

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

LYN ADANICH,
Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,
Appellee.

)
)
)
)
)
)
)
)
)
)

Vet. App. No. 18-4199

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet. App. Rules 27 and 42, the parties hereby agree to and move for termination, with prejudice, of the above 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 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."). Accord *Dofflemyer v. Brown*, 4 Vet.App. 339 (1993). 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 confession 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 above captioned appeal.

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” 2

Respectfully submitted,

FOR THE APPELLANT:

Date: 4/6/2020

/s/ Maxwell D. Kinman
MAXWELL D. KINMAN
423 Reading Road
Mason, OH 45040
(513) 228-1100

FOR THE APPELLEE:

WILLIAM A. HUDSON, JR.
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Kenneth A. Walsh
KENNETH A. WALSH
Deputy Chief Counsel

Date: 4/6/2020

/s/ Lance Steahly
LANCE STEAHLY
Appellate Attorney
Office of the General Counsel (027J)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 632-6809
lance.steahly@va.gov

STIPULATED AGREEMENT

WHEREAS, Lyn Adanich, (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on August 9, 2018, of a May 24, 2018, decision of the Board of Veterans' Appeals (Board); and

WHEREAS, the Secretary of Veterans Affairs (Secretary) 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 Secretary agrees to grant entitlement to compensation under 38 U.S.C. § 1151 for residuals of a dental procedure including non-removal of gauze on a substitution basis. The parties make no agreement regarding the level of disability or the effective date to be assigned for the award(s), which shall be matters for initial adjudication by the agency of original jurisdiction, subject to the right of appeal.

2. The Secretary 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 Secretary 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 or issue that is the subject of this appeal.

4. Appellant agrees that her pending appeal in the United States Court of

Appeals for Veterans Claims, U.S. Vet.App. No. 18-4199 shall be terminated, with prejudice, as to all issues presently before this Court and addressed in the May 24, 2018, Board decision following execution of this agreement.

5. Upon Appellant's timely application for an award of attorney fees and expenses under 28 U.S.C. § 2412(d), Appellee agrees to pay reasonable attorney fees and expenses relative to time spent on the underlying appeal, subject to review by the Court.

6. 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.

Respectfully submitted,

FOR THE APPELLANT:

Date: 4/6/2020

/s/ Maxwell D. Kinman
MAXWELL D. KINMAN
423 Reading Road
Mason, OH 45040
(513) 228-1100

FOR THE APPELLEE:

WILLIAM A. HUDSON, JR.
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Kenneth A. Walsh
KENNETH A. WALSH
Deputy Chief Counsel

Date: 4/6/2020

/s/ Lance Steahly

LANCE STEAHLY

Appellate Attorney

Office of the General Counsel (027J)

U.S. Department of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, DC 20420

(202) 632-6809

lance.steahly@va.gov