



VETERANS LAW UPDATE: August 2015
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Summaries of Precedential Cases Issued by
the U.S. Court of Appeals for Veterans Claims and
the U.S. Court of Appeals for the Federal Circuit

| **Aldridge v. McDonald**, 27 Vet.App. 392 (August 7, 2015)

EQUITABLE TOLLING

Held: Equitable tolling was not warranted, even where the appellant asserted that his grief over the deaths of three family members prevented him from timely filing his Notice of Appeal.

On December 24, 2013, the Board denied the veteran's claims. He filed his Notice of Appeal to the CAVC on October 27, 2014, which was well past the 120-day deadline to appeal. The Secretary asked the Court to dismiss the appeal because it was not timely, and the Court ordered the veteran to explain why it should not be dismissed.

The veteran explained to the Court that his time to appeal should be equitably tolled due to the deaths of his mother, sister, and unborn granddaughter during a nine-month period. He asserted that these deaths led to a deep depression that caused him to have difficulty processing dates and that he did not understand the appeal deadline.

The Court found that he had "not demonstrated that equitable tolling is warranted" because, during that same time period, he dealt with the estates of his deceased mother and sister, became his father's primary caregiver, maintained his job at a VA hospital, and attempted to hire a law firm to represent him in his appeal to the Court. Because of this, the Court found that he had not shown that his circumstances "neither directly nor indirectly prevented the timely filing of his appeal."

Judge Greenberg dissented, stating that "[h]arsh application of a non-jurisdictional, though 'important[,] procedural rule,' ... is inconsistent with the intent of Congress and ignores long-settled principles of courts' application of rules..." (quoting *Henderson v. Shinseki*, 562 U.S. 428, 440-41 (2011)).

NOTE: This case was appealed to the Federal Circuit in September 2015. Stay tuned.

| **Jackson v. McDonald**, docket no. 12-0738 (August 11, 2015) (order)

ATTORNEY FEE, ACCRUED BENEFITS

HELD: This precedential order implements the Federal Circuit's reversal of a prior CAVC decision that held that an attorney was not entitled to a fee where the veteran/client died before the Regional Office implemented a favorable Board decision

and where the veteran's surviving spouse was subsequently awarded accrued benefits without signing a fee agreement and without having filed an appeal.

See *Jackson v. Shinseki*, 26 Vet.App. 460 (2014), *rev'd*, *Jackson v. McDonald*, ____ F. App'x ____, No. 2014-7088 (Fed. Cir. June 2, 2015).