

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Edingborough v. Mansfield

262 F. App'x 245 (Fed. Cir. 2007) · Decided December 10, 2007

SUMMARY

The United States Court of Appeals for the Federal Circuit granted the Acting Secretary of Veterans Affairs’ motion to vacate the judgment of the United States Court of Appeals for Veterans Claims. Relying on *Mlechick v. Mansfield*, the court held that the Veterans Court should consider whether any notice error under 38 U.S.C. § 5103(a) was prejudicial and remanded for further proceedings, with each side bearing its own costs.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Schall; Prost; Rader
JURISDICTION	Federal
DECIDED	December 10, 2007
DISPOSITION	vacated
PROCEDURAL POSTURE	The Acting Secretary of Veterans Affairs appealed from a judgment of the United States Court of Appeals for Veterans Claims that vacated and remanded a Board of Veterans' Appeals decision concerning notice under 38 U.S.C. § 5103(a).
STANDARD OF REVIEW	The Federal Circuit reviewed the Veterans Court's disposition of the prejudicial-error issue in light of the governing notice and harmless-error principles.
PRECEDENTIAL VALUE	published Federal Circuit order reported in the Federal Appendix; precedential status is not specified in the opinion text
PARTIES	Acting Secretary of Veterans Affairs v. Ronald E. Edingborough

TOPICS

- veterans benefits
- appellate procedure
- harmless error
- judicial review of agency action
- administrative law

PRACTICE AREAS

- veterans benefits
- administrative law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals for Veterans Claims could decline to determine prejudicial error merely because the Board had relied on both pre- and post-decisional communications.
2. Whether the Veterans Court's judgment should be vacated and the case remanded for consideration of whether any notice deficiency affected the fundamental fairness of the adjudication.

HOLDINGS

1. The Veterans Court may not refuse to consider the rule of prejudicial error in that circumstance; it must review the pre-decisional communications to determine whether any difference between the notice given and the notice required by 38 U.S.C. § 5103(a) affected the fundamental fairness of the adjudication.

KEY QUOTATIONS

“Mlechick held that the Court of Appeals for Veterans Claims cannot refuse to consider the rule of prejudicial error if the Board relied on both pre and post-decisional communications.” (262 F. App'x at 245)

“Rather, in cases such as this, where the Secretary has attempted to show the notice error was nonprejudicial, the court should review the pre-decisional communications ‘to determine if any differences between the notice given and the notice required by [section 5103(a)] ‘affected the fundamental fairness of the adjudication’ being mindful that the burden is on [the Secretary] to make such a showing.”” (262 F. App'x at 245)

FACTUAL BACKGROUND

The Board of Veterans' Appeals found that Ronald E. Edingborough had received adequate notice of the evidence or information necessary to substantiate his claim under 38 U.S.C. § 5103(a). The notice consisted of various pre- and post-decisional communications. The Veterans Court concluded that reliance on post-decisional communications was improper and remanded because it was uncertain whether the pre-decisional communications alone satisfied the statutory notice requirements and whether any error was prejudicial.

PROCEDURAL HISTORY

The Board of Veterans' Appeals determined that Edingborough had received adequate section 5103(a) notice through pre- and post-decisional communications. The Court of Appeals for Veterans Claims held that reliance on post-decisional communications was improper under *Mayfield v. Nicholson* and remanded because it could not determine whether the notice error was prejudicial. After the Federal Circuit decided *Mlechick v. Mansfield*, the Secretary sought vacatur of the Veterans Court's judgment. The Federal Circuit granted the motion, vacated the judgment, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgment of the United States Court of Appeals for Veterans Claims is vacated, and the case is remanded for further proceedings consistent with *Mlechick*, including consideration of the pre-decisional communications and whether any notice deficiency was prejudicial.

CASES CITED

- *Mayfield v. Nicholson*, 444 F.3d 1328 (Fed. Cir. 2006)
- *Mlechick v. Mansfield*, 503 F.3d 1340 (Fed. Cir. 2007)

OPINION

SCHALL, J.

ORDER SCHALL, Circuit Judge. The Acting Secretary of Veterans Affairs moves to vacate the judgment of the United States Court of Appeals for Veterans Claims in *Edingborough v. Nicholson*, — Vet.App.—, No. 04-1227, 2006 WL 2107049 (Vet.App. July 13, 2006). Ronald E. Edingborough appealed to the Court of Appeals for Veterans Claims from a May 30, 2006 decision of the Board of Veterans' Appeals that, *inter alia*, determined Edingborough had received adequate notification of the evidence or information necessary to substantiate his claim as required by 38 U.S.C. § 5103(a) through receipt of various pre and post-decisional communications.

Having determined that the Board's reliance on post-decisional communications was improper under *Mayfield v. Nicholson*, 444 F.3d 1328 (Fed.Cir.2006) and noting that it was uncertain whether the Board would have concluded that pre-decisional communications alone would have satisfied the Secretary's section 5103(a) notice requirements, the Court of Appeals for Veterans Claims held that it was not in a position to determine whether the notice error was prejudicial.

The court vacated and remanded for the Board to decide the issue in the first instance. The Secretary appealed, seeking review by this court. On October 4, 2007, the court issued its decision in *Mlechick v. Mansfield*, 503 F.3d 1340 (Fed.Cir.2007). *Mlechick* held that the Court of Appeals for Veterans Claims cannot refuse to consider the rule of prejudicial error if the Board relied on both pre and post-decisional communications.

Id. at 1345-46. Rather, in cases such as this, where the Secretary has attempted to show the notice error was nonprejudicial, the court should review the pre-decisional communications "to determine if any differences between the notice given and the notice required by [section 5103(a)] 'affected the fundamental fairness of the adjudication' being mindful that the burden is on [the Secretary] to make such a showing." *Id.* (citation omitted).

Accordingly, IT IS ORDERED THAT: (1) The Acting Secretary's motion is granted. The judgment of the United States Court of Appeals for Veterans Claims is vacated and the case is remanded for further proceedings. (2) Each side shall bear its own costs.

