# United States Court of Appeals for the Federal Circuit

**JAMES R. RUDISILL,**
*Claimant-Appellee*

**v.**

**DENIS MCDONOUGH, SECRETARY OF VETERANS AFFAIRS,**
*Respondent-Appellant*

2020-1637

Appeal from the United States Court of Appeals for Veterans Claims in No. 16-4134, Senior Judge Mary J. Schoelen, Chief Judge Margaret C. Bartley, Judge Michael P. Allen.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

TIMOTHY L. MCHUGH, Troutman Pepper Hamilton Sanders LLP, Richmond, VA, filed a response to the petition for claimant-appellee. Also represented by DAVID JOSEPH DEPIPPO, Dominion Resource Services Inc., Richmond, VA.

GALINA I. FOMENKOVA, Commercial Litigation Brnach, Civil Division, United States Department of Justice, Washington, DC, filed a petition for panel rehearing and rehearing en banc for respondent-appellant Denis McDonough.

Also represented by BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR; Y. KEN LEE, BRYAN THOMPSON, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

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Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, O'MALLEY, REYNA, TARANTO, CHEN, HUGHES, STOLL, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

**ORDER**

Appellee, the Secretary of Veterans Affairs ("Secretary"), filed a Combined Petition for Panel Rehearing and Rehearing en banc. A response to the petition was invited by the court and filed by Appellant James R. Rudisill. The petition and response were considered by the panel that heard the appeal and thereafter referred to the circuit judges in regular active service. A poll was requested and taken, and the court decided that the appeal warrants en banc consideration.

Accordingly,

IT IS ORDERED THAT:

(1) The petition for panel rehearing is denied.

(2) The petition for rehearing en banc is granted.

(3) The panel opinion in *Rudisill v. McDonough*, 4 F.4th 1297 (Fed. Cir. 2021) is vacated, and the appeal is reinstated.

(4) The parties are requested to file new briefs. The briefs should address the following questions:

    a. For a veteran who qualifies for the Montgomery GI Bill and the Post-9/11 GI Bill under a separate period of qualifying service, what is the veteran's statutory entitlement to education benefits?

b. What is the relation between the 48-month entitlement in 38 U.S.C. § 3695(a), and the 36-month entitlement in § 3327(d)(2), as applied to veterans such as Mr. Rudisill with two or more periods of qualifying military service?

(5) The Secretary's en banc opening brief is due 60 days from the date of this order. Mr. Rudisill's en banc response brief is due within 45 days of service of the Secretary's en banc opening brief, and the Secretary's reply brief within 30 days of service of the response brief. The court requires 30 paper copies of all briefs and appendices provided by the filer within 5 business days from the date of electronic filing of the document. The parties' briefs must comply with Fed. Cir. R. 32(b)(1).

(6) The court invites the views of amici curiae. Any amicus brief may be filed without consent and leave of court. Any amicus brief supporting Mr. Rudisill's position or supporting neither position must be filed within 14 days after service of Mr. Rudisill's en banc opening brief. Any amicus brief supporting the Secretary's position must be filed within 14 days after service of the Secretary's en banc response brief. Amicus briefs must comply with Fed. Cir. R. 29(b).

(7) Oral argument will be held at a time and date to be announced later.

FOR THE COURT

February 3, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court