

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 96-1123

ROBERT H. WILMERING,

APPELLANT,

v.

TOGO D. WEST, JR.,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before NEBEKER, *Chief Judge*, and IVERS and STEINBERG, *Judges*.

ORDER

On August 30, 1996, the appellant filed pro se a Notice of Appeal (NOA) as to an August 16, 1996, decision of the Board of Veterans' Appeals that ordered as follows: "Evidence of a legally meritorious claim not having been submitted, the claim of entitlement to authorized [Department of Veterans Affairs (VA)] outpatient care on June 7, 1993, and inpatient care provided from April 19 through April 22, 1993, and from November 29 through December 7, 1993, is dismissed." Record (R.) at 6. The appellant has filed through counsel a brief, asserting that his claim is not one for an award of benefits but that VA should be estopped from requiring him to pay for VA medical treatment already received on the ground that he was misled by VA employees into believing that that treatment would be without cost. The Secretary has filed a brief, and the appellant has filed a reply brief.

The Court notes, however, that neither the appellant nor the Secretary has addressed the question whether 38 U.S.C. § 5302 (waiver of recovery of payments where such recovery would be "against equity and good conscience") might have applicability to this case.

On consideration of the foregoing, it is

ORDERED that, not later than 30 days after the date of this order, the appellant file, and serve on the Secretary, a memorandum addressing the potential applicability of 38 U.S.C. § 5302 to this case. It is further

ORDERED that, not later than 30 days after service of the appellant's memorandum, the Secretary file a memorandum in response.

DATED: June 11, 1999

PER CURIAM.