

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

<b>DONALD P. LINCOLN, JR.,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-2617
	)	
<b>DENIS MCDONOUGH,</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 has held that when the Secretary of Veterans Affairs enters into such an agreement, the Board of Veterans' Appeals (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).<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 presented 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 Rule 41(c)(2), the parties agree to unequivocally waive further Court review of, and any right to appeal, the Court’s order on this Motion to Terminate and respectfully ask that the Court enter mandate upon the granting of this motion.

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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 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 the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

Respectfully submitted,

FOR THE APPELLANT:

Date: December 4, 2023

/s/ Grace Hurley  
GRACE HURLEY  
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FOR THE APPELLEE:

RICHARD J. HIPOLIT  
Deputy General Counsel for Veterans Programs

MARY ANN FLYNN  
Chief Counsel

Date: December 4, 2023

/s/ Mark J. Hamel  
MARK J. HAMEL  
Deputy Chief Counsel  
Office of the General Counsel (027J)  
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## STIPULATED AGREEMENT

WHEREAS, Donald P. Lincoln, Jr. (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on May 2, 2022, from the February 23, 2022, Board of Veterans' Appeals (Board) decision that (1) denied entitlement to an earlier effective date prior to August 29, 2011, for service connection of a left eye scar, (2) found the rating reduction from 50% to 30% effective March 1, 2019, for left knee degenerative joint disease post total knee arthroplasty (previously rated as left knee loss of extension residuals of sprain and arthritis status post-surgery) proper, and (3) found the calculation of an 80% combined rating for the period since March 1, 2019, proper; 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 reinstatement of the 30% rating for knee instability under diagnostic code 5257 from February 6, 2017.
2. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that VBA shall take prompt action to implement this agreement.

3. 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.

4. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet.App. No. 22-2617 shall be terminated, with prejudice, as to all issues addressed in the February 23, 2022, Board decision following execution of this agreement.

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 THE APPELLANT:

Date: December 6, 2023

/s/ Grace Hurley  
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FOR THE APPELLEE:

RICHARD J. HIPOLIT  
Deputy General Counsel for Veterans Programs

MARY ANN FLYNN  
Chief Counsel

Date: December 6, 2023

/s/ Mark J. Hamel  
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