On July 11, 2024, the United States Court of Appeals for Veterans Claims (CAVC) issued the decision in *Bolds v. McDonough*, No. 22-2484, which vacated and remanded the Board's April 2022 denial of service connection for reproductive organ disabilities, finding that the Board erred in not ensuring substantial compliance with the terms of a December 2021 joint motion for partial remand (JMPR) that waived enforcement of the Appeals Modernization Act (AMA) evidence submission limits.

Main Takeaways:

- The evidence submission limits under 38 U.S.C. § 7113(b) and 38 C.F.R. § 20.302(a) are waivable claims processing rules, subject to Secretarial waiver.
- Language in a joint motion for remand (JMR) or JMPR permitting an appellant to submit additional evidence after a CAVC remand may be sufficient evidence to demonstrate that VA waived enforcement of the evidence submission limits.

Chief Counsel Note: The Office of Chief Counsel (OCC) will provide additional guidance addressing the application of *Bolds*.

Case Summary: By way of history, in May 2019, the Agency of Original Jurisdiction (AOJ) denied service connection for ovarian cancer or precancerous cells, miscarriage, fallopian tube endometriosis, and uterine cyst. The Veteran appealed the decision to the Board and selected the hearing docket. She later testified at a Board hearing in January 2021. In May 2021, the Board denied the claim.

The Veteran appealed the Board's denial to CAVC, and, pursuant to a December 2021 JMPR, the case was remanded back to the Board. The JMPR noted that on remand the appellant was allowed to submit additional argument and evidence, and the Board was permitted to seek any additional evidence it deemed necessary for a timely resolution of the claim. Thereafter, in January 2022, the Veteran submitted a VA examination report and treatment records. In the April 2022 Board decision, the Board denied the Veteran's claim stating that it declined to consider the evidence she submitted in January 2022 because it was outside of the evidence window. The current appeal ensued.

The Veteran argued that the Board legally erred in refusing to consider the evidence she submitted in January 2022 following the JMPR. She further asserted that the Secretary should be bound by the specific terms of the JMPR rather than the evidence submission rules that ordinarily apply to appeals on the Board hearing docket. She stated that her constitutional right to due process would be violated if she was deprived of the benefit of the duly negotiated and executed JMPR.

The Secretary argued that the Board had adequately explained that it could not consider evidence received outside of the evidence window. The Secretary further asserted that the statute and regulation prohibited the Board from considering evidence submitted after a CAVC remand and any JMPR statement to the contrary was void and unenforceable. The Secretary stated that alternatively, even if the December 2021 JMPR was fully enforceable, the Board substantially complied with the JMPR and the Veteran failed to show prejudicial error, including any constitutional violation. At oral argument, the Secretary disagreed with the Veteran's suggestion that the Board's failure to enforce the terms of the JMPR had affected her procedural rights because the terms of the JMPR related to the evidentiary record before the Board and affected the adjudicatory domain and should be considered substantive and unwaivable. Also, the Secretary argued that his mistake in using incorrect boilerplate language in the JMPR could not create a right that was contrary to statute and regulation. The Secretary agreed, however, that the Board failed to address favorable hearing testimony and conceded remand.

CAVC found that 38 U.S.C. § 7113(b) and 38 C.F.R. § 20.302(a) are waivable claims processing rules, rather than jurisdictional rules, and that the JMPR language waived the evidence submission limits. CAVC noted that regulations, such as section 20.302(a) had already been determined to be akin to claims processing rules, rather than jurisdiction rules, as explained in *Hall v. McDonough,* 34 Vet. App. 329 (2021). CAVC further found that section 7113(b) also was a waivable claims processing rule, as it did not govern the Board's adjudicatory capacity or limit the class of cases the Board can hear or the persons who can file an appeal. CAVC noted that the placement of section 7113(b) within the statutory scheme confirms this characterization, as the evidence submission rules are not part of section 7104, the statutory provision that expressly prescribes the Board's jurisdiction.

CAVC further found that the December 2021 JMPR was a valid waiver of the claims processing rules because section 7113(b) unequivocally authorizes the Secretary to limit the evidentiary record before the Board for appeals on the hearing docket, and the Secretary knowingly exercises that authority as a matter of course in such appeals through application of section 20.302(a). CAVC also noted that the language of the JMPR contained an unqualified and unequivocal statement permitting the Veteran to submit additional evidence to the Board. CAVC declined to accept the Secretary's argument that the language in the JMPR contravened a finding of waiver, specifically that any statements made herein shall not be construed as statements of policy or the interpretation of any statute, regulation, or policy by the Secretary. CAVC found that this statement only indicates that the Secretary did not intend for the JMPR to be broadly construed as a binding statement of policy or interpretation of law in all cases, not that he did not intend to waive the sections 7113(b) and 20.302(a) claims processing rules in this individual case as reflected in the remainder of the JMPR.

CAVC also rejected the Secretary's argument that the language in the JMPR noting that any statements made herein shall not be construed as a waiver of any rights or VA duties under the law as a disclaimer of any Secretarial waiver. CAVC noted that this statement should not be read in isolation from the rest of the JMPR and as explained above, the other relevant provisions of the JMPR expressly authorized the Veteran to submit additional evidence to the Board when her appeal returned to the hearing docket.

In addition, CAVC rejected the Secretary's argument that a December 2021 Board letter invalidated the terms of the JMPR by instructing the Veteran not to submit additional evidence because the window for evidence submission had closed. CAVC found that because the Board did not abide by the Secretary's waiver of the evidence submission limits in sections 7113(b) and 20.302(a), the Board erred in not ensuring substantial compliance with the terms of that JMPR. CAVC agreed with the appellant that prejudice was established by demonstrating a disruption of the essential fairness of the adjudication and that the availability of supplemental claims is not a cure-all for all Board procedural errors.

In consideration of the foregoing, CAVC vacated the Board's April 2022 decision to deny service connection for ovarian cancer or precancerous cells, miscarriage, fallopian tube endometriosis, and uterine cyst and remanded it for further adjudication.

This summary was prepared by the Office of Assessment and Improvement in consultation with the Office of the Chief Counsel. The principal drafter was Sarah Richmond.