

Sterne Kessler and Military-Veterans Advocacy Help Attain Grant of Certiorari at U.S. Supreme Court in *Pro Bono* Veterans Case

Sterne Kessler Goldstein & Fox and Military-Veterans Advocacy Inc. (MVA) recently helped secure grant of certiorari at the U.S. Supreme Court in *Bufkin v. McDonough*, No. 23-713, an important appeal concerning veterans disability benefits. The Veterans Act creates a statutory presumption that veterans—not the government—receive the benefit of the doubt in close cases where veterans seek benefits. And 38 U.S.C. § 7261(b)(1) directs the U.S. Court of Appeals for Veterans Claims (“Veterans Court”) to “take due account” of the application of the “benefit of the doubt” rule by the Secretary of Veterans Affairs. The question the Supreme Court will address is whether the statute requires the Veterans Court only to review factual findings by the Secretary or whether the Veterans Court must also independently assess whether the veteran actually received the benefit of the doubt on close factual issues.

Last February, a Sterne Kessler team filed an [amicus brief](#) before the Supreme Court on behalf of MVA, a non-profit organization that litigates and advocates on behalf of service members and veterans. MVA’s brief supported petitioners Joshua Bufkin and Norman Thornton, two veterans who challenged the level of review required by § 7261(b)(1) before the U.S. Court of Appeals for the Federal Circuit. The Federal Circuit held that § 7261(b)(1) “does not require the Veterans Court to conduct any review of the benefit of the doubt issue beyond the clear error review” of underlying factual findings. Bufkin and Thornton petitioned the Supreme Court for certiorari, which was granted on April 29, 2024. The Supreme Court will take up the case for the 2024–25 term and has the potential to affect thousands of veterans appeals each year. *Bufkin* is likely to be argued in October 2024.

Directors Anna G. Phillips and Michael E. Joffe make up the Sterne Kessler *pro bono* team representing MVA.