

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 00-1985

ROBERT J. TAYLOR, APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before FARLEY, IVERS, and GREENE, *Judges*.

ORDER

The appellant, through counsel, seeks review of two Board of Veterans' Appeals (Board or BVA) decisions, both dated July 27, 2000. In the first Board decision, the Board construed the appellant's arguments as a motion to vacate pursuant to 38 C.F.R. § 20.904. The Board rejected the argument that an April 12, 1984, Statement of the Case (SOC) was so deficient that it constituted a denial of due process, and it denied the construed motion to vacate. In the second Board decision, the Board concluded that there was no basis for an earlier effective date, and it also rejected the appellant's argument that a January 1985 Board decision was not final because the SOC did not address the issue presented in the appellant's NOD.

Following oral argument before this Court on September 18, 2002, the Federal Circuit issued *Herndon v. Principi*, 311 F.3d 1121 (Fed. Cir. 2002). While we might have reached a different conclusion were we writing on a clean slate, *Herndon* compels us to reject the appellant's arguments that (1) the April 12, 1984, SOC denied the appellant due process and required the Board to vacate the January 1985 Board decision, and (2) the same SOC rendered the January 1985 decision non-final. For the reasons stated by the Federal Circuit in *Herndon*, the two July 27, 2000, Board decisions must be affirmed.

The appellant also submitted an opposed motion for leave to submit an illustrative Board decision. That Board decision is not binding on this Court, and it was not of record at the time of the Board decisions in this case.

Upon consideration of the foregoing, it is

ORDERED that the appellant's motion to file an illustrative Board decision is denied. It is further

ORDERED that both Board decisions dated July 27, 2000, are AFFIRMED.

DATED: June 12, 2003

PER CURIAM.