

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Crews v. McDonough

No. 2021-2030, United States Court of Appeals for the Federal Circuit (March 16, 2023)

SUMMARY

****Crews v. McDonough, 2023, Fed. Cir.**** ****Topics:**** Veterans benefits; substitution of surviving spouse under 38 U.S.C. § 5121A; clear and unmistakable error (CUE); pending claim. ****Holding:**** The Federal Circuit affirmed the Veterans Court, holding that a surviving spouse cannot be substituted under § 5121A to raise a CUE claim that the deceased veteran never raised before death. The statute permits substitution only on a claim that was pending at the veteran's death; a CUE allegation challenging a prior final decision not previously contested by the veteran constitutes a new claim, not a theory of entitlement within a pending claim.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	HUGHES; REYNA; MAYER
JURISDICTION	Federal
DECIDED	March 16, 2023
DOCKET	2021-2030
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States Court of Appeals for Veterans Claims in No. 19-6298, Judge Joseph L. Falvey, Jr.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Yvonne Crews v. Denis McDonough, Secretary of Veterans Affairs

TOPICS

- statutory interpretation
- administrative law
- appellate procedure
- standard of review

PRACTICE AREAS

- Veterans Law
- Administrative Law

QUESTIONS PRESENTED

1. Whether a surviving spouse may be substituted under 38 U.S.C. § 5121A to raise a claim of clear and unmistakable error (CUE) that the deceased veteran had not raised before death.

HOLDINGS

1. Section 5121A only allows a survivor to substitute as a claimant for a previously raised CUE claim; it does not allow a survivor to bring a CUE claim that was not previously raised.

KEY QUOTATIONS

“If a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is pending, [a surviving spouse] may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.” (4)

“even though section 5121A might now allow a survivor to substitute on a pending CUE claim that the veteran had filed before his death, Haines still stands for the proposition that a survivor cannot initiate a freestanding CUE claim under section 5109A if the veteran had not already filed such a claim.” (6)

FACTUAL BACKGROUND

Mr. Crews served in the U.S. Air Force and was originally granted a 100% disability rating for schizophrenia, but in November 1960 his rating was lowered to 70%. In December 2006, he filed a new claim for an increased rating, which was denied in May 2007. In September 2009, Mrs. Crews submitted a letter on behalf of her husband requesting further evaluation, which the Regional Office treated as a new claim for an increased rating and granted in March 2010 with an effective date of September 2009. Mr. Crews died in October 2010. In March 2011, Mrs. Crews moved to be substituted as the appellant and filed a notice of disagreement with the effective date, alleging clear and unmistakable error (CUE) in the November 1960 rating decision.

PROCEDURAL HISTORY

The veteran's claim for increased disability rating was granted in 2010. After his death, his surviving spouse sought substitution and alleged clear and unmistakable error in a 1960 rating decision. The Regional Office, Board, and Veterans Court denied substitution for the CUE claim because no CUE claim was pending at the time of death.

DISPOSITION

affirmed

CASES CITED

- Phillips v. Shinseki, 581 F.3d 1358 (Fed. Cir. 2009)
- Zevalkink v. Brown, 102 F.3d 1236 (Fed. Cir. 1996)
- Padgett v. Nicholson, 473 F.3d 1364 (Fed. Cir. 2007)
- Rusick v. Gibson, 760 F.3d 1342 (Fed. Cir. 2014)

- Haines v. West, 154 F.3d 1298 (Fed. Cir. 1998)
- Bazalo v. West, 150 F.3d 1380 (Fed. Cir. 1998)

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