

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

HERLINDA C. RICHARD,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-1619
)	
ROBERT L. WILKIE,)	
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, with prejudice, of the above captioned appeal that relates to the Board of Veterans' Appeals (Board) November 16, 2018, decision that denied entitlement to an effective date prior to October 7, 2011, for the grant of service connection for lung cancer, status post right lung lobe removal, for accrued purposes. The terms upon which the parties agree that 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."); 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 U.S. Vet. App. R. 41(c)(2), the parties agree to unequivocally waive further Court review of and any right to appeal to the U.S. Court of Appeals

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”

for the Federal Circuit of the Court's order on this Joint Motion. They 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 captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

Respectfully submitted,

FOR APPELLANT:

January 11, 2021
Date

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January 11, 2021
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FOR APPELLEE:

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MARY ANN FLYNN
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January 11, 2021
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/s/ Melissa A. Timbers
MELISSA A. TIMBERS

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STIPULATED AGREEMENT

WHEREAS, Herlinda C. Richard (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on March 11, 2019, from a November 16, 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 an effective date of October 9, 2002, for the award of service connection for lung cancer, status post lobe removal, for accrued purposes.

2. Appellee agrees to award a 100% evaluation for the service-connected lung cancer from October 9, 2002, until September 12, 2012, for accrued purposes.

3. Appellee agrees to grant Appellant entitlement to special monthly compensation pursuant to 38 U.S.C. § 1114(l) from November 10, 2002, until September 12, 2012, for accrued purposes.

4. Appellee agrees to assign an earlier effective date of November 7, 2002, for the award of service connection for diabetes mellitus. The parties make no agreement regarding the appropriate evaluation to be assigned for this award but agree that this determination shall be a matter for initial adjudication by the Agency of Original Jurisdiction (AOJ), subject to the right of appeal.

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

6. 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.

7. Appellant agrees that her pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 19-1619, shall be terminated, with prejudice, as to all issues addressed in the November 16, 2018, Board decision following execution of this agreement.

8. The parties agree that this agreement is entered into for the sole 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:

January 11, 2021
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