

Analysis of
Bufkin v. Collins
604 U.S. __ No. 23-713

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Department / Veteran Service Officers

The bottom line: The Supreme Court held the Court of Appeals for Veterans Claims (CAVC) must review VA's application of the benefit-of-the-doubt rule the same way it makes all other determinations: reviewing legal issues *de novo* and factual issues for clear error. This is bad for Veterans because it affirms the current standard of review.

Legal Background: This case involves a question as to the proper standard of review, or the level of deference an appeals court gives to a lower court in reviewing their decisions. "Clear error" means the appellate court will uphold the lower court's factual finding unless there is a "definite and firm conviction that a mistake has been committed." In contrast, "de novo" review means the appellate court reviews the decision like new without any deference to the lower court's conclusions. Congress has said that the CAVC should review factual determinations under "clear error" and legal determinations "de novo."

What happened Bufkin: Mr. Bufkin appealed VA's denial of his claim for service connection for PTSD. Specifically, he argued that the evidence for and against his claim for service connection for PTSD was roughly equal and therefore he was entitled to "the benefit of the doubt" under 38 U.S.C. § 5107(b). The VA Board of Appeals denied his claim because they found the evidence was not in approximate balance and therefore the benefit-of-the-doubt rule did not apply. The CAVC and Federal Circuit both affirmed VA's decision because they found the approximate-balance determination was a factual question and VA's determination was not "clearly erroneous."

Mr. Bufkin appealed to the Supreme Court arguing that the CAVC misapplied their own standard of review. As background, in 2002, Congress amended the statute to require the CAVC to "take due account of" VA's application of the benefit-of-the-doubt rule. 38 U.S.C. § 7261(b)(1). Mr. Bufkin argued that Congress intended the CAVC to review the entire record "de novo" and

decide for themselves whether the evidence was in approximate balance rather than deferring to VA's determination if the evidence was in approximate balance.

The Supreme Court affirmed and found the CAVC did not err in Mr. Bufkin's case. The Supreme Court held that the application of the benefit of the doubt and the determination of whether evidence was in approximate balance are factual issues and therefore reviewed under the "clear error" standard of review.

Why *Bufkin* is important: This case affirmed the CAVC's current practice and will not impact future appeals.

Suggested argument based upon *Bufkin*: None.