

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Dawkins v. Peake

313 F. App'x 312 (Fed. Cir. 2008) · Decided July 18, 2008

SUMMARY

The United States Court of Appeals for the Federal Circuit dismissed Rory O. Dawkins’s appeal from a decision of the United States Court of Appeals for Veterans Claims. The court held that Dawkins’s challenges concerned factual determinations or the application of law to the facts, which are outside the Federal Circuit’s limited jurisdiction under 38 U.S.C. § 7292.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Per curiam; Bryson; Clevenger; Prost
JURISDICTION	Federal
DECIDED	July 18, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Dawkins appealed the United States Court of Appeals for Veterans Claims' affirmance of a Board of Veterans' Appeals decision denying an evaluation exceeding ten percent for a bilateral foot disability. The Secretary moved to dismiss the Federal Circuit appeal for lack of jurisdiction.
STANDARD OF REVIEW	The Federal Circuit has limited jurisdiction over appeals from decisions of the United States Court of Appeals for Veterans Claims and may not review challenges to factual determinations or to a law or regulation as applied to the facts of a particular case.
PRECEDENTIAL VALUE	Nonprecedential
PARTIES	Rory O. Dawkins v. Secretary of Veterans Affairs

TOPICS

- appellate jurisdiction
- veterans benefits
- judicial review of agency action
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Federal Circuit had jurisdiction to review Dawkins's challenges to the Board's consideration of the facts, medical evidence, and pain evidence.
2. Whether the appeal should be dismissed because it raised only challenges to factual determinations or to the application of law to the facts.

HOLDINGS

1. The Federal Circuit lacked jurisdiction because Dawkins's arguments challenged factual determinations and the application of law or regulation to the facts of his particular case.

KEY QUOTATIONS

“This court “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.”” (313)

FACTUAL BACKGROUND

Dawkins sought a disability evaluation exceeding ten percent for a bilateral foot disability. He argued that the Board failed to consider all facts relevant to his disability, improperly relied on a physician's medical evaluation, and inadequately considered evidence concerning the level of pain caused by the disability.

PROCEDURAL HISTORY

The Board of Veterans' Appeals denied entitlement to an evaluation in excess of ten percent for Dawkins's bilateral foot disability. The Court of Appeals for Veterans Claims affirmed, concluding that the Board provided sufficient reasons and bases. Dawkins appealed to the Federal Circuit, which dismissed the appeal because his arguments challenged factual determinations and the application of law to the facts, matters outside the court's jurisdiction under 38 U.S.C. § 7292(d)(2).

DISPOSITION

dismissed

CASES CITED

- Forshey v. Principi, 284 F.3d 1335, 1338 (Fed. Cir. 2002) (en banc)

OPINION

PER CURIAM.

*313ON MOTION PER CURIAM. ORDER The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and to dismiss Rory O. Dawkins' appeal from the United States

Court of Appeals for Veterans Claims' judgment in *Dawkins v. Mansfield*, 06-0988, 2007 WL 4104015, for lack of jurisdiction. Dawkins has not responded. Dawkins sought review by the Court of Appeals for Veterans Claims of a Board of Veterans' Appeals decision that denied him entitlement to an evaluation in excess of ten percent for bilateral foot disability.

The Court of Appeals for Veterans Claims affirmed the Board's decision, concluding that the Board provided sufficient reasons and bases for its determination Dawkins appeals to this court. Under 38 U.S.C. § 7292, this court has limited jurisdiction over appeals from decisions of the Court of Appeals for Veterans Claims. See *Forshey v. Principi*, 284 F.3d 1335, 1338 (Fed.Cir.2002) (en banc).

This court "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). In his informal brief, Dawkins argues that in making its determination, the Board failed to consider all the facts relevant to his disability, erroneously placed weight on a physician's medical evaluation of Dawkins, and did not adequately consider evidence regarding his level of pain due to his disability.

Because Dawkins fails to raise an issue within our jurisdiction, we must dismiss this appeal. Accordingly, IT IS ORDERED THAT: (1) The Secretary's motions are granted. The appeal is dismissed. (2) Each side shall bear its own costs.