

Arellano v. McDonough: Veterans Disability Benefits and Equitable Tolling

December 11, 2023

On January 23, 2023, the U.S. Supreme Court decided *Arellano v. McDonough*. The case involved a U.S. Navy veteran, Adolfo Arellano, with a [service-connected psychiatric disability](#) resulting from an incident that occurred on board an aircraft carrier in 1980. Mr. Arellano was honorably discharged on October 29, 1981, but did not file a claim for U.S. Department of Veterans Affairs (VA) disability benefits until 2011. VA granted Mr. Arellano's claim and assigned a [benefits effective date](#) of June 3, 2011, the date VA received the claim. Mr. Arellano disagreed with the effective date and argued that, for decades starting upon his discharge from service, his disability prevented him from understanding that he could apply for VA benefits. He therefore asserted that he should qualify for a statutory [exception](#) that allows VA to assign an effective date of the day after a veteran's discharge if the veteran files a claim within one year of being discharged. Under this exception, Mr. Arellano asserted that his benefits effective date should be October 30, 1981, the day after his discharge, or January 1, 1982, when a psychiatrist first diagnosed him as suffering from psychiatric disability. A unanimous Supreme Court ultimately [ruled](#) in VA's favor. The Court held that the [statute](#) governing the effective dates of veterans' disability benefits does not allow for equitable tolling (which, in limited circumstances, suspends filing time requirements to promote fairness). Accordingly, the Court affirmed VA's assignment of June 3, 2011, as Mr. Arellano's benefits effective date.

The Supreme Court's decision has significant implications for those seeking VA benefits. This Legal Sidebar summarizes the doctrine of equitable tolling and *Arellano's* factual and procedural history. It then discusses the Supreme Court's [opinion](#). The Sidebar concludes with several considerations for Congress.

Equitable Tolling

Equitable tolling [is a rare form](#) of relief whereby courts may suspend, or toll, statutes limiting the time period for filing a claim in the interest of fairness. The Supreme Court has [described](#) this remedy as “a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods.”

Before a court can equitably toll a given statute of limitations, it must determine whether the statute is one that can be tolled. The Supreme Court [has distinguished](#) between *jurisdictional rules*, which cannot be

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equitably tolled, and *claims-processing rules*, which are “[presumptively subject](#) to equitable tolling.” In assessing whether a statute is subject to equitable tolling, a court [will look](#) to Congress’s intent.

For a court to equitably toll a statute of limitations, it must [find](#) that an extraordinary circumstance prevented a claimant from filing a claim in a timely manner and that, despite the circumstance, the claimant acted diligently in pursuing the claim. If a claimant demonstrates both factors, the court can toll the statute of limitations and the court or an agency can accept an otherwise untimely filing. Courts have equitably tolled statutes in various situations, including when natural disasters, government conduct, or a disability prevented a timely filing.

Factual Background

Mr. Arellano served in the U.S. Navy from November 1, 1977, to October 29, 1981. [On July 29, 1980](#), Mr. Arellano was serving on the aircraft carrier USS *Midway* servicing fighter jets on the flight deck. [That night](#), the carrier collided with a freighter, which [tore through](#) the *Midway*’s hull underneath the overhanging flight deck and above the waterline. Two sailors were killed and three were injured. The carrier suffered major damage to its hull and systems and multiple planes were damaged or destroyed. During the crash, Mr. Arellano was almost [crushed](#) and almost swept overboard by moving equipment.

Mr. Arellano was honorably discharged on October 29, 1981. [On January 1, 1982](#), a psychiatrist first diagnosed Mr. Arellano as suffering from delusions, anxiety, and paranoia and treated him with antipsychotic medication. The medication, in turn, caused violent shaking known as tardive dyskinesia. Over the following decades, Mr. Arellano exhibited the same psychiatric symptoms and was consistently treated with antipsychotics and anxiolytics as both an outpatient and inpatient (including extended involuntary admissions) by VA health care providers. Over this same period, Mr. Arellano experienced great difficulty finding and keeping work and interacting with others.

Procedural History

Mr. Arellano first applied for VA service-connected disability benefits [on June 3, 2011](#), for back, shoulder, and head disorders. He filed a supplemental claim seeking benefits for post-traumatic stress disorder (PTSD) on June 13, 2011. A VA regional office (RO) denied his claims in March 2012. Mr. Arellano sought reconsideration in May 2012, which the RO denied in July 2012.

On October 9, 2012, Mr. Arellano filed another supplemental claim seeking service-connected disability benefits related to schizoaffective disorder and tardive dyskinesia. The RO denied these claims in August 2013. Mr. Arellano submitted notices of disagreement with the RO’s denials in March 2013 and November 2013, respectively. In October 2014, the RO issued a new decision reiterating its denials, and Mr. Arellano perfected his appeal in December 2014. At the end of the month, the RO granted Mr. Arellano service connection for schizoaffective disorder bipolar type with PTSD and assigned a 100% disability rating effective June 3, 2011. The RO also granted service connection for tardive dyskinesia, assigning a non-compensable (0%) rating effective January 31, 2012. Mr. Arellano’s brother, on Mr. Arellano’s behalf, appealed the RO’s effective date determination to the [Board of Veterans’ Appeals \(BVA\)](#) seeking an earlier benefits effective date. He argued that Mr. Arellano’s service-connected disability prevented Mr. Arellano from understanding that he could apply for VA benefits and from doing so from the time of Mr. Arellano’s discharge until he filed his claim. Mr. Arellano’s brother asserted that Mr. Arellano should, as a result of incapacity, qualify for an earlier effective date under [38 U.S.C. § 5110\(b\)\(1\)](#), a statutory provision that allows a veteran’s disability benefits effective date to be the day after discharge if the veteran files a claim within one year of being discharged. In line with this position, Mr. Arellano’s brother asked BVA to assign a benefits effective date of October 30, 1981, the day after

Mr. Arellano's discharge, or January 1, 1982, when a psychiatrist first diagnosed Mr. Arellano as suffering from mental illness.

On July 28, 2017, the BVA [denied](#) Mr. Arellano's request for an earlier effective date. In support of its decision, the BVA cited [§ 5110](#) (implemented through [38 C.F.R. § 3.400](#)), which states that, except in certain circumstances, a veteran's benefits effective date "shall not be earlier than the date of receipt of application therefor." One exception to this general rule is [§ 5110\(b\)\(1\)](#), which provides that if a veteran files a claim within one year of being discharged for a disability suffered during service, the benefits effective date will be one day after the date of discharge. The BVA found that this exception did not apply and that, therefore, Mr. Arellano's benefits effective date is June 3, 2011. The BVA did, however, find that Mr. Arellano filed his tardive dyskinesia informal claim earlier than January 31, 2012, and awarded Mr. Arellano an earlier benefits effective date of August 29, 2011, for that disability. Mr. Arellano appealed the BVA decision to the [U.S. Court of Appeals for Veterans Claims \(CAVC\)](#).

On August 14, 2019, the CAVC [affirmed](#) the BVA's decision. Like the BVA, CAVC cited [§ 5110](#), stating that, except in certain situations, a veteran's benefits effective date is the date that VA receives their claim. The CAVC also relied on the [U.S. Court of Appeals for the Federal Circuit's](#) (Federal Circuit's) 2003 opinion in *Andrews v. Principi*. In that case, the Federal Circuit held that [§ 5110](#) is not a statute of limitations that can be equitably tolled. Rather, the provision delineates a statutory requirement for when benefits can begin, and courts are unable to waive this express statutory requirement. Mr. Arellano subsequently appealed to the Federal Circuit.

A three-judge panel of the Federal Circuit heard argument on July 6, 2020. Before a decision was issued, a majority of the court [voted](#) to consider the case en banc—that is, the judges of the court voted to have the case considered by all of the judges of the court, not just the original three-judge panel. Following en banc consideration, the Federal Circuit unanimously [held](#) that [§ 5110](#) is not subject to equitable tolling and affirmed the CAVC's decision. The court was, however, equally divided in the reasons for its determination, so it issued no majority opinion. Six judges opined that *Andrews v. Principi* controlled and that [§ 5110](#) is not a statute of limitations subject to equitable tolling. This contingent of judges further reasoned that, even if the provision was a statute of limitations, its language evinces Congress's clear intent to foreclose equitable tolling when it comes to a veteran's benefits effective date. Six other judges wrote that [§ 5110](#) is indeed a statute of limitations that can be equitably tolled and that *Andrews v. Principi* should be overruled. However, this group of judges believed that the facts of Mr. Arellano's case did not warrant equitable tolling. Mr. Arellano then sought review by the U.S. Supreme Court by filing a [petition](#) for a writ of certiorari, which the Court [granted](#).

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On January 23, 2023, the U.S. Supreme Court [unanimously affirmed](#) the Federal Circuit's decision. The Court, in an opinion written by Justice Amy Coney Barrett, expressly did not address whether [§ 5110](#) is a statute of limitations. Rather, the Court determined that there is good reason to believe that Congress did not want equitable tolling to apply to this provision, regardless of whether it is a statute of limitations, reasoning that this conclusion is "[straightforward](#)."

The Supreme Court [focused](#) on language in [§ 5110](#) stating that a veteran's benefits effective date "shall not be earlier than the date of receipt of application therefor," and that this is the case "[u]nless specifically provided otherwise" in statute. Allowing equitable tolling in addition to existing statutory exceptions, the Court reasoned, would depart from congressional intent.

The Supreme Court also [determined](#) that "[t]he structure of [§ 5110](#) reinforces Congress's choice to set effective dates solely as prescribed in the [statutory] text," to the exclusion of equitable tolling. The Court listed sixteen statutory exceptions to the default benefits effective date, including those that appear to take

equitable considerations into account. One such exception is § 5110(e)(1), which, in the case of certain survivor benefits for a deceased veteran's child, allows the benefits effective date to be "the first day of the month in which the child's entitlement arose" if the claim is filed within one year of that date.

According to the Court, this statute takes into account the fact that child claimants are "typically dependent on others for prompt filing." The Court therefore concluded that the fact "[t]hat Congress accounted for equitable factors in setting effective dates strongly suggests that it did not expect an adjudicator to add a broader range of equitable factors to the mix."

Based on the foregoing analysis, the Supreme Court held that § 5110 "is not subject to equitable tolling" and affirmed the Federal Circuit's decision. Mr. Arellano's benefits effective date is therefore June 3, 2011, the date VA received his claim.

Congressional Considerations

The Supreme Court's *Arellano* decision has implications for veterans seeking VA disability benefits, as well as other claimants, such as the surviving spouses and children of deceased veterans seeking dependency, indemnity, or death benefits. It precludes claimants from attaining benefits effective dates earlier than the dates that VA receives their claims, except in the specific situations statutorily delineated by Congress in § 5110. None of these exceptions provides for benefits effective dates earlier than one year prior to VA's receipt of a claim.

If Congress disagrees with the Supreme Court's decision in *Arellano*, it could pass a law accounting for the effects of claimants' disabilities on their ability to file claims. For example, Congress could include a statutory exception to existing benefits effective date provisions addressing cases where a claimant's disability hinders or prevents them from making a claim. Such an exception could provide for an earlier benefits effective date commensurate with when a disability became so severe that it hindered or prevented a claimant from understanding that they could file for VA benefits or prevented them from doing so. Congress could also require enhanced compensation for a certain length of time or up to a certain amount in cases where a disability hindered or prevented a claimant from submitting a claim to VA in a timely manner.

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