

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Douglas A. Constantine
Appellant,

v.

No. 18-7044

Robert L. Wilkie,
Secretary of Veterans Affairs,
Appellee.

**APPELLANT'S UNOPPOSED MOTION FOR CLARIFICATION OF ISSUES FOR
ORAL ARGUMENT**

After conferring with his counsel on September 8, 2020, the Secretary is unopposed to this motion. The parties framed the issue in this appeal as follows:

The BVA's jurisdiction to review decisions by the Secretary does not give it authority to interpret the law. On its face, a consent decree entered in the original *Nehmer* case affords earlier effective date rules to veterans exposed to the herbicide dioxin, without any limitation due to the location of their exposure. The BVA denied Mr. Constantine, a veteran exposed to Agent Orange while on patrols in the Korean DMZ, an effective date required by the *Nehmer* consent decree because he was not a Vietnam veteran. Did the BVA exceed its jurisdiction when it limited the scope of the Court-ordered *Nehmer* consent decree? *Appellant's Opening Brief*, page 1.

Whether the Court should affirm the October 31, 2018, Board of Veterans' Appeals (BVA or Board) decision, denying an effective date prior to August 31, 2010, for the grant of service connection for coronary artery disease, when the Board correctly found that Appellant, who had no service in the Republic of Vietnam, was not a *Nehmer* class member. *Secretary's Response Brief*, page 1.

On September 9, 2020, the Court set the matter for oral argument before a panel of the Court that will be convened on November 4, 2020. Mr.

Constantine respectfully moves the Court for clarification of the issue(s) about which the Court is interested in hearing at oral argument.

Mr. Constantine believes this clarification would assist both parties prepare for oral argument and assist the Court by ensuring both parties have prepared to specifically address issues which the Court wishes to discuss or finds most pertinent.

Mr. Constantine respectfully asks the Court to clarify the issue(s) it wishes the parties to address at oral argument.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on September 9, 2020, I caused this motion to be served on the Secretary by and through the Court's E-Filing system:

SECRETARY, DEPARTMENT OF VETERANS AFFAIRS
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