

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

JOHN R. RATZER,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 18-0107
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet. App. Rules 27 and 42, the parties agree to and move for termination of the captioned appeal. The terms upon which the parties agree this appeal is to be terminated are contained in the attached Stipulated Agreement.

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 mootng the case or controversy. *Bond v. Derwinski*, 2 Vet.App. 376 (1992). See also *Kimberly-Clark v. Procter & Gamble*, 973 F.2d 911, 914 (Fed. Cir. 1992) ("Generally, settlement of a dispute does render a case moot.").

The General Counsel represents the Secretary of Veterans Affairs before the Court. 38 U.S.C. § 7263(a); 38 C.F.R. § 14.500. By 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 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).¹ See also Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. 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 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 case on appeal.

WHEREFORE, the parties jointly move the Court for an order terminating the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

Respectfully submitted,
FOR THE APPELLANT:

¹ “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”

10/16/2019
Date

/s/ Patrick A. Berkshire
PATRICK A. BERKSHIRE
BARTON F. STICHMAN
National Veterans Legal Services Program
1600 K Street, NW Suite 500
Washington, DC 20006
202-265-8305

FOR THE APPELLEE:

RICHARD J. HIPOLIT
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

10/16/2019
Date

/s/ Selket N. Cottle
SELKET N. COTTLE
Deputy Chief Counsel

10/16/2019
Date

/s/ Mark D. Vichich
MARK D. VICHICH
Senior Appellate Attorney
Office of the General Counsel (027I)
U.S. Dept. of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-5985

STIPULATED AGREEMENT

WHEREAS, John R. Ratzer (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on January 8, 2018, from an October 24, 2017, Board of Veterans' Appeals (BVA) 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. The Appellee agrees to award an effective date of November 18, 2008, for the awards of service connection for (1) a blood disorder, to include thrombocytopenia with pancytopenia and chronic cholelithiasis, secondary to alcoholic liver cirrhosis; (2) alcoholic liver cirrhosis; and (3) posttraumatic stress disorder (PTSD).

2. The 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. The parties make no agreement with respect to the disability rating for these conditions, which VBA will assign based on the evidence of record and in accordance with applicable law and regulation.

4. The 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 claim that is the subject of this appeal.

5. The Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 18-0107, shall be terminated, with prejudice, as to all issues addressed in the October 24, 2017, BVA decision following execution of this agreement.

6. The parties make this agreement to avoid further litigation and the related costs. Both parties 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:

10/16/2019
Date

/s/ Patrick A. Berkshire
PATRICK A. BERKSHIRE
BARTON F. STICHMAN
National Veterans Legal Services Program
1600 K Street, NW Suite 500
Washington, DC 20006
202-265-8305

FOR THE APPELLEE:

RICHARD A. HIPOLIT
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

10/26/2019
Date

/s/ Selket N. Cottle
SELKET N. COTTLE
Deputy Chief Counsel

Date

/s/ Mark D. Vichich _____
MARK D. VICHICH
Senior Appellate Attorney
Office of the General Counsel (0271)
U.S. Dept. of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-5985