

Hunton Andrews Kurth and Dominion Energy Team Delivers Veterans a Victory

The U.S. Court of Appeals for Veterans Claims has issued a major decision that could restore billions of dollars in Post-9/11 GI Bill and other educational benefits to military service members of the Post-9/11 era, according to a release from Hunton Andrews Kurth.

The firm's release describes the case:

Since World War II, Congress has provided veterans with different GI Bill benefits for different periods of qualifying service. Nevertheless, since 2009, the Department of Veterans Affairs has required 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.

In *BO v. Wilkie*, the court on Aug. 15 rejected this practice, declaring that the law "require[s] neither relinquishment nor exhaustion" and determined that the law allows veterans with separately qualifying service "to receive entitlement under both programs subject to a 36-month cap on utilization of each of the two separate programs and a 48-month cap overall."

The court reversed a decision by the VA's Board of Veterans' Appeals and ordered the board to recalculate BO's entitlement to GI Bill benefits. Attorneys from **Hunton Andrews Kurth LLP** and **Dominion Energy**, the appellant's pro bono counsel, estimate that the decision impacts millions of veterans affected by the VA's illegal practice and those who would have been affected.

"B0" is the identifier given to the veteran in this case, which is sealed to protect national security and B0's service as a federal counterterrorism agent. B0 is also a highly decorated Army combat veteran of the pre- and post-9/11 eras. After an initial period of enlisted military service, he attended college on the Montgomery GI Bill, then returned to the Army as a commissioned officer. In 2015, he applied for post-9/11 benefits based on his commissioned service so that he could attend Yale Divinity School and then become an Army chaplain.

But based on its misreading of the law, the VA forced B0 to forfeit his remaining Montgomery benefits and limited his Post-9/11 benefits to the amount of the forfeited benefits. The VA rejected his repeated calls to correct its error, forcing him to appeal its decision. During the lengthy appellate process, B0 had to give up his Yale admission and became ineligible to return to the Army because of his age, but he continued to press his appeal to receive the correct amount of benefits, and, more importantly to him, for the benefit of all veterans.

"B0 urges the VA to take immediate, affirmative action not only to correct his educational entitlements, but also to identify the many veterans impacted by the court's decision and notify them of the restoration of their hard-earned benefits," said Hunton Andrews Kurth lawyer Timothy L. McHugh, who represented the appellant.

The legal team also included Dominion Energy senior counsel David J. DePippo, as well as lawyers and staff with Hunton Andrews Kurth's Veterans Pro Bono Program.