

# United States Court of Appeals for the Federal Circuit

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**KERRY E. SHEA,**  
*Claimant-Appellant*

v.

**ROBERT WILKIE, SECRETARY OF VETERANS  
AFFAIRS,**  
*Respondent-Appellee*

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2018-1735

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Appeal from the United States Court of Appeals for  
Veterans Claims in No. 16-3479, Judge Amanda L. Meredith.

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Decided: June 20, 2019

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ISAAC CHAIM BELFER, Covington & Burling LLP, Washington, DC, argued for claimant-appellant. Also represented by JEFFREY HOWARD LERNER; RICHARD VALENTINE SPATARO, National Veterans Legal Services Program, Washington, DC.

MOLLIE LENORE FINNAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent-appellee. Also represented by JOSEPH H. HUNT, TARA K. HOGAN, ROBERT EDWARD KIRSCHMAN, JR.; MARTIE ADELMAN, BRIAN

D. GRIFFIN, DEREK SCADDEN, Office of General Counsel,  
United States Department of Veterans Affairs, Washing-  
ton, DC.

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Before DYK, REYNA, and TARANTO, *Circuit Judges*.

TARANTO, *Circuit Judge*.

Kerry Shea served in the United States Air Force. In 2007, she filed an application with the Department of Veterans Affairs (VA) for disability benefits, expressly reciting physical injuries she sustained from an in-service truck accident. In 2008, she expressly sought disability benefits for a psychiatric condition connected to her military service. VA granted benefits for both physical and psychiatric conditions, but when Ms. Shea argued for a 2007 effective date for the psychiatric-disability benefits on the ground that her 2007 application presented an informal claim for psychiatric-disability benefits, VA disagreed. Specifically, VA's Board of Veterans' Appeals concluded that, under the regulation then governing informal claims, Ms. Shea's 2007 application did not adequately convey that she was seeking benefits for a psychiatric disability. The Court of Appeals for Veterans Claims (Veterans Court) affirmed. In this appeal by Ms. Shea, we conclude that the Veterans Court applied too restrictive a legal standard in reading her 2007 application. We vacate the Veterans Court's decision and remand for further proceedings.

I

A

Ms. Shea began serving in the Air Force in October 2006. Her pre-enlistment examination indicated a normal psychiatric condition. On January 19, 2007, while stationed at the Sheppard Air Force Base in Wichita Falls, Texas, Ms. Shea underwent an Air Force medical examination. The record of the examination states a diagnosis of

an adjustment disorder with anxiety and depressed mood, and it notes, among other things, that she found the Air Force harder than anticipated, was having difficulty in her classes, and had obtained professional help for anxiety and depression. Four days later, on January 23, 2007, Ms. Shea was struck by a large truck while on base. She was brought to the emergency room at the United Regional Health Care System, where several examinations showed that she had sustained various physical injuries, including a right pulmonary contusion, a transverse process fracture of L3, a left iliac wing fracture, and a right L3 acetabular fracture.

After being released from the emergency room, Ms. Shea was treated at several different facilities. On January 31, 2007, she entered HealthSouth Rehabilitation Hospital in Wichita Falls, Texas. Her medical records from that facility report anxiety, depression, and impaired memory, which were “currently exacerbated,” and for which she was prescribed antidepressants. J.A. 171. She was discharged from rehabilitation on March 21, 2007.

On March 28, 2007, an Air Force medical evaluation board recommended that Ms. Shea be discharged from the military. The board reasoned that Ms. Shea’s continued service was “not compatible with anxiety and depression and sleep disturbance[,] which puts her at risk for inattention and evident self harm,” and that she might not recover from her physical injuries quickly enough to return to active duty. J.A. 186.

Near the beginning of April 2007, Ms. Shea was transferred to Dover Air Force Base, where her then-husband was stationed, to continue her treatment. Her medical records from her time at Dover, though primarily focused on her physical injuries, also list diagnoses of anxiety and depression and note that Ms. Shea was having some memory problems.

An Air Force physical evaluation board determined in May 2007 that Ms. Shea’s pelvic fractures and transverse

process fracture were unfitting conditions that were compensable and ratable but that her adjustment disorder with depression and anxiety was not separately unfitting and was not compensable or ratable. On July 2, 2007, Ms. Shea was discharged from the Air Force because of her physical disabilities.

## B

On October 19, 2007, Ms. Shea submitted a claim for disability benefits to VA. Her statement in support of the claim states, “Veteran is App[ly]ing For se[r]vice connected disabilit[i]es,” and adds, “Please see Attached VA Form 21-526.” J.A. 254. The referred-to form, under the heading “What disability are you claiming?,” lists four physical disabilities: “Pelvic Fractures and transverse process fracture of L3,” “Shortness of breath,” “Right and Left Pulmonary contu[s]ions,” and “Pain chest.” J.A. 245. Under the heading “When did your disability begin?,” the form specifies “1/23/2007,” the date of the truck accident, for each disability. *Id.* And for the address of the medical facility or doctor that treated Ms. Shea for each disability, the form lists the United Regional hospital for the first disability, the Wichita Falls rehabilitation hospital for the second, and the Dover facility for the last two. *Id.*<sup>1</sup>

After receiving the claim, VA sent Ms. Shea a letter regarding the agency’s duty to assist veterans in obtaining evidence needed to substantiate their claims. In response to that letter, in December 2007, Ms. Shea submitted an additional statement in support of her claim, explaining that she had been treated by “United Regional Medical Ctr, Texas, Health South, Texas,” another “VA Hospital,” and

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<sup>1</sup> Ms. Shea appointed the American Legion as her representative. The parties accept that Ms. Shea should be treated as having filed her initial claim pro se.

two doctors in Dover. J.A. 290. She requested that VA “please obtain these records + grant benefits.” *Id.*

In February 2008, the relevant VA regional office (RO) found that Ms. Shea’s transverse process fracture, pelvic fracture, and rib fractures were connected to her service within the meaning of, *e.g.*, 38 U.S.C. § 1110 and 38 C.F.R. § 3.303. For the resulting benefits, the RO assigned an effective date of July 3, 2007, the day after Ms. Shea was discharged from service. Under a governing regulation, that was the proper effective date because her claim was filed within a year of her discharge. *See* 38 C.F.R. § 3.400(b)(2)(i) (2007).

Ms. Shea submitted a notice of disagreement with the RO’s decision on July 7, 2008. She attached to that filing a letter asking that VA “please reconsider my disability rating” and explaining that, among other symptoms, “I also don’t remember a lot of things I do, even the same day,” “[m]y job had to print out special instructions for me to close out the computer step by step because I am unable to remember day to day,” and “I live the accident daily now.” J.A. 304. Eventually, VA found that letter (but no earlier filing) to be sufficient to present a claim for psychiatric-disability benefits.

The path to that finding was as follows. On September 9, 2008, Ms. Shea filed a claim in which she requested a determination of service connection for post-traumatic stress disorder (PTSD), noting that she was “now having problems.” J.A. 306. She submitted a statement in support of that claim on October 15, 2008, clarifying that her asserted PTSD was secondary to her in-service truck accident.

The RO granted Ms. Shea’s PTSD claim in February 2009 and assigned a 50% disability rating effective September 9, 2008, the date of her submission expressly requesting benefits for PTSD. On April 7, 2009, Ms. Shea submitted a notice of disagreement with the RO’s decision,

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