

*Not published*

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

No. 23-5963

JOHN A. COOPER,

APPELLANT,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

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

**ORDER**

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

This case was submitted to a panel on April 1, 2024, and oral argument is scheduled for June 27, 2024. The Court seeks a supplemental memoranda of law addressing the following:

(1) Whether the Veterans Appeals Improvement and Modernization Act of 2017—either alone or in combination with implementing regulations—has fundamentally changed the nature of a Board remand, such that a remand constitutes an appealable final adverse decision on the question of whether benefits may be granted without additional development.

(2) Whether and to what extent *Clark v. McDonough*, 35 Vet.App. 317 (2022), *aff'd sub nom. Smith v. McDonough*, No. 22-2213, 2024 WL 981143 (Fed. Cir. Mar. 7, 2024) (per curiam), which held that the Board's denial of a motion to waive further development did not constitute a final and appealable Board decision for purposes of this Court's jurisdiction, affects this inquiry.

The parties may respond to opposition briefing during the June 27 oral argument. The Court denies as moot Mr. Cooper's motion for leave to file a motion to reconsider the Court's previous order in this case limiting his response to the Secretary's motion to dismiss to 20 pages.

Mr. Cooper also filed a motion to consolidate his appeal with docket number 23-3844, in which the appeal was dismissed in a March 21, 2024, single-judge order. The Court is not persuaded that consolidation is appropriate and will therefore deny the appellant's motion. *See* U.S. VET. APP. R. 3(e).

Accordingly, it is

ORDERED that the appellant's motion for consolidation is denied. It is further

ORDERED that the April 11, 2024, motion for leave to file a motion for reconsideration is denied as moot. It is further

ORDERED that, no later than May 31, 2024, the parties submit a supplemental memorandum of law not exceeding 30 pages addressing the issues stated above.

DATED: April 25, 2024

PER CURIAM.

Copies to:

Kent A. Eiler, Esq.

VA General Counsel (027)