

UNITED STATES COURT OF VETERANS APPEALS

No. 94-241

PAUL G. HOLBROOK,

APPELLANT,

v.

VA FILE NO. 5 687 983

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before NEBEKER, *Chief Judge*, and FARLEY and HOLDAWAY, *Judges*.

ORDER

On May 30, 1995, the Court affirmed the Board of Veterans' Appeals decision on appeal. On June 13, 1995, the appellant filed a timely motion for review by a panel.

In the motion for review, the appellant challenges the BVA's fundamental authority to decide a claim in the alternative, as it did here, and as the Secretary alternatively argues before this Court (*see* Secretary's brief at 14-15)--each an efficient use of adjudicative resources. *See* 3 KENNETH CULP DAVIS, ADMINISTRATIVE LAW TREATISE § 14.29 (2d ed. 1980), *quoting Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-86 (1974) (where agency's decision has less than "ideal clarity," Court will nevertheless uphold agency's action where basis may reasonably be discerned). To deny the BVA that fundamental authority would result in adjudicative rebound, further protracting an already time-consuming process. The doctrine of "harmless error" lends support to the universally recognized administrative law concept that an administrative agency may rule in the alternative, and this Court has statutory authority to apply that doctrine. *See* 38 U.S.C. § 7261(b).

On consideration of the foregoing, it is by the panel

ORDERED that the appellant's motion for review by a panel is denied.

DATED:

PER CURIAM.