



Taylor v. McDonough: Veterans Disability Benefits and Secret Military Programs

August 31, 2023

On June 15, 2023, the U.S. Court of Appeals for the Federal Circuit decided *Taylor v. McDonough*. The case involved a veteran (Mr. Taylor) who had a [service-connected disability](#) resulting from participation in a secret military program. Mr. Taylor did not file a claim with the U.S. Department of Veterans Affairs (VA) until several decades after the disability manifested because he had signed a secrecy oath barring him from divulging information related to the secret program under penalty of court-martial and criminal punishment. When Mr. Taylor was finally released from the oath and filed a claim, VA resolved, per [statute](#), that his [benefits effective date](#) was February 28, 2008, the date VA received his claim. Mr. Taylor, however, argued that his benefits effective date should be September 7, 1971, the date he was discharged from the military and when he believed his effective date would have been had he not been prevented from filing his claim earlier by the secrecy oath. Ultimately, a divided en banc Federal Circuit held that the government violated Mr. Taylor’s constitutional right to due process under the [Fifth Amendment](#) by effectively denying him access to the one forum ([VA’s claim system](#)) by which he could vindicate his legal entitlement to VA benefits. The court further held that Mr. Taylor’s effective date was the date he would have received benefits had the government’s actions not prevented him from filing his claim earlier.

The Federal Circuit’s decision may have significant implications for servicemembers and veterans involved with secret military programs, or whose involvement in military activity was conditioned on a commitment that prevented them from seeking veterans benefits even when eligible. More broadly, the holding potentially impacts other situations in which the government prevents an eligible individual from claiming government benefits, though the court did indicate that it was addressing what it “would expect to be a very rare set of circumstances.”

This Legal Sidebar discusses the factual and procedural history of *Taylor* and summarizes the Federal Circuit’s [opinion](#). The Sidebar concludes with some considerations for Congress.

Factual Background

Mr. Taylor served in the U.S. Army from 1969 to 1971. During this time, he volunteered for a [secret Army program at Edgewood Arsenal, Maryland](#), testing the effects of dangerous substances, including

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chemical weapons, on military personnel. As a condition of Mr. Taylor's participation, he was required to sign a secrecy oath preventing him from divulging any information pertaining to the program under penalty of court-martial and criminal punishment. Mr. Taylor [served two tours](#) in Vietnam following his participation in the Edgewood program.

Mr. Taylor suffered injuries from his participation in the secret Army program that subsequently manifested as disabilities. For decades, however, he refrained from filing a claim with VA for service-connected disability benefits because of his secrecy oath and the potential repercussions of violating it. In 2006, the Army released Mr. Taylor and other test subjects from their secrecy oaths.

Procedural History

In 2007, Mr. Taylor filed a claim for service-connected disability benefits with VA. A VA medical examiner diagnosed Mr. Taylor with post-traumatic stress disorder (PTSD) resulting from his time at Edgewood, which was aggravated during his time serving in Vietnam. Mr. Taylor was ultimately granted a total disability rating with an effective date of February 28, 2007, the day VA received his claim. VA relied on [38 U.S.C. § 5110](#) (implemented under [38 C.F.R. § 3.400](#)) to establish this effective date. The provision specifies that, absent certain exceptions, the effective date for veterans benefits "shall not be earlier than the date of receipt of application therefor." Mr. Taylor appealed the VA determination to the Board of Veterans' Appeals (BVA) seeking an effective date of September 7, 1971, the day he was discharged from service. Mr. Taylor alleged that, since the secrecy oath prevented him from filing a claim, the effective date that he would have received in the absence of the oath should apply.

The BVA, in July 2010, [held](#) that [38 U.S.C. § 5110](#) prevented the effective date for Mr. Taylor's benefits from being any earlier than the day he filed his claim. The BVA stated that "there was nothing stopping [Mr. Taylor] from filing the claim . . . earlier and [VA] asking for a delay in the adjudication of the case following the obtaining of important evidence." Mr. Taylor then appealed to the [U.S. Court of Appeals for Veterans Claims](#) (CAVC). In June 2013, the CAVC, in a single-judge decision, held that the BVA "failed to provide an adequate statement of reasons or bases for its . . . decision." Specifically, the CAVC sought the language of the original secrecy oath. The CAVC vacated the BVA's decision and remanded the case. The BVA, in February 2014, [remanded](#) the case to VA to ascertain the secrecy oath's language and reassess the case.

On remand, after VA procured a secrecy oath that most participants in the Edgewood program signed, VA and the BVA again [concluded](#) that Mr. Taylor was entitled to VA benefits starting February 28, 2007, the day VA received his claim, not September 7, 1971, the day he was discharged. The BVA made its determination in April 2017 and provided three reasons for its holding: (1) Mr. Taylor could have filed a disability claim earlier than 2007 premised on his experiences serving in Vietnam, which were partially responsible for his PTSD; (2) Mr. Taylor could have divulged his participation in the Edgewood program because he had done so on a previous occasion in pursuit of care, though the health care provider at that time did not believe him; and (3) [Section 5110](#) delineates when VA benefits can begin and does not provide for equitable tolling (that is, exceptions to delineated time requirements to promote fairness). Mr. Taylor appealed to the CAVC for a second time.

In April 2019, in a 2-1 decision, a panel of CAVC judges affirmed the BVA's determination that Mr. Taylor was only entitled to VA disability benefits beginning February 28, 2007. The CAVC detailed three components of its analysis. First, Mr. Taylor was not entitled to relief under the Constitution's Fifth Amendment [Due Process Clause](#) because he did not have a property interest in his VA benefits prior to February 28, 2007. Relying on Federal Circuit precedent, the CAVC held that individuals only gain a constitutionally cognizable property interest in VA benefits upon filing claims for such benefits. Second, the court determined that it lacked authority to provide Mr. Taylor with equitable relief by ordering VA to establish a process through which he and similarly situated veterans could establish effective dates for VA

benefits preceding their claim-filing dates. Third, the CAVC held that [38 U.S.C. § 5110](#) required the effective date for Mr. Taylor’s VA benefits to be February 28, 2007, the date he filed his claim. Mr. Taylor appealed the CAVC’s decision to the Federal Circuit.

A three-judge Federal Circuit panel issued its [opinion](#) in June 2021, ruling in favor of Mr. Taylor. The court held the following: (1) “the Veterans Court may exercise such equitable powers, within the scope of its statutory jurisdiction, to ensure that all veterans entitled to benefits receive them” (that is, the CAVC had equitable powers beyond those specifically delineated by Congress); (2) the effective date requirement under [38 U.S.C. § 5110\(a\)\(1\)](#) is not jurisdictional and can therefore be subject to equitable considerations and relief; (3) where “the Government has affirmatively and intentionally prevented” veterans from seeking medical care and VA benefits to which they are entitled under threat of criminal prosecution, the CAVC “is within its authority to hold the Government equitably estopped from asserting that those veterans are not entitled to an earlier effective date”; and (4) the government is equitably estopped from asserting [38 U.S.C. § 5110\(a\)\(1\)](#) against Mr. Taylor because the government’s actions caused Mr. Taylor to file his benefits claim when he did. The Federal Circuit reversed the CAVC’s decision and remanded the case.

In July 2021, however, the Federal Circuit [voted](#) to hear this case en banc. The full court heard oral argument on February 10, 2022, but weeks later, the U.S. Supreme Court [granted review](#) of *Arellano v. McDonough*, a case concerning whether [38 U.S.C. § 5110\(b\)\(1\)](#), an exception to subsection (a)(1)’s requirements, is subject to equitable tolling. Section 5110(b)(1) mandates that “[t]he effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran’s discharge or release if application therefor is received within one year from such date.” The Federal Circuit stayed all proceedings in *Taylor* until the Supreme Court decided *Arellano*.

In January 2023, the [Supreme Court held](#), in relevant part, that subsection (b)(1) is not subject to equitable tolling because “[t]he structure of §5110 reinforces Congress’s choice to set effective dates solely as prescribed in the text,” and because subsection (a)(1) provides “an instruction to attend to specifically enacted language to the exclusion of general, unenacted carveouts.” Following the *Arellano* decision, the Federal Circuit requested supplemental briefing by the parties in light of the Supreme Court’s holding.

Taylor v. McDonough

In June 2023, the full Federal Circuit [decided](#) in favor of Mr. Taylor. After finding equitable estoppel unavailable under Section 5110(a)(1) in light of Supreme Court precedent, the court held that the government violated Mr. Taylor’s constitutional right to due process under the [Fifth Amendment](#). The court concluded that Mr. Taylor had “a constitutional right of access to adjudicatory forums” to vindicate his legal entitlements, and that the VA adjudicatory system and VA benefits are such a forum and entitlement, respectively. The Federal Circuit further held that the government unconstitutionally denied Mr. Taylor “access to the adjudication system of VA, the exclusive forum for securing his legal entitlement to the benefits at issue,” through the secrecy oath and threat of criminal prosecution for violating it. Thus, the court ruled that the relevant statutory limits on effective dates were “unconstitutional as applied” in Mr. Taylor’s case. The Federal Circuit determined that Mr. Taylor was entitled to “the effective date he would have had if no unconstitutional denial of access had occurred,” which could be September 7, 1971, the date Mr. Taylor was discharged, pending VA assessment of this issue on remand in accordance with the court’s decision.

The Federal Circuit summarized its holding’s implications in the following terms:

[W]hen a veteran has been determined to be entitled to benefits for one or more disabilities connected to participation in the Edgewood program at issue, the required effective date of such benefits is the date that the veteran would have had in the absence of the challenged government

conduct—imposition of the secrecy oath with no VA route for claim presentation and proof to vindicate the benefits entitlement.

The court reversed the CAVC's decision and remanded the case.

The government has not sought Supreme Court review as of this writing, though it still has time to do so—petitions must be filed [within 90 days](#) of judgment.

Congressional Considerations

Barring reversal by the Supreme Court, the Federal Circuit's [Taylor opinion](#) requires VA to reassess the benefits effective dates for the service-connected disability claims of veterans who took part in the Edgewood program, suffered disabilities therefrom, and did not file earlier claims because of associated secrecy oaths. The holding also has potential implications for veterans disabled as a result of taking part in other secret military programs for which signing a secrecy oath was a condition of participation. As a result, VA might promulgate guidelines or rules for handling claims involving the aforementioned circumstances.

Congress can also act in light of the *Taylor* opinion. For example, Congress could do the following: (1) amend [38 U.S.C. § 5110](#) to provide explicit exceptions to the effective date requirements for veterans who were prevented from filing claims because of certain government actions; (2) require the U.S. Department of Defense (DOD) to release individuals from secrecy oaths for the purpose of attaining veterans benefits, as DOD did on a January 11, 2011, through a [memorandum](#) addressing those involved with World War II- and Cold War-era human subject research programs; (3) direct DOD to develop and implement a plan for providing information to VA on Edgewood and other secret military programs to facilitate veterans' disability claims, similar to [legislation](#) addressing Project 112; (4) institute specific requirements for VA in establishing the benefits effective date for a veteran who did not file a claim earlier because of a secrecy oath (for instance, establishing that such a veteran's discharge date is automatically their effective date); or (5) mandate that VA provide regular reports on the number and status of service-connected disability claims involving secret military programs.

Author Information

Andreas Kuersten
Legislative Attorney

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