

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

EUGENE A. DYKES,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 23-5120
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION TO TERMINATE AND DISMISS

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

The Court held that when the Secretary of Veterans Affairs enters into a stipulated agreement such as here, it moots the case or controversy pending before the Court. *See Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (“When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction); *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.”).

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 resolved, to their mutual satisfaction, an issue raised by this case 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 the above-noted issue addressed herein.

The parties agree to unequivocally waive further Court review and any right to appeal to the U.S. Court of Appeals for the Federal Circuit of the Court's order on this joint motion and respectfully ask that the Court enter mandate upon the granting of this motion.

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”

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

Respectfully submitted,

FOR APPELLANT:

/s/ Douglas J. Rosinski
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(803) 256-9555

FOR APPELLEE:

RICHARD J. HIPOLIT
Deputy General Counsel
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MARY ANN FLYNN
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/s/ Clifton A. Prince
CLIFTON A. PRINCE
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STIPULATED AGREEMENT

WHEREAS, Eugene A. Dykes filed a Notice of Appeal with the U.S. Court of Appeals for Veterans Claims on August 28, 2023, which identified an August 4, 2023, notification letter as the “decision” on appeal; and

WHEREAS, the parties participated in a Rule 33 conference on November 29, 2023, at which counsel for Appellant clarified that when he submitted his August 3, 2023, VA Form 10182, Mr. Dykes intended to appeal all issues identified in the June 23, 2023 Rating Decision;

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

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

1. Appellee agrees that following termination of this case the Board will docket Appellant’s appeal of all issues listed on the June 24, 2023, Rating Decision based on the August 3, 2023, VA Form 10182 and the clarification received during the November 29, 2023, Staff Conferences conducted by the Court under U.S. Vet. App. R. 33, as the date of this filing.

2. Appellee agrees to also promptly notify the Board upon final disposition by the Court with respect to this settlement, and that the Board shall

take expeditious action to implement this agreement by adjudicating Appellant's appeal of all issues listed on the June 24, 2023, Rating Decision.²

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

4. Appellant agrees that his pending case in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 23-5120, shall be terminated, with prejudice, and the matter dismissed by the Court.

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:

/s/ Douglas J. Rosinski

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FOR APPELLEE:

RICHARD J. HIPOLIT

Deputy General Counsel

for Veterans Programs

² Appellee understands that if the Board fails to issue a decision on the claims referenced in the now clarified VA Form 10182 within the next 45 days, Appellant may file a petition for a writ of mandamus, or a motion to enforce this Stipulated Agreement with the Court.

MARY ANN FLYNN

Chief Counsel

/s/ Clifton A. Prince

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