In Re VIZIO, INC.

2024 | Cited 0 times | Federal Circuit | September 4, 2024

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit _____

TREVOR SPENCER TAYLOR, Claimant-Appellant

v.

DENIS MCDONOUGH, SECRETARY OF VETERANS AFFAIRS, Defendant-Appellee

_____

2024-1642 _____

Appeal from the United States Court of Appeals for Veterans Claims in No. 23-6758, Judge Amanda L. Mere- dith. _____

Decided: September 6, 2024 _____

TREVOR TAYLOR, Ann Arbor, MI, pro se.

KATY M. BARTELMA, Commercial Litigation Branch, Civil Division, United States Department of Justice, Wash- ington, DC, for defendant-appellee. Also represented by BRIAN M. BOYNTON, ERIC P. BRUSKIN, PATRICIA M. MCCARTHY. _____

Before MOORE, Chief Judge, CHEN, Circuit Judge, and MURPHY, District Judge. 1 PER CURIAM Trevor Spencer Taylor, a veteran, appeals from a deci- sion of the Court of Appeals for Veterans Claims ("the Vet- erans Court"). SAppx7–17. 2 He seeks a service connection for bilateral hearing loss. For the following reasons, we dismiss this appeal for lack of jurisdiction. BACKGROUND Mr. Taylor served in the United States Army from June 1986 to June 1990 and from January to March

1991. His service as an M1 Armor Crewman carried a risk of expo- sure to hazardous noise and certain toxic substances. SAppx29. In 2019, he sought a service connection for bilat- eral hearing loss. A Regional Office of the Department of Veterans Affairs ("VA") examined his record and found no hearing test results meeting the VA's criteria for impaired hearing. SAppx28. The VA noted that Mr. Taylor declined a new auditory examination because he believed that there was already sufficient evidence of record. SAppx30. The VA denied service connection. Mr. Taylor appealed to the Board of Veterans' Appeals ("Board"). The Board found that Mr. Taylor did not have bilateral hearing loss for VA purposes and concluded that the criteria for service connec- tion for bilateral hearing loss were not met. SAppx18. The Board noted that Mr. Taylor had submitted his own state- ments that he believes he suffers from hearing loss, but the

1 Honorable John F. Murphy, District Judge, United States District Court for the Eastern District of Pennsylva- nia, sitting by designation. 2 "SAppx" refers to the supplemental appendix at- tached to Appellee's Informal Brief, ECF No. 18.

Board gave conclusive weight to the medical evidence in his record. Mr. Taylor appealed to the Veterans Court, which af- firmed in a single-judge decision. SAppx9–17. The Veter- ans Court reviewed Mr. Taylor's hearing test data and confirmed that none met the VA's criteria for hearing loss. The Veterans Court also disagreed with Mr. Taylor's argu- ments that the VA failed to correctly consider or ade- quately address his in-service and post-service medical records. Mr. Taylor sought reconsideration and a full- panel decision, and the Veterans Court maintained the sin- gle-judge decision. SAppx8. Mr. Taylor timely appeals the Veterans Court's deci- sion affirming the Board's denial of service connection for bilateral hearing loss. DISCUSSION We have jurisdiction only "with respect to the validity of a decision of the [Veterans] Court on a rule of law or of any statute or regulation . . . or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the [Veterans] Court in making the deci- sion. 38 U.S.C. § 7292 (a). "Except to the extent that an appeal . . . presents a constitutional issue, [we] may not re- view (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." § 7292(d)(2). On appeal, Mr. Taylor identifies five alleged errors for review by this Court: (i) the hearing tests were improperly administered and the VA failed to identify helpful test re- sults in his claims file; (ii) the Veterans Court was biased in favor of counsel for the VA; (iii) counsel for the VA led the Veterans Court astray by citing to the wrong section of the audiologist's notes; (iv) the Veterans Court misread several hearing test results as "20" decibels instead of "26"; and (v) the Veterans Court failed to properly oversee the

VA because one or more lawyers who represent the VA are also members of the Veterans Court Bar Association. Mr. Taylor characterizes these alleged errors as both legal and constitutional. In particular, Mr. Taylor argues that the Veterans Court decision demonstrates improper entanglement between the Veterans Court and the VA in violation of separation of powers principles. Most of Mr. Taylor's arguments fall outside of our ju- risdiction because they challenge factual determinations or applications of law to fact. See § 7292(d)(2). We are not permitted to reassess Mr. Taylor's records as he requests. Nor do we perceive a genuine constitutional issue in Mr. Taylor's appeal. The Veterans Court did not address or rely on any constitutional issues. Mr. Taylor's arguments on appeal that he did not receive fair treatment at the Vet- erans Court do not raise colorable constitutional concerns. And we do not agree with Mr. Taylor that his case or his allegations about the lawyers involve perceptible due pro- cess concerns. Labeling arguments as constitutional does not automatically confer jurisdiction. Helfer v. West, 174 F.3d 1332 , 1335 (Fed Cir. 1999). Therefore, we lack juris- diction to consider Mr. Taylor's appeal. CONCLUSION We have considered Mr. Taylor's remaining arguments and find them unpersuasive. Accordingly, we dismiss this appeal for lack of jurisdiction. DISMISSED COSTS No costs.