

*Not published*

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

No. 17-0934

EDDIE T. CAMPBELL,

APPELLANT,

v.

ROBERT L. WILKIE,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before TOTH, *Judge*.

**ORDER**

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

In May 2019, the Court issued a memorandum decision vacating a December 2016 Board decision adverse to veteran Eddie T. Campbell and remanding the matters for readjudication. On July 30, 2019, mandate issued. The appellant's counsel then filed a timely application for attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. That application is still pending.

Since then, the appellant's counsel notified the Court that the appellant died on August 28, 2019, and filed an unopposed motion for substitution on behalf of Louise Campbell, the veteran's surviving spouse. Per counsel, VA has already determined that Mrs. Campbell is a qualified accrued-benefits claimant. Meanwhile, the Secretary sought and was granted a 45-day extension to file a response to the EAJA application; that response is now due on November 7, 2019.

In *Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010), the Court held that it would generally permit substitution in pending appeals if the person seeking substitution had been granted substitution before VA or the Secretary conceded that the person is a qualified accrued-benefits claimant. In light of VA's determination that Mrs. Campbell is a qualified accrued-benefits claimant and a proper party for substitution, the Court grants the motion nunc pro tunc. *See generally Phillips v. Shinseki*, 581 F.3d 1358 (Fed. Cir. 2009).

Upon consideration of the foregoing, it is

ORDERED that Louise Campbell's motion for substitution as the appellant is granted nunc pro tunc to August 28, 2019, the date of the veteran's death. It is further

ORDERED that the Clerk of the Court change the caption of the case to reflect that Louise Campbell is now the appellant. It is further

ORDERED that the Secretary file a response to the EAJA application by November 7, 2019.

DATED: October 31, 2019

BY THE COURT:



JOSEPH L. TOTH  
Judge

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)