

MOTION GRANTED

United States Court of Appeals for Veterans Claims

For the Panel
Margaret Bartley

August 24, 2016
Margaret Bartley
Judge

Warren B. Cook,

Appellant,

v.

Vet. App. No. 15-0873

Robert A. McDonald,

Secretary of Veterans Affairs,

Appellee.

Request for Leave to Submit Supplemental Authority Out of Time

Pursuant to Vet. App. Rule 30(b), Mr. Cook's counsel requests for leave from the panel to submit supplemental authority out of time. This Court's Rule provides: "When pertinent and significant authority comes to the attention of a party after the party's brief has been filed or after oral argument but before decision, a party shall promptly file notice with the Clerk and serve all other parties." Pertinent and significant authority came to the attention of Mr. Cook's while preparing for oral argument on Monday August 22, 2016. This occurred as counsel was examining the statutes cited by the VA upon which the provisions of 38 C.F.R. § 20.700(a) were promulgated. Mr. Cook's counsel also reviewed each of the provisions of Part 20 of the Code of Federal Regulations where his attention was drawn to the three specific VA regulations, those cited in his two submissions, which he deemed to be pertinent to this issue to be presented at oral argument. As a result, Mr. Cook's counsel

promptly but prematurely filed two notices with the Clerk and serve the Secretary with both without first or at the same time having sought leave of this Court to do so.

This Court's rule expressly provides that: "In no case will supplemental authority - pertinent and significant or otherwise - be accepted by the Clerk for filing fewer than 7 days preceding a scheduled oral argument, without leave of the Court." Mr. Cook's counsel inadvertently and unintentionally overlooked this requirement. Due to the lateness of his discovery and his desire to provide the authority that had to come to his attention to this Court and Secretary as soon as possible, Mr. Cook's counsel failed to carefully read this Court's rule. Mr. Cook's counsel apologizes to the Court and to the Secretary for this oversight. The two notices submitted by Mr. Cook's counsel set forth the citations to the authority and referred to the page of the supplemental memorandum of law to which each citation pertained without argument the reasons for the supplemental citations. The Appellant, pursuant to Rule, attempted to contact counsel for the Appellee, but he was not available to give his position to the filing of this motion.

WHEREFORE, Mr. Cook prays that this Court grant him leave to submit these supplemental authorities out of time.

/s/Kenneth M. Carpenter
Kenneth M. Carpenter
Counsel for Appellant,
Warren Cook
Electronically filed August 23, 2016