

**Analysis of**  
***Ley v. McDonough***  
**\_\_ Vet. App. \_\_ No. 23-1547**  
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Department / Veteran Service Officers

**The Bottom Line:** In *Ley v. McDonough*, The Court of Appeals for Veterans Claims (CAVC) ruled that a Veteran who delayed filing a VA disability claim because their VA doctor intentionally chose not to tell them that they had leukemia may not be awarded an earlier effective date prior to the date they first filed a claim for compensation. This is bad for Veterans because it leaves them with no remedy when a VA doctor deliberately chooses not to share important information.

**What Happened in *Ley*:** In 2012, Mr. Ley went to the VA complaining of extreme fatigue. At that time, his blood work indicated Mr. Ley could or did have leukemia. The VA hematologist wrote in his notes:

**“I did not use the term leukemia; told him that maybe in 20 yrs he would need further investigation.”**

The veteran’s condition got progressively worse over the next four years, and he was officially diagnosed with leukemia in 2016. He applied for service connection four days later, which was granted on a presumptive basis at 100% based upon his service in Vietnam. At the time, a VA oncologist determined that he qualified for a leukemia diagnosis in 2010 based upon his bloodwork. Nonetheless, the Veteran’s effective date for benefits was limited under 38 U.S.C. § 5110 by the date of his claim.

Based upon these facts, Mr. Ley asserted that he was entitled to an effective date of 2012 because the explicit note in his medical records showed that the VA doctor withheld his diagnosis from him. Had Mr. Ley been informed he would have filed a claim four years earlier. At the CAVC, the Veteran argued that this case was like *Taylor v. McDonough*, where the Federal Circuit held that an earlier effective date was available to a Veteran of the Edgewood Arsenal experiments because his secrecy oath of classified information prevented him from filing for service connection until

it was lifted many years after service. 71 F.4th 909 (Fed. Cir. 2023) (en banc).

In the decision on appeal, the CAVC ruled the exception to the normal effective date statute set forth in *Taylor* was not applicable. *Taylor* held that an effective date prior to the filing of the initial application of benefits could be awarded where the government unreasonably prevented the Veteran from filing a claim. The majority of the panel in this decision ruled that Mr. Ley was not prevented from filing a claim even though he was denied information that affected his decision not to file. Therefore, the exception set forth in *Taylor* does not apply.

**Why *Ley* is important:** *Taylor* was the first case in which the federal courts held that it was possible for a Veteran to be awarded benefits prior to the filing of any application for benefits. After *Taylor*, there has been a lot of speculation as to what other types of government behavior could justify an exception to the effective-date law. In this case, the CAVC took a narrow approach to this exception essentially holding that it does not matter how egregious the government behavior is so long as the Veteran is not completely prevented from filing a claim with VA. This is bad for Veterans because it is extremely rare that the behavior of the government literally prevents the filing of a claim. It is likely that the Veteran will appeal this decision to the Federal Circuit, which decided *Taylor*. If so, B&M will update you when that appeal is decided.

#### **What Veteran Advocates Should Know:**

- **No Change in Policy (yet):** Until an appeal is successful, the *Ley* decision stands. It limits earlier effective dates to cases where the Veteran was **fully prevented** from filing a claim, not misled.
- **No Recommendation to Cite This Case:** At this time, Veteran advocates should not cite *Ley* as supportive case law.