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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SHINSEKI, SECRETARY OF VETERANS AFFAIRS *v.* SANDERS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 07–1209. Argued December 8, 2008—Decided April 21, 2009*

As part of the Department of Veterans Affairs' (VA) statutory duty to help a veteran develop a benefits claim, the Secretary of Veterans Affairs (Secretary) must notify an applicant of any information or evidence that is necessary to substantiate the claim. 38 U. S. C. §5103(a). VA regulations require the notice to specify (1) what further information is necessary, (2) what portions of that information the VA will obtain, and (3) what portions the claimant must obtain. These requirements are referred to as Type One, Type Two, and Type Three, respectively.

The Court of Appeals for Veterans Claims (Veterans Court), which hears initial appeals from VA claims decisions, has a statutory duty to "take due account of the rule of prejudicial error." §7261(b)(2). It has developed a system for dealing with notice errors, whereby a claimant arguing that the VA failed to give proper notice must explain precisely how the notice was defective. The reviewing judge will then decide what "type" of notice error the VA committed. Under the Veterans Court's approach, a Type One error has the "natural effect" of harming the claimant, but Types Two and Three errors do not. In the latter instances, the claimant must show harm, *e.g.,* by describing what evidence he would have provided (or asked the Secretary to provide) had the notice not been defective, and explaining just how the lack of that notice and evidence affected the adjudication's essential fairness.

The Federal Circuit, which reviews Veterans Court decisions, re-

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*Together with *Shinseki, Secretary of Veterans Affairs* v. *Simmons,* also on certiorari to the same court (see this Court's Rule 12.4).

jected the Veterans Court's approach and set forth its own framework for determining whether a notice error is harmless. When the VA provides a claimant with a notice that is deficient in *any* respect, the framework requires the Veterans Court to presume that the error is prejudicial and requires reversal unless the VA can demonstrate (1) that the defect was cured by the claimant's actual knowledge or (2) that benefits could not have been awarded as a matter of law. The Federal Circuit applied its framework in both of the present cases.

In respondent Sanders' case, the VA denied disability benefits on the ground that Sanders' disability, blindness in his right eye, was not related to his military service. Sanders argued to the Veterans Court that the VA had made notice errors Type Two and Type Three when it informed him what further information was necessary, but failed to tell him which portions of that information the Secretary would provide and which portions he would have to provide. The Veterans Court held these notice errors harmless, but the Federal Circuit reversed, ruling that the VA had not made the necessary claimant-knowledge or benefits-ineligibilty showing required by the Federal Circuit's framework.

The VA also denied benefits in respondent Simmons' case after finding that her left-ear hearing loss, while service connected, was not severe enough to warrant compensation. Simmons argued to the Veterans Court, *inter alia,* that the VA had made a Type One notice error by failing to notify her of the information necessary to show worsening of her hearing. The court agreed, finding the error prejudicial. Noting that a Type One notice error has the "natural effect" of producing prejudice, the Veterans Court added that its review of the record convinced it that Simmons did not have actual knowledge of what evidence was necessary to substantiate her claim and, had the VA told her more specifically what additional information was needed, she might have obtained that evidence. The Federal Circuit affirmed.

Held:

1. The Federal Circuit's harmless-error framework conflicts with §7261(b)(2)'s requirement that the Veterans Court take "due account of the rule of prejudicial error." Pp. 8–15.

(a) That §7261(b)(2) requires the same sort of "harmless-error" rule as is ordinarily applied in civil cases is shown by the statutory words "take due account" and "prejudicial error." Congress used the same words in the Administrative Procedure Act (APA), 5 U. S. C. §706, which is an " 'administrative law . . . harmless error rule,' " *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, ___. Legislative history confirms that Congress intended §7261(b)(2) to incorporate the APA's approach. Pp. 8–9.

(b) Three related features, taken together, demonstrate that the Federal Circuit's framework mandates an approach to harmless error that differs significantly from the one normally taken in civil cases. First, the framework is too complex and rigid: In every case involving any type of notice error, the Veterans Court *must* find the error harmful unless the VA demonstrates the claimant's actual knowledge curing the defect or his ineligibility for benefits as a matter of law. An error's harmlessness should not be determined through the use of mandatory presumptions and rigid rules, but through the case-specific application of judgment, based upon examination of the record. See *Kotteakos* v. *United States*, 328 U. S. 750, 760. Second, the framework imposes an unreasonable evidentiary burden on the VA, requiring the Secretary to demonstrate, *e.g.,* a claimant's state of mind about what he knew or the nonexistence of evidence that might significantly help the claimant. Third, the framework requires the VA, not the claimant, to explain why the error is harmless. The burden of showing harmfulness is normally on the party attacking an agency's determination. See, *e.g.*, *Palmer* v. *Hoffman*, 318 U. S. 109, 116. This Court has placed the burden on the Government only when the underlying matter was criminal. See, *e.g., Kotteakos, supra*, at 760. The good reasons for this rule do not apply in the ordinary civil case. Pp. 9–13.

(c) The foregoing analysis is subject to two important qualifications. First, the Court need not, and does not, decide the lawfulness of the Veterans Court's reliance on the "natural effects" of certain kinds of notice errors. Second, although Congress' special solicitude for veterans might lead a reviewing court to consider harmful in a veteran's case error that it might consider harmless in other cases, that is not at issue, and need not be decided here. Pp. 13–15.

2. In Sanders' case, a review of the record demonstrates that the Veterans Court lawfully found the notice errors harmless. The VA's Types Two and Three notice errors did not matter, given that Sanders has pursued his claim for many years and should be aware of why he has been unable to show that his disability is service connected. Sanders has not told the reviewing courts what additional evidence proper notice would have led him to obtain or seek and has not explained how the notice errors could have made any difference.

In Simmons' case, some features of the record suggest that the VA's Type One error was harmless, *e.g.,* that she has long sought benefits and has a long history of medical examinations. But other features, *e.g.*, that her left-ear hearing loss was concededly service connected and has continuously deteriorated over time, suggest the opposite. Given the uncertainties, the Veterans Court should decide whether reconsideration is necessary. Pp. 15–17.

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487 F. 3d 881, reversed and remanded; 487 F. 3d 892, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined.