

United States Court of Appeals for the Federal Circuit

BRUCE R. TAYLOR,
Claimant-Appellant

v.

**DENIS MCDONOUGH, SECRETARY OF VETER-
ANS AFFAIRS,**
Respondent-Appellee

2019-2211

Appeal from the United States Court of Appeals for Veterans Claims in No. 17-2390, Judge Joseph L. Falvey Jr., Judge William S. Greenberg, Judge Amanda L. Meredith.

Decided: June 15, 2023

CHARLES MCCLOUD, Williams & Connolly LLP, Washington, DC, argued for claimant-appellant. Also represented by DEBMALLO SHAYON GHOSH, ANNA JOHNS HROM, LIAM JAMES MONTGOMERY, TIMOTHY M. PELLEGRINO; MARK B. JONES, Mark B. Jones Attorney at Law, Sandpoint, ID.

WILLIAM JAMES GRIMALDI, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for respondent-appellee. Also represented by BRIAN M. BOYNTON, PATRICIA M.

MCCARTHY, LOREN MISHA PREHEIM; CHRISTOPHER O. ADELOYE, BRIAN D. GRIFFIN, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

DROR LADIN, American Civil Liberties Union Foundation, New York, NY, for amici curiae American Civil Liberties Union, American Civil Liberties Union of the District of Columbia. Also represented by BRETT MAX KAUFMAN; SCOTT MICHELMAN, ARTHUR B. SPITZER, ACLU Foundation of the District of Columbia, Washington, DC.

GLENN R. BERGMANN, Bergmann Moore, LLC, Bethesda, MD, for amicus curiae American Legion. Also represented by THOMAS POLSENO, JAMES DANIEL RIDGWAY.

MELANIE L. BOSTWICK, Orrick, Herrington & Sutcliffe LLP, for amicus curiae Military-Veterans Advocacy Inc. Also represented by THOMAS MARK BONDY; ELIZABETH MOULTON, San Francisco, CA; JOHN B. WELLS, Law Office of John B. Wells, Slidell, LA.

ANGELA K. DRAKE, Veterans Clinic, University of Missouri School of Law, Columbia, MO, for amicus curiae National Law School Veterans Clinic Consortium.

JENNIFER SWAN, Dechert LLP, Palo Alto, CA, for amici curiae National Veterans Legal Services Program, Swords to Plowshares. Also represented by HOWARD W. LEVINE, Washington, DC; RENEE A. BURBANK, National Veterans Legal Services Program, Arlington, VA; EMILY WOODWARD DEUTSCH, Washington, DC.

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Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, REYNA, WALLACH, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.¹

Opinion filed by *Circuit Judge* TARANTO, Parts I–IV of which constitute an opinion for the court. *Chief Judge* MOORE and *Circuit Judges* PROST, CHEN, STOLL, and CUNNINGHAM join in full; *Circuit Judges* LOURIE and HUGHES join Parts I–IV.

Opinion concurring in the judgment filed by *Circuit Judge* DYK, which *Circuit Judges* NEWMAN, REYNA, and WALLACH join in full and Parts I, II, and V of which *Circuit Judge* STARK joins.

Opinion dissenting in part and dissenting from the judgment filed by *Circuit Judge* HUGHES, which *Circuit Judge* LOURIE joins.

TARANTO, *Circuit Judge*.

During his service in the U.S. Army from 1969 to 1971, Bruce R. Taylor voluntarily participated as a test subject in a secret Army program, at the Edgewood Arsenal facility in Maryland, that assessed the effects of various dangerous substances, including chemical warfare agents. The government swore him to secrecy through an oath broadly requiring him not to reveal any information about the program to persons not authorized to receive it, without specifying who might be so authorized. Mr. Taylor suffered injuries from his participation in the program, resulting in disabilities. But as the government concedes, the secrecy oath, backed by the possibilities of court-martial and criminal penalties, caused Mr. Taylor to refrain, for more than three decades after his discharge from service, from pursuing the sole adjudicatory route to vindicate his statutory

¹ Circuit Judge O'Malley retired on March 11, 2022.

entitlement to disability compensation for those service-connected disabilities. Specifically, he refrained from filing a claim with the Department of Veterans Affairs (VA) for compensation based on his Edgewood injuries until after the government, in 2006, released him and similarly situated veterans from their secrecy oaths.

In 2007, Mr. Taylor filed a claim for disability benefits, which VA granted. But VA granted the benefits only from the 2007 date of the claim because the governing statute, 38 U.S.C. § 5110, specifies that the earliest possible effective date (with some limited exceptions) is the date on which VA receives the veteran's claim. On appeal from an adverse decision of the United States Court of Appeals for Veterans Claims (Veterans Court), *Taylor v. Wilkie*, 31 Vet. App. 147 (2019) (*Taylor CAVC 2019*), Mr. Taylor argues that he was entitled to a much earlier effective date, as far back as one day after the day that he was discharged in 1971, because it was the government's threat of penalties for revealing information that for decades caused him not to file a claim to vindicate his legal entitlement to benefits.

Mr. Taylor relies first on the general doctrine of equitable estoppel to support his request. We conclude that application of that doctrine here is barred by the Supreme Court's decision in *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), which held that courts may not rely on equitable estoppel to award money from the public fisc of the United States in violation of limitations established by statute. That substantive limit on the doctrine applies in any forum unless Congress has overridden *Richmond* for a particular context by statutorily providing for application of the general equitable estoppel principles to claims for money from the public fisc. Congress has not done so for the benefits setting here, so *Richmond* precludes reliance on equitable estoppel to override the claim-filing effective-date limits of § 5110, as we held in *McCay v. Brown*, 106 F.3d 1577 (Fed. Cir. 1997).

We also conclude that Mr. Taylor has not supported his new argument for relief based on 38 U.S.C. § 6303, which directs VA to provide certain information and assistance regarding potential benefits to veterans even before they file, or indicate an interest in filing, claims for benefits. Nothing in § 6303 purports to displace the *Richmond* limit on equitable estoppel. To the extent that Mr. Taylor argues that equitable estoppel might apply based on § 6303 even if Congress did not make compliance with § 6303 a precondition to enforcing § 5110's claim-filing effective-date requirements, he is incorrect. Applying equitable estoppel in those circumstances would violate *Richmond* because the monetary award would violate statutory limits. To the extent that Mr. Taylor argues that Congress made compliance with § 6303 a precondition to enforcing § 5110's claim-filing effective-date limits, he is also incorrect. That argument is contrary to precedent, *see Andrews v. Principi*, 351 F.3d 1134 (Fed. Cir. 2003); *Rodriguez v. West*, 189 F.3d 1351 (Fed. Cir. 1999), and Mr. Taylor has not asked us to overrule that precedent and there are strong reasons not to do so.

Although we thus find no equitable-doctrine or statutory basis to support Mr. Taylor's effort to obtain an effective date earlier than the date prescribed by § 5110, we agree with Mr. Taylor in his alternative argument that he is entitled under the Constitution to have the effective date of his benefits determined notwithstanding § 5110's claim-filing limits on the effective date. For decades, the government denied Mr. Taylor his fundamental constitutional right of access to the adjudication system of VA, the exclusive forum for securing his legal entitlement to the benefits at issue. The government's threat of court-martial or prosecution—without an exception for claims made to VA—affirmatively foreclosed meaningful access to the exclusive adjudicatory forum. And without questioning the strength of the interest in military secrecy, we see no adequate justification for this denial of access. The government makes

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