

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

JAMES H. OATES,)	
)	
Appellant,)	
)	
v.)	Vet.App. No. 18-2417
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet.App. Rules 27 and 42, Appellant and Appellee hereby agree to and move for termination of the captioned appeal. The terms upon which the parties agree to terminate this appeal 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 decision giving rise to the appeal is overridden, thereby mooting 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.”). 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).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 concession of error by the Secretary; and (3) this agreement disposes of the case on appeal.

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

Respectfully submitted,

FOR APPELLANT:

/s/ Jeany C. Mark

JEANY C. MARK

Date: November 4, 2019

/s/ Ethan F. Maron

ETHAN F. MARON

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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"

FOR APPELLEE:

RICHARD J. HIPOLIT
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Edward V. Cassidy, Jr.
EDWARD V. CASSIDY, JR.
Deputy Chief Counsel

Date: November 4, 2019

/s/ Jonathan Z. Morris
JONATHAN Z. MORRIS
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STIPULATED AGREEMENT

WHEREAS, James H. Oates (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on May 11, 2018, from a January 12, 2018, Board of Veterans' Appeals (Board) decision, which (1) denied entitlement to a rating higher than 90% for degenerative joint disease of the right hip, status post femoral head fracture, from May 20, 2015; and, (2) granted entitlement to a total disability rating based on individual unemployability due to service-connected disabilities from May 20, 2015.

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 a separate 10% disability rating for painful motion of the lumbar spine, with an effective date of May 20, 2015.

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 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.

4. The Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet.App. No. 18-2417 shall be terminated, with prejudice, as to all issues addressed in the January 12, 2018, Board decision following execution of this agreement.

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

FOR THE APPELLANT:

/s/ Jeany C. Mark
JEANY C. MARK

Date: November 4, 2019

/s/ Ethan F. Maron
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FOR THE APPELLEE:

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