

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

EUGENE COSTELLO,
Claimant-Appellant

v.

**ROBERT WILKIE, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee

2019-2317

Appeal from the United States Court of Appeals for
Veterans Claims in No. 18-3462, Judge Amanda L. Meredith.

Decided: December 23, 2020

KENNETH M. CARPENTER, Law Offices of Carpenter
Chartered, Topeka, KS, argued for claimant-appellant.

BORISLAV KUSHNIR, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, argued for respondent-appellee. Also repre-
sented by JEFFREY B. CLARK, ELIZABETH MARIE HOSFORD,
ROBERT EDWARD KIRSCHMAN, JR.; MARTIE ADELMAN, Y.

KEN LEE, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before WALLACH, TARANTO, and CHEN, *Circuit Judges*.

WALLACH, *Circuit Judge*.

Appellant, Eugene Costello, appeals a decision of the U.S. Court of Appeals for Veterans Claims (“Veterans Court”) affirming a decision of the Board of Veterans’ Appeals that denied Mr. Costello’s request to revise a December 1965 rating decision. *Costello v. Wilkie*, No. 18-3462, 2019 WL 2261275, at *4 (Vet. App. May 28, 2019); *see* J.A. 16 (Judgment); *see also* J.A. 27 (1965 Rating Decision), 86–104 (Board Decision). Mr. Costello failed to present to the Veterans Court the sole issue he now raises on appeal—namely, “[t]he correct interpretation of the phrase ‘recognized as symptomatic of brain trauma’ as used in Diagnostic Code 8045 of 38 C.F.R. § 4.124a (1965). Appellant’s Br. 11. *Compare id.* at 1, 3–11, with J.A. 105–16 (Mr. Costello’s Brief to the Veterans Court). *See In re DBC*, 545 F.3d 1373, 1378 (Fed. Cir. 2008) (“It is well-established that a party generally may not challenge an agency decision on a basis that was not presented to the agency.”). Accordingly, Mr. Costello’s appeal is

DISMISSED