

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Jo-Ann Sacco,**  
Petitioner

v.

Docket No. VS-22-0246

**Executive Office of Veterans' Services,<sup>1</sup>**  
Respondent

**Appearances for Petitioner:**

Harper Burke, Esq.  
T. Peter Pound, Esq.  
Morgan, Lewis & Bockius LLP  
One Federal Street  
Boston, MA 02110-1726

Daniel Nagin, Esq.  
Legal Services Center of Harvard Law School  
122 Boylston Street  
Jamaica Plain, MA 02130

**Appearance for Respondent:**

Alexandra Ford, Esq.  
Administrative Law Counsel  
Executive Office of Veterans Services  
600 Washington St.  
1st Floor  
Boston, MA 02111

**Administrative Magistrate:**

Kenneth Bresler

---

<sup>1</sup> Until March 1, 2023, the Executive Office of Veterans Services (EOVS) was known as the Massachusetts Department of Veterans' Services (DVS).

## **SUMMARY OF DECISION**

Under a regulation of the Executive Office of Veterans' Services (EOVS), an application for Chapter 115 benefits must be dated with the date of the first contact between an applicant and Veterans' Service Officer (VSO). In 2019, a veteran's widow worked with a VSO to apply for benefits from the U.S. Department of Veterans Affairs. In 2021, the widow applied for Chapter 115 benefits. EOVS's decision not to award retroactive benefits between 2019 and 2021 is affirmed; EOVS's motion for summary decision is granted.

## **DECISION**

The petitioner, Jo-Ann Sacco, contests the decision of the Executive Office of Veterans' Services not to grant her veterans' benefits under Chapter 115 for the period between 2019 and 2021. Her case is not strictly an appeal, as I explain below.

The case was decided on submissions and other documents, as I explain below.

## **Findings of Fact**

1. In 1971, David Sacco joined the U.S. Army. (DVS Decision and Order 6) In 1972, he was deployed to Vietnam. (Ex. 5<sup>2</sup>)

2. In 1973, the U.S. Army discharged Mr. Sacco under conditions other than honorable. (Ex. 5) Mr. Sacco had initiated the discharge by signing a Request for Discharge for the Good of the Service, which recognized that he could receive such a discharge. (Ex. 10 I)

3. In 1975, Jo-Ann Shebertes and David Sacco married; she became Jo-Ann Sacco. (Ex. 3; Affidavit of Jo-Ann Sacco<sup>3</sup>)

4. In 2017, Mr. Sacco died. (Ex. 4; Sacco affidavit)

---

<sup>2</sup> Exhibits with numbers are attached to the Decision and Order of the Massachusetts Department of Veterans' Services, June 8, 2022.

<sup>3</sup> Mrs. Sacco's affidavit is Exhibit A, attached to Petitioner's Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021 and Incorporated Memorandum of Law in Support.

5. According to Mrs. Sacco,

I first started working with Jim Devlin, the former Veterans Service Officer in Stoneham, in early 2019....He helped me apply for benefits through both the VA and the state's Chapter 115 program.

(Sacco affidavit at 2)<sup>4</sup>

6. On January 29, 2019, Mrs. Sacco and Thomas Ryan, National Service Officer for the Massachusetts Department of Veterans' Services (DVS), signed a U.S. Department of Veterans Affairs form, VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative. Mrs. Sacco then lived in Stoneham. (Ex. B, p. 1<sup>5</sup>) (The substance of the forms that Mrs. Sacco signed on January 29, 2019 is not significant.) See 108 CMR 12.04 (state veterans' agents assist applicants with both state and federal benefits).<sup>6</sup>

7. Also on January 29, 2019, Mrs. Sacco signed a U.S. Department of Veterans Affairs form, VA Form 21-0966, Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC. (Ex. B, p. 3) ("DIC" stands for "Dependency and Indemnity Compensation.")

8. Also on January 29, 2019, Mrs. Sacco signed a U.S. Department of Veterans Affairs form, VA Form 21-0845, Authorization to Disclose Personal Information to a Third Party. The third party was Stoneham Veterans Services. (Ex. B., p. 4; Ex. C, p. 1)

9. On April 16, 2019, Mrs. Sacco signed a U.S. Veterans Affairs Department form, VA

---

<sup>4</sup> To the extent that it matters, the record contains no support for this contention, unless "early 2019" means "April 16, 2019." Rather, the record shows that Mrs. Sacco was in contact with a Massachusetts DVS employee on or before January 19, 2019, not Mr. Devlin. See next Factual Finding.

<sup>5</sup> Exhibits with letters are attached to Petitioner's Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021 and Incorporated Memorandum of Law in Support.

<sup>6</sup> The record does not reveal who Mr. Ryan was, other than his title, or what a National Service Officer is. An employee of the Massachusetts DVS or EOVS is apparently not a veterans' agent; a veterans' agent must be a municipal employee, according to the definition. G.L. c. 115, §1.

Form 21P-534EZ, an Application for DIC, Survivors Pension and/or Accrued Benefits. (Ex. 10A). (The substance of the application is not significant.)

10. Also on April 16, 2019, James Devlin, Stoneham's Veterans' Service Officer (VSO), signed the Statement in Support. (Ex. C, p. 5-6)<sup>7</sup>

11. On April 17, 2019, Timothy Sullivan, a Veterans' Service Officer with Massachusetts DVS, mailed the application and accompanying documents to the U.S. Veterans Department. (Ex. 10A; Ex. C, p. 7)

12. On July 9, 2019, the U.S. Department of Veterans Affairs denied Mrs. Sacco's application. (Ex. 10B) One reason was that Mr. Sacco's discharge from the military had been dishonorable for VA's purposes. (Ex. C, p. 4)

13. On or around April 6, 2021, Mrs. Sacco applied for Chapter 115 benefits. (Ex. D)<sup>8</sup>

14. By then, Melanie Mendel was the Stoneham VSO. (Ex. 1; Sacco affidavit)

15. On an unknown date, Mrs. Sacco petitioned Massachusetts DVS under 108 CMR 3.06(2)<sup>9</sup> and (3). (DVS Decision and Order 1) (This may have been part of Mrs. Sacco's application for Chapter 115 benefits.)

---

<sup>7</sup> Although VSO is the usual terminology, Chapter 115 uses the term "veterans' agent." G.L. c. 115, §1.

<sup>8</sup> On January 6, 2025, I asked the parties for the application because I had not located it in the record. On January 10, 2024, one of Mrs. Sacco's lawyers emailed in part: "Counsel for Mrs. Sacco does not have a copy of Mrs. Sacco's Chapter 115 application....We note that there is no dispute that a Chapter 115 application was made...." On January 14, 2024, EOVS provided an unsigned copy of Mrs. Sacco's application, a VS-1 Form, which I have marked Exhibit D. On that date, EOVS also provided affidavits from EOVS's hearing officer and Stoneham's VSO averring that they had checked their respective entity's files and could not locate a signed copy of Mrs. Sacco's application. I find that the absence of a signed copy is ultimately not significant.

<sup>9</sup> The first regulation states:

An applicant who has received an undesirable discharge shall be presumed to be ineligible for benefits. The applicant shall be entitled to challenge that

16. On April 6, 2021, the Town of Stoneham notified Mrs. Sacco that on April 27, 2027, it would deny her application for Chapter 115 benefits because Mr. Sacco's discharge had been less than honorable. The denial notified Mrs. Sacco that she had 21 days to appeal to DVS. (Ex. 1; Sacco affidavit)

17. On April 22, 2021, Mrs. Sacco timely appealed to the Massachusetts DVS. (Ex. 2)

18. On June 8, 2022, the Massachusetts DVS upheld Stoneham's denial of Mrs. Sacco's application. (Decision and Order)

19. On June 16, 2022, Mrs. Sacco timely appealed to the Division of Administrative Law Appeals (DALA). (Appeal letter)

20. At some time before October 12, 2022, Mrs. Sacco decided to seek to have Mr. Sacco's discharge upgraded posthumously. (Standstill Agreement)

21. On October 12, 2022, the parties agreed that Mrs. Sacco would receive Chapter 115 benefits while Mrs. Sacco sought the discharge upgrade. (Standstill Agreement)

22. On November 2, 2022, at the request of the parties, I held Mrs. Sacco's appeal in abeyance while she sought the discharge upgrade. (Order to Hold Appeal in Abeyance)

23. On April 28, 2023, Mrs. Sacco applied to the Army Review Boards Agency to upgrade Mr. Sacco's discharge. (Joint Progress Report, May 2, 2023)

24. On March 12, 2024, the Army Board for Correction of Military Records upgraded Mr. Sacco's discharge to General, Under Honorable Conditions. (Record of Proceedings, attached to Joint Status Report, April 1, 2024)

25. On April 1, 2024, the parties agreed that Mr. Sacco's discharge upgrade resolved

---

presumption on the ground that the circumstances of the discharge were not dishonorable....

The second regulation in effect gives EOVS discretion to waive the first regulation.

some of the issues in Mrs. Sacco's appeal. (Joint Status Report, April, 2024)

26. In or around April 2024, Mrs. Sacco submitted paperwork for Chapter 115 benefits to the Veterans' Services Office in Melrose, where she was living (not Stoneham, where she had lived previously and had initially applied). (Joint Status Report, May 31, 2024)

27. In May 2024, the City of Melrose started paying Chapter 115 benefits to Mrs. Sacco. (Joint Status Report, May 31, 2024)

28. The parties agreed in principle that the City of Melrose would pay retroactive benefits to Mrs. Sacco for the period April 2021 (when she applied for Chapter 115 benefits in Stoneham) through April 2024 (the month before she started receiving Chapter 115 benefits from Melrose). (Joint Status Report, May 31, 2024)

29. The parties did not agree whether Mrs. Sacco was eligible for retroactive benefits from April 2019 through March 2021. (Joint Status Report, May 31, 2024)<sup>10</sup>

30. In October 2024, I scheduled a hearing for December 2024. In anticipation of the hearing, the parties filed the following:

A. Petitioner's Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021 and Incorporated Memorandum of Law in Support. (Petitioner's Motion)<sup>11</sup>

---

<sup>10</sup> Note the start of the period: April 2019. Mrs. Sacco, through her lawyers, stated:

Petitioner's position is that her eligibility for retroactive benefit payments relates back to the date of her application....Petitioner has provided documentation evidencing contact with her local VSO as of April 16, 2021, and maintains that her period of eligibility...should run from that date....

(Joint Status Report, May 31, 2024, at 3 (two references to April 2019))

"April 16, 2021" is probably a typographical error for "April 16, 2019."

<sup>11</sup> Note that the start of the period for which Mrs. Sacco sought retroactive benefits had changed from April 2019 to January 2019. Mrs. Sacco, through her lawyers, did not explain the change. Neither party noted the change. The change is ultimately not significant, as I discuss below.

B. Respondent's Opposition to Petitioner's Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021 and Motion for Summary Decision. (EOVS Opposition)

C. Petitioner's Reply in Support of Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021. (Petitioner's Reply)

31. Mrs. Sacco, through her lawyers, stated that her eligibility for Chapter 115 benefits left

one issue – one that should be a purely legal question, since the relevant facts are not reasonably in dispute: that of Mrs. Sacco's entitlement to retractive payments for an earlier period of time, specifically January 2019 to March 2021.

(Petitioner's Motion at 5)

32. EOVS, in its motion for summary decision, stated:

The parties agree, Petitioner made contact with the Stoneham VSO in 2019. See Petitioner's Instant Motion at 2. The only question here is a legal one—for Chapter 115, when is "first contact" for the purpose of dating an application for benefits.

(Respondent's Opposition and Motion for Summary Decision)

33. On December 4, 2024, I emailed the parties in part:

The petitioner's motion, p. 5, states that one purely legal issue remains. My reading of the submissions<sup>12</sup> leads me to agree. In addition, my reading of the submissions reveals that the one issue is not complicated.

I rarely hold hearings on motions and legal issues. Since the hearing scheduled for Dec. 17, 2024 will not be an evidentiary hearing, I question the need for a hearing.

34. Mrs. Sacco, through one of her lawyers, responded by email:

If you have no questions for the parties and do not believe a hearing is necessary, Petitioner agrees a hearing is not necessary.

---

<sup>12</sup> Including EOVS's motion for summary decision. Such a motion is premised on the absence of a "genuine issue of fact." 801 CMR 1.01(7)(h).

35. EOVS responded by email: “EOVS agrees that a hearing is not necessary.”

36. I canceled the hearing and now consider whether Mrs. Sacco is entitled to Chapter 115 benefits for the period January 2019 through March 2021.

### **Discussion**

#### Whether the remaining issue is before me

Neither party has noted that what the parties consider the remaining issue in this appeal (retroactivity of benefits to 2019) is not strictly on appeal or before me.

In 2021, Mrs. Sacco applied for Chapter 115 benefits; the Town of Stoneham denied her application; she appealed to the Massachusetts DVS; DVS upheld the Town of Stoneham’s denial; and she appealed to DALA. Before her case arrived at DALA, Mrs. Sacco did not apparently ask that her 2021 application be considered retroactively to 2019; she has not been explicitly denied benefits retroactively to 2019; and she has not appealed the denial of benefits retroactively to 2019. (I write “apparently” because Mrs. Sacco’s signed application – and thus, presumably, a final one – is not in the record.)

The parties first raised with DALA the issue of benefits retroactive to 2019 in their Joint Status Report dated May 31, 2024, as far as I can tell. Just as a joint prehearing memorandum is “not a mechanism to expand the underlying appeal itself,” *John Sorrentino v. State Board of Retirement*, CR-19-0118 (DALA 2023), neither a status report to DALA nor a motion to DALA, as in this case, is a way to launch an appeal. See Petitioner’s Motion to Receive Chapter 115 Benefits for the Period January 2019 Through March 2021.

As I wrote in *Sorrentino*,

I have authority to decide in an appeal only the issues that a petitioner has appealed. I cannot decide issues that are not on appeal. *See Michael Dufresne et al. v. State Board of Retirement*, CR-19-0572 (DALA 2022). By extension, I have



no authority to decide issues that the parties agree are in front of me or do not object to my hearing but are not actually in front of me.... I have no authority to examine a general situation that has been brought to my attention through an appeal of a specific issue and issue orders to rectify the situation beyond the appealed issue.

Nonetheless, I reluctantly examine the retroactivity issue because it *could* be the subject of an appeal, unlike in *Sorrentino* and *Dufresne*, and administrative economy militates in favor of my resolving it now without Mrs. Sacco's having to apply for benefits explicitly retroactive to 2019 (which she apparently did not do in 2021), having the application denied, having to proceed to EOVS for an appeal, and so on. As it is, Mrs. Sacco's application began in 2021 and her appeal to DALA began in 2022.

Since (1) retroactivity to neither April 2019 nor January 2019 is strictly on appeal; (2) I am examining the issue of retroactivity for the sake of administrative economy; and (3) I rule against Mrs. Sacco, it is not significant that Mrs. Sacco, through her lawyers, asked for retroactivity to April 2019 in the Joint Status Report, May 31, 2024, and for retroactivity to January 2019 in Petitioner's Motion five months later.

Whether Mrs. Sacco has one or two arguments

The introduction to Petitioner's Motion refers to 108 CMR 4.02(3)(e) and its "first contact" language three times. Thus, Mrs. Sacco's argument is as follows: Since 108 CMR 4.02(3)(e) specifies that the "date which appears on the application shall be the date of the applicant's first contact with the veterans' agent," and Mrs. Sacco first contacted the VSO in 2019 about federal benefits, her 2021 application for Chapter 115 benefits should have been dated 2019.

It is unclear whether Mrs. Sacco meant to advance the following second argument: The Stoneham VSO was required to have explained Chapter 115 benefits to Mrs. Sacco in January

2019 when she began to apply for benefits from the U.S. Department of Veterans Affairs. Therefore, she deserves Chapter 115 benefit retroactive to 2019. (See Petitioner's Motion at 8, 9, 10; Petitioner's Reply at 5-7)

I find that Mrs. Sacco has advanced only one argument, the one about 108 CMR 4.02(3)(e) and its "first contact" language. That is the only argument I will examine. I so find for the following reasons:

- In the Joint Status Report dated May 31, 2024, the first time that the parties raised retroactivity, Mrs. Sacco, through her lawyers, stated:

Petitioner's position is that her eligibility for retroactive benefit payments relates back to the date of her application, which is "[t]he date of the appellant's first contact with the veteran's agent." 108 CMR 4.02(3)(e).

- The introduction to Petitioner's Motion refers to 108 CMR 4.02(3)(e) and its "first contact" language three times, as I state above.

- Mrs. Sacco has barely developed any possible legal argument about a VSO's obligation to explain Chapter 115 benefits to a potential applicant who may or may not be eligible. She has not developed any facts about what happened or did not happen, and who said or did not say what or why, in January or April 2019. Mrs. Sacco has stated that the one remaining issue in this appeal is "a purely legal question, since the relevant facts are not reasonably in dispute." (Petitioner's Motion at 5) Since the facts that Mrs. Sacco had contact with a VSO or similar person in January and April 2019 are not reasonably in dispute, I take Mrs. Sacco's position to be that the purely legal question is the "first contact" language in 108 CMR 4.02(3)(e).

#### The regulation and its interpretation

108 CMR 4.02(3) generally requires an application for Chapter 115 benefits to be on Form VS-1. The regulation continues:

(e) The date which appears on the application shall be the date of the applicant's first contact with the veterans' agent.

EOVS's reasonable interpretation, which I accept, is that the "first contact" language means an applicant's first contact with a VSO *for Chapter 115 benefits*. (EOVS Opposition)

EOVS's interpretation of "first contact" is authoritative and generally deserves deference because EOVS wrote the regulation and its interpretation is reasonable. *Freiner v. Secretary of Executive Office of Health and Human Services*, 494 Mass. 198, 205 (2024).<sup>13</sup>

A court will reject a "literal interpretation" of a regulation that would be utterly absurd and contrary to agency's interpretation. *Haas v. Commissioner of Correction*, 103 Mass. App. Ct. 1, 10 n.11 (2023). While common sense can be an aid in interpreting a regulation, *e.g.*, *Morales v. Commissioner of Public Welfare*, 18 Mass. App. Ct. 239, 243 n.5 (1984), Mrs. Sacco's interpretation of the "first contact" language defies common sense. EOVS demonstrates as much:

A former service member might contact a VSO, requesting help appealing a VA disability rating, asking what documentation was required to appeal the rating, and if there were any other programs available to help them while they waited on the VA rating change. A VSO might inform a veteran about Chapter 115, but the veteran decides they do not need the Chapter 115 money until 10 years later. An applicant for Chapter 115 may have called the VSO 5 years prior, concerned they were going to lose their job, and asking for information about the Chapter 115 program. The applicant did not lose their job for 5 years, but recalls the conversation well, and wants that to be their first contact with the VSO. An applicant may have gone to high school with the VSO, called the VSO when they had both been recently discharged from service, to congratulate the VSO on his new job as VSO in their hometown and asking about what type of programs were

---

<sup>13</sup> On June 28, 2024, fourteen days after the Massachusetts Supreme Judicial Court issued its *Frenier* decision, the U.S. Supreme Court issued *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overturned the doctrine known as *Chevron* deference, named after the case of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The doctrine granted deference to administrative agencies' interpretations of the statutes that they implemented. *Loper* has had no known impact on *Frenier* and Massachusetts law because *Loper*, unlike *Frenier*, interpreted the U.S. Constitution and the federal Administrative Procedure Act. No Massachusetts Court has cited *Loper* as of this writing.

offered to assist veterans, 35 years ago. None of these contacts can reasonably be construed as a “first contact” within the meaning of the law.

(EOVS Opposition 7-8)

Sometimes a regulation calls for a literal interpretation. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 393 (2024) (“The text of the APA means what it says”). Sometimes a regulation calls for an interpretation determined by context. *Knapp Shoes, Inc. v. Sylvania Shoe Manufacturing Corp.*, 418 Mass. 737, 744 (1994).

Context matters here. The “first contact” language is in the context of applying for Chapter 115 benefits on the VS-1 Form, not contact regarding U.S. veterans’ benefits and not *any* contact regarding anything.

Mrs. Sacco’s lawyers may or may not be aware of it, but despite their repeated requests that the regulation be interpreted by its “plain language” (Petitioner’s Motion; Petitioner’s Reply), they implicitly request an interpretation that is partly literal and partly less than literal.

The regulation refers to “the applicant’s first contact with *the* veterans’ agent,” not *a* veterans’ agent. *The* veterans’ agent who helped Mrs. Sacco with the Form VS-1, which the regulation refers to, was Melanie Mendel in 2021, not James Devlin in April 2019. The regulation’s reference to “the veterans’ agent” means Ms. Mendel. Mrs. Sacco’s first contact with “the veterans’ agent” who helped her with her application was in April 2021 and that was the date that went on her application.

Furthermore, the regulation refers to “the applicant’s first contact with the *veterans’ agent*.” Mrs. Sacco’s contact in January 2019 with Mr. Ryan, a DVS National Service Officer, was apparently not with a veterans’ agent, as I discuss above.

Thus, Mrs. Sacco seeks an interpretation of the regulation in which “first contact” is interpreted literally to her advantage and “the” and “veterans’ agent” are interpreted less than

literally to her advantage.

The word “first contact” should be interpreted in context. It means contact with a VSO for the purpose of filling out a VS-1 Form. The “the” should be interpreted less than literally. If one VSO had the first contact with a veteran and another VSO prepared the VS-1 Form with a date, the regulation should bind the second VSO, despite the word “the.” The term “veterans’ agent” should be interpreted literally to mean a person who meets the definition of “veterans’ agent,” not any person who helps veterans.

As this agency stated in *Michaud v. Executive Office of Veterans’ Services*, VS-23-0689 (DALA 2024):

Although it is not clear why the Petitioner’s representative was never able to file a properly completed application with the appropriate entity despite these repeated attempts to do so, the reason why it was not done is immaterial. The bottom line is that the Petitioner has never filed a properly completed application for Chapter 115 benefits on the EOVS’s prescribed form.

U.S. Department of Veterans Affairs forms are not VS-1 Forms. Mrs. Sacco did not complete a VS-1 Form in 2019. She apparently signed a VS-1 Form in 2021. She is not entitled to Chapter 115 benefits dating back to 2019.

### **Conclusion and Order**

EOVS’s decision not to pay Chapter 115 benefits to Mrs. Sacco retroactively from 2021 back to 2019 is affirmed. Because EOVS is “entitled to prevail as a matter of law,” 801 CMR 1.01(7)(h), its motion for summary decision is granted.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

---

Kenneth Bresler  
Administrative Magistrate

Dated: