

Analysis of
Chisholm v. Collins
___ Vet. App. ___ No. 22-7028

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Department / Veteran Service Officers

The bottom line: The opinion from the Court of Appeals for Veterans Claims (CAVC) in ***Chisholm*** holds that “while a supplemental claim needs to be filed on a form prescribed by the Secretary, it doesn’t need to be filed on a supplemental claim form.” This is great for Veterans, who often do not understand which form VA wants them to use.

What happened in *Chisholm*: The decision in *Chisholm* addresses a dispute about whether an attorney is entitled to fees. However, that dispute depends upon whether the application for TDIU that the attorney helped the Veteran file was a Supplemental Claim.

Veteran Anthony Sutton sought increased rating for his service-connected disabilities in November 2019. His claims were denied and his request for Higher-Level Review (HLR) was also denied in April 2021. Within a year of the HLR decision, his attorney (Mr. Chisholm) submitted a VA Form 21-8940 TDIU application that eventually led to a grant of benefits.

When Mr. Chisholm sought to be paid for his assistance, VA claimed that the TDIU application was an initial claim for benefits—not a Supplemental Claim—and, therefore, the attorney could not legally charge a fee for the work. Mr. Chisholm appealed arguing that the TDIU application filed within a year of the HLR was a Supplemental Claim because his client was continuously pursuing a higher rating for claims that he first filed in 2019.

The CAVC agreed with Mr. Chisholm. It analyzed VA’s regulations and concluded that “while a supplemental claim needs to be filed on a form prescribed by the Secretary, it doesn’t need to be filed on a supplemental claim form.” Furthermore, it held that because TDIU is not a separate claim but just another way to seek a higher rating, when adjudicating TDIU “if VA sees that the veteran's schedular rating for those disabilities may need to be increased, it needs to address that.”

Why *Chisholm* is important: *Chisholm* is an extremely important case. Each year, VA rejects tens of thousands of claims because they are not filed in the right form. Because of the time required to process the original application and mail delivery, this almost always results in a loss of an earlier effective date. This can happen when filing an 8940, but it is most common when a Veteran files a Form 21-526EZ and VA responds that it requires a Form 20-0995 instead. The *Chisholm* decision means that VA is wrong to reject claims filed on a standard form and when the Veteran's intent is clear, and the submitted form has enough information to process the Supplemental Claim.

As always, our advice is not to argue with VA when they demand a particular form. Provide VA with the requested form and get the claim granted as soon as possible. However, if you encounter a Veteran who has received an unfavorable effective date because VA rejected a claim and requested a separate to establish the claim though the submitted form had enough information to process the claim, then you should dispute the effective date and argue for the application of *Chisholm*. The form at issue will already be in the file so the dispute should be either an HLR or an appeal on the Board's direct docket.

Suggested arguments based upon *Chisholm*: This argument is appropriate for Higher-Level Review using VA Form 20-0996 or the Board's Direct Docket using VA Form 10182 if VA provides an unfavorable effective date for an award of TDIU when the Form 21-8940 was filed within one year of a prior decision:

In this case, Veteran [name] was granted an effective date of [date] for [his/her] award of TDIU. This date was based upon the date that VA received [his/her] Form 21-8940. However, that application for TDIU was filed within a year of [describe the prior decision] and was a Supplemental Claim continuously pursuing benefits for the underlying condition[s]. The Court of Appeals for Veterans Claims (CAVC) has held that that "while a supplemental claim needs to be filed on a form prescribed by the Secretary, it doesn't need to be filed on a supplemental claim form" and, therefore, an application for TDIU is a Supplemental Claim when filed within one year of a prior decision. See *Chisholm v. Collins*, __ Vet. App. __, __, slip op. at 1, No. 22-

7028 (Mar. 13, 2025). Accordingly, the proper effective date for this award is the date is [date], the date that [Mr./Ms. name] began pursuing compensation for this/these conditions.

This argument is appropriate for Higher-Level Review using VA Form 20-0996 or the Board's Direct docket using VA Form 10182 if VA provides an unfavorable effective date for a Supplemental Claim after previously rejecting another form that adequately identified the benefit sought:

In this case, Veteran [name] was granted an effective date of [date] for his/her award of [describe]. This date was based upon the date that VA received his/her Form 20-0995 Supplemental Claim form. However, prior to that date, on [date] he/she submitted the claim on a Form [526EZ/other identified form]. The Court of Appeals for Veterans Claims (CAVC) has held that that "while a supplemental claim needs to be filed on a form prescribed by the Secretary, it doesn't need to be filed on a supplemental claim form." See **Chisholm v. Collins**, __ Vet. App. __, __, slip op. at 1, No. **22-7028** (Mar. 13, 2025). Accordingly, VA erred in rejecting the original form and the proper effective date for this award is [date].