

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Lang v. Wilkie

No. 19-1992, United States Court of Appeals for the Federal Circuit (August 19, 2020)

SUMMARY

Lang v. Wilkie addresses the constructive receipt of VA-generated medical records for purposes of 38 C.F.R. § 3.156(b) and the finality of VA disability rating decisions. The Federal Circuit held that the Veterans Court erred in requiring actual knowledge by VA adjudicators to establish constructive receipt of post-decision VAMC records; instead, under the Bell doctrine, records are constructively received if they were created by the VA and can reasonably be expected to be connected to the veteran’s claim. Because the veteran’s post-decision mental health treatment records were constructively received within the one-year appeal period, the 1996 rating decision was not final, and a clear and unmistakable error (CUE) analysis was premature. The decision vacates the Veterans Court ruling and remands for the Board to determine whether the records constitute new and material evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	O'Malley, Circuit Judge; Newman, Circuit Judge; Lourie, Circuit Judge
JURISDICTION	Federal
DECIDED	August 19, 2020
DOCKET	19-1992
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Appeal from the United States Court of Appeals for Veterans Claims. Lang appealed the Veterans Court's decision affirming the Board's denial of his request for remand to consider whether post-decision VAMC medical records constitute new and material evidence.
STANDARD OF REVIEW	De novo review of legal questions, including whether the Veterans Court exceeded its jurisdiction. The court reviews the Veterans Court's legal determinations de novo, and sets aside any regulation or interpretation that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
PRECEDENTIAL VALUE	Published

PARTIES

James R. Lang v. Robert Wilkie, Secretary of Veterans Affairs

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QUESTIONS PRESENTED

1. Whether the Veterans Court had jurisdiction to consider Lang's argument that the 1996 rating decision was not final, given that the argument was raised for the first time on appeal.
2. Whether the Veterans Court erred in holding that VA-generated medical records were not constructively received under 38 C.F.R. § 3.156(b) because the VA adjudicator lacked actual knowledge of the records.

HOLDINGS

1. The Veterans Court properly exercised jurisdiction over Lang's argument because it was not a new CUE claim but a procedural argument that the decision was not final, which is a prerequisite for CUE review.
2. The Veterans Court's 'triggering principle' in *Turner v. Shulkin*, requiring actual knowledge by VA adjudicators, is an erroneous statement of law. Constructive receipt of VA-generated medical records post-decision is governed by the same framework as pre-decision records: records are constructively received if they (1) were generated by the VA or were submitted to the VA and (2) can reasonably be expected to be connected to the veteran's claim. No actual knowledge is required.

KEY QUOTATIONS

"Evidence is constructively received by the VA adjudicator post-decision if it (1) was generated by the VA or was submitted to the VA and (2) can reasonably be expected to be connected to the veteran's claim." (at 9-10)

"The Veterans Court has never, however, required that a veteran, or anyone else, take affirmative action for the veteran's own VA-generated medical records to become part of the record." (at 7)

*"We hold that the Veterans Court in *Turner* articulated an erroneous statement of the law when it failed to adequately address *Bell* and its progeny."* (at 9)

FACTUAL BACKGROUND

Lang served in the U.S. Marine Corps from 1966 to 1968, including service in Vietnam where he was injured. He was diagnosed with PTSD in 1995 and filed a disability compensation claim. He received a 10% disability rating in June 1996. He continued to receive treatment at the Pittsburgh VAMC from July 1996 to June 1997. In 2014, he moved to revise the 1996 rating decision based on CUE, arguing that the decision was not final because VA-generated medical records from the year after the decision were not reviewed for new and material evidence.

PROCEDURAL HISTORY

Lang filed a disability compensation claim for PTSD in 1995, received a 10% disability rating in 1996, and did not appeal. In 2014, he filed a motion to revise the 1996 rating decision based on clear and unmistakable error (CUE). The Board denied the CUE motion, and the Veterans Court affirmed. Lang appealed to the Federal Circuit, arguing that the 1996 rating decision was not final because VA-generated medical records created in the year after the decision were constructively received and required review under 38 C.F.R. § 3.156(b).

DISPOSITION

vacated_and_remanded

REMAND INSTRUCTIONS

The Veterans Court is to remand this case to the Board for further proceedings consistent with this opinion, specifically to review the post-decision VAMC medical records for new and material evidence.

CASES CITED

- Bell v. Derwinski, 2 Vet. App. 611 (1992)
- Turner v. Shulkin, 29 Vet. App. 207 (2018)
- Monzingo v. Shinseki, 26 Vet. App. 97 (2012)
- Goodwin v. West, 11 Vet. App. 494 (1998)
- Bowey v. West, 11 Vet. App. 106 (1998)
- Sullivan v. McDonald, 815 F.3d 786 (Fed. Cir. 2016)
- Beraud v. McDonald, 766 F.3d 1402 (Fed. Cir. 2014)
- Andre v. Principi, 301 F.3d 1354 (Fed. Cir. 2002)
- Maggitt v. West, 202 F.3d 1370 (Fed. Cir. 2000)