

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Keyes v. Shinseki

358 F. App'x 163 (Fed. Cir. 2009) · Decided December 17, 2009

SUMMARY

The United States Court of Appeals for the Federal Circuit denied the Secretary of Veterans Affairs’ motion to dismiss and summarily affirmed the judgment of the Court of Appeals for Veterans Claims. The court held that its recent decision in Vazquez-Flores resolved the notice issue concerning the Veteran Claims Assistance Act and the adjudication of disability-rating claims.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Schall; Linn; Michel
JURISDICTION	Federal
DECIDED	December 17, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Secretary of Veterans Affairs moved to dismiss the appeal from a judgment of the United States Court of Appeals for Veterans Claims. The Federal Circuit denied the motion and summarily affirmed the Veterans Court's judgment.
STANDARD OF REVIEW	Summary affirmance is appropriate when one party's position is so clearly correct as a matter of law that no substantial question regarding the appeal's outcome exists.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Charles E. Keyes v. Eric K. Shinseki, Secretary of Veterans Affairs

TOPICS

- appellate procedure
- administrative law
- judicial review of agency action

PRACTICE AREAS

- veterans benefits
- administrative law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Secretary's motion to dismiss should be granted.
2. Whether the Veterans Court's judgment should be summarily affirmed because the controlling notice issue had been resolved by *Vazquez-Flores v. Shinseki*.

HOLDINGS

1. The Secretary's motion to dismiss was denied.
2. Summary affirmance of the Veterans Court's judgment was appropriate because the only issue over which the Federal Circuit would have jurisdiction was clearly resolved by *Vazquez-Flores v. Shinseki*.

KEY QUOTATIONS

“summary affirmance of a case “is appropriate, inter alia, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists”” (164)

FACTUAL BACKGROUND

Keyes sought an initial disability rating from the Department of Veterans Affairs. The Board of Veterans' Appeals denied the claim, and the Veterans Court affirmed the determination that VA had provided sufficient notice under the Veterans Claims Assistance Act of 2000. Keyes argued on appeal that the notice requirements described in *Vazquez-Flores v. Peake* controlled his case.

PROCEDURAL HISTORY

The Board of Veterans' Appeals denied Keyes an initial disability rating, and the Department of Veterans Affairs was found to have provided sufficient notice under the Veterans Claims Assistance Act of 2000. The United States Court of Appeals for Veterans Claims affirmed. On appeal, the Secretary moved to dismiss, while Keyes relied on the Veterans Court's decision in *Vazquez-Flores v. Peake*. The Federal Circuit concluded that its controlling decision in *Vazquez-Flores v. Shinseki* resolved the only issue within its jurisdiction and summarily affirmed.

DISPOSITION

affirmed

CASES CITED

- *Vazquez-Flores v. Peake*, 22 Vet. App. 37 (2008)
- *Vazquez-Flores v. Shinseki*, 580 F.3d 1270, 1281 (Fed. Cir. 2009)
- *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)

OPINION

SCHALL, J.

ORDER SCHALL, Circuit Judge. The Secretary of Veterans Affairs responds to the court's November 5, 2008 order and moves to dismiss Charles E. Keyes' appeal. The briefing schedule in this appeal was stayed pending this court's disposition of *Vazquez-Flores v. Shinseki*, and *Schultz v. Shinseki*,.

In the present case, the United States Court of Appeals for Veterans Claims affirmed the Board of Veterans' Appeals decision that the Department of Veterans Affairs provided Keyes with sufficient notice under the Veteran Claims Assistance Act of 2000 in denying Keyes an initial disability rating.

In his brief appeal, Keyes relies on the Court of Appeals for Veterans Claims' decision in *Vazquez-Flores v. Peake*, 22 Vet. App. 37 (2008). In that decision, the Court of Appeals for Veterans Claims held that when a veteran seeks an increased disability rating, the Department of Veterans Affairs must provide the veteran with specific notice of the relevant rating criteria for every diagnostic code potentially applicable to the veteran and must also consider the effect the veteran's worsened disability has on his or her daily life in making its determination.

On September 4, 2009, this court reversed the Court of Appeals for Veterans Claims and held that a veteran need not be provided with specific notice and that "daily life" evidence need not be required for proper claim adjudication. *Vazquez-Flores v. Shinseki*, 580 F.3d 1270, 1281 (Fed.Cir.2009).

Because the only issue over which we would have jurisdiction is clearly resolved by our recent decision in *Vazquez-Flores*, summary affirmance of the Court of Appeals for Veterans Claims' judgment is appropriate. *Joshua v. United States*, 17 F.3d 378, 380 (Fed.Cir.1994) (summary affirmance of a case "is appropriate, inter alia, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists").

Accordingly, IT IS ORDERED THAT: (1) The Secretary's motion to dismiss is denied. (2) The judgment of the Court of Appeals for Veterans Claims is summarily affirmed. (3) Each side shall bear its own costs.