

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Torres v. Peake

313 F. App'x 301 (Fed. Cir. 2008) · Decided June 3, 2008

SUMMARY

The United States Court of Appeals for the Federal Circuit granted the Secretary of Veterans Affairs’ motion and dismissed Torres’s appeal for lack of jurisdiction. The court held that the challenges to notice compliance, remand compliance, disability ratings, and evidentiary weighing involved factual determinations or applications of law to fact outside its jurisdiction under 38 U.S.C. § 7292. The court also rejected Torres’s characterization of the evidentiary challenge as a constitutional due process issue.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Linn; Mayer; Schall
JURISDICTION	Federal
DECIDED	June 3, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Torres appealed the Court of Appeals for Veterans Claims' affirmance of a Board of Veterans' Appeals decision denying higher initial disability ratings. The Secretary moved to dismiss the Federal Circuit appeal for lack of jurisdiction.
STANDARD OF REVIEW	The Federal Circuit's review of Court of Appeals for Veterans Claims decisions is limited by 38 U.S.C. § 7292; factual determinations and applications of law to fact generally are outside its jurisdiction, except to the extent a constitutional issue is presented.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Miguel A. Torres v. Secretary of Veterans Affairs

TOPICS

- appellate jurisdiction
- appellate procedure
- administrative law
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Federal Circuit had jurisdiction to review the Court of Appeals for Veterans Claims' determinations that VA provided compliant notice and complied with a prior remand order.
2. Whether the Federal Circuit had jurisdiction to review the disability-rating determinations.
3. Whether Torres's allegation that the Secretary prejudicially selected evidence presented a constitutional due-process issue within the Federal Circuit's jurisdiction.

HOLDINGS

1. The Federal Circuit lacked jurisdiction to review the determinations that the Secretary provided timely and statutorily compliant notice and complied with the prior remand order because those determinations involved facts or the application of law to facts.
2. The Federal Circuit lacked jurisdiction to review the Court of Appeals for Veterans Claims' affirmance of the Board's disability-rating determinations because the challenge concerned facts or the application of law to facts.
3. A party cannot create Federal Circuit jurisdiction by characterizing a fact-bound challenge to the weighing of evidence as a constitutional issue.

KEY QUOTATIONS

“The court’s jurisdiction to review decisions of the Court of Appeals for Veterans Claims is limited.” (at 301)

“Although Torres characterizes this issue as one involving constitutional analysis, we must look beyond the appellant’s characterization of the issue to determine whether it falls within the jurisdiction of this court.” (at 302)

FACTUAL BACKGROUND

The Board of Veterans' Appeals denied Torres an initial disability rating above 20 percent for lumbar-spine spondylosis and spondylolisthesis and above 10 percent for thoracic outlet syndrome affecting both arms. The Court of Appeals for Veterans Claims affirmed, finding adequate notice, compliance with a prior Board remand, and proper disability ratings. Torres then challenged those determinations and asserted that the agency had selectively weighed evidence.

PROCEDURAL HISTORY

The Board of Veterans' Appeals denied higher initial ratings for lumbar-spine spondylosis and spondylolisthesis and bilateral thoracic outlet syndrome. The Court of Appeals for Veterans Claims affirmed, including findings concerning notice, compliance with a prior remand, and the applicable disability ratings. The Federal Circuit dismissed Torres's appeal because his challenges concerned factual determinations and application of law to fact rather than reviewable legal or constitutional issues.

DISPOSITION

dismissed

CASES CITED

- Forshey v. Principi, 284 F.3d 1335, 1338 (Fed. Cir. 2002)
- Garrison v. Nicholson, 494 F.3d 1366, 1370 (Fed. Cir. 2007)
- Flores v. Nicholson, 476 F.3d 1379, 1382 (Fed. Cir. 2007)
- Heifer v. West, 174 F.3d 1332, 1335 (Fed. Cir. 1999)

OPINION

PER CURIAM.

ON MOTION PER CURIAM. ORDER The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and dismiss for lack of jurisdiction Miguel A. Torres' appeal from the United States Court of Appeals for Veterans Claims. Torres opposes. Torres appealed to the Court of Appeals for Veterans Claims, challenging an April 18, 2006 decision of the Board of Veterans' Appeals denying an initial disability rating in excess of 20% for spondylosis and spondylolisthesis of the lumbar spine and an initial disability rating in excess of 10% for thoracic outlet syndrome of the right and left arms.

The court affirmed, determining, inter alia, that the Secretary had fulfilled his duty-to-notify requirements under 38 U.S.C. § 5103(a) and complied with a prior remand order of the Board, and that the Board had applied the appropriate disability ratings to his claims. This appeal followed.

The court's jurisdiction to review decisions of the Court of Appeals for Veterans Claims is limited. See Forshey v. Principi, 284 F.3d 1335, 1338 (Fed.Cir.2002) (en bane). Under 38 U.S.C. § 7292(a), this court has jurisdiction over rules of law or the validity of any statute or regulation, or an interpretation thereof relied on by the court in its decision.

This court may also entertain challenges to the validity of a statute or regulation, and to interpret constitutional and statutory provisions as needed for resolution of the matter. 38 ■ U.S.C. § 7292(c). In contrast, except where an appeal presents a constitutional question, this court lacks jurisdiction over challenges to factual determinations or laws or regulations as applied to the particular case.

38 U.S.C. § 7292(d)(2). Torres asserts that his appeal involves issues of statutory and regulation interpretation as well as constitutional issues. We disagree. First, Torres contends that the court erred in determining that the Secretary had provided him timely and statutorily compliant notice, thereby also erring in determining that the Secretary failed to comply with a prior remand order of the Board.

Such determinations amount to a challenge of facts or the application of law to fact which are squarely outside of this court's review. See *Garrison v. Nicholson*, 494 F.3d 1366, 1370 (Fed.Cir.2007) ("We agree with the government that whether, in a given case, the VA has complied with the notice requirement of section 5103(a) is a factual issue.").

We are similarly without jurisdiction to address Torres' second contention of error that the Court of Appeals for Veterans Claims erred in affirming the Board's disability rating determinations because that issue only challenges facts or the application of law to facts. Torres' final contention of error is that the Secretary "prejudicially selected" evidence before the agency of original adjudication and Board to facilitate an unfavorable outcome for Torres on his claims.

It appears that Torres asserts that this argument raises constitutional due process issues within our jurisdiction. We disagree. Although Torres characterizes this issue as one involving constitutional analysis, we must look beyond the appellant's characterization of the issue to determine whether it falls within the jurisdiction of this court. *Flores v. Nicholson*, 476 F.3d 1379, 1382 (Fed.Cir.2007); *Heifer v. West*, 174 F.3d 1332, 1335 (Fed.Cir.1999).

Here, Torres' argument is not constitutional but is clearly aimed at the merits of his claim and how the evidence was weighed. Because we agree with the Secretary that this court lacks jurisdiction, we must dismiss Torres' appeal.

Accordingly, IT IS ORDERED THAT: (1) The Secretary's motion is granted. (2) Each side shall bear its own costs.