

In the United States Court of Federal Claims

No. 05-166 C
(Filed February 7, 2006)

HAROLD W. VAN ALLEN, *
 *
 Plaintiff, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *
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ORDER

On January 31, 2006, the Clerk’s Office received a “letter motion,” dated January 30, 2006, from plaintiff “to reconsider January 18, 2006 order denying adjournment” and “to stay proceedings pending an order from CAVC Judge Hagel in CAVC docket 05-3730”

In view of the format in which the matter was submitted, plaintiff’s submission was forwarded to chambers for a ruling as to its filing and disposition.

Plaintiff attached to his “letter motion” copies of his filing in the Court of Appeals for Veterans Claims where his prior appeals had been dismissed for lack of jurisdiction.

The instant case concerns plaintiff’s request, denied by the Board for Correction of Naval Records (“BCNR”), to have his June 30, 1978 honorable discharge from active duty as a Lieutenant Junior Grade in the Navy “corrected” to place him on disability retirement status with resulting compensation. Defendant has filed a motion to dismiss plaintiff’s January 25, 2005 Complaint on statute of limitation grounds, asserting, among its arguments, that the complaint was filed more than six years after

the BCNR finally denied his relief request.^{1/} The medical records which plaintiff attaches to his submission are included in the record before the BCNR and concern a suprasellar arachnoid cyst, which the records indicate pre-dated plaintiff's military service, and which was initially diagnosed from a MRI of the head plaintiff obtained on January 29, 1988 from the College of Physicians and Surgeons of Columbia University. (Vol. 1, BCNR file at 206.) Plaintiff subsequently underwent procedures on October 20, 1992 and March 2, 1993 to obviate possible pressure caused by the cyst (Right frontal craniotomy, fenestration of arachnoid cyst and installation of a right VP shunt--(Vol. 1, BCNR file at 133-35).

The BCNR record includes several reports by the Specialty Advisor for Neurology, National Naval Medical Center, Capt. Judith F. Morales, USN, concerning the relationship, if any, of the cyst, discovered in 1988, and plaintiff's naval service which concluded with his discharge in 1978. (Vol. 1, BCNR file at 94 (April 28, 1994), 170 (March 31, 1992).) Also, the BCNR record contains reports prepared by Dr. Lucien J. Cote, Department of Neurology, College of Physicians and Surgeons of Columbia University on this issue including a response to Capt. Morales' report. (Vol. 1, BCNR file at 162-63, 192.) Dr. Cote's reports were provided to the BCNR by plaintiff's then counsel, Hyman Goodman, Esq. *Id.*

The Order, filed January 18, 2006, denied plaintiff's motion to adjourn the proceedings and noted that, following the ruling reported at 66 Fed. Cl. 295 (2005), and the Amended Complaint, filed September 12, 2005, and defendant's motion to dismiss, filed November 2, 2005, what is now required is plaintiff's response to defendant's statute of limitations position and plaintiff's position on whether the BCNR decision denying his disability retirement status correction request is arbitrary, capricious, contrary to law, or unsupported by substantial evidence. *Chambers v. United States*, 417 F.3d 1218, 1227 (Fed. Cir. 2005).

As noted in the prior ruling in this matter, claims for veteran's benefits are not within the jurisdiction of the Court of Federal Claims. 66 Fed. Ct. at 269. No valid basis has been shown for staying proceedings to await a ruling by the Court of Appeals for Veterans Claims. The BCNR record contains all of the medical records

^{1/} The five volume BCNR record has been filed with this court as an administrative record in conjunction with defendant's motion to dismiss.

referenced by plaintiff and proceedings must continue in order to reach a resolution of this litigation on the record evidence.

Accordingly, it is **ORDERED** that:

(1) Plaintiff's "Letter-motion" received by the clerk on January 31, 2006, shall be **FILED** by leave of court;

(2) Upon its filing pursuant to (1), the motion for reconsideration of the January 18, 2006 Order and to stay proceedings shall be **DENIED**.

James F. Merow
Senior Judge