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NON-PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-2345

STENSON FEARS, JR.,

APPELLANT,

V.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before ALLEN and TOTH, *Judges*, and SCHOELEN, *Senior Judge*.¹

ORDER

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

In an August 12, 2019, panel decision, the Court affirmed an April 6, 2017, Board of Veterans' Appeals decision that denied entitlement to service connection for hepatitis. On September 4, 2019, at midnight, appellant's counsel filed, via email, a motion for reconsideration of the panel decision or, in the alternative, for full-Court review. In his email, counsel noted that he was "having problems logging on" to the Court's automated Case Management/Electronic Case Filing (CM/ECF) system.

A motion for panel reconsideration must be filed "not later than 21 days . . . after the date of the dispositive action for which reconsideration, panel review, or full Court review is sought."² In this case, appellant's motion was due on September 3, 2019, by 11:59 PM.³ It was filed one minute late, at midnight on September 4, 2019. Given appellant's counsel's assertions regarding technical difficulties with CM/ECF and the delay of only one minute, pursuant to Rule 2, the Court will suspend the 21-day deadline and accept appellant's motion for panel reconsideration or, in the alternative, full-Court review.

Turning to the merits, "a motion for . . . panel [reconsideration] . . . shall state the points of law and or fact that the party believes the Court has overlooked or misunderstood."⁴ The Court did

¹ Judge Schoelen is a Senior Judge acting in recall status. *In re: Recall of Retired Judge*, U.S. VET. APP. MISC. ORDER 04-20 (Jan. 2, 2020).

² U.S. VET. APP. R. 35(d).

³ E-Rule 5(c); U.S. VET. APP. R. 25(a)(2), 25(e)(1) (noting that electronic filing must be completed before midnight Eastern Time).

⁴ U.S. VET. APP. R. 35(e)(1).

not overlook or misunderstand any argument that was properly before it. Appellant has not presented any argument that warrants reconsideration by the panel.

Upon consideration of the foregoing, it is

ORDERED that the motion for reconsideration or, in the alternative, en banc review is accepted as timely. It is further

ORDERED that the motion for reconsideration by the panel is denied. It is further

ORDERED that the motion for full-Court review is held in abeyance pending further order of the Court.

DATED: January 29, 2020

PER CURIAM.

Copies to:

Brian K. Lewis, Esq.

VA General Counsel (027)