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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 23-5120

EUGENE A. DYKES, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before GREENBERG, ALLEN, and LAURER, *Judges*.

ORDER

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

Appellant Eugene A. Dykes through counsel appeals an August 4, 2023, letter from the Board of Veterans' Appeals that informed appellant that the Board could not review his appeal because he had not properly completed the necessary form. This matter was submitted to a panel on November 15, 2023, to determine whether the August 2023 letter constituted a Board decision over which the Court has jurisdiction.

On November 21, 2023, the Court granted, in part, appellant's motion to expedite, including ordering the parties to participate in a Rule 33 staff conference. Oral argument was scheduled for December 8, 2023.

The Rule 33 conference was held on November 29, 2023, and, on that same day, the parties filed a joint motion to terminate the appeals (JMT). The parties agreed that (1) appellant agrees to the dismissal of this appeal with prejudice; (2) following dismissal of this appeal, 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 (as clarified during the November 29, 2023 Rule 33 staff conference) as of the date of the filing of the JMT—that is, November 29, 2023; and (3) the Secretary will promptly notify the Board following the Court's action on the JMT of the terms of the parties' settlement and that the Board will take expeditious action to implement the terms of the agreement.¹

Finally, the parties agree to "unequivocally waive" any right to appeal the Court's order, and the parties ask the Court to issue mandate upon the issuance of an order granting the JMT.²

¹ JMT Attachment (Stipulated Agreement)

² JMT at 2.

The Court will grant the parties' motion. The Court also will revoke the November 21, 2023, order scheduling oral argument to take place on December 8, 2023.

Upon consideration of the foregoing, it is

ORDERED that the November 21, 2023, order scheduling oral argument for December 8, 2023, is revoked. It is further

ORDERED that the November 29, 2023, JMT entered into pursuant to the parties' stipulated agreement is granted. It is further

ORDERED that this appeal is DISMISSED WITH PREJUDICE. And it is further

ORDERED, pursuant to Rule 41(c)(2) and (3) of the Court's Rules of Practice and Procedure, that this order is the mandate of the Court.

DATED: December 1, 2023

PER CURIAM.

Copies to:

Douglas J. Rosinski, Esq.

VA General Counsel (027)