

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

RICHARD C. BAREFORD,)	
)	
Appellants,)	
)	
v.)	Vet. App. No. 19-4633
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**SECRETARY’S RESPONSE IN OPPOSITION TO APPELLANT’S
MOTION FOR AN ORAL ARGUMENT**

Pursuant to U.S. Vet. App. Rule 27(b), Appellee, Robert L. Wilkie, Secretary of Veterans Affairs (Secretary), respectfully submits this response in opposition to Appellants’ June 12, 2020, Motion for Oral Argument (Motion). The Secretary respectfully asserts that the Court should deny Appellants’ Motion because he has not demonstrated that oral argument before the Court will materially assist in the disposition of this appeal.

PROCEDURAL SUMMARY

On December 20, 2019, Appellant filed a brief challenging the July 1, 2019, Board of Veterans’ Appeals (Board) decision that denied entitlement to a Government-furnished headstone or marker, arguing in large part that 38 C.F.R. § 38.600(a) is contrary to 38 U.S.C. § 2306. See Appellant’s Brief (App. Br.) at 15-30. The Secretary filed a brief on May 4, 2020, in which he argued that the statute leaves a gap that is appropriately filled by 38 C.F.R.

§ 38.600(a). See Secretary's Brief (Sec. Br.) at 5-26. Appellant filed a reply brief on June 1, 2020.

THE COURT SHOULD DENY APPELLANT'S MOTION

The Secretary respectfully asserts that the Court should deny Appellant's Motion because it does not demonstrate that an oral argument will materially assist the Court in deciding the issues in this appeal. See U.S. Vet.App. R. 34(b) ("Such motion shall specify therein why such argument will aid the Court."); see also *Janssen v. Principi*, 15 Vet.App. 370, 379 (2001) ("the appellant's request for oral argument is denied because the Court does not believe it would materially assist in the disposition of this appeal"). In his Motion, Appellant states that oral argument "may help crystallize the key issues." Motion at 2. Appellant also noted that this is a case of first impression, and his requested relief is "unusual, namely, the invalidation of a regulation." *Id.* Appellant concedes that his brief describes "in detail" the basis for his argument, but nevertheless asserts oral argument "may assist the Court in resolving any lingering questions it may have about the Parties' arguments." *Id.* Finally, Appellant alleges that this case "would affect a pending rulemaking." *Id.*

However, Rule 34(b) requires a motion for an oral argument to specify why an argument will aid the Court, and Appellant's motion contains no such showing apart from his bare allegations as to how he believes it may be helpful, even though he concedes that his briefs detail the reasoning behind

his arguments. See Motion at 1-2. Because Appellant has not shown that an oral argument will materially assist the Court, the Secretary respectfully asserts that the Court should deny his motion. *Janssen*, 15 Vet.App. at 379.

WHEREFORE, Appellee respectfully asserts that the Court should deny Appellant's Motion for an Oral Argument.

Respectfully submitted,

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