

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALBERT MALCOM,)
)
 Plaintiff,)
)
 v.) C.A. No. 02-465-SLR
)
 VETERANS ADMINISTRATION,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Albert Malcom ("Malcom") filed this 42 U.S.C. § 1983 action alleging that defendant Veterans Administration ("VA") refused to provide dental treatment following his discharge from military service in Vietnam. (D.I. 1) VA has moved to transfer the case pursuant to 28 U.S.C. § 1631 and 38 U.S.C. § 7252 or, in the alternative, to dismiss under Fed.R.Civ.P. 12(b)(1)(6) and (h)(3). (D.I. 16) Malcom has filed a response. (D.I. 18, 19) For the reasons that follow, the motion to transfer will be granted.

II. BACKGROUND

Malcom served in the United States armed forces from July 1967 to June 1969. (D.I. 1; D.I. 17 Ex. A) Specifically, during a tour of duty in Vietnam, Malcom was assisting with a construction project when a hammer fell off a roof and struck him on the head and mouth. (D.I. 20) As a result of this trauma,

Malcom was rendered unconscious and all of his teeth became cracked. After his discharge, he applied for and was denied dental benefits by the Department of Veterans Affairs. (D.I. 17, Ex. A)

III. STANDARD OF REVIEW

Under the Veteran's Judicial Review Act, 38 U.S.C. § 101 et seq., a veteran disputing benefits must follow specific procedures for review of his claims. See e.g. 38 U.S.C. § 7105(a) ("appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section,"); 38 U.S.C. § 7292 (the United States Court of Appeals for the Federal Circuit has exclusive jurisdiction to review decisions of the Court of Appeals for Veterans Claims).

The court finds that Malcom is challenging the validity of decisions which denied him veteran's benefits. This court, however, lacks jurisdiction over such claims. See 38 U.S.C. § 7252 (the Court of Appeals of Veterans Claims has exclusive jurisdiction over decisions of the Board of Veterans' Appeals). Pursuant to 28 U.S.C. § 1631,¹ the court shall transfer this

¹Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time

action to the United States Court of Appeals for Veterans Claims.

IV. CONCLUSION

At Wilmington, this 7th day of November, for the reasons stated;

IT IS ORDERED that:

1. Defendant's motion to transfer is granted. (D.I. 16)
2. Defendant's motion to dismiss is denied as moot. (D.I. 16)
3. The Clerk of Court is directed to transfer this action to the United States Court of Appeals for Veterans Claims.

Sue L. Robinson
United States District Judge

it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.