

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-2993

ROBERT M. SELLERS, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before ALLEN, *Judge*, and DAVIS¹ and SCHOELEN,² *Senior Judges*.

ORDER

Appellant Robert M. Sellers appealed an April 29, 2016, Board of Veterans' Appeals decision denying an effective date earlier than September 18, 2009, for his service-connected major depressive disorder. In an August 23, 2018, precedential decision, the Court set aside the Board decision and remanded the matter. The Court held that a general statement of intent to seek benefits, coupled with a reasonably identifiable in-service medical diagnosis reflected in service treatment records VA possessed before the RO decided the claim, may be sufficient to constitute a claim for benefits.³

In a July 2020 decision, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) reversed this Court's decision.⁴ The Federal Circuit held that this Court "formulated an incorrect legal test for determining if Mr. Sellers is entitled to an earlier effective date" and that "[u]nder the correct test, a veteran's formal claim is required to identify the sickness, disease, or injuries for which compensation is sought, at least at a high level of generality."⁵ The Federal Circuit held that appellant undisputedly failed that test and thus was not entitled to an earlier effective date.⁶ The court reversed this Court's decision and remanded the matter for the entry of judgment against appellant.

Upon consideration of the foregoing, it is

¹ Judge Davis is a Senior Judge acting in recall status. *In re Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 03-20 (Jan. 2, 2020).

² Judge Schoelen is a Senior Judge acting in recall status. *In re Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 04-20 (Jan. 2, 2020).

³ *Sellers v. Wilkie*, 30 Vet.App. 157, 161 (2018).

⁴ *Sellers v. Wilkie*, 965 F.3d 1328 (Fed. Cir. 2020).

⁵ *Id.* at 1338.

⁶ *Id.*

ORDERED that the April 29, 2016, Board decision is AFFIRMED. It is further

ORDERED that this order is the final judgment and mandate of this Court.

DATED: October 27, 2020

PER CURIAM.