

18-15 KISOR V. WILKIE, SECRETARY OF VETERANS AFFAIRS

DECISION BELOW: 869 F.3d 1360

LOWER COURT CASE NUMBER: 16-1929

QUESTION PRESENTED:

Auer v. Robbins, 519 U.S. 452 (1997), and *Bowles Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), direct courts to defer to an agency's reasonable interpretation of its own ambiguous regulation. Separately, in *Brown v. Gardner*, 513 U.S. 115, 118 (1994), the Court held that "interpretive doubt is to be resolved in the veteran's favor."

Petitioner, a Marine veteran, seeks disability benefits for his service-related post-traumatic stress disorder (PTSD). While the Department of Veterans Affairs (VA) agrees that petitioner suffers from service-related PTSD, it has refused to award him retroactive benefits. The VA's decision turns on the meaning of the term "relevant" as used in 38 C.F.R. § 3.156(c)(I).

Below, the Federal Circuit found that petitioner and the VA both offered reasonable constructions of that term. On that basis alone, the court held that the regulation is ambiguous, and-invoking *Auer*- deferred to the VA's interpretation of its own ambiguous regulation. The questions presented are:

1. Whether the Court should overrule *Auer* and *Seminole Rock*.
2. Alternatively, whether *Auer* deference should yield to a substantive canon of construction.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 12/10/2018