In the United States Court of Federal Claims

No. 03-2470C
(Filed May 5, 2005)

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*
ANTHONY J. BROOKS, *
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Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
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* *

ERRATUM ORDER

The second sentence (reprinted below with the accompanying footnote) of the second paragraph of page 20 of the Court's April 18, 2005 order should be corrected to read as follows:

> But considering our Court's convention of basing review of this type of claim upon an administrative record compiled before and by the Correction Board, *see, e.g.*, *Bishop v. United States*, 26 Cl. Ct. 281, 285 (1992), prudence dictates that the Court demur on this specific issue and permit the BCCCR to analyze the question first.[22]

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[22] This convention of restricting review to the administrative record seems to conflict with the express holding of the Federal Circuit that plaintiffs challenging Correction Board determinations are "entitled" to supplement this record with additional evidence. *See Heisig v. United States*, 719 F.2d 1153, 1157 (Fed. Cir. 1983) ("Appellant was entitled to offer de novo evidence in his presentations . . . to the district court."); *id.* at 1156 (holding that the same precedents should apply to our Court and district courts in this area). This practice also rests, in part, on Supreme Court jurisprudence concerning the APA. *See, e.g.*, *Bishop*, 26 Cl. Ct. at 285; *Long v. United States*, 12 Cl. Ct. 174, 177 (1987). This jurisprudence, in turn, appears to rest on a misreading of the legislative history of the APA. *Gulf Group Inc. v. United States*, 61 Fed. Cl. 338, 350 n.25 (2004). Further, the substantial evidence standard in *military* benefits cases is primarily derived from the deference courts afford to military judgment in military matters, *see Heisig*, 719 F.2d at 1156, and may not be applicable in this case, for the reasons discussed in the text, above.

The above correction is not substantive.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge