

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

<b>JOHN A. COOPER,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 23-5963
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLEE’S OPPOSITION TO APPELLANT’S APRIL 11, 2024,  
OUT OF TIME MOTION FOR RECONSIDERATION OF  
THE COURT’S DECEMBER 22, 2023, ORDER**

Appellee, the Secretary of Veterans Affairs, hereby files his response to Appellant’s April 11, 2024, opposed motion seeking “reconsideration” of the Court’s December 22, 2023, Order.

By way of background, for the sake of clarity, on November 30, 2023, the Secretary filed an opposed motion to dismiss the appeal for lack of subject matter jurisdiction. On December 6, 2023, Appellant filed an opposed motion to file a response to the Secretary’s motion to dismiss, in which he requested leave to file a 30-page response. Cf. U.S. Vet.App. Rule (R.) 27(d)(1) (“a motion or response may not exceed 10 pages”). In a December 22, 2023, Order, Judge Toth granted the motion in part, permitting Appellant to file a 20-page response, noting “[w]hat will be of most help to the Court is concise and focused argument on th[e] legal question [of jurisdiction].” On January 29, 2024, Appellant filed a 20-page response to the Secretary’s motion to dismiss, with multiple attachments. On April

11, 2024, Appellant filed an opposed motion seeking “reconsideration” of this December 22, 2023, Order, reiterating that he “needed” thirty pages to respond. (Reconsideration Motion (“Motion”) at 1).

At the outset, while Appellant characterized the April 11, 2024, motion as one seeking “reconsideration,” and cited to Vet.App. R. 35 in the motion, Appellant’s motion is not of the kind contemplated by U.S. Vet.App. R. 35. Rather, U.S. Vet.App. R. 35 governs reconsideration of “a case decided by a single judge.” U.S. Vet.App. R. 35(a)(1). The rule does not govern the interlocutory review of a judge’s ruling on a motion. Here, the Court has not decided the case on appeal, indeed no decision has been issued. Rather, Appellant’s motion, which he characterizes as one for “reconsideration,” is a request for leave to file written argument anew. Therefore, even though Appellant has characterized his April 11, 2024, motion as one seeking “reconsideration,” the prohibition against a response established under U.S. Vet.App. R. 35(g) does not apply under these circumstances and the Secretary opposes any motion for “reconsideration” in an attempt to file new argument.

In response to Appellant’s April 11, 2024, motion, the Secretary avers that Appellant has not established a new basis for further response. The reasons presented in the April 11, 2024, motion mirror those presented in Appellant’s original December 6, 2023, motion, in which he initially requested leave to file a 30-page response. These reasons were previously considered by the Court and only a 20-page response was permitted. The Secretary continues to oppose

Appellant's request for a response beyond what has already been submitted. Further, to the extent Appellant requests an opportunity to submit new argument or "brief" his opposition to the Secretary's November 30, 2023, motion to dismiss, the Secretary fully opposes. See Motion at 3.

**WHEREFORE**, Appellee, the Secretary of Veterans Affairs, hereby responds to Appellant's April 11, 2024, opposed motion seeking "reconsideration" of the Court's December 22, 2023, Order.

Respectfully submitted,

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