

# **Federal Circuit Affirms Decision by Veterans Court Potentially Restoring Billions of Dollars in GI Bill Educational Benefits**

United States Court of Appeals for the Federal Circuit Affirms Decision by Veterans Court Potentially Restoring Billions of Dollars in GI Bill Educational Benefits

Hunton Andrews Kurth and Dominion Energy pro bono attorneys work on behalf of former FBI counterterrorism agent denied benefits for divinity school

Richmond, VA – The U.S. Court of Appeals for the Federal Circuit has issued a major decision in a case that could restore billions of dollars in Post-9/11 educational benefits for veterans. The court affirmed the decision previously issued by the United States Court of Appeals for Veterans Claims (“Veterans Court”) in the case Rudisill v. McDonough (formerly BO v. Wilkie), which determined that veterans with separately qualifying periods of military service are entitled to GI Bill benefits for each period of service.

“We are extremely pleased with the outcome of this case and what it means for our country’s veterans,” said Hunton Andrews Kurth lawyer Timothy L. McHugh, who represented the appellee, Jim Rudisill. “An estimated 1.7 million post-9/11 era veterans could benefit from this ruling, so it is truly an impactful decision for those who have bravely served.”

Since World War II, Congress has provided veterans with different GI Bill benefits for different periods of qualifying service. Never has Congress required veterans with different

periods of qualifying service to forfeit one benefit to receive another. Nevertheless, since 2009, the Department of Veterans Affairs ("VA") has required veterans with more than one period of separately qualifying service to relinquish or exhaust their entitlement to their Montgomery GI Bill benefits before using their Post-9/11 GI Bill benefits, thereby capping most veterans' combined GI Bill benefits at 36 months.

In *Rudisill v. McDonough*, the court held that veterans with periods of separately qualifying military service are entitled to GI Bill education benefits for each period of service, subject only to an overall statutory cap of 48 months. In 2015, Rudisill, a decorated Army combat veteran who was deployed to both Iraq and Afghanistan, applied for Post-9/11 GI Bill benefits so that he could attend Yale Divinity School to become an Army chaplain. Based on its interpretation of the law, the VA forced Rudisill to forfeit his remaining Montgomery benefits and limited his Post-9/11 benefits to the amount of the forfeited benefits. While Rudisill has since given up his Yale admission and is now ineligible to return to the Army due to his age, he continued the appeal process with the hope of using them in different educational setting, and helping other veterans in their fight for benefits. He is now using his restored benefits to attend another seminary program while continuing to serve as an FBI agent.

"Post 9-11 GI Bill benefits are generous and have the ability to produce life-changing results for veterans and their families. The court's decision ensures that our veterans have the opportunity to receive the full complement of educational benefits, as promised by Congress," said David J. DePippo, a Dominion Energy attorney who also represented Rudisill.

#### Case Background

On August 15, 2019, the Veterans Court rejected the VA's practice of requiring veterans with more than one period of separately qualifying service to relinquish or exhaust their entitlement to Montgomery GI Bill benefits before utilizing

their Post-9/11 GI Bill benefits, thereby capping most veterans' combined GI Bill benefits at 36 months. Instead, the Veterans Court restored one year of educational benefits to all post-9/11 "veterans with multiple periods" of otherwise qualifying active-duty service. That decision was poised potentially to restore billions of dollars in Post-9/11 GI Bill and other educational benefits to military service members. The VA appealed, and the case was then heard by the U.S. Court of Appeals for the Federal Circuit, which on July 8, 2021, affirmed the Veterans Court's decision.

Rudisill's legal team includes Hunton Andrews Kurth attorney Timothy L. McHugh and Dominion Energy Senior Counsel David J. DePippo, as well as lawyers and staff with Hunton Andrews Kurth's Veterans Pro Bono Program.

Hunton Andrews Kurth LLP is proud of its community service and leadership among law firms in the United States, where the firm's tradition of pro bono service is well recognized. At the end of the firm's fiscal year on March 31, 2021, its lawyers had donated more than 58,000 pro bono hours to underserved communities. This represented more than 4% of the firm's gross billable hours and commemorates 28 continuous years of meeting or exceeding the Pro Bono Institute's Law Firm Pro Bono Challenge of donating at least 3% of the firm's annual billable hours to pro bono service.

Dominion Energy, where 1 in every 5 new hires is a veteran, has supported the military, veterans, and their families since World War I, and continues its focus on those who serve our country today.

Throughout Dominion Energy's lengthy history of service to its communities, the company has made support for the military, veterans and their families a priority. Beginning in World War I, when employees sent soldiers care packages, and continuing until today, the company has focused on those who serve our country. G.I. Jobs ranked Dominion Energy #5 in its 2019 list

of the top military-friendly companies nationwide. The company respects the hard and important work the VA does and looks forward to helping them implement this order and getting veterans the benefits they have earned.