

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

VICTOR AVILES-RIVERA,
Appellant,

v.

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

)
)
)
)
)
)
)
)
)
)

Vet. App. No. 19-5969

**APPELLANT’S MOTION FOR A STAY OF PROCEEDINGS PENDING
THE FEDERAL CIRCUIT’S ISSUANCE OF MANDATE IN *EUZEBIO V.*
*WILKIE***

Pursuant to U.S. Vet. App. Rules 5 and 27, Appellant respectfully moves the Court to stay proceedings in the instant case pending the issuance of mandate in the United States Court of Appeals for the Federal Circuit case styled *Euzebio v. Wilkie*, No. 20-1072. That case concerns legal issues that could have an impact on the instant appeal.

The legal issue in *Euzebio* is whether an appellant claiming constructive possession of a document that would support the appellant’s claim for disability compensation must show that there is a direct relationship between the document and the appellant’s claim in order to demonstrate that the document was constructively before the Board. In *Euzebio v. Wilkie*, 31 Vet. App. 394, 403 (2019), this Court held that a National Academies of Sciences’ updated report regarding veterans and Agent Orange was not constructively part of the record and thus the Board did not have an obligation to address the report in its decision.

Mr. Euzebio filed an appeal to the Federal Circuit on October 22, 2019, and the Federal Circuit issued a notice of docketing the next day. If the Federal Circuit overturns this Court's decision in *Euzebio*, it could have a material impact on Appellant's appeal to this Court.

Therefore, in light of the similarity between the legal issue presented in *Euzebio* and this case, Appellant respectfully requests that this motion for a stay of proceedings be granted to conserve the Court's resources, ensure uniformity in the Court's case law, and permit an orderly development of the law in this area.

Counsel for the Secretary, Omar Yousaf, Esq., has informed counsel for Appellant that the Secretary **takes no position** regarding this motion.

WHEREFORE, Appellant respectfully moves the Court to stay proceedings in this case pending mandate in *Euzebio v. Wilkie* or until further order by the Court.

Respectfully submitted,

Date: August 18, 2020

/s/ Robert A. Jackson
ROBERT A. JACKSON
Attorney at Law
9548 Spring River Way
Elk Grove, CA 95624
(916) 685-6433

Counsel for Appellant