

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-7086

TORE O. ARNESEN,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
07-0444, Judge Alan G. Lance, Sr.

ON MOTION

Before MAYER, CLEVINGER, and RADER, Circuit Judges.

PER CURIAM

ORDER

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and dismiss for lack of jurisdiction Tore O. Arnesen's appeal from a decision of the United States Court of Appeals for Veterans Claims affirming the Board of Veterans' Appeals decision denying Arnesen's claims for an increased evaluation for his bilateral knee condition and an earlier effective date of disability for his left knee. Arnesen opposes. The Secretary replies. Arnesen moves for leave to file a response to the Secretary's reply.

Arnesen served in the military from July 1966 to March 1970. In March 1970, Arnesen filed a claim seeking service connection for arthritis in his right knee. The Department of Veterans Affairs (DVA) granted him a 10-percent disability rating. Arnesen then sought service connection for a left knee condition in May 1970, which the

DVA denied. After numerous appeals and submissions, in December 1990, the DVA granted Arnesen a 10-percent disability rating for his left knee, effective February 14, 1986. Subsequently, the DVA combined the diagnostic code for his left and right knees, resulting in a 20% combined disability evaluation.

Following various appeals to the Board, the Court of Appeals for Veterans Claims affirmed the Board's decision denying Arnesen's claim for an increased disability rating overall and an earlier effective date for his left knee condition. The Court of Appeals for Veterans Claims concluded that the Board acted within its discretion in denying his disability rating and in refusing an earlier effective date for Arnesen's left knee condition. Additionally, the Court of Appeals for Veterans Claims concluded that pursuant to 38 U.S.C. § 7252(b), it did not have jurisdiction to review Arneson's claim requesting review of the provisions of the VA's rating schedule. Arnesen appealed to this court.

The Secretary moves this court to dismiss Arnesen's appeal because he does not raise any issue in his informal brief within this court's jurisdiction. Our jurisdiction to review decisions of the Court of Appeals for Veterans Claims is limited. 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). Additionally, this court may not review "a refusal [by the Court of Appeals for Veterans Claims] to review the schedule of ratings for disabilities." 38 U.S.C. § 7292(a).

In his informal brief, Arnesen essentially argues that the DVA's present method of rating disabilities is unlawful and does not meet current medical standards and that the Board did not consider the proper evidence in determining the effective date for his

left knee condition. Because Arnesen fails to raise an issue within our jurisdiction, we must dismiss this appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) Arnesen's motion to file a response is granted.
- (2) The Secretary's motions are granted. The appeal is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

JUL 30 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Tore O. Arnesen
John S. Groat, Esq.

s20

ISSUED AS A MANDATE: JUL 30 2009

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 30 2009

JAN HORBALY
CLERK