

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

JOHN A. COOPER,
Appellant,

v.

DENIS McDONOUGH,
Secretary of Veterans Affairs,
Appellee.

Vet. App. No. 23-5963

APPELLANT’S OPPOSED MOTION FOR LEAVE
TO FILE OUT OF TIME A MOTION FOR RECONSIDERATION OF THE
COURT’S DECEMBER 22, 2023 ORDER GRANTING IN PART APPELLANT’S
MOTION TO SUBMIT A RESPONSE IN EXCESS OF THE PAGE LIMIT

The Appellant, John A. Cooper (“Mr. Cooper”), respectfully moves this Court pursuant to U.S. Vet. App. Rules 2, 26, and 27 for leave to file a motion for reconsideration the part of this Court’s December 22, 2023 Order denying leave for Mr. Cooper’s response to the Secretary’s motion to dismiss to exceed twenty pages. On November 30, 2023 the Secretary filed an opposed motion to dismiss the present appeal for lack of subject matter jurisdiction. On December 6, 2023 Mr. Cooper filed an opposed motion for leave to file a response to the motion to dismiss in excess of the ten page limit provided for by this Court’s rules. In his December 6, 2023 motion Mr. Cooper argued he needed thirty pages (the length afforded initial briefs before this Court absent permission to exceed the thirty-page limit under U.S. Vet. App. Rule 32(e)) to fully and adequately cover the depth and breadth of his argument as to why the Secretary’s motion to dismiss should be denied.

On December 22, 2023 this Court granted in part Mr. Cooper's opposed motion to exceed the page limit, permitting Mr. Cooper to file a response of no more than twenty pages. On January 29, 2024 Mr. Cooper submitted his twenty page response.

Subsequently, this Court has, correctly in Mr. Cooper's view, determined Mr. Cooper's argument with respect to why this Court has jurisdiction to consider this appeal is significant, warranting panel review. It is in light of this Court's March 28, 2024 Order submitting this case for panel review that Mr. Cooper now moves for leave to file out of time a motion for reconsideration of the part of the Court's December 22, 2023 Order denying in excess of twenty pages to respond to the Secretary's motion to dismiss.

Convening a three-judge panel to decide this appeal presents good cause to reconsider the Court's initial denial of in excess of twenty pages. Mr. Cooper has more to say that he believes would aid the Court than fits within twenty pages. *Compare* Resp. to Mot. to Dismiss, *Cooper v. McDonough*, Vet. App. No. 23-5963 (filed Jan. 29, 2024), *with* Resp. to Mot. to Dismiss, *Fotopoulos v. McDonough*, Vet. App. No. 23-3844 (filed Feb. 9, 2024) (response when provided thirty pages). The three-judge panel should not, faced with the prospect of a precedential decision issued by this Court, permit Mr. Cooper's argument be stunted before this Court in any way. If not reconsidered, the single-judge truncation could affect thousands of similarly situated U.S. military veterans and survivors.

The Secretary, by and through counsel, has indicated to Mr. Cooper, by and through counsel, that the Secretary opposes this motion for leave to file a out of time a motion for reconsideration and reserves the right to respond.

April 11, 2024

Respectfully submitted,

/s/ Kent A. Eiler

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