

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ROBERT E. RANDOLPH,**  
*Claimant-Appellant*

v.

**DENIS MCDONOUGH, SECRETARY OF  
VETERANS AFFAIRS,**  
*Respondent-Appellee*

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2023-1386

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Appeal from the United States Court of Appeals for Veterans Claims in No. 20-5809, Judge Coral Wong Pitsch, Judge Michael P. Allen, Judge William S. Greenberg.

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Decided: April 18, 2024

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ROBERT E. RANDOLPH, Baton Rouge, LA, pro se.

KELLY GEDDES, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by BRIAN M. BOYNTON, ERIC P. BRUSKIN, PATRICIA M. MCCARTHY; BRIAN D. GRIFFIN, DEREK SCADDEN, Office of

General Counsel, United States Department of Veterans Affairs, Washington, DC.

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Before LOURIE, REYNA, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

Claimant-Appellant Robert E. Randolph appeals pro se from a June 16, 2022 United States Court of Appeals for Veterans Claims (“Veterans Court”) decision, *Randolph v. McDonough*, No. 20-5809, 2022 WL 2167995 (Vet. App. June 16, 2022) (“*Decision*”), affirming a July 1, 2020 Board of Veterans’ Appeals (“Board”) order that dismissed Mr. Randolph’s clear and unmistakable error (“CUE”) claim relating to his June 1987 rating decision, S. App’x 11–14.<sup>1</sup> Specifically, Mr. Randolph’s CUE claim was dismissed as moot because the Veterans Court found the June 1987 rating decision was not final as to the denial of sinusitis. S. App’x 14. For the reasons discussed below, we *dismiss* Mr. Randolph’s appeal for lack of jurisdiction.

## I. BACKGROUND

Mr. Randolph served honorably in the U.S. Marine Corps from 1981 to 1984. *Decision* at \*2. In January 1985, Mr. Randolph filed a claim for disability benefits. *Id.*; S. App’x 40–43. In June 1985, he received a rating decision granting benefits for service-connected hypertension and reactive airway disease (“RAD”) with obstructive ventilatory impairment. S. App’x 44.

In March 1987, Mr. Randolph filed a request for “reevaluation of [his] sinus condition.” S. App’x 45. In June 1987, the Department of Veterans Affairs (“VA”) issued a rating decision denying service connection for the claimed

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<sup>1</sup> “S. App’x” refers to the corrected supplemental appendix, ECF No. 24, filed by the Respondent-Appellee.

sinus condition. *Decision* at \*2; S. App'x 47–48. This decision was then treated as final. *Decision* at \*2; *see also* S. App'x 59.

Mr. Randolph, now referring to his sinus condition as sinusitis, requested an increase in his RAD rating and requested an amendment to his claim to include service connection for chronic sinusitis, deviated septum, and sleep apnea in January 2008. S. App'x 57; *see also* S. App'x 58–60. In February 2009, the VA issued a new rating decision that continued Mr. Randolph's RAD and hypertension ratings without increasing them and denied Mr. Randolph's request for service connection for a sinus condition, deviated septum, and sleep apnea. S. App'x 58–60. In the 2009 rating decision, the VA asserted that Mr. Randolph had been “previously denied service connection for [a sinus] condition;” Mr. Randolph had not timely appealed that decision; and that June 1987 rating decision was final. S. App'x 59. In response, Mr. Randolph filed a Notice of Disagreement, alleging that he “d[id] not recall filing the claim” for sinusitis and had no “recollection of ever having received a copy of any decision in that regard” (i.e., the June 1987 rating decision). S. App'x 61–62.

In June 2012, the VA regional office (“RO”) issued a Statement of the Case, reiterating that the June 1987 rating decision was final and stating that the decision “d[id] not contain clear and unmistakable error.” S. App'x 64–66; *Decision* at \*2. Mr. Randolph subsequently appealed to the Board, arguing that he had included in his March 1987 filing informal claims of sinusitis and rhinitis, and that the VA had erred in denying those claims because the June 1987 decision had resulted from CUE. S. App'x 68; *see generally* S. App'x 67–76. In December 2014, the Board upheld the RO's findings of finality and no CUE. *Decision* at \*2; S. App'x 79–80, 84, 91. Mr. Randolph then appealed to the Veterans Court, once again arguing that the June 1987 decision was nonfinal because he had never received it. *Decision* at \*2; S. App'x 112.

In August 2016, the Veterans Court vacated the Board's December 2014 decision and remanded for further proceedings because the Board had "failed to provide an adequate statement of reasons or bases for its determination that the June 22, 1987[] rating decision was final and that the appellant ha[d] not rebutted the presumption of regularity that VA notified him of that rating decision." *Randolph v. McDonald*, No. 15-1380, 2016 WL 4247148, at \*2 (Vet. App. Aug. 11, 2016); S. App'x 110–14.

In December 2017, the Board again found the June 1987 rating decision was final and denied Mr. Randolph's motion for revision of that rating decision based on CUE. *Decision* at \*3. Mr. Randolph again appealed to the Veterans Court. *Id.*

In February 2019, the Veterans Court reversed the Board's December 2017 decision that the June 1987 rating decision was final, otherwise vacated the Board's December 2017 decision, and remanded the matter to the Board for re-adjudication. *Randolph v. Wilkie*, No. 17-4864, 2019 WL 848748, at \*3–4 (Vet. App. Feb. 22, 2019); S. App'x 119.

On remand, in July 2020, the Board concluded it "ha[d] no jurisdiction to adjudicate the merits of the motion for revision of the June 1987 rating decision based on clear and unmistakable error" because the June 1987 rating decision was now nonfinal as to the denial of service connection for sinusitis and thus Mr. Randolph's CUE motion was not ripe for appeal. S. App'x 11, 13; *Decision* at \*3. The Board referred the matter "to the agency of original jurisdiction (AOJ) for consideration and any action deemed appropriate." S. App'x 13. It also noted that his remaining arguments were not properly before the Board, because Mr. Randolph did not perfect the corresponding appeals. S. App'x 12, 14. Mr. Randolph appealed the Board's July 2020 decision to the Veterans Court. *Decision* at \*3.

In June 2022, the Veterans Court affirmed the Board's July 2020 decision. *Decision* at \*3. It noted that because

“the June 1987 rating decision was not final and . . . CUE motions can attack only final decisions,” Mr. Randolph’s “motion for revision based on CUE was moot,” and “[t]he matter has been properly returned to the RO because the [Veterans] Court found that the RO never properly notified the appellant of the June 1987 rating decision.” *Id.* This appeal followed.

## II. DISCUSSION

Our jurisdiction to review decisions of the Veterans Court is limited. *Cavaciuti v. McDonough*, 75 F.4th 1363, 1366 (Fed. Cir. 2023). We may review “all relevant questions of law, including interpreting constitutional and statutory provisions.” 38 U.S.C. § 7292(d)(1). Except with respect to constitutional issues, we “may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.” 38 U.S.C. § 7292(d)(2). As we explain below, we are without jurisdiction to address the issues raised by Mr. Randolph’s appeal.

Mr. Randolph argues that “[t]he Veterans Court erred in its *application of a rule of law and the interpretation of a statute* when it determined that the Board did not err when it dismissed [his] appeal, rather than remanding or referring the matter back to the regional office for further adjudication.” Attachment to Appellant’s Br. 1 (emphases added); *see also* Appellant’s Br. 2 (“[T]he Board and the Veterans Court did not properly apply the rule of law set forth by this Court in *AG v. Peak . . .*”).

Appeals generally challenging the Veterans Court’s application of a rule of law to the facts of a specific case fall outside this court’s jurisdiction. *See* 38 U.S.C. § 7292(d)(2); *Leonard v. Gober*, 223 F.3d 1374, 1376 (Fed. Cir. 2000) (“Section 7292(d)(2) expressly bars us from reviewing challenges to the application of law to the facts of a particular case.”). Mr. Randolph’s arguments concerning the purported failure of the Veterans Court to correctly apply a

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