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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 18-4520

RICARDO D. STAFFORD, APPELLANT,

V.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, GREENBERG, and TOTH, *Judges.*

O R D E R

Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.

Ricardo D. Stafford appealed a July 13, 2018, Board decision that referred a claim for entitlement to a total disability rating based on individual unemployability (TDIU) for the period prior to April 17, 2012, to the Director of the Compensation Service for extraschedular consideration. Mr. Stafford argued that the Board was authorized to consider extraschedular TDIU in the first instance and asked the Court to vacate the appealed decision and remand for the Board to do so. After the matter was referred to a panel of the Court and oral argument was held, the Secretary notified the Court that the Board issued a decision on March 26, 2020, which granted TDIU on an extraschedular basis for the period at issue on appeal.

The Court abides by the case or controversy requirement found in Article III of the U.S. Constitution. *Browder v. Shulkin*, 29 Vet.App. 170, 172 (2017). When VA awards the full benefits sought in an appeal, there is no longer a live dispute between the parties and the case becomes moot. *See Padgett v. Peake*, 22 Vet.App. 159, 164 (2008) (en banc); *see also MacWhorter v. Derwinski*, 3 Vet.App. 223 (1992). And when a case becomes moot during the course of litigation, the proper remedy is to dismiss the matter. *Browder*, 29 Vet.App. at 172. In the March 2020 decision, the Board granted the relief sought: a Board decision considering entitlement to—and, in fact, awarding—a TDIU rating prior to April 17, 2012. Accordingly, there is no longer a case or controversy for the Court to resolve, and the matter before the Court is now moot.

There is one final matter. On March 31, 2020, the appellant filed an opposed motion to consolidate his case with two other appeals that are currently pending before this Court, *Christensen v. Wilkie*, No. 18-3320 (Notice of Appeal filed June 26, 2018), and *Hughes v. Wilkie*, No. 18-5630 (Notice of Appeal filed Oct. 9, 2018). Having found the appellant's case moot, the Court likewise denies the motion to consolidate as moot. However, our denial of the consolidation motion in this case does not inhibit the Court's consideration of the remaining consolidation motions filed in *Christensen* and *Hughes*; we express no opinion on the merits of those motions.

Upon consideration of the foregoing, it is

ORDERED that the appeal of the Board's July 13, 2018, decision is DISMISSED as moot. It is further

ORDERED that the appellant's February 24, 2020, motion to order the Secretary to produce material relied on at oral argument is denied as moot. Finally, it is

ORDERED that the appellant's March 31, 2020, motion to consolidate his now-moot case with two other pending cases is also denied as moot.

DATED: April 15, 2020 PER CURIAM.

GREENBERG, *Judge*, dissenting: There is no such thing as an impermissible advisory opinion. Letters written by Justices to the President have been sufficient to force Congress to modify veteran-related legislation. *See, e.g.*, *Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 n (1792). The Court "to the extent necessary to its decision and when presented, shall—(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary." 38 U.S.C. § 7261(a). This statutory command is "unambiguous, unequivocal, and unlimited." *Conroy v. Aniskoff*, 507 U.S. 511, 514 (1993). Perhaps it has been forgotten that the fundamental holding that has led to this Court's adherence to the case-or-controversy requirement is that "it is sufficient to observe that we are granted power judicial in nature and being statutorily characterized as a 'Court' we are free, in the absence of a congressional directive to the contrary, to adopt as a matter of policy the jurisdictional restrictions of the Article III case or controversy rubric." *Mokal v. Derwinski,* 1 Vet.App. 12, 14 (1990). This statement implies that the Court is "free" to abandon this barrier when it no longer benefits the Court and its claimants.

What evil lurks behind the Court deciding whether *Bowling v. Principi*, 15 Vet.App 1 (2001) remains good law? Have other veterans benefitted from Mr. Stafford's grant of extraschedular TDIU? Are there unique facts to this appeal that would render an opinion on the merits here superfluous? Why must the appellant file a motion to consolidate so that other veterans can have an answer on a legal issue? The Court has been presented with a relevant question of law and it is necessary to address this matter in issuing a decision, not because of this worthy claimant's circumstances, but because that is why this Court exists. *See* 38 U.S.C. § 7261(a)(1). For this reason, I dissent.

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