

No. ~~24-5802~~

ORIGINAL

FILED

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

BURFORD EARL FREDERICK — PETITIONER  
(Your Name)

vs.

DENIS MCDONOUGH, SECRETARY  
OF VETERANS AFFAIRS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US COURT OF APPEALS FOR THE FEDERAL CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BURFORD EARL FREDERICK

(Your Name)

14469 MARVIN STREET

(Address)

TAYLOR, MI 48180

(City, State, Zip Code)

734-946-7352

(Phone Number)

## QUESTIONS PRESENTED

The SHA medical exam is required at discharge by the D.O.D. AND THE DEPARTMENT of Veterans Affairs. When a serviceman is overlooked, would this be a Grave Prejudicial Error and a violation of the Due Process under the Fifth Amendment?

If there is Spoliation of favorable evidence, how is "Benefit of the Doubt" under 38 U.S.C. 5107 evenly balanced?

When the VA has proof of unemployability and denies a claim. Has the VA just violated the Veterans 14<sup>th</sup> Amendment, Equal Protection Clause, also the Due Process Rights under the Constitution?

Under 38 U.S.C. 5103A, When VA does not schedule an examination or help find missing records, could this be considered Fraudulent Concealment?

Can a Veteran use the Continuing Violation Doctrine, in an Equitable Estoppel claim with alleged unconstitutional conduct and intentional infliction of emotional stress ?

Is it possible for 42 U.S.C. 1983, Equitable Estoppel and a Medical Malpractice Tort claim to be used in the same case ?

## LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

COURT OF APPEALS FOR VETERANS CLAIMS  
# 20-2112 JUDGEMENT MAY 3, 2021

U.S. COURT OF APPEALS FOR THE FEDERAL  
CIRCUIT. # 24-1539 REHEARING DENIED  
JULY 25, 2024

BURFORD EARL FREDERICK V. DENIS MCDONOUGH

## TABLE OF CONTENTS

OPINIONS BELOW.....	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3, 4.
STATEMENT OF THE CASE.....	5.
REASONS FOR GRANTING THE WRIT.....	6.
CONCLUSION.....	7.

## INDEX TO APPENDICES

APPENDIX A - US Court Of Appeals Decision - June 25, 2024	1a
APPENDIX B - US Court Of Appeals Denial of Rehearing - July 25, 2024	4a
APPENDIX C - US Court Of Appeals Mandate - August 16, 2024	6a
APPENDIX D - Court Of Appeals for Veterans Claims Decision May 3, 2021	7a
APPENDIX E - Board of Veterans Appeals Ruling on Motion for Clear and Unmistakable Error - February 7, 2024	11a
APPENDIX F - Board of Veterans Appeals Decision - February 9, 2024	12a
APPENDIX G - Board of Veterans Appeals Decision - December 3, 2019	19a
APPENDIX H - Letter from D. Dingell to Board of Veterans Appeals Re: Delay in Final Decision - February 20, 2018	39a
APPENDIX I - Letter from D. Dingell to Burford Frederick Re: Premature Closure of Appeal - June 6, 2018	40a
APPENDIX J - Letter from Department of Education Re: Handicapped Worker Qualification - May 23, 1983	41a
APPENDIX K - Department of V.A. Statement of the Case - Sept 4, 2012	42a

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

**JURISDICTION**

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 25, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 25, 2024, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

38 U.S.C. 1114, Wartime disability	Pg. 6
38 C.F.R. 4.16 (TDIU)	Pg. 6
FEDERAL TORT CLAIM ACT	Pg. 6
38 C.F.R. 3.303, Service connection	Pg. 6
38 C.F.R. 3.321 SMC RATING	Pg. 6
38 C.F.R. 3.304 Direct Service	Pg. 6
38 U.S.C. 1151 Medical error	Pg. 6
38 U.S.C. 1112 Presumptions relating to diseases	Pg. 6
38 U.S.C. 503 Administrative Error	Pg. 6
38 U.S.C. 5110 Award of compensation can be tolled	Pg. 6
Veterans Judicial review Act of 1988	Pg. 6
Continuing Violation Doctrine	Pg. 6
Prestabilization ratings	Pg. 6
Spoliation of Evidence	Pg. 6
Affirmative Misconduct	Pg. 6
Violation of 5th Amendment Rights	Pg. 5, 6
Violation of 14th Amendment Rights	Pg. 5, 6
Violation of Civil Rights for a person on disability	Pg. 6
Violation of the Due Process under the 5th and 14th Amendments	Pg. 6
42 U.S.C. 1983, Addressing Constitutional Violations	Pg. 6
A deprivation of property interest in VA disability	Pg. 6
Clearly Erroneous BVA Decision	Pg. 6
Doctrine of Equitable Estoppel	Pg. 6

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. 242

Pg. 6

VA officials subjected me to a Deprivation of Federally Protected Rights. VA violated my Due Process Rights under the 5th Amendment.

28 U.S.C. 1254

Pg. 6

Because the Federal Circuit has exclusive Jurisdiction to review the decisions of the Veterans Court. See 38 U.S.C. 7292 (2000 & Supp. V. 2005) There is no possibility of a circuit conflict arising in the specific text of VCM notice errors.

VA violated my Due Process Rights under the 5th Amendment and the 14th Amendment.

38 U.S.C. 5109

Pg. 6

No expert medical opinions or exams were scheduled.

38 U.S.C. 5107

Pg. 6

Preponderance of evidence was in favor of the Veteran.

38 C.F.R. 3.1.03

Pg. 6

Procedural Due Process was violated.

38 U.S.C. 7252

Pg. 6

Appeals Court Affirmed BVA decision was "clearly erroneous".



STATEMENT OF THE CASE

I BURFORD EARL FREDERICK, Have been trying for fourteen years to get the VA disability I should have been discharged with, but was not aware of what my rights were at the time. I know now, but it is not seem like any thing has changed from 60 years ago. I am living with the medical mistake that happened when I was 20 years old. I am 83 years old and have my 5<sup>TH</sup> Amendment Due Process Rights violated and 14<sup>TH</sup> Amendment Civil rights violated and still working to prove something is not right in this picture.

## REASONS FOR GRANTING THE PETITION

38 U.S.C. 1151

When I started reading about medical errors at the VA, the code said they could be accidental or intentional. I just knew someone made a mistake in my case. I now feel that sometime along the way things changed. When I had my first 4 by pass surgery, all the doctor could say was, let's hope this lasts eight years. When I had my second by pass surgery eight years later for three blocked arteries. No doctor sat down and said you have to change your way of life. They knew it was the rheumatic fever in the service. The Veterans having the same problem I am having are addressing the violation of 6303, outreach services. I believe the answer is in the SHA exams ,with a specialist addressing any disease or injury in the service. The exams are created to make VA disability claims easier. If the SHA exam is the answer, we have to let them know. If a Veteran is suffering from PTSD, he also has to know about the Discovery rule and the violation of his Fifth Amendment Rights of Due Process. Also 38 U.S.C. 5107 , Benefit of the Doubt, and how it is clear that to deny a claim on its merits the evidence must preponderate against the claim. Can the Supreme Court help the VA see how important it is that all servicemen get to take the SHA exam. It would have made my life easier.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brusford Carl Frederick

Date: Sept. 14, 2024