

RICARDO D. STAFFORD,)
Appellant,)
)
v.) Vet. App. No. 18-4520
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
Appellee.)

Pursuant to U.S. VET. APP. R. 27(b), Appellee submits this response in opposition to Appellant's March 31, 2020, Motion to Consolidate the instant case of *Stafford v. Wilkie*, Vet.App. No. 18-4520, with *Christensen v. Wilkie*, Vet.App. No. 18-3320, and *Hughes v. Wilkie*, Vet.App. No. 18-5630. This Court should deny Appellant's motion because Appellant fails to demonstrate that consolidation is warranted in this case.

On March 31, 2020, Appellant filed a Motion to Consolidate the instant case with *Christensen* and *Hughes* pursuant to U.S. VET. APP. R. 3(e). [March 31, 2020, Motion to Consolidate]. Appellant argues that “[c]onsolidation of these cases would conserve the Court’s and the Secretary’s resources and promote judicial economy.” [March 31, 2020, Motion to Consolidate]. Appellant contends that all three cases involve the issue of “whether 38 C.F.R. § 4.16(b) (2019) precludes the Board of Veterans’ Appeals [(Board)] from granting entitlement to a total disability rating based on individual unemployability (TDIU) without first referring the matter to the Director of Compensation Service for a decision.” [March 31, 2020, Motion to Consolidate]. Appellant notes that this Court sua sponte stayed proceedings in *Christensen* and *Hughes* pending resolution of the instant case. [March 31, 2020, Motion to Consolidate].

Consolidation of appeals in this Court is governed by Rule 3(e) of the Court's Rules. U.S. VET. APP. R. 3(e). Pursuant to that Rule, “[a]ppeals may be consolidated by order of the Court on its own initiative or on a party’s motion.” *Id.* The Court has also looked to the Federal Rules of Civil Procedure for guidance on consolidation. See *Sapp v. Wilkie*, 32 Vet.App. 125, 149 (2019). The Federal Rules of Civil Procedure provide that, when “actions . . . involve a common question of law or fact, the court may . . . consolidate the actions.” FED. R. CIV. P. 42(a).

As an initial matter, Appellant neglected to mention recent developments in both the instant case and *Christensen*. On March 27, 2020, in the instant case, Appellee filed a notice informing the Court that the Board issued a decision on March 26, 2020, granting an extraschedular TDIU. [March 27, 2020, Notice pursuant to *Solze v. Shinseki*, 26 Vet.App. 299 (2013)]. This recent Board decision, granting benefits sought by Appellant, would seem to render most, if not all, of the issues raised in the instant appeal moot. Similarly, on March 10, 2020, Appellee filed a notice in *Christensen* informing the Court that the regional office issued a decision on January 29, 2020, granting an extraschedular TDIU pursuant to an advisory opinion from Compensation Service. [March 10, 2020, Notice pursuant to *Solze v. Shinseki*, 26 Vet.App. 299 (2013), in Vet.App. No. 18-3320]. This recent decision would likewise appear to render moot some, if not all, of the issues raised in the *Christensen* appeal. Thus, Appellant fails to establish that the three cases proposed for consolidation continue to “involve a common question of law or fact” in light of these developments. *Sapp*, 32 Vet.App. at 149; FED. R. CIV. P. 42(a).

Moreover, apart from a bare assertion, Appellant fails to provide any specific explanation for how consolidation would conserve the Court’s and the Secretary’s resources or promote judicial economy, especially in light of recent developments

in the instant appeal and *Christensen*. Since all three appeals are fully briefed in separate appeals, consolidation at this time would not conserve the Secretary's resources nor would it promote judicial economy. Likewise, with *Christensen* and *Hughes* currently stayed pending a decision in the instant case, this Court's resources are currently being conserved and consolidation would not provide any further apparent benefit.

Further, it should weigh against consolidation that Appellant, who has been represented by the same counsel who represents the appellants in *Christensen* and *Hughes*, and, thus, was presumably aware of the now asserted concerns for the conservation of the Court's and the Secretary's resources, moved to consolidate only after individualized briefing was completed in all three cases and after oral argument was completed in the instant case. Appellant has provided no explanation for failing to move for consolidation of these cases earlier when resources potentially could have been conserved.

WHEREFORE, Appellee respectfully requests that the Court deny Appellant's Motion for Consolidation.

Respectfully submitted,

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