

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bracy v. Shinseki

358 F. App'x 159 (Fed. Cir. 2009) · Decided December 17, 2009

SUMMARY

The United States Court of Appeals for the Federal Circuit dismissed Bracy’s appeal from a decision of the United States Court of Appeals for Veterans Claims. The court held that Bracy raised only factual issues, which are outside the Federal Circuit’s jurisdiction under 38 U.S.C. § 7292(d)(2), and ordered each side to bear its own costs.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Per curiam; Linn; Michel; Schall
JURISDICTION	Federal
DECIDED	December 17, 2009
DISPOSITION	dismissed
PROCEDURAL POSTURE	Bracy appealed a Court of Appeals for Veterans Claims decision concerning dismissal of his appeal from a Board of Veterans' Appeals decision. The Secretary moved to waive the Federal Circuit's filing requirements and dismiss the appeal for lack of jurisdiction.
STANDARD OF REVIEW	The Federal Circuit applied the jurisdictional limitations of 38 U.S.C. § 7292 and reviewed whether Bracy raised an issue within the court's statutory jurisdiction.
PRECEDENTIAL VALUE	Nonprecedential appellate decision
PARTIES	Arnett A. Bracy III v. Secretary of Veterans Affairs, Shinseki

TOPICS

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

PRACTICE AREAS

- Veterans benefits
- Federal appellate jurisdiction
- Administrative law

QUESTIONS PRESENTED

1. Whether the Federal Circuit had jurisdiction under 38 U.S.C. § 7292 to review Bracy's challenges to factual determinations and the application of law to the facts of his veterans-benefits claim.

HOLDINGS

1. The Federal Circuit lacked jurisdiction because Bracy'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.”” (358 F. App'x at 160)

“Because Bracy fails to raise an issue within our jurisdiction, we must dismiss this appeal.” (358 F. App'x at 160)

FACTUAL BACKGROUND

Bracy sought an increased disability rating for a low back disability. The Board of Veterans' Appeals dismissed his appeal after he failed to pay the filing fee or file a declaration of financial hardship and failed to respond to the Court of Appeals for Veterans Claims' show-cause order. In the Federal Circuit, Bracy challenged the factual determinations concerning his paperwork and disability rating.

PROCEDURAL HISTORY

The Board of Veterans' Appeals denied Bracy's claim for an increased rating for a low back disability. After Bracy failed to pay the filing fee or submit a declaration of financial hardship and failed to respond to a show-cause order, the Court of Appeals for Veterans Claims dismissed his appeal. Bracy appealed to the Federal Circuit, which dismissed the appeal for lack of jurisdiction and granted the Secretary's motions.

DISPOSITION

dismissed

CASES CITED

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

OPINION

PER CURIAM.

ON MOTION PER CURIAM. ORDER The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. *16027(f) and dismiss this appeal for lack of jurisdiction. Arnett A. Bracy, III sought review by the United States Court of Appeals for Veterans Claims of a Board of Veterans' Appeals decision denying Bracy's claim for an increased rating for a low back disability.

The Board dismissed Bracy's appeal after he failed to pay the filing fee or file a declaration of financial hardship and for failure to respond to the Court of Appeals for Veterans Claims' show cause order. Bracy appealed to this court.

Under 38 U.S.C. § 7292, this court has limited jurisdiction over appeals from decisions of the CAVC. 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, in response to the issue decided by the Court of Appeals for Veterans Claims, Bracy argues that he "always return[s] all of my paperwork." Bracy also argues that the Board erred in determining the facts related to his claim for an increased disability rating. These are factual issues, outside of this court's jurisdiction.

Because Bracy 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. (2) Each side shall bear its own costs.