

Analysis of
Ingram v. Collins
___ Vet. App. ___ No. 23-1798
Mar. 12, 2025

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Department / Veteran Service Officers

The bottom line: The opinion from the Court of Appeals for Veterans Claims (CAVC) in ***Ingram*** holds that orthopedic conditions should be rated based in how bad they are even if medication helps with symptoms. This is good for Veterans but also means that representatives need to help Veterans submit statements explaining their limitations, especially how their range of motion is affected when they are not taking medication.

What happened in *Ingram*: Veteran Carlton Ingram sought an increased rating for his back and left ankle conditions. The record shows that he takes a variety of different pain medications to control his symptoms. Mr. Ingram received a VA medical examination in 2017 that noted his use of medications but did not explain how the medication affected his ability to move or function, including during flare ups and after repetitive movement.

Why *Ingram* is important: *Ingram* is important for two reasons. First, it clearly confirms that the Court's earlier decision *Jones v. Shinseki*, 26 Vet.App. 56, 63 (2012) on discounting the effects of medication as it applies to orthopedic claims. This means that if a Veteran feels better while taking medication, the VA still has to rate the condition based upon the severity of the condition when the Veteran is not taking medication. However, to do this, the record must contain evidence of those limitations.

Second, the opinion suggests that VA examiners must ask the Veterans about their symptoms when they are not taking medication to accurately describe the Veterans limitations so that may be factored into a correct rating. Previously, in *Sharp v. Shulkin*, 29 Vet.App. 26 (2017), the CAVC held that a VA examiner must ask and document about how a Veteran feels and the severity of their condition during flare ups or after repetitive movements--even if the examiner is not able to observe the severity during the examination. In *Ingram*, the CAVC indicated that the examinations relied upon by the Board were inadequate because they failed to ask the

Veteran about the pain and limited range of motion without using medication, which would have provided information need to make an accurate decision.

Suggested argument based upon *Ingram*: To assist a Veteran in obtaining a higher rating under *Ingram*, help them prepare a Statement in Support of Claim, VA Form 21-4138. This statement should clearly explain what the Veteran cannot do when they do not take their medication. It should also use terms that align with rating criteria. In most instances, this will mean describing exactly how far the Veteran can bend the joint without experiencing pain that would make physical activity involving that motion intolerable. To the extent medication is used only during flare ups or after repetitive movement over time, the statement should clearly state that as well.

Arguments based upon *Ingram* can be appropriate whether submitting evidence describing the Veteran's functional limitations when not taking medication or seeking review of rating that failed to properly consider the evidence already of record.

This argument is appropriate for a Supplemental Claim using VA Form 20-0995 if the Veteran is disputing a rating decision within one year or to accompany a VA Form 21-526EZ if the Veteran is seeking a higher rating more than one year after the previous rating decision:

Veteran [name] takes [list medications] to control the pain associated with [condition]. When not taking this medication [add "during flare ups" or "after repetitive use" as appropriate], he/she experiences functional limitations as described in the attached statement. Accordingly, the Veteran should be rated based upon the severity of his/her condition in an unmedicated state. See *Ingram v. Collins*, __ Vet. App. __, __, slip op. at 2, No. 23-1798 (Mar. 12, 2025).

This argument is appropriate for Higher-Level Review using VA Form 20-0996 or the Board's Direct docket using VA Form 10182 if the evidence is already in the record:

Veteran [name] takes [list medications] to control the pain associated with [condition]. When not taking this medication [add “during flare ups” or “after repetitive use” as appropriate], he/she experiences functional limitations as described in the Statement in Support of Claim submitted on [date]. Accordingly, the Veteran should be rated based upon the severity of his/her condition in an unmedicated state. See *Ingram v. Collins*, __ Vet. App. __, __, slip op. at 2, No. 23-1798 (Mar. 12, 2025).