting a request for benefits to the VA. A VA regional office then adjudicates the claim. The Department of Veterans Affairs (VA) applies a “benefit-of-the-doubt rule” that tips the scales in a veteran’s favor when evidence regarding any issue material to a service-related disability claim is in “approximate balance.” 38 U. S. C. §5107(b). Congress designed the VA’s adjudicatory process to function ““with a high degree of informality and solicitude for the claimant.”” *Henderson v. Shinseki*, 562 U. S. 428, 431(2011) (quoting *Walters v. National Assn. of Radiation Survivors*, 473 U. S. 305, 311 (1985)). If the regional office issues an adverse decision, the veteran may seek de novo review from the Board of Veterans’ Appeals. The Board is an administrative body within the VA that renders final decisions for the agency. 38 U. S. C. §§7101, 7104(a).

Process:

When presented with a claim, the VA reviews each item of evidence and assigns weight to it (a fact finding inquiry reviewed only for clear error). Next, the VA determines whether the evidence is in approximate balance. §5107(b). This step includes both legal and factual components: factual because it involves marshaling and weighing evidence, and legal because the “approximate balance” determination involves whether the evidence satisfies a legal standard. The VA’s approximate-balance determination is thus at most a mixed question. And the appropriate standard of review for a mixed question depends “on whether answering it entails primarily legal or factual work.” *U. S. Bank N. A. v. Village at Lakeridge, LLC*, 583 U. S. 387, 396. Reviewing a determination whether record evidence is approximately balanced is “about as factual sounding” as any question gets.

Veterans who suffer from service-connected PTSD are entitled to VA disability benefits. To establish the service connection, the VA requires medical evidence diagnosing the condition and linking the veteran’s symptoms with an “in-service stressor,” as well as credible evidence that the in-service stressor occurred. 38 CFR §3.304(f) (2023). If the VA finds those conditions are met, it will assign a disability rating that reflects reductions in earning capacity. 38 U. S. C. §1155; 38 CFR §4.130. This rating determines the amount of compensation a veteran will receive.

Benefit of the Doubt:

Under §7261(b)(1), the Veterans Court must “take due account” of the VA’s application of the benefit of the doubt rule. This requirement directs the Veterans Court to give appropriate attention to the VA’s work. The Veterans Court must review the VA’s application of the benefit-of-the-doubt rule “[i]n making the determinations under subsection (a).” §7261(b)(1). Accordingly, the standards of review provided in subsection (a) also govern the Veterans Court’s review of benefit-of-the-doubt issues. Section 7261(b)(1) makes explicit the Veterans Court’s previously implicit duty to review the VA’s application of the benefit-of-the-doubt rule, pursuant to the standards set forth.

Argument:

In Bufkin, both of the petitioners were veterans who applied for service connected post-traumatic stress disorder (PTSD) disability benefits and were dissatisfied with the VA's resolution of their claims. Bufkin claimed that his PTSD stemmed from his military service, but the VA found no clear link. Thornton obtained service-connected PTSD disability benefits, but the VA denied his most recent request to increase his disability rating. These adverse determinations were reviewed de novo by the Board of Veterans' Appeals, which rendered final decisions on behalf of the VA denying the claims.

The Petitioners then challenged the adverse determinations before the U. S. Court of Appeals for Veterans Claims (Veterans Court). Under §7261(a), the Veterans Court reviews legal issues de novo and factual issues for clear error. And under §7261(b)(1), the Veterans Court must "take due account" of the VA's application of the benefit-of-the-doubt rule. In applying those standards, the Veterans Court affirmed the VA's adverse benefit determinations, finding that the Board's approximate-balance determinations were not clearly erroneous. The petitioners then appealed to the Federal Circuit, challenging the Veterans Court's legal interpretation of §7261(b)(1), and arguing that the statutory command to "take due account" of the VA's application of the benefit-of-the-doubt rule requires the Veterans Court to review the entire record de novo and decide for itself whether the evidence is in approximate balance. The Federal Circuit rejected this argument and affirmed.

The U.S. Supreme Court ruled against two veterans who argued that their disability claims were unfairly denied because they did not receive favorable decisions when the evidence presented in their cases was equal. In a 7-2 decision, the court ruled that the U.S. Court of Appeals for Veterans Claims is not required to review the Department of Veterans Affairs' application of the "benefit-of-the-doubt" rule in most decisions. The standard requires the VA to approve veterans' claims when the supporting evidence, either for or against approval, is close. Writing for the majority, Justice Clarence Thomas said the VA claims court and the Federal Circuit Court, which upheld the lower court's decision, weren't legally bound, in the specific cases, to conduct a benefit-of-the-doubt review. Instead, the claims court was required only to review the cases for any errors by the claims adjudicators or the Board of Veterans Appeals, Thomas wrote in a decision published March 5.

"We hold that the Veterans Court must review the VA's application of the rule the same way it would any other determination -- by reviewing legal issues [from the beginning] and factual issues for clear error," Thomas wrote. The case, *Bufkin v. Collins*, included the arguments of two veterans: Joshua Bufkin, who served in the Air Force from 2005 to 2006, and former Army soldier Norman Thornton, who served from 1988 to 1991.

In a summary, the justices said they accepted the case to determine whether the Veterans Court was required to consider the VA's use of the benefit-of-the-doubt in claims decisions beyond a review for error. Thomas said, however, that they failed to make their legal argument, adding that the veterans court can overturn a decision only when there is clear error. "[The law] does not establish a new standard of review for challenges to the VA's application of the benefit--of-the-

doubt rule," Thomas wrote. Finding, or at least a predominantly factual, mixed questions of law and fact, subject to clear-error review, Justice Thomas noted that:

The approximate-balance determination involves two steps. First, the VA reviews each item of evidence in the record and assigns weight to it. Both sides agree that this aspect of the VA's analysis is factfinding reviewed only for clear error. Second, the VA assesses the weight of the evidence as a whole, deciding whether "there is an approximate balance of positive and negative evidence" on any material issue. §5107(b). The VA gives the benefit of the doubt to the veteran only after determining that the positive evidence and negative evidence on a material issue are in approximate balance. Otherwise, the VA simply resolves the issue in favor of the party with the more persuasive evidence. The second step—deciding whether the evidence as a whole is approximately balanced—has both legal and factual components. The task is partly factual because it involves marshaling and weighing evidence.

In affirming the decision of the Court of Appeals, the majority opinion concluded that:

Section 7261(b)(1) does not establish a new standard of review for challenges to the VA's application of the benefit-of-the-doubt rule. Instead, it requires the Veterans Court to apply the appropriate standard of review under §7261(a). Because the VA's approximate-balance determination is a predominantly factual question, the Veterans Court reviews it for clear error. §7261(a)(4).