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Veterans Entitled to GI Bill Education Benefits for Each Qualifying Period of Military Service

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11.0—Veterans claims

Rudisill v. McDonough: A veteran with multiple periods of qualifying military service is entitled to GI Bill education benefits for each period of service.

I. INTRODUCTION

The GI Bill of Rights was created over 75 years ago to ensure that American veterans are given an opportunity to live the American dream.[2] Through the years it has undergone revisions, yet it continues to be a valuable resource for American veterans. This is evidenced by the Department of Veterans Affairs ("VA") providing educational benefits to nearly 800,000 veterans since the implementation of the Post-9/11 GI Bill.

Though the goal of the GI Bill is to allow veterans to live out the American dream, since 2008, with the enactment of the Post-9/11 GI Bill, the VA has hampered that goal by limiting veterans to benefits from only one GI education program.[3] However, the United States Court of Appeals for the Federal Circuit corrected this unjust limitation with its ruling in *Rudisill v. McDonough*.[4] The court held that a veteran who qualifies for both the Montgomery GI Bill and the Post-9/11 GI Bill for multiple periods of military service is allowed to draw benefits from each program, up to the aggregate limit of 48 months.[5]

II. BACKGROUND

James R. Rudisill served three periods of military active duty: (1) from January 2000 to June 2002 in the Army; (2) from June 2004 to December 2005 in the Army National Guard; and (3)

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**Military title used for identification only. The views expressed in this article are the views of the author, and not necessarily the views of the Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. Government.*
[2]*See the Servicemen's Readjustment Act of 1944. Pub. L. 78-346, 58 Stat 284.*
[3]*See 2009 VA POST-9/11 GI BILL OUTREACH LETTER, http://www.gibill.va.gov/documents/CH33_veteran_outreach_letter.pdf (website last updated Nov. 10, 2009) ("Those individuals transferring to the Post-9/11 GI Bill from the Montgomery GI Bill (chapter 30) will be limited to the amount of their remaining chapter 30 entitlement.").*
[4]*Rudisill v. McDonough, 4 F.4th 1297 (Fed. Cir. 2021).*
[5]*Id. at 1305.*

from November 2007 to August 2011 as a commissioned officer in the Army.[6] Rudisill wanted use his available GI Bill to further his education and so applied for and received 25 months and 14 days of education under the Montgomery GI Bill.[7] In 2015, Rudisill wanted to continue his education further by attending the Yale Divinity School graduate program.[8] He applied for education benefits under the Post-9/11 GI Bill.[9] The VA determined that he was entitled to only 10 months and 16 days of benefits under the Post-9/11 GI Bill.[10] This would allow Rudisill to only receive a total 36 months of education benefits.

Rudisill appealed to the Board of Veterans' Appeals ("BVA") requesting to obtain education benefits up to the statutory cap of 48 months for multiple terms of service.[11] The BVA denied Rudisill's request, limiting his education benefits to a total of 36 months because Rudisill made an irrevocable election to use Post-9/11 benefits instead of the Montgomery benefits.[12]

Rudisill appealed the BVA decision to the United States Court of Appeals for Veterans Claims (Veterans Court).[13] The Veterans Court reversed the BVA, holding that Rudisill is entitled to the aggregate cap of 48 months of benefits.[14] The VA appealed, and the Federal Circuit affirmed the decision of the Veterans Court, holding that each period of service earns education benefits, subject to the cap of 48 aggregate months of benefits.[15]

III. APPLICABLE GI BILLS

The United States has a long history of providing educational benefits to veterans. Since 1944 with the passage of the Servicemen's Readjustment Act, the GI Bill has been a life- changing piece of legislation. The original GI Bill provided education and other benefits to veterans of World War II.[16] Since then, other similar bills have been enacted to continue to provide educational benefits to veterans.[17] Today, many veterans have the option to utilize the Montgomery GI Bill and the Post-9/11 GI Bill.[18]

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[6] *Id. at 1299.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id. at 1300.*
[14] *Id.*
[15] *Id. at 1305.*
[16] *Pub. L. 78-346, 58 Stat 284.*
[17] *See e.g. Veterans' Readjustment Assistance Act of 1952, 66 Stat. 663 ("Korean War GI Bill"); Veterans' Readjustment Benefits Act of 1966, 80 Stat. 12 ("Cold War GI Bill"); the Veterans' Education and Employment Assistance Act of 1976, 90 Stat. 2383 ("Post-Korean Conflict and Vietnam Era GI Bill"); and Veterans' Rehabilitation and Education Amendments of 1980, 94 Stat. 2171 ("Post-Vietnam Era Veterans Educational Assistance Program").*
[18] *38 U.S.C. § 3001 et seq, 3301 et seq.*

The Montgomery GI Bill's purpose of education benefits for veterans is to "aid in the recruitment and retention of highly qualified personnel … [and] enhance our Nation's competitiveness through the development of more highly educated and productive workforce."19 The Montgomery GI Bill applies to those who become a member of the Armed Forces after June 30, 1985, and serves a set amount of time in the Armed Forces.20 If a veteran can meet the qualifications he or she is entitled to "36 months of educational assistance and benefits."21 In line with previous GI Bills, educational benefits are provided as a monthly stipend at a fixed rate and do not include payment for books or living expenses.22

The Post-9/11 GI Bill's purpose is to "improve educational assistance for veterans who served in the Armed Forces after September 11, 2001."23 The Bill applies to veterans who served an aggregate of at least 36 months of active-duty service after September 11, 2001.24 If a veteran can meet the qualifications set out within the statute, he or she may receive up to 36 months of benefits.25 Unlike previous GI Bills, the Post-9/11 GI Bill provides broader benefits, including payment of the actual amount of tuition and fees, a monthly housing stipend, and a lump sum amount for books, supplies, equipment, and other costs.26

The enactment of the Post-9/11 GI Bill did not terminate or expire the Montgomery GI Bill. The two laws co-exist in a broader statutory scheme.27 Thus, both GI Bills apply to veterans.

IV. THE COURT'S ANALYSIS

How the Montgomery GI Bill and the Post-9/11 GI Bill interact has led to confusion.

Some, including the Secretary of Veterans Affairs (Secretary), argue that a veteran with multiple periods of qualifying service is limited to the cap applicable to the initial period while others, like Rudisill, argue that such a veteran earns educational benefits for each period of service, subject to the cap of 48 aggregate months. The Federal Circuit adopted the second interpretation, affirming the decision of the Veterans Court.28 Due to the bulk of the analysis taking place in the Veterans Court, I will focus on the analysis there.29

The Veterans Court focused on section 3322 because, in its view, this was the cause of the confusion.30 The Veterans Court first determined that the statute was ambiguous and turned to the implementing regulations. The implementing regulations that cite section 3322 as authority are 38 C.F.R. §§ 21.4022, 21.9635(w), and 21.9690. The court determined that the

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[19]*Id. § 3001.*
[20]*Id. § 3011(a).*
[21]*Id. § 3013(a)(1).*
[22]*Id. § 3015.*
[23]*124 Stat. 4106 (approved Jan. 4, 2011).*
[24]*38 U.S.C. § 3311(b).*
[25]*Id. § 3312(a).*
[26]*Id. § 3313(c)(1)(B)(iv).*
[27]*BO v. Wilkie, 31 Vet.App. 321 (2019).*
[28]*Rudisill v. McDonough, 4 F.4th 1297, 1305 (Fed. Cir. 2021).*
[29]*Bo v. Wilkie, 31 Vet.App. 321 (2019).*
[30]*Id. at 331-32.*

implementing regulations were not of use in determining the meaning of section 3322.31 Since the VA did not speak to the statutory ambiguity, the court independently assumed the task of interpreting the meaning of the statutory scheme.[32]

In determining the best meaning of the statute, the court considered several factors. The first was giving full effect to the statutory provisions.[33] In analyzing section 3322, specifically subsections (a), (d), and (h), the court determined that for the statute to coordinate the best reading was in line with allowing veterans who have served multiple periods to be entitled to benefits from each period of service.[34]

Additionally, the court considered the 48-month cap.[35] The court stated that if section 3322 was interpreted as the Secretary asserts, then the 48-month cap would be rendered null because it would apply to very few veterans.[36] However, by reading section 3322 as the veteran requests, then the aggregate of 48 months will apply in many more instances.[37]

Third, the court examined the regulatory structure.[38] There are several regulations in place to implement the GI programs.[39] Reading the provisions together, and ensuring there is no surplusage, the court determined the best reading of section 3322 was in line with the veteran's view.[40]

The court then reaches its analysis on the Congressional purpose. The purpose of section 3322 is to ensure veterans do not double-dip. With this in mind, the court determined that a veteran who qualifies and receives benefits for one period of service cannot be conceived of double-dipping if he qualifies and receives benefits from another period of service.[41] The court then examined the history of the GI Bill, noting that the original GI Bill and the Korean War GI Bill allowed veterans to combine benefits up to the aggregate limit.[42] Finally, the court noted the purpose of the GI Bill is to encourage citizens to voluntarily join the Armed Forces.[43] Taken all together, the court determined that Congress's purpose is achieved by reading the statute to allow veterans with multiple qualifying periods of service to receive benefits for each period of service.

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[31] *Id. at 339-40.*
[32] *See Cook v Snyder, 28 Vet. App. 330, 339 (2017) (deference does not apply in instances where when the regulation does not resolve statutory ambiguity).*
[33] *BO, 31 Vet.App. 341-42.*
[34] *Id. at 342.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *38 C.F.R. §§ 21.4022, 21.9635(w) 21.9690.*
[40] *BO, 31 Vet.App. at 344.*
[41] *Id.*
[42] *Id. at 345; Cold War GI Bill, Pub. L. No. 89-358, §§ 2 & 3(b), 80 Stat. 12, 14, 2.*
[43] *BO, 31 Vet.App. at 345.*

The last consideration was the pro-veteran canon.[44] The doctrine encourages courts to favor an interpretation of the statutory scheme in favor of veterans.[45] In keeping with the doctrine, the court favored allowing veterans with multiple periods of service to obtain benefits from both the Montgomery GI Bill and the Post-9/11 GI Bill subject to the aggregate cap of 48 months.

Taking all these factors together, the court held the statutory pattern supports the holding that each period of service earns education benefits, up to 48 aggregate months of benefits.[46] The Court of Appeals does not dispute the reasoning at the Veterans Court, holding that the "Veterans Court correctly" decided the case.[47]

V. ANALYSIS OF THE COURT'S DECISION

The analysis performed by the Veterans Court, and affirmed by the Federal Circuit, is sound; a veteran with multiple periods of qualifying military service is entitled to GI Bill education benefits for each period of service. This is the best interpretation when one considers the language of the statute, the regulatory scheme, the purpose of the GI Bill, and the pro-veteran canon.

a. Language of the Statute

Section 3322 is ambiguous, which explains the competing interpretations. Reasonably well- informed people could understand the statutes in two or more different ways. A well-informed person, like the Secretary, could understand section 3322 to bar a veteran who has two separate qualifying periods of service from receiving educational benefits under both GI Bills and must elect under which GI Bill to receive educational assistance.[48] On the other hand, a reasonably well-informed individual, like Rudisill, could understand section 3322 to allow a veteran to switch freely between both GI Bills so long as he is not receiving assistance from both during a single month, semester, or other applicable payment period.

However, the dissent in *BO v. Wilkie* argues that section 3322 is not ambiguous.[49] To support this view, Judge Barley focuses on subsections (d) and (h) of section 3322.[50] Judge Barely notes that subsection 3322(d) does not speak in terms of qualifying periods, however, subsection 3322(h) does.[51] Based on the language, he concluded that Congress intended for subsection 3322(d) to apply to veterans equally, whether the veteran served one qualifying period or two.[52]

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[44] *Id.*
[45] *Brown v. Gardner, 513 U.S. 115 (1994).*
[46] *Rudisill v. McDonough, 4 F.4th 1297, 1305 (Fed. Cir. 2021).*
[47] *Id.*
[48] *38 U.S.C. § 3322.*
[49] *Bo v. Wilkie, 31 Vet.App 321, 349-50 (2019) (Bartley, J., dissenting).*
[50] *Id. at 351-52.*
[51] *Id.; see also 38 U.S.C. §§ 3322(d), 3322(h).*
[52] *Bo, 31 Vet.App. at 351 (Bartley, J., dissenting).*

I find the dissent's proposition to be unpersuasive. Section 3322 is ambiguous. Subsection 3322(d)'s silence does not automatically mean that it applies to veterans with one or multiple qualifying periods equally. Both subsections could coexist even if they both apply only to a single period of service. Subsection 3322(d) could allow a veteran who has already elected to use the Montgomery GI Bill benefits to irrevocably elect to use the Post-9/11 GI Bill benefits in the amount of the remaining, unused Montgomery GI Bill benefits for a single period of service.[53] Then also, subsection 3322(h) could impose an election on a veteran who has not yet elected any program attributable to their period of service.[54] The fact that these two understandings exist leads to ambiguity.

Since ambiguity does exist in the statute, the court was correct in taking on the task of interpreting the meaning of the statutory scheme, keeping in mind that the best interpretation of a statute is one that gives effect to all of its provisions and leaves no part inoperative or superfluous, void or insignificant, and ensuring no section should destroy the other.[55] The Veterans Court does just that.[56] When looking at subsection 3322(d), the word "additional" suggests that this subsection works secondary to the other provisions within section 3322. If the majority were to read the subsection as the dissent or Secretary asserts, then the statute would be choppy and not coordinated. However, by reading the statute as the veteran suggests, it harmonizes all provisions making no part superfluous or insignificant.

Further, making a section largely a nullity is something that should be avoided.[57] By reading the statute as the Secretary asserts, the 48-month aggregate cap in section 3695 would be rendered largely null. The dissent argues that this is not true because veterans could benefit from exhausting 36 months of entitlement under the Montgomery GI Bill and then can make use of their 12 months of Post-9/11 GI Bill benefits.[58] However, the dissent notes that many veterans may voluntarily choose to receive benefits under the Post-9/11 GI Bill without fully exhausting their Montgomery GI Bill benefits, resulting in these veterans being subject to the 36-month cap. This assertion made by the dissent is one of the reasons why the argument is unpersuasive. Due to the 9/11 GI Bill providing significantly greater benefits than the Montgomery GI Bill, most, if not all, veterans would choose to receive Post-9/11 GI Bill benefits before exhausting the Montgomery GI Bill benefits. This result renders the 48-month cap largely a nullity. Further, there is no authority cited by the dissent that would allow a veteran to use 36 months under the Montgomery GI Bill and then use 12 months under Post-9/11. By allowing veterans with multiple periods of qualifying service to receive benefits for each period of service, section 3695 is not largely a nullity.

b. Regulatory Framework

[53] *Id. at 339.*
[54] *Id.*
[55] *Id.*
[56] *Id. at 341-42.*
[57] *Husted v. A. Philip Randolph Inst., 138 S.Ct. 1833, 1842 (2018).*
[58] *BO, 31 Vet.App at 353-54 (Bartley, J., dissenting).*

The majority correctly noted that not only do all provisions within a section need to be harmonized to render no part inoperative, but so do other statutes.[59] If the court were to read section 3322 as the Secretary requests, then it would render portions of the Secretary's regulations inoperable surplusage.[60] This is highly disfavored by the courts.[61] Yet, if we read the Secretary's regulations as a whole, it supports the notion that a veteran with multiple periods of service can use benefits from different programs, so long as he or she does not double-dip during the relevant pay periods.

c. Congressional Intent

The dissent does make a compelling argument regarding Congressional intent.[62] The dissent points out that Congress is presumed to know about the current statutory scheme.[63] Following the canon, Congress is presumed to know that after the enactment of the Post-9/11 GI Bill, that section 3322 was being applied to veterans the same, whether the veteran was entitled to benefits under two separate periods of service or just one. Yet, when Congress made changes directly affecting section 3322, it did not amend the statute to be in line with the majority's view. This could lead one to conclude that Congress intended for the statute to be interpreted as the VA suggests, section 3322 applies to veterans equally, no matter the number of qualifying periods of service.

While this is a compelling argument, it cannot be considered in a vacuum. Looking at Congress' statutory purpose, the goal was to bar duplication. As the majority points out, a veteran who qualifies and receives benefits for one period of service cannot be accused of double-dipping if he qualifies and receives benefits from another period of service.[64] Additionally, when one considers the previous GI Bills and the purpose of the GI Bills, the scale tips in favor of the veteran. Congress intended to promote veterans and their ability to receive benefits. Thus, Congress' goal is achieved by allowing a veteran with multiple periods of qualifying military service to be entitled to GI Bill education benefits for each period of service.

d. Pro-Veteran Canons

It is important to note that there is a pro-veteran canon that encourages courts to resolve ambiguity in favor of the veteran.[65] By interpreting the statute to entitle veterans with multiple periods of service to benefits under both the Montgomery and the Post/911 GI Bill promotes the use of this canon. Yet, it is argued that interpreting the statute in this way is note more veteran-friendly because it treats veterans differently.[66] However, this argument is unfounded. Just because veterans are treated differently based on their service does not mean that the statute is not "veteran-friendly."

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[59] 2A NORMAN J. SINGER ET. AL., SUTHERLAND ON STATUTORY CONSTRUCTION § 46.6 (7th ed. 2007).
[60] 38 C.F.R. §§ 21.4022, 21.9635(w), and 21.9690.
[61] *Supra* note 62.
[62] *BO*, 31 Vet.App. at 352-53. (Bartley, J., dissenting).
[63] *Id.* at 352; *see also Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).
[64] *BO*, 31 Vet.App. at 344.
[65] *Brown v. Gardner*, 513 U.S. 115 (1994).
[66] *BO*, 31 Vet.App. at 354 (Bartley, J., dissenting).

By reading the statute as the dissent and Secretary wishes, veterans, like Rudisill, would be disadvantaged because they would be stripped of benefits. The pro-veteran canon would be ignored. But, by holding that veterans who have served multiple periods of qualifying service are entitled to benefits from each period of service, the courts are utilizing the pro-veteran canon.

VI. EFFECTS OF THE COURT'S HOLDING

While Rudisill is not a class action, the Federal Circuit decided to make the decision precedential.[67] This means that other similarly situated veterans can use Rudisill to support their eligibility for additional benefits. It is said that "[a]n estimated 1.7 million Post-9/11 era veterans could benefit from this ruling." [68] This is billions of dollars being restored to veterans.[69]

The billions of dollars being restored to veterans will only apply to those who have multiple qualifying periods of service, not those who have a single qualifying period of service.[70] That means veterans who have served a single qualifying period are only entitled to "the number of months of unused entitlement of the individual under [the Montgomery GI Bill] as of the date of election."[71] I anticipate the courts will hear this issue at some point, however, I believe it will not be in the veterans' favor. The reason for this conclusion is twofold. The first reason is based on the Veterans Court and the Federal Circuit analysis. Both courts distinguished between those who served one period of service and those who served multiple periods when interpreting the statute.[72] If the courts intended for the 48-month cap to apply to veterans equally they would likely have indicated such. The second reason is based on statutory construction. Using similar rules as above, section 3327 would seem to be superfluous and meaningless unless it were to be applied to veterans who have served a single qualifying period.

Luckily, the fight is over for those veterans with multiple qualifying periods of service. The VA had until mid-August to make a move, but they failed to do so. The VA officials could have attempted to appeal the ruling to the Supreme Court but did not. This is likely because of the strong opinions given by the lower courts. Another option available was for the Solicitor General to petition the Federal Circuit to expand the panel hearing the case and re-examine the arguments. Again, this option was not exercised. While there was a dissenting opinion by Circuit Judge Dyk, I believe the Solicitor General realized there would not be a different outcome.[73]

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[67] *Id.*
[68] *Nikki Wentling/Stars and Stripes, Court decides millions of veterans are eligible for more GI Bill benefits, THE AMERICAN LEGION, https://www.legion.org/gibill/252994/court-decides-millions-veterans-are-eligible-more-gi-bill-benefits?utm_source=Adestra&utm_medium=email&utm_content=STAR%20AND%20STRIPES&utm_campaign=Source+Code+Here&utm_term=newsletter (July 14, 2021).*
[69] *Id.*
[70] *See Rudisill v. McDonough, 4 F.4th 1297, 1304 (Fed. Cir. 2021).*
[71] *38 U.S.C § 3327(d).*
[72] *See Rudisill, 4 F.4th at 1304; BO, 31 Vet.App at 332.*
[73] *Rudisill, 4 F.4th at 1305-06.*

Since the VA failed to make a move by mid-August, the court order will stay in place and veterans with multiple periods of service can benefit from both GI Bills.[74]

VII. Conclusion

The United States strives to support veterans and ensure that they can live their American dream after serving the Nation. Unfortunately, Rudisill was unable to live his American dream due to being denied his educational benefits. However, the holding in *Rudisill* ensures that no other veteran will be denied their American dream. This holding allows veterans who qualify for the Montgomery GI Bill under one period of service and the Post-9/11 GI Bill under a different qualifying service to draw from both benefits in the aggregate of 48 months. Millions of veterans will benefit from this precedential holding.

Update – May 2022

We spoke too soon; the fight is not over. The Secretary of Veterans Affairs filed a Combined Petition for Panel Rehearing en banc.[75] After Rudisill responded, the court decided that the appeal warranted en banc consideration.[76] Thus, the panel opinion in *Rudisill v. McDonough,* 4 F.4th 1297 (Fed. Cir. 2021) was vacated, and the appeal was reinstated.[77] At a later day, oral arguments will be held.[78] In the meantime, the court invited the view of amici curiae.[79] We will keep the readers updated.

Update—April 2023
Bad News

Rudisill v. McDonough, 55 F.4th 879 (Fed. Cir. 2022).

The Secretary of the Department of Veterans Affairs applied to the United States Court of Appeals for the Federal Circuit for a rehearing en banc, and the court granted the application. There were new briefs and a new oral argument before all of the active judges of the Federal Circuit. In December 2022, the Federal Circuit en banc reversed the panel decision for Mr. Rudisill. This is the en banc decision cited above.

The Federal Circuit held that "Section 3327 [of title 38 of the United States Code] applies to Mr. Rudisill and limits his Post-9/11 benefits to 10 months and 16 days of his unused Montgomery entitlement." This means that Mr. Rudisill did not have enough remaining educational benefits to finance getting a divinity degree.

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[74] *Wentling, supra note 70.*

[75] *Rudisill v. McDonough, No. 2020-1637, 2022 WL 320680 (Feb.3, 2022).*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

The final appellate step available to Mr. Rudisill is to apply to the United States Supreme Court for a writ of certiorari. Certiorari will be granted if four or more of the nine Justices vote for certiorari at a conference to consider certiorari applications. If only three or fewer Justices vote for certiorari, the en banc decision of the Federal Circuit will become final. Certiorari is denied in about 99% of the cases where it is sought.80 We will keep the readers informed of further developments in this case.

Update—JULY 2023
Good News

James R. Rudisill served on active duty for three separate periods. He served as an enlisted member of the Regular Army from January 2000 until June 2002. He left active duty and affiliated with the Army National Guard as an enlisted soldier, and he was recalled to active duty from June 2004 until December 2005. After he left the second period of active duty, he earned a commission in the Army and served in that capacity from November 2007 until August 2011.

Rudisill earned GI Bill educational benefits for each active duty period, and he claimed to have earned 48 months of benefits by combining these periods. The Department of Veterans Affairs (DVA) claimed that there was a 36-month cap on his educational benefits, and the Board of Veterans Appeals (BVA) agreed with that interpretation.

Rudisill appealed to the United States Court of Appeals for Veterans Claims (CAVC), and that court agreed with his interpretation and awarded him 48 months of benefits. *Rudisill v. McDonough,* 34 Vet. App. 176, 2021 U.S. App. Vet. Claims LEXIS 863 (U.S. App. Vet. Cl. May 7, 2021). The DVA appealed to the United States Court of Appeals for the Federal Circuit, and the case was assigned to a panel of three appellate judges. The panel agreed with Rudisill's position and affirmed the CAVC decision. *Rudisill v. McDonough,* 4 F.4th 1297 (Fed. Cir. 2021).

The DVA applied to the Federal Circuit for rehearing en banc, and the DVA application was granted. The Federal Circuit conducted a new oral argument before all of the active (not senior status) judges of the Federal Circuit. After the oral argument, the Federal Circuit vacated the panel decision and held that Rudisill's educational benefits were capped at 36 months. *Rudisill v. McDonough,* 55 F.4th 879 (Fed. Cir. 2022).

In the final appellate step available, Rudisill applied to the Supreme Court for certiorari (discretionary review). A party seeking Supreme Court review must apply for certiorari, and certiorari is granted only if four or more of the nine Justices vote for certiorari in a conference where certiorari petitions are considered. Certiorari is granted in approximately 1% of the cases where it is sought.

On June 26, 2023, the Supreme Court granted certiorari. *Rudisill v. McDonough,* 2023 U.S.

LEXIS 2754. The 2023-24 term of the Supreme Court starts on October 2, 2023, and ends approximately on June 30, 2024. Sometime during that term, there will be an oral argument on *Rudisill v. McDonough,* and we expect the Supreme Court decision before the end of the term.

It has been estimated that 1.7 million veterans are affected by this issue—whether educational benefits earned during separate active-duty periods can be aggregated, or whether there is a 36-month cap on such benefits. *See "Supreme Court Accepts GI Bill Case That Could Affect 1.7 Million Veterans."* Many members of the Reserve Organization of America (ROA) have answered repeatedly to the nation's call to the colors since the terrorist attacks of September 11, 2001, the "date which will live in infamy" for our time. We strongly support the position of James R. Rudisill, not just for him but for all veterans similarly situated.

Please join or support ROA

This article is one of 2200-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs. Indeed, ROA is the only national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, including "friend of the court" briefs filed in the Supreme Court and other courts, we have sought to educate service members, military spouses, attorneys, judges, employers, ESGR volunteers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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[80] *See Law Review 23013 (March 2023) for a description of the certiorari process.*