

App No. _____

**In The
Supreme Court of the United States
LOIS HARRIS,**

Applicant,

v.

**DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS,**

Respondent.

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**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Federal Circuit**
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Counsel for Applicant

March 11, 2025

To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Lois Harris respectfully requests that the time to file her petition for a writ of certiorari be extended for 60 days, up to and including Monday, May 26, 2025. The Court of Appeals issued its opinion on December 27, 2024 (Exhibit B) and entered mandate on February 18, 2025 (Exhibit A). Absent an extension of time, the petition would be due on March 27, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This request is unopposed.

Background

This case arises from a dispute over the effective date for an award of Total Disability based on Individual Unemployability (TDIU) for a veteran, Max Harris, who served in the United States Air Force from March 1961 through April 1970. Mr. Harris initially filed a claim for an increased rating for his service-connected knee disability with the Department of Veterans Affairs (VA) on April 22, 2013. Following the VA Regional Office's decision, Mr. Harris appealed to the Board of Veterans' Appeals (Board) in July 2016.

While his appeal was pending, Mr. Harris retained counsel and submitted an application for TDIU on April 16, 2018. His counsel argued that this request for TDIU was not a new claim but was part and parcel of the previously pending increased compensation appeal, pursuant to *Rice v. Shinseki*, 22 Vet. App. 447 (2009). However, the Board determined that no cogent evidence of unemployability

existed prior to the April 16, 2018, application and denied an earlier effective date. The Board applied 38 C.F.R. § 3.400(o), holding that the effective date for an award of increased compensation is the later of either the date of receipt of the claim or the date entitlement arose.

Following the Board's denial, Mr. Harris appealed to the United States Court of Appeals for Veterans Claims (CAVC). Upon his passing, his widow, Lois Harris, was substituted as the appellant. Before the Veterans Court, Mrs. Harris, represented by new counsel, did not argue that the TDIU request was part of the 2013 increased rating claim. Instead, she contended that the Board had failed to explain why the evidence before it was insufficient to constitute "cogent evidence of unemployability." The CAVC affirmed the Board's decision, finding that the Board had adequately explained its reasoning and that its findings were not clearly erroneous.

On appeal to the United States Court of Appeals for the Federal Circuit, Mrs. Harris sought to revive the argument that the TDIU application should relate back to 2013, presenting what should be the correct law. However, the Federal Circuit declined to consider the issue, holding that Mrs. Harris had forfeited the correct application of the law because she did not raise it before the CAVC. Accordingly, the Federal Circuit affirmed the CAVC's decision, maintaining the April 16, 2018, effective date for Mr. Harris's TDIU award.

This petition seeks further review of the Federal Circuit's decision of an important statute governing the Court of Appeals for the Federal Circuit, 38 U.S.C.

§ 7292. This appeal raises the issue of whether an appellant can forfeit the correct application of the law, even when the Circuit Court has jurisdiction over the issue.¹ The issues presented are of exceptional importance to veterans and the veterans court system, because the Federal Circuit's position is different from other Circuits, and wanders from this Court's precedent. And only this Court can review the Federal Circuit's interpretation of the statute in question, because of the Federal Circuit's exclusive subject matter jurisdiction in this area

Reasons For Granting an Extension of Time

Counsel's competing work obligations limit his ability to devote adequate time to Petitioner's petition for writ of certiorari between today and March 27, 2025. Substantial commitments of counsel of record during the relevant time period include:

- A brief in the United States Court of Appeals for Veterans Claims in *Ford v. Collins*, No. 24-983, due March 3, 2025;
- Oral arguments before the United States Court of Appeals for Federal Circuit in *Shulman v. Collins*, No. 23-2003, on March 3, 2025.
- A reply brief in the United States Court of Appeals for Federal Circuit in *Yurk v. Collins*, No. 24-2023, due March 6, 2025;
- A brief in the United States Court of Appeals for Veterans Claims in *Brotherton v. Collins*, No. 24-4425, due March 7, 2025;
- A reply brief in the United States Court of Appeals for Veterans Claims in *Terrell v. Collins*, No. 23-7169, due March 10, 2025;

¹ The Federal Circuit decided a closely related case involving the same statutory interpretation issues on February 10, 2025. *Messer v. Collins*, No. 23-1543 (Fed. Cir. 2025). Undersigned counsel for Mrs. Harris is also counsel in *Messer* in seeking Supreme Court review of that decision. Counsel intends to file a joint cert petition seeking review of both decisions.

- A brief in the United States Court of Appeals for Veterans Claims in *Arnold v. Collins*, No. 24-4833, due March 24, 2025;
- A brief in the United States Court of Appeals for Veterans Claims in *Hansford v. Collins*, No. 23-5142, due March 10, 2025;
- A reply brief in the United States Court of Appeals for Veterans Claims in *Schram v. Collins*, No. 24-1211, due March 24, 2025;
- Oral arguments before the United States Court of Appeals for Federal Circuit in *Deal v. Collins*, No. 23-2214, on April 9, 2025.

The requested 60-day extension would cause no prejudice to Respondent, who has advised that he has no objection to the extension. Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including May 26, 2025.

Dated this 11th day of March, 2025.

Respectfully submitted,

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