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# "Authorized Travel" and VA Disability Compensation Eligibility
**By Bradley W. Hennings[1] and Robert Chisholm[2]**

## 11.0—Veterans' claims

U.S. military reservists and National Guard members are eligible for VA disability compensation if they meet criteria including, crucially, being on the appropriate type of duty at the time of the disease or injury that led to their disability.

Reserve service members are considered on qualifying duty during Active Duty for Training (ACDUTRA), and they are generally eligible for VA benefits for disabilities which develop as a result of this service.

But what is less settled is the extent to which reservists are considered on active duty when conducting "authorized travel" to ACTDUTRA. This article will briefly examine *Watkins v. McDonough*[3], a 2022 Court of

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[3] 35 Vet.App. 256 (2022).

Appeals for Veterans Claims (CAVC) case that may provide insights into VA's current stance on this topic.

## Relevant Background: *United States v. Cline*

In *United States v. Cline*[4], what is now the United States Court of Appeals for the Armed Forces (CAAF) held that a Reserve member is on duty one minute past midnight on the day the Reserve member is ordered to appear for training—and therefore subject to the terms of the Uniform Code of Military Justice (UCMJ)—even if the member's official reporting time is not until later in the day.

However, the CAVC and VA did not automatically apply this definition to the process for determining VA disability compensation eligibility. Therefore, the facts of *Watkins* seemed an opportunity for the CAVC to bring together two areas of law that, perhaps surprisingly, are often not considered together.

## *Watkins v. McDonough*

### Facts

A veteran named Stephanie L. Watkins received orders for ACDUTRA—including one travel day—starting on June 2, 1997. On June 2, 1997, the veteran checked into a civilian hospital in Little Rock, Alabama—a significant distance from her duty station in Pensacola, Florida—exhibiting acute psychotic symptoms, later diagnosed as bipolar disorder.

The case was appealed to the CAVC after the Board of Veterans' Appeals denied service connection. The Board asserted that the veteran could not have been on authorized travel at the time her

[4] 29 M.J. 83 (C.M.A. 1989).

condition manifested because she had diverted from the most direct route of travel without obtaining approval to change her itinerary.

This matter was submitted to a panel of the CAVC to "address, among other issues, what 'full-time duty in the Armed Forces performed by Reserves for training purposes' and 'authorized travel to or from such duty' mean."[5]

**Court Analysis**

The appellant raised three issues on appeal.

1. Whether VA must consider decisions from the CAAF that are relevant to issues before the Board. This would address whether the Board was required to consider the *United States v. Cline*'s bright-line rule that a reserve member is on duty one minute past midnight on the day the member is to appear for training, even if the member's reporting time is not until later in the day. This would answer whether the veteran in *Watkins* was on duty status when her bipolar disorder manifested.

2. Whether any deviation from her purported "itinerary" affected her veteran status.

3. Whether her travel orders were unconstitutional because they did not adequately notify her about travel restrictions. The veteran claimed that the military had committed a due process violation by issuing unclear orders that led her to believe she could deviate from her itinerary while traveling to her duty station.

The Court declined to consider the first and third arguments, which were raised for the first time on appeal. The Court did request that VA

[5] *Watkins*, quoting 38 U.S.C. § 101 (22)(A), (E) and 38 C.F.R. § 3.6(c)(1), (6).

consider the issues on remand, and per *Quirin v. Shinseki*,[6] the Court provided additional guidance to the Board to consider on remand. This guidance will be discussed in the next section.

As for the appellant's second argument, the CAVC found that there was insufficient evidence on the record for the Court to examine the Board's argument that the appellant was not on authorized travel at the time her condition manifested because she had deviated from her alleged itinerary. In fact, the Court pointed out that the Board had failed even to define "itinerary." The CAVC set aside the Board's decision and remanded the matter for further proceedings.

**CAVC Guidance Regarding "Authorized Travel"**

The CAVC instructed the Board on remand to consider *United States v. Cline* and justify adopting a rule for determining duty status that was different from the CAAF's decision. The Court suggested that if such a bright-line rule existed—rendering the veteran subject to military discipline one minute past midnight on June 2, 1997—the Board should at least consider that fact when determining whether appellant was also eligible for VA disability benefits.

> "It would be remarkable if appellant were considered to have been on active duty by the service department for the purpose of imposing discipline, but not considered to have been on active duty by VA for the purpose of awarding benefits, and a thorough discussion of any such conclusion would aid in judicial review."[7]

The Court also instructed the Board to locate the appellant's travel orders and explain how likely it was that the veteran would have understood whatever alternative interpretation the Board had assigned

[6] 22 Vet.App. 390 (2009).
[7] *Watkins*.

to them. The CAVC reminded VA of its duties to assist and to give the benefit of the doubt to veterans.

**VA Rules for Veteran after Remand**

Despite the CAVC's decision to remand rather than rule on the veteran's arguments, there are indications that VA has seriously considered the CAVC's guidance.

At the end of 2024, the *Watkins* veteran's counsel announced that VA had decided to grant the veteran's claim. This suggests that VA has potentially adopted at least some of CAVC's reasoning and the standards proposed by the appellant in *Watkins*.

If so, this may in turn inform other VA decisions involving claims by reserve service members who develop disabilities during authorized travel to ACTDUTRA.

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