

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 23-7719

STANLEY L. DAVIS, APPELLANT,

v.

DOUGLAS A. COLLINS,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

On Appeal from the Board of Veterans' Appeals

(Decided November 4, 2025)

Kenneth H. Dojaquez, of Topeka, Kansas, was on the brief for the appellant.

Richard J. Hipolit, Principal Deputy General Counsel; *Mary Ann Flynn*, Chief Counsel; *Carolyn F. Washington*, Deputy Chief Counsel; and *Safiya L. Dixon*, all of Washington, D.C., were on the brief for the appellee.

Before BARTLEY, TOTH, and FALVEY, *Judges*.

BARTLEY, *Judge*: In 2018, veteran Stanley L. Davis appealed through counsel a June 2018 decision of the Board of Veterans' Appeals (Board) that denied entitlement to an effective date earlier than February 27, 2009, for the award of service connection for lupus. In May 2021, the Court affirmed that portion of the June 2018 Board decision that denied an earlier effective date under 38 C.F.R. § 3.156(b) but set aside and remanded that portion of the June 2018 Board decision that denied an earlier effective date under § 3.156(c). *Davis v. McDonough*, 34 Vet.App. 131, 140 (2021) (*Davis I*), *appeal dismissed*, No. 2022-1247, 2023 WL 1987940 (Fed. Cir. Feb. 14, 2023) (nonprecedential order) (*Davis II*). In an August 29, 2023, decision, the Board, in readjudicating the § 3.156(c) issue, again denied Mr. Davis an earlier effective date.

Mr. Davis timely appealed the August 2023 Board decision to this Court and we have jurisdiction to review it. *See* 38 U.S.C. §§ 7252(a), 7266(a). Because the current appeal involves substantially the same issue remanded by the Court in *Davis I*—entitlement to an earlier effective date under § 3.156(c)—the *Davis I* panel has reconvened. *See* U.S. VET. APP. INT. OP. PROC.

III(c)(2).¹ Because we conclude that Mr. Davis has failed to demonstrate error on this issue, we will affirm the August 2023 Board decision.

In addition, Mr. Davis contends that the Court should now revisit the § 3.156(b) issue we decided in *Davis I*, alleging that our affirmance of the denial of an earlier effective date under § 3.156(b) exceeded our jurisdiction in that we reversed a favorable Board factual finding. He argues that the law of the case doctrine should not apply to preclude the Court from revisiting the issue. However, we conclude that law of the case applies and will not retread ground we decided in May 2021.

I. FACTUAL BACKGROUND

Mr. Davis served on active duty in the U.S. Navy from August 1985 to June 1988. R. at 4140. He had additional active duty for training service from November 1984 to April 1985. R. at 1952.

In December 2001, Mr. Davis sought service connection for "nerves (breakdown)," post-traumatic stress disorder (PTSD), bilateral knee pain, bilateral foot pain, hand arthritis, hearing loss, and a lung condition. R. at 3828. In June 2002, a VA regional office (RO) denied the claims. R. at 3813-17. Regarding the psychiatric claim (nervous condition and PTSD), the RO declined to reopen a previously denied claim for service connection, finding that Mr. Davis's only mental health diagnosis was adjustment disorder, which was a non-service-connectable condition; thus, he did not demonstrate a current psychiatric condition for VA purposes. R. at 3815-16. In January 2003, Mr. Davis requested that the psychiatric claim be reopened, R. at 3805-07, which the RO construed as a Notice of Disagreement, R. at 3803-04 (March 2003 VA letter).

In May 2003, Mr. Davis filed a claim for service connection for lupus. R. at 3800. At that time, he stated that he experienced symptoms of lupus during service and that his "depression and all other mental conditions are as a result of [his] lupus." *Id.* (capitalization altered).

Later in May 2003, the RO issued a Statement of the Case (SOC), continuing the denial of service connection for an acquired psychiatric condition. R. at 3779-96. However, in September 2003, the RO noted that, although the SOC was sent to Mr. Davis, he had requested a review by a

¹ On January 16, 2025, Mr. Davis filed a combined motion for initial review by panel and for oral argument. *See* U.S. VET. APP. R. 27.1, 34(b). Because the original panel has reconvened and oral argument will not materially aid resolution of this appeal, the Court will dismiss that part of the motion requesting panel review and deny that part of the motion requesting oral argument.

decision review officer (DRO). R. at 3771. In October 2003, the RO issued another SOC after DRO review. R. at 3764-66.

In October 2003 correspondence received by VA in November 2003, Mr. Davis stated that his December 2001 claims for bilateral knee pain, bilateral foot pain, hand arthritis, hearing loss, and a lung condition were actually a single claim, service connection for lupus, as "[t]hese conditions are associated with [l]upus." R. at 3767. Also in November 2003, Mr. Davis submitted a VA Form 21-4142, requesting that VA obtain private medical records on his behalf. R. at 3760-63. In December 2003, the veteran's private physician confirmed that the veteran was treated in 2003 for glomerulonephritis (a kidney condition) secondary to lupus. R. at 3761; *see* R. at 3732.

In May 2004, the RO denied service connection for lupus and for adjustment disorder with mixed emotional features secondary to lupus. R. at 3731-35; *see* R. at 3728-30 (notification letter).

In August 2006, Mr. Davis requested reopening of the acquired psychiatric claim. R. at 3575; *see* R. at 3576-81 (attached medical records). In November 2006, the RO denied reopening, finding that the medical records only provided diagnoses of non-service-connectable mental health conditions; in other words, the records "confirm[ed] information previously reviewed" and, thus, were not new and material evidence sufficient to reopen the claim. R. at 3564-65.

In February 2009, Mr. Davis sought to reopen the lupus claim. R. at 3383-85; *see* R. at 3384 (noting date of receipt of February 27, 2009). At that time, he submitted a medical opinion from his treating private rheumatologist, stating that Mr. Davis had manifestations of lupus² during service, including a false positive VDRL/RPR test,³ significant fatigue, anemia, fever, chills, and joint pain. R. at 3498. The physician then opined that, "[i]n hindsight, the above symptoms were likely related to [lupus]." *Id.* In August 2009, a VA examiner provided a favorable linkage opinion, specifically referencing a March 1985 false positive RPR test and noting that "there are numerous

² Specifically, the rheumatologist diagnosed systemic lupus erythematosus (SLE). R. at 3498. SLE is a "chronic inflammatory, often febrile [(characterized by fever)] multisystemic disorder of connective tissue . . . characterized principally by involvement of the skin . . . , joints, kidneys, and serosal membranes." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1066 (33d ed. 2020) (DORLAND'S). "The condition is marked by a wide variety of abnormalities," including, among others, joint, kidney, lung, and heart manifestations. *Id.*

³ VDRL (Venereal Disease Research Laboratories) and RPR (rapid plasma regain) tests are common tests for screening syphilis. DORLAND'S at 1868, 1873, 1997. Because both are screening tools that detect antibodies not specific to the bacterium that causes syphilis, they can result in false positive results due to other medical conditions, including autoimmune disorders. Papp JR, Park IU, et al. *CDC Laboratory Recommendations for Syphilis Testing, United States*, 2024. MMWR Recomm Rep. 2024; 73(1), at 4-5, 8 (available at <https://www.cdc.gov/mmwr/volumes/73/rr/pdfs/rr7301a1-H.pdf>) (last accessed Nov. 3, 2025).

disease processes that can be associated with a false positive RPR, to include [SLE]." R. at 3145-46.

In June 2010, the RO granted service connection for SLE with glomerulonephritis, alopecia (baldness), and depression, assigning an initial 100% disability evaluation effective February 27, 2009. R. at 2831-35. In June 2011, Mr. Davis timely appealed the effective date assigned to the Board. R. at 2777-79.⁴ Following a November 2012 SOC, R. at 2107-27, Mr. Davis timely perfected an appeal to the Board, R. at 2098.

In March 2017, Mr. Davis argued through counsel that the December 2001 claim⁵ was not finally decided until June 2010. R. at 1975-76. This was so, he argued, because when he filed his May 2003 claim, he had stated that his depression was caused by his lupus; he asserted that that assertion transformed the original claim for depression into a claim for lupus with depression and required VA to make a responsive determination as to that statement under § 3.156(b); and he argued that VA had not directly responded to that assertion. R. at 1976. He likewise argued that the October 2003 statement required a § 3.156(b) determination. R. at 1976-77.

In August 2017, Mr. Davis submitted service records he received from the National Personnel Records Center. R. at 1949; *see* R. at 1950-72. These records included a health record noting a history of syphilis in 1980, R. at 1969; a December 1983 positive RPR test, R. at 1964; and a March 1985 positive VDRL test that was determined to be a false positive, R. at 1970; *see* R. at 3145 (August 2009 VA examiner's opinion explaining the false positive test). In November 2017, Mr. Davis, noting the August 2009 VA examiner's reliance on the March 1985 false positive blood test, argued that the service treatment records (STRs) submitted in August 2017 were relevant and warranted § 3.156(c) reconsideration. R. at 1924-25.

In June 2018, the Board denied entitlement to an earlier effective date. R. at 1904-15. In reaching that determination, the Board found that § 3.156(c) reconsideration was not warranted in light of the service records submitted by Mr. Davis in August 2017, R. at 1908-11, and rejected

⁴ Mr. Davis also argued that the May 2004 RO decision contained clear and unmistakable error (CUE), R. at 2779, an argument he repeated in October 2013, R. at 2063-65. The RO denied the CUE motion in May 2016. R. at 2016-18. Although Mr. Davis purported to appeal the May 2016 RO decision in December 2018, the Board in July 2020 found the appeal was untimely. R. at 1647-52. In May 2023, this Court affirmed the July 2020 Board decision. *Davis v. McDonough*, 36 Vet.App. 142, 155-56 (2023), *appeal dismissed sub nom. Davis v. Collins*, No. 2023-2363, 2025 WL 2017291 (Fed. Cir. July 18, 2025) (per curiam nonprecedential order).

⁵ As noted above, in May 2003, during the pendency of the December 2001 claim, Mr. Davis stated that his depression was caused by his lupus, R. at 3800, and in October 2003, he stated that the conditions for which he sought service connection in December 2001 were residuals of his lupus, R. at 3767.

Mr. Davis's argument, based on § 3.156(b), that he was entitled to an earlier effective date because the December 2001 claim was nonfinal in light of his 2003 statements, R. at 1911-14.

Mr. Davis appealed the June 2018 decision to this Court. In May 2021, a split panel affirmed that portion of the June 2018 Board decision denying an earlier effective date under § 3.156(b) but the full panel set aside that portion denying an earlier effective date under § 3.156(c). R. at 1628-40; *Davis I*, 34 Vet.App. at 140. Regarding § 3.156(b), the majority assumed that Mr. Davis's arguments about the 2003 statements were correct—that they "permissibly clarified" that his December 2001 claim was properly construed as a claim for lupus with associated joint and psychiatric problems—and that the statements triggered a § 3.156(b) determination. R. at 1634-35; *Davis I*, 34 Vet.App. at 136-37. But the majority concluded that Mr. Davis failed to demonstrate prejudicial error because the RO "for all practical purposes" rendered the requisite § 3.156(b) determination in its May 2004 decision. R. at 1635-37; *Davis I*, 34 Vet.App. at 137-38 (also concluding that the May 2004 RO decision was "directly responsive" to the 2003 statements) (citing *Beraud v. McDonald*, 766 F.3d 1402, 1407 (Fed. Cir. 2014)).

Regarding § 3.156(c), the Court noted that, after the June 2018 Board decision, the caselaw changed regarding the regulatory definition of "relevant." R. at 1638-39; *Davis I*, 34 Vet.App. at 139-40 (citing *Kisor v. Shulkin*, 869 F.3d (Fed. Cir. 2017), *vacated sub. nom Kisor v. Wilkie*, 588 U.S. 558 (2019); *Kisor v. Wilkie*, 969 F.3d 1333 (Fed. Cir. 2020), *modified and superseded on reh'g sub. nom Kisor v. McDonough*, 995 F.3d 1316 (Fed. Cir. 2021) (*Kisor IV*)). Thus, the Court remanded the § 3.156(c) issue to the Board to address the implications of the new legal development in the first instance. R. at 1639; *Davis I*, 34 Vet.App. at 140.

Mr. Davis appealed to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), seeking to challenge the portion of *Davis I* that affirmed the June 2018 Board decision regarding § 3.156(b). In February 2023, the Federal Circuit dismissed the appeal for lack of jurisdiction, concluding that because we remanded the § 3.156(c) theory of entitlement, Mr. Davis's case did not satisfy the rule of finality. *Davis II*, 2023 WL 1987940, at *1 ("[R]egardless of whether we view Mr. Davis's claim under § 3.156(b) and (c) as a single claim or as separable claims 'inextricably intertwined' because they claim compensation for the same disability, this case does not meet *Williams*'s third prong." (citing *Williams v. Principi*, 275 F.3d 1361, 1363-64 (Fed. Cir. 2002))).

In the August 2023 decision on appeal, the Board denied entitlement to an earlier effective date under § 3.156(c), noting that this theory of entitlement was the only one remanded by this Court. R. at 6. The Board concluded that the service records submitted by Mr. Davis in November 2017 "were simply cumulative documents reiterating information that was never in dispute and was already clear from the STRs of record at the time of the May 2004 denial" by the RO. R. at 10. This appeal followed.

II. THE § 3.156(b) ISSUE AND LAW OF THE CASE

A. Parties' Arguments

Mr. Davis argues that in May 2021 the Court in *Davis I* exceeded its jurisdiction when it reversed a favorable factual finding made by the June 2018 Board. Appellant's Brief (Br.) at 7-10. Specifically, he argues that the *Davis I* Court's finding that, as to § 3.156(b), the May 2004 RO decision was responsive to his 2003 statements, *Davis I*, 34 Vet.App. at 137, directly contradicted the June 2018 Board finding that the May 2004 RO decision "did not address the October 2003 letter," R. at 1911. Appellant's Br. at 7-8. He further argues that the Court should not apply the law of the case doctrine and should instead revisit the § 3.156(b) issue and conclude that, because the May 2004 RO decision did not directly respond to the 2003 statements, the December 2001 claim remained pending until that claim was ultimately granted in June 2010. *Id.* at 8-12.

The Secretary argues that *Davis I* represents the law of the case regarding Mr. Davis's § 3.156(b) arguments, that it is not subject to relitigation by this Court, Secretary's Br. at 9-10 (citing *Johnson v. Brown*, 7 Vet.App. 25, 26-27 (1994)), and that "there is no mechanism that would allow the Court to revisit the May 2021 decision as to [§] 3.156(b)," *id.* at 10. Alternatively, the Secretary asserts that Mr. Davis's arguments regarding the Court exceeding its jurisdiction lack merit, disputing that the Board's June 2018 statement was a favorable finding of fact. *Id.* at 13-15.

B. Legal Landscape

"Where a case is addressed by an appellate court, remanded, then returned to the appellate court, the 'law of the case' doctrine operates to preclude reconsideration of identical issues." *Johnson*, 7 Vet.App. at 26 (citing *In re United States Steel Corp.*, 479 F.2d 489, 493-94 (6th Cir. 1973)). The doctrine "was 'created to ensure judicial efficiency and to prevent the possibility of endless litigation.'" *Toro Co. v. White Consolidated Industries, Inc.*, 383 F.3d 1326, 1335 (Fed. Cir. 2004) (quoting *Cent. Soya Co. v. Geo. A. Hormel & Co.*, 723 F.2d 1573, 1580 (Fed. Cir.

1983)) (citing *Roberts v. Cooper*, 61 U.S. 467, 481 (1857) ("[T]here would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate on chances from changes of its members.") (alteration in original)).

The law of the case "doctrine is not . . . an 'inexorable command.'" *Johnson*, 7 Vet.App at 27 (quoting *In re United States Steel Corp.*, 479 F.2d at 494). The doctrine "merely expresses the practice of courts generally to refuse to open what has been decided" and is "not a limit to their power." *Messenger v. Anderson*, 225 U.S. 436, 444 (1912); see *Arizona v. California*, 460 U.S. 605, 618 (1983) ("Law of the case directs a court's discretion, it does not limit the tribunal's power." (citing *Messenger*, 225 U.S. at 444)); *Hudson v. Principi*, 260 F.3d 1357, 1363 (Fed. Cir. 2001) ("It is well-accepted that the application of the law of the case doctrine is discretionary.").

"Although a court may depart from the law of the case doctrine in 'exceptional cases,' such departures are rare." *Toro Co.*, 383 F.3d at 1336. In fact, the Supreme Court has indicated that "[a] court has the power to revisit prior decisions of its own . . . , although as a rule courts should be loathe to do so in the absence of *extraordinary circumstances*." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1998) (emphasis added).

"One basis upon which the courts will revisit a previously settled issue is when the previous decision was 'clearly erroneous and would work a manifest injustice.'" *Hudson*, 260 F.3d at 1364 (quoting *Christianson*, 486 U.S. at 817); see *Arizona*, 460 U.S. at 618 n.8 ("Under law of the case doctrine, as now most commonly understood, it is not improper for a court to depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice.").⁶ The "clearly erroneous and manifest injustice" exception "is a stringent one." *Gindes*, 740 F.2d at 950. This is so because "[t]he doctrine of the law of the case is intended to prevent . . . speculation and second-guessing . . . in the broader interests of certainty, finality, and legal efficiency." *Toro Co.*, 383 F.3d at 1337.

⁶ Two additional generally accepted bases for law of the case not applying are where "the evidence in a subsequent trial is substantially different" and "controlling authority has since made a contrary decision of the law applicable to the issues." *Gould, Inc. v. United States*, 67 F.3d 925, 930 (Fed. Cir. 1995) (citing *Gindes v. United States*, 740 F.2d 947, 950 (Fed. Cir. 1984)); see *Chisem v. Gober*, 10 Vet.App. 526, 528 (1997). Mr. Davis acknowledges that neither of these bases are relevant here. Appellant's Br. at 9 (citing *Gould, Inc.*, 67 F.3d at 930).

C. Analysis

1. *The August 2023 Board decision under review did not address § 3.156(b).*

We start our discussion by first noting that the August 2023 Board decision currently on appeal did not address the issue of an earlier effective date for service connection for lupus under § 3.156(b). This is clear from the facts recited above, and we emphasize it here because that circumstance impacts why the Court must address the law of the case doctrine and the purported applicability of relevant exceptions. Mr. Davis asks the Court to revisit the § 3.156(b) issue that was decided in *Davis I*, urging us to review the factual findings and legal conclusions reached in the June 2018 Board decision. But the Court did just that in *Davis I*, affirming the part of the June 2018 Board decision that denied an earlier effective date based on § 3.156(b).

Thus, the Board in August 2023 had no reason to revisit the § 3.156(b) issue when in May 2021 we tasked the Board on remand to consider Mr. Davis's entitlement under § 3.156(c) and affirmed the Board decision as to § 3.156(b). The Board in August 2023 understood that our affirmance of the § 3.156(b) issue served to forestall further analysis of that issue and it properly confined itself to deciding the § 3.156(c) issue. As a result, the August 2023 Board decision under review today made no factual findings and rendered no legal conclusions related to § 3.156(b). And since the Court's jurisdiction and scope of review, absent circumstances not present here, are prescribed by the Board decision on appeal, *see* 38 U.S.C. §§ 7252, 7261, we would not address the § 3.156(b) issue in our normal course of reviewing the 2023 Board decision.

Mr. Davis acknowledges that his request that we review Board factual findings and legal conclusions from 2018, which were reviewed in our 2021 *Davis I* decision, invokes the law of the case and he urges the Court not to apply that doctrine.

2. *"Clearly erroneous and manifest injustice" is a demanding standard.*

Mr. Davis argues that the Court should not apply law of the case because the Court's *Davis I* conclusion—that the May 2004 RO decision responded to his 2003 submissions—directly contradicted what he alleges was a Board favorable factual finding. He argues that the *Davis I* conclusion was clearly erroneous because that conclusion was made outside the Court's jurisdiction and results in substantial injustice. Appellant's Br. at 8-10. He adds that jurisdictional defects may be raised at any stage of proceedings. *Id.* at 7-9 (citing *Johnson*, 7 Vet.App. at 27).

In determining whether Mr. Davis has persuasively argued that his case is deserving of a "clearly erroneous and manifest injustice" exception to the law of the case, the Court first notes

that such exceptions require clearing a high hurdle. "Clear error requires more than a mere allegation that a prior panel rendered an unfavorable decision. Clear error leading to manifest injustice is judged under a 'stringent standard': 'A mere suspicion of error, no matter how well supported, does not warrant reopening an already decided point.'" *Toro Co.*, 383 F.3d at 1336-37 (quoting *Gindes*, 740 F.2d at 950). In *Toro Co.*, the Federal Circuit found a lack of manifest injustice when a prior panel of that court afforded full briefing and argument, was presented with a full and accurate record, and had determined relief in that case based on applicable precedent. *Id.* at 1337.⁷

3. *Mr. Davis fails to meet the "clearly erroneous and manifest injustice" standard.*

In determining whether the *Davis I* Court's conclusion about the May 2004 RO decision was clearly erroneous and would work a manifest injustice we emphasize the question that is before us. Mr. Davis argues that in *Davis I* the Court was absolutely precluded from even considering whether the May 2004 RO decision was directly responsive to the 2003 statements because the Board had decided that question in his favor. *See* Appellant's Br. at 6 ("[T]he Board favorably found that the disputed evidence was not considered and under this Court's precedent . . . the Court is *powerless* to review this finding.") (emphasis added).⁸ For several reasons, Mr. Davis fails to satisfy his burden of demonstrating that his circumstances meet the "clearly erroneous and manifest injustice" exception requirement.⁹

Caselaw firmly establishes that this Court cannot disturb a favorable factual finding by the Board. *Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007), *aff'd in part, dismissed in part sub nom. Medrano v. Shinseki*, 332 F. App'x 625 (Fed. Cir. 2009); *see* 38 U.S.C. § 7261(a)(4) (providing that the Court may reverse or set aside only findings of fact "adverse to the claimant").

⁷ To the extent that Mr. Davis appears to assert that jurisdictional defects are a mandatory exception to applying law of the case, *see* Appellant's Br. at 9, the Court disagrees. Courts employ the identified standard for applying law of the case regardless of the characterization of the purported error in the prior litigation. *Christianson*, 486 U.S. at 816 n.5 ("Perpetual litigation of any issue—jurisdictional or nonjurisdictional—delays, and therefore threatens to deny, justice."). Moreover, assuming purely for the sake of argument that the Court in *Davis I* made the error argued, we reject that the error as described is properly characterized as jurisdictional since the Court in May 2021 clearly had jurisdiction to review the June 2018 Board decision.

⁸ To be clear, Mr. Davis does not argue that the Court, when applying the law to the facts, erred in concluding that the May 2004 RO decision directly responded to the 2003 statements.

⁹ Although we split in *Davis I* on whether the May 2004 RO decision was directly responsive to Mr. Davis's 2003 statements, we are in unanimous agreement in this case that Mr. Davis has not proffered an extraordinary circumstance for us to revisit that question. Thus, because we are not revisiting the merits of the § 3.156(b) issue, nothing in this opinion should be read as inconsistent with our differing opinions in *Davis I*.

But during *Davis I* proceedings, Mr. Davis did not clearly argue that the June 2018 Board rendered a favorable factual finding about the May 2004 RO decision that bound the Court. Although he asserted that the 2018 Board favorably found that the May 2004 RO decision did not respond to his 2003 statements, *Davis I*, Appellant's Br. at 5, Reply Br. at 5, he did not assert in his briefs that the Court was bound by any favorable Board finding. And although he initially asserted at oral argument in *Davis I* that the Court was bound by the Board's June 2018 favorable findings, *Davis I*, Oral Argument at 3:48-4:03,¹⁰ he acknowledged later in the argument that the May 2004 RO decision was "technically responsive" to his 2003 statements, *id.* at 15:18-15:44.

Moreover, although the Court is bound to adjudicate cases within our statutorily mandated scope of review, our decision in *Davis I* made clear that we did not consider the June 2018 Board statements regarding the May 2004 RO decision to be a favorable factual finding that the Court was bound to accept. *See Davis I*, 34 Vet.App. at 134 (describing the June 2018 Board analysis). In fact, that we disagreed on whether the May 2004 RO decision directly responded to the veteran's 2003 statements underscores that we did not believe that the Board had made a binding favorable finding either way. *Compare id.* at 137-38 (majority), *with id.* at 140-41 (Bartley, C.J., dissenting in part).

Second, if Mr. Davis believed the *Davis I* Court exceeded its jurisdiction or improperly exceeded its scope of review, he had the opportunity to raise that argument on appeal to the Federal Circuit in *Davis II*. Such an argument is clearly within the Federal Circuit's jurisdiction. *See* 38 U.S.C. § 7292(d). However, Mr. Davis did not raise any such argument. *See Davis II*, Appellant's Br. at 7-21, Reply Br. at 1-18. *Contra Davis II*, Appellant's Br. at 5 (seemingly arguing that the *Board* erred when it ignored its own favorable finding regarding the May 2004 RO decision). Mr. Davis's failure to raise the argument to the Federal Circuit underscores a lack of manifest injustice because he had the opportunity to raise that argument to the Federal Circuit and did not do so.

Third, Mr. Davis fails to demonstrate that the *Davis I* Court's execution of its scope of review was clearly erroneous. Mr. Davis argues that the following sentence constitutes the June 2018 favorable Board finding: "Lupus was denied in a May 2004 decision but it did not address the October 2003 letter." Appellant's Br. at 8 (quoting R. at 1911). The Secretary counters that the

¹⁰ Available at <https://www.youtube.com/watch?v=-nXEHrLZY8k> (last accessed Nov. 3, 2025).

Board's statement was part of a "comprehensive summary" of Mr. Davis's arguments before the Board. Secretary's Br. at 14. In reply, Mr. Davis asserts that "[n]othing about what the Board said suggests it was reciting [his] version of the procedural history" and the Board's language about the May 2004 RO decision is distinct from other sentences clearly referencing his prior arguments. Reply Br. at 6.

Although Mr. Davis argues that the Board in June 2018 rendered a favorable finding regarding the May 2004 RO decision, he has not demonstrated that the *Davis I* Court was clearly erroneous in concluding otherwise. The June 2018 Board decision contains three paragraphs addressing Mr. Davis's arguments regarding § 3.156(b). R. at 1911-12. Mr. Davis asserts that although certain sentences within these paragraphs reference his arguments, other sentences—including the operative sentence he relies upon—do not and, instead, reflect the Board's factual findings. Reply Br. at 5-7 (citing R. at 1911-12). Although not every sentence in this section of the June 2018 Board decision begins with "the attorney contends" (or some variant), it is clear that this entire section addresses Mr. Davis's arguments. *Compare* R. at 1911 ("Lupus was denied in a May 2004 decision but it did not address the October 2003 letter."), *with* R. at 1976 (Mr. Davis's March 2017 argument: "The VA denied his claim for lupus in May 2004; however, the October 2003 letter was not addressed."). Moreover, the paragraph immediately following the Board's discussion of Mr. Davis's arguments begins with a statement that the Board "disagree[d] with the purported evolution of the claims." R. at 1912.

"Only if we were convinced to a certainty that our prior decision was incorrect would we be warranted in now reexamining [it]." *Toro Co.*, 383 F.3d at 1337 (alteration in original) (quoting *Gindes*, 740 F.2d at 950 (internal quotation omitted)). The law of the case doctrine prioritizes the broader principles of certainty, finality, and legal efficiency over speculation and second-guessing. *Id.* Mr. Davis has failed to demonstrate an exceptional circumstance that would serve a manifest injustice against him. Thus, invocation of the law of the case is appropriate here, and we will not retread ground covered in our May 2021 decision.

III. NEWLY ASSOCIATED SERVICE RECORDS UNDER § 3.156(c)

A. Legal Landscape

Under § 3.156(c), VA is required to reconsider a prior claim when relevant service department records are newly associated with the veteran's claims file. "This ensures that a veteran

is not denied benefits due to [VA's] administrative error" in not obtaining the relevant service records before deciding the earlier claim. *Blubaugh v. McDonough*, 773 F.3d 1310, 1313 (Fed. Cir. 2014). To be relevant under § 3.156(c), a record must relate to "the issue that was dispositive against the veteran in the VA adjudication of the claim sought to be reconsidered and, in that way, bear on the outcome of the case." *Kisor IV*, 995 F.3d at 1322. In other words, "in order to be 'relevant' for purposes of reconsideration, additional records must speak to the basis for the VA's prior decision." *Id.* at 1323. In contrast, "[d]uplicative records and records directed to an undisputed fact" are not "relevant" under § 3.156(c). *Id.* at 1324.

B. Parties Arguments and Analysis

Mr. Davis argues that the August 2023 Board decision mischaracterized the basis of the May 2004 RO decision, leading it to erroneously conclude that newly associated service records were not relevant to the May 2004 denial of service connection. Appellant's Br. at 17-18. He asserts that, although the Board found that the RO denied service connection based on lack of linkage between lupus and service, the RO actually denied the claim because lupus did not begin during service. *Id.* (arguing that the Board employed the wrong "lens" in assessing relevance); Reply Br. at 2.¹¹ The Secretary defends the Board's relevance analysis, arguing that the newly associated service records were duplicative of records considered by the RO in May 2004 when it denied service connection for lupus. Secretary's Br. at 7-8. The Court concludes that Mr. Davis's § 3.156(c) argument, besides being substantively deficient, fails to demonstrate error.

As background, the RO in May 2004 denied service connection for lupus because "the condition neither occurred in nor was caused by service." R. at 3732. In reaching its decision, the RO found that service medical records did not reflect a diagnosis of or treatment for lupus and that Mr. Davis had not submitted evidence showing that lupus began during service. *Id.*

In November 2017, Mr. Davis submitted service medical records that he contended warranted § 3.156(c) reconsideration of the May 2004 RO decision. At that time, he contended that the service records "contain lab tests and other evidence showing the onset of his lupus" during

¹¹ Mr. Davis also submitted service medical records in August 2006, R. at 3575-81, which he argued in June 2011 and October 2013 might trigger § 3.156(c) reconsideration, R. at 2777-79, 2064. The Board in August 2023 focused on service records submitted in November 2017. Mr. Davis does not argue Board error in this regard, nor does he renew his 2011 and 2013 argument that the records submitted in August 2006 would trigger § 3.156(c) reconsideration. Therefore, the Court considers any such argument abandoned. *See Grivois v. Brown*, 6 Vet.App. 136, 138 (1994).

service and argued that the evidence was "prima facie" relevant because the August 2009 VA examiner based his positive linkage opinion on March 1985 blood test results. R. at 1924-25.

In August 2023, the Board described the May 2004 RO decision as denying service connection "on the grounds that the condition neither occurred in nor was caused by service. In other words, there was no nexus between the [v]eteran's service and his lupus." R. at 8; *see* R. at 10 (concluding that the newly associated service records "were not relevant to the determination of whether the [v]eteran's lupus had its onset during or was otherwise related to service"). The Board described the service records submitted by Mr. Davis in November 2017 as documenting positive RPR tests in December 1983 and March 1985. R. at 9. The Board found those records duplicative of service records that were associated with the veteran's file in May 2004, which included false positive RPR tests and in-service notations of fatigue. R. at 8-9.

Mr. Davis's argument, limited to two paragraphs of his opening brief, is that the Board improperly focused on linkage when it assessed the relevance of the service records submitted in November 2017. Appellant's Br. at 18. But he overlooks that the Board correctly stated that the RO denied the lupus claim because "the condition neither occurred in nor was caused by service." R. at 8; *see* R. at 3732. And although Mr. Davis focuses on the Board's references to "nexus" or linkage, he ignores that the predicate for the Board's relevancy finding was that the newly associated service records merely presented evidence of positive RPR test results, a fact that the Board found was already known to the RO in May 2004. R. at 8-9. Thus, regardless of how Mr. Davis frames the Board's "lens," the Board found the newly associated service records duplicative and, therefore, were not relevant to whether lupus began during service or was otherwise related to service. R. at 10.

Mr. Davis does not argue that the Board's finding that the newly associated records were duplicative was incorrect. Nor does he argue or explain why the newly associated service records are relevant under § 3.156(c). Instead, he acknowledges that the newly associated service records "contained evidence of blood tests" and speculates that the records "may support a finding of an in-service incurrence." Reply Br. at 2. But the Board found that the service records of record in May 2004 already documented false positive RPR test results. R. at 8-9. And the Board in the decision on appeal explained that it was not until the August 2009 VA examiner explained that the false positive RPR test results and notations of fatigue, when viewed retrospectively, suggested an in-service onset of lupus. R. at 9-10. In other words, the Board found that the fact that Mr. Davis

had false positive RPR test results in service was not in dispute; instead, the missing element at the time of the May 2004 RO decision was evidence demonstrating that the false positive blood test results were indicative of lupus.

Therefore, we conclude that Mr. Davis fails to carry his burden of demonstrating error in the August 2023 Board decision. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant bears the burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). Therefore, we will affirm the August 2023 Board decision.

IV. CONCLUSION

The veteran's January 16, 2025, combined motion for initial review by panel and for oral argument is dismissed in part as moot to the extent that it requests panel consideration and denied in part to the extent that it requests oral argument.

Upon consideration of the foregoing, the Court AFFRIMS the August 29, 2023, Board decision that denied entitlement to an effective date earlier than February 27, 2009, for the award of service connection for lupus based on § 3.156(c).