

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

DIANE I. GARCIA-BECKER,)	
Appellant,)	
)	
v.)	Vet. App. No. 22-0934
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Appellee.)	

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet. App. R. 27 and 42, Appellant and Appellee hereby agree to and move for termination of the captioned appeal, which relates to the October 28, 2021, Board of Veterans' Appeals (Board) decision. The terms upon which the parties agree this appeal is to be terminated are contained in the attached Stipulated Agreement.

The Court has held that, when the Secretary of Veterans Affairs enters into such an agreement, the Board decision giving rise to the appeal is overridden, thereby mooting the case or controversy. *Bond v. Derwinski*, 2 Vet.App. 376 (1992); see also *Kimberly-Clark v. Proctor & Gamble*, 973 F.2d 911, 914 (Fed. Cir. 1992) ("Generally, settlement of a dispute does render a case moot."); accord *Dofflemyer v. Brown*, 4 Vet.App. 339 (1993); cf. 38 C.F.R. § 14.500(a), (c), (d).

The General Counsel represents the Secretary of Veterans Affairs before the Court. 38 U.S.C. § 7263(a). In entering into this settlement agreement, the General Counsel is following well-established principles regarding the Government attorney's authority to terminate lawsuits by settlement or compromise, which

principles date back well over a century. *Compare Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (“[G]overnment attorneys [should] settle cases whenever possible.”) (citing Executive Order on Civil Justice Reform, (Exec. Order No. 12,778, 3 C.F.R. § 359 (1991), *reprinted in* 28 U.S.C.S. § 519 (1992)), *with* 2 Op. A.G. 482, 486 (1831);¹ *see also* Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412 (1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884). The parties have resolved, to their mutual satisfaction, the issues raised by this appeal and aver that (1) their agreement does not conflict with prior precedent decisions of the Court; (2) this is not a confession of error by the Secretary; and (3) this agreement disposes of the case on appeal.

Pursuant to Rule 41(c)(2), the parties agree to unequivocally waive further Court review of and any right to appeal the Court’s order on this joint motion to terminate, and respectfully ask that the Court enter mandate upon the granting of this joint motion.

WHEREFORE, the parties jointly move the Court for an order terminating the above captioned appeal pursuant to U.S. Vet. App. R. 42.

¹ “An attorney conducting a suit for a party has, in the absence of that party, a right to discontinue it whenever, in his judgment, the interest of his client requires it to be done. If he abuses his power, he is liable to the client whom he injures. An attorney of the United States, except in so far as his powers may be restrained by particular acts of Congress, has the same authority and control over the suits which he is conducting. The public interest and the principles of justice require that he should have this power”

Respectfully submitted,

FOR APPELLANT:

Dated: September 19, 2022

/s/ Haley E. Smith
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FOR APPELLEE:

CATHERINE C. MITRANO
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Jonathan G. Scruggs
JONATHAN G. SCRUGGS
Acting Deputy Chief Counsel

Dated: September 19, 2022

/s/ Jacqueline Kerin
JACQUELINE KERIN
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STIPULATED AGREEMENT

WHEREAS, Diane I. Garcia-Becker (Appellant) filed an appeal to the U.S. Court of Appeals for Veterans Claims on February 15, 2022, from a October 28, 2021, Board of Veterans' Appeals (BVA) decision; and

WHEREAS, the Secretary of Veterans Affairs (Appellee) and Appellant have reached a mutually satisfactory resolution of this litigation;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Appellee agrees to reinstate a 100% disability evaluation for Appellant's service-connected major depressive disorder and posttraumatic stress disorder, effective May 1, 2014.

2. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that VBA shall take prompt action to implement this agreement.

3. Appellee does not admit that any error was committed by the Department of Veterans Affairs or any of its employees in the adjudication of the claim that is the subject of this appeal.

4. Appellant agrees that her pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 22-0934, shall be terminated, with prejudice, following execution of this agreement.

5. The parties agree that this agreement is entered into for the purpose of avoiding further litigation and the costs related thereto. Both parties agree that this

settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.

Respectfully submitted,

FOR APPELLANT:

Dated: September 19, 2022

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