

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

JOHN A. ABRAHAMSON,)	
)	
Appellant,)	
)	
v.)	Vet.App. No. 18-7067
)	
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 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 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 presented 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, the parties jointly move the Court for an order terminating the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

Respectfully submitted,

FOR THE APPELLANT:

/s/ Jennifer A. Zajac

JENNIFER A. ZAJAC

Paralyzed Veterans of America

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Oceanside, CA 92056

(760) 639-0765

Date: July 24, 2020

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 THE APPELLEE:

WILLIAM A. HUDSON, JR.

Principal Deputy General Counsel

MARY ANN FLYNN

Chief Counsel

/s/ Sarah W. Fusina

SARAH W. FUSINA

Deputy Chief Counsel

/s/ Margaret E. Sorrenti

MARGARET E. SORRENTI

Appellate Attorney

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U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

(202) 632-6790

Date: July 24, 2020

STIPULATED AGREEMENT

WHEREAS, John A. Abrahams (Appellant) filed an appeal to the United States Court of Appeals for Veterans Claims on December 6, 2018, from the November 27, 2018, Board decision that found that the overpayment of Department of Veterans Affairs (VA) disability compensation benefits in the amount of \$4,176.00 resulting from Appellant's incarceration in excess of 60 days for conviction of a felony was properly created; and

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. Appellee agrees to release Appellant from any obligation to repay the overpayment that was the subject of the November 27, 2018, Board decision. VA will close the agency file on the \$4,176.00 overpayment created in October and November 2001 resulting from Appellant's incarceration in excess of 60 days for conviction of a felony, and refund any amount already collected from that overpayment.

2. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) and VA's Debt Management Center (DMC) upon final disposition by the Court with respect to this settlement; and that VBA and DMC shall take prompt action to implement this agreement.

3. 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. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 18-7067, shall be terminated with prejudice, as to all issues addressed in the November 27, 2018, Board decision following the 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.

Respectfully submitted,

FOR THE APPELLANT:

/s/ Jennifer A. Zajac

JENNIFER A. ZAJAC

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FOR THE APPELLEE:

WILLIAM A. HUDSON, JR.

Principal Deputy General Counsel

MARY ANN FLYNN

Chief Counsel

Date: July 24, 2020

/s/ Sarah W. Fusina

SARAH W. FUSINA

Deputy Chief Counsel

Date: July 24, 2020

/s/ Margaret E. Sorrenti

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