

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-4045(E)

MICHAEL MAGNANTI,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, ALLEN, and FALVEY, *Judges*.

ORDER

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

On April 15, 2019, this matter was submitted for panel consideration. Oral argument is currently scheduled for June 17, 2019. On April 24, 2019, the appellant filed an unopposed Motion to Reschedule Oral Argument¹ as well as a Joint Motion for Clarification of Issues for Oral Argument. The following procedural history has presented an issue of first impression:

On May 31, 2018, the Court issued a memorandum decision that vacated a June 24, 2015, Board of Veteran's Appeals decision denying an earlier effective date for the appellant's service-connected diabetes condition and remanded the matter for readjudication. On June 22, 2018, the Court's judgment entered. Mandate then became effective August 21, 2018. The appellant's application for attorney's fees pursuant to the Equal Access to Justice Act (EAJA) was due on September 20, 2018. 28 U.S.C. § 2142.

On September 21, 2018, the appellant filed his EAJA application. The Secretary's response to the EAJA application was due on October 21, 2018. On October 22, 2018, the Secretary filed a nonconforming document with the Court. On October 28, 2018, the Secretary filed an unopposed motion for an extension until November 21, 2018, to file a response to the EAJA application. The Secretary failed to respond in a timely manner. On November 26, 2018, the Court ordered the Secretary to file a motion for leave and a response to the EAJA application by December 3, 2018.

On December 3, 2018, the Secretary filed an unopposed motion for leave to file a late response to the appellant's EAJA application challenging the timeliness of the EAJA application. On December 4, 2018, the Clerk of the Court stamp granted the appellee's motion for leave to file a late response to the appellant's EAJA application.

¹ The motion notes that the VA's deputy counsel is unable to appear at oral argument between June 22, 2019, and July 6, 2019.

The parties should be prepared to address all arguments raised in their briefing. In addition, the Court provides the following information to assist the parties in preparation for argument. A panel has been formed to address under what standard a single judge of the Court can reconsider a previously entered Court order. The panel will also consider whether the Court must nevertheless determine if equitable tolling of the time to file an EAJA application is warranted if an earlier order allowing a late filed objection is revoked.

Upon consideration of the foregoing, it is

ORDERED that the unopposed Motion to Reschedule Oral Argument is granted. It is further

ORDERED that the Clerk's office reschedule oral argument in due course, but not between June 22, 2019, and July 27, 2019. It is further

ORDERED that the Joint Motion for Clarification of Issues for Oral Argument is granted. The issue has been clarified above.

DATED: April 29, 2019

PER CURIAM.

Copies to:

Christopher F. Attig, Esq.

VA General Counsel (027)