

Pursuant to U.S. Vet. App. Rules 27 and 42, Appellant and Appellee hereby agree to, and move for, termination, with prejudice, of that part of the captioned appeal which relates to the Board of Veteran's Appeals (Board) November 14, 2016, decision denying Appellant's claim for entitlement to an effective date prior to January 21, 2009, for his award of service connection for posttraumatic stress disorder (PTSD), at the currently assigned 70 % rating for that disability. The terms upon which the parties agree this portion of the appeal is to be terminated are contained in the attached Stipulated Agreement. To the extent Appellant also appealed the Board's decision denying entitlement to a rating in excess of 70% for his service-connected PTSD, that portion of the appeal should also be terminated. Regarding that portion of the Board's decision which addressed Appellant's claim for entitlement to an effective date prior to January 21, 2009, for his award of a total disability evaluation based upon individual unemployability (TDIU), a joint motion for partial remand is being filed contemporaneously with this motion which addresses the issue.

The Court has held that when the Secretary of Veterans Affairs enters into such an agreement, the Board of Veterans' Appeals decision giving rise to the appeal is overridden, thereby mooted 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."). Accord *Dofflemyer v. Brown*, 4 Vet.App. 339 (1993). 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.*

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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 . . . ."

*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 raised by this portion of the 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 issue, as captioned by the Board, of an effective date prior to January 21, 2009, for service-connected PTSD.

WHEREFORE, pursuant to the Rule 42 of the Court's Rules of Practice and Procedure, the parties jointly move the Court for an order terminating the portion of the above captioned appeal which relates to the Board of Veterans' Appeals November 14, 2016, decision denying entitlement to an effective date prior to January 21, 2009, for the award of service connection for PTSD at a 70% rating for that disability; and which denied a rating in excess of 70% for Appellant's service-connected PTSD.

Respectfully submitted,

FOR THE APPELLANT:

August 17, 2018  
Date

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**MARY ANN FLYNN**

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August 17, 2018

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## **STIPULATED AGREEMENT**

**WHEREAS**, Rosetta McKnight (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on February 16, 2017, from a November 14, 2016, Board of Veterans' Appeals (Board) decision; 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 award Appellant service connection for PTSD effective January 22, 2008, and assign a 70% rating for his service-connected PTSD effective that date.
2. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that the 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 above referenced issue.
4. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 17-0477, with the exception of the issue addressed in the contemporaneously filed Joint Motion for Remand, shall be terminated, with prejudice, as to all issues addressed in the November 14, 2016, Board decision following execution of this agreement and the issuance of

the Court's Order granting the parties' joint motion for partial remand filed concurrently herewith.

5. The parties also agree that this agreement is entered into for the purpose of avoiding further litigation and the costs related thereto. The parties further 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:

August 17, 2018  
Date

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