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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-2879

CLIFTON R. GOFORTH, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, TOTH, and FALVEY, *Judges*.

ORDER

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

Clifton R. Goforth, through counsel, appealed a January 18, 2022, Board of Veterans' Appeals decision denying special monthly compensation (SMC) based on the need for aid and attendance. On August 23, 2023, the Court granted Mr. Goforth's motion for initial panel review and the next day this case was submitted to panel. Oral argument was scheduled for January 9, 2024. On January 2, 2024, the Secretary filed an unopposed motion to postpone oral argument because the parties were working to reach a potential joint resolution of the case. The Court stamp granted that motion on January 4, 2024.

On January 3, 2024, the parties filed a joint motion for remand, asking the Court to vacate the January 2022 Board decision and remand the matter for readjudication. The parties agreed that the Board erred by misinterpreting 38 U.S.C. § 1114(l) and 38 C.F.R. § 3.352(a) when it denied SMC based on the need for aid and attendance, citing both *Spicer v. McDonough*, 61 F.4th 1360, 1364 (Fed. Cir. 2023), and *Payne v. Wilkie*, 31 Vet.App. 373 (2019). The parties also unequivocally waived further Court review and any right to appeal and asked that mandate issue upon the granting of the motion. *See* U.S. VET. APP. R. 41(c)(2).

Upon consideration of the above, it is

ORDERED that oral argument, which had been postponed, is cancelled. It is also

ORDERED that the parties' joint motion for remand is granted. It is also

ORDERED that the January 18, 2022, Board decision denying SMC based on the need for aid and attendance is SET ASIDE and the matter is REMANDED for readjudication in accordance with the terms of the joint motion for remand. It is also

ORDERED that this order is the mandate of the Court.

DATED: January 8, 2024

PER CURIAM.

Copies to:

Kent A. Eiler, Esq.

VA General Counsel (027)