

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

<b>BILL M. NOAH,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 18-7429
	)	
<b>ROBERT L. WILKIE,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**JOINT MOTION TO TERMINATE THE APPEAL**

Pursuant to U.S. Vet. App. Rules 27 and 42, Appellant and Appellee hereby agree to and move for termination of the captioned appeal. The terms upon which the parties agree this appeal is to be terminated are contained in the attached Stipulated Agreement.

The Court of Appeals for Veterans Claims (Court) has held that when the Secretary of Veterans Affairs (Secretary) enters into such an agreement, the Board of Veterans' Appeals 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. Procter & Gamble*, 973 F.2d 911, 914 (Fed. Cir. 1992) ("Generally, settlement of a dispute does render a case moot."); *Dofflemyer v. Brown*, 4 Vet.App. 339 (1993). Cf. 38 C.F.R. § 14.500(a), (c), (d).

The General Counsel represents the Secretary 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)<sup>1</sup>; *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 this agreement: (1) does not conflict with prior precedential decisions of the Court; (2) is not a confession of error by the Secretary; and (3) disposes of the case on appeal.

WHEREFORE, the parties jointly move the Court for an order terminating the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

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<sup>1</sup> “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 [or she] 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 THE APPELLANT:

8/6/2020  
Date

/s/ Jacques P. DePlois  
**JACQUES P. DEPLOIS**  
P.O. Box 3159  
Coos Bay, OR 97420  
(541) 888-6338

FOR THE APPELLEE:

**WILLIAM A. HUDSON, JR.**  
Principal Deputy General Counsel

**MARY ANN FLYNN**  
Chief Counsel

8/6/2020  
Date

/s/ Kenneth A. Walsh  
**KENNETH A. WALSH**  
Deputy Chief Counsel

8/6/2020  
Date

/s/ Omar Yousaf  
**OMAR YOUSAF**  
Senior Appellate Attorney  
Office of General Counsel (027H)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
(202) 632-8395

## **STIPULATED AGREEMENT**

WHEREAS, Bill M. Noah (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on December 31, 2018, from a September 25, 2018, Board of Veterans' Appeals (Board) 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 award Appellant with an effective date of December 3, 1981, for the award of service connection for post-traumatic stress disorder.

2. The parties make no agreement regarding the level of disability to be assigned for the award, which shall be a matter for initial adjudication by the agency of original jurisdiction, subject to the right of appeal.

3. Upon the Court's final disposition regarding this settlement, Appellee agrees to promptly notify the Veterans Benefits Administration (VBA), and agrees that the VBA shall take prompt action to implement this agreement.

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

5. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 18-7429, shall be terminated,

with prejudice, as to all issues presently before this Court and addressed in the September 25, 2018, Board decision following execution of this agreement.

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

8/6/2020  
Date

/s/ Jacques P. DePlois  
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Principal Deputy General Counsel

**MARY ANN FLYNN**  
Chief Counsel

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/s/ Kenneth A. Walsh  
**KENNETH A. WALSH**  
Deputy Chief Counsel

8/6/2020  
Date

/s/ Omar Yousaf  
**OMAR YOUSAF**  
Senior Appellate Attorney  
Office of General Counsel (027H)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
(202) 632-8395