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Don't Miss the Filing Deadline for Disability Benefits

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At the end of January 2023, the Supreme Court held that a disabled veteran who missed the VA filing deadline for disability benefits was not eligible for retroactive payments, even though the service connected disability was the reason the veteran missed the deadline.

This case, *Arellano v. McDonough*, had the potential to award significant sums of money to veterans who failed to meet the filing deadline for military injuries.³ The main issue in the case concerned 38 U.S.C. § 5110, which is a law that lays out *how* the VA is to determine the “effective date” for a veteran’s disability claim; a determination that largely falls on whether or not the veteran applied for benefits within one year of separating from the military.⁴

Under this law, the VA has two separate methods of determining the “effective day” of a veteran’s injury that can best be illustrated in examples provided by the VA:

¹ Please see www.roa.org/lawcenter. You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses’ Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997, and add new articles each month. Capt. Samuel F. Wright is the author of more than 90% of the articles published so far, but we are always looking for “other than Sam” articles by other lawyers.

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³ Leo Shane III, *No retroactive benefits for veterans past deadline, Supreme Court says*, MILITARYTIMES (Jan. 23, 2023), https://www.militarytimes.com/veterans/2023/01/23/supreme-court-rejects-bid-to-ease-retroactive-benefits-rules-for-vets/?utm_source=sailthru&utm_medium=email&utm_campaign=marine-dnr.

⁴ 38 U.S.C. § 5110.

Example 1

Shaun is a Veteran who ended his active service on September 30, 2013, with a hearing disability. He filed a claim for his hearing problem ***more than a year*** later.

We got Shaun's claim on November 15, 2014. On March 10, 2015, we awarded Shaun a 30% disability rating with an effective date of November 15, 2014—the date we got the claim.

Example 2

Ric is a Veteran who ended his active service on September 30, 2013, with a hearing disability. He filed a claim for his hearing problem ***less than a year*** later.

We got Ric's claim on July 5, 2014. Because we got it within 1 year of his separation from active service, we awarded Ric a 30% disability rating with an effective date of October 1, 2013—the day after Ric's separation from the military.⁵

While this policy follows the law laid out in 38 U.S.C. § 5110, Arellano argued that his disability made him so ill that he did not know he could apply for disability benefits.⁶ Arellano received an honorable discharge from the Navy, but did not apply for VA disability compensation for 30 years.⁷ Suffering from service-connected psychiatric disorders, he "spent years either living on the street or under the care of family members."⁸ Because of the severity of his illness and his inability to apply for benefits on his own, his lawyers argued that the one-year deadline was unfair.⁹

However, the Supreme Court unanimously rejected Arellano's arguments. Justice Amy Coney Barrett explained that 38 U.S.C. § 5110 is not subject to the legal doctrine of "equitable tolling." The opinion explains "[e]quitable tolling "effectively extends an otherwise discrete limitations period set by Congress" when a litigant diligently pursues his rights but extraordinary circumstances prevent him from bringing a timely action."¹⁰ However, that doctrine is inapplicable to 38 U.S.C. § 5110 because it is "inconsistent with the statutory scheme" and the terms that Congress "specifically provided."¹¹ The statute specifically explains that "[t]he effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release."¹² §5110 also sets out 16 individual exceptions that

⁵ U.S. DEP'T OF VETERANS AFFAIRS, DISABILITY COMPENSATION EFFECTIVE DATES (2023).

⁶ *Arellano v. McDonough*, Sec'y of Veterans Affairs, No. 21-423 (Jan. 23, 2023).

⁷ *Id.*

⁸ Leo Shane III, *No retroactive benefits for veterans past deadline, Supreme Court says*, MILITARYTIMES (Jan. 23, 2023), https://www.militarytimes.com/veterans/2023/01/23/supreme-court-rejects-bid-to-ease-retroactive-benefits-rules-for-vets/?utm_source=sailthru&utm_medium=email&utm_campaign=marine-dnr.

⁹ *Id.*

¹⁰ *Arellano v. McDonough*, Sec'y of Veterans Affairs, No. 21-423 (Jan. 23, 2023) (quoting *Lozano v. Montoya Alvarez*, 572 U. S. 1, 10).

¹¹ *Id.*

¹² *Id.*

provide for an effective date earlier than the default, which the Supreme Court says “reinforces Congress’s choice to set effective dates solely as prescribed in the text.”¹³

Ultimately, the Court’s opinion explains “[a]lthough hard and fast limits on retroactive benefits can create harsh results, Congress has the power to choose between rules, which prioritize efficiency and predictability, and standards, which prioritize optimal results in individual cases.”¹⁴ Here, Congress chose rules, and Arellano’s VA disability effective date was determined to be the date the agency received his award.

Do not make the same mistake that Arellano did and be sure to submit your disability claim within a year of separating from service in order to maximize your benefits.

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¹³ *Id.*

¹⁴ *Id.*

¹⁵ Congress recently created the United States Space Force as the 8th uniformed service.

¹⁶ If you are under the age of 35, you can become an associate member for free for five years or when you turn 35, whichever comes first.

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