

*Not published*

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

No. 18-7044

DOUGLAS A. CONSTANTINE,

APPELLANT,

v.

ROBERT L. WILKIE,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and GREENBERG and MEREDITH, *Judges*.

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

Veteran Douglas A. Constantine appeals, through counsel, an October 31, 2018, Board of Veterans' Appeals (Board) decision that denied entitlement to an effective date earlier than August 31, 2010, for the award of service connection for coronary artery disease. On August 28, 2020, the case was submitted to a panel of this Court for consideration. Oral argument is scheduled for November 4, 2020. On September 9, 2020, Mr. Constantine filed an unopposed motion seeking clarification of the issues to be addressed at oral argument.

This matter centers on two aspects of the *Nehmer* class action lawsuit against VA: the scope of the *Nehmer* class, as certified by the U.S. District Court of the Northern District of California, and the terms of the May 1991 consent decree. *See Nehmer v. U.S. Veterans' Admin.*, 118 F.R.D. 113, 116 (N.D. Cal. Dec. 22, 1987) (defining the class); *Nehmer v. U.S. Veterans Admin.*, 32 F.Supp.2d 1175, 1177 (N.D. Cal. 1999) (describing the Final Stipulation and Order (consent decree)). One of the many issues being considered in this matter is whether the Court has jurisdiction and authority to provide the relief Mr. Constantine seeks: to determine that the Board exceeded its jurisdiction by limiting the scope of the *Nehmer* consent decree and to direct the Board to apply the clear and express terms of the consent decree as including him as a class member. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378, 381 (1994); *Nehmer v. U.S. Dept. of Veterans Affairs*, 494 F.3d 846, 856 (9th Cir. 2007) ("Ordinarily, when a district court incorporates the terms of a settlement agreement or a stipulation into an order, it retains subject matter jurisdiction to interpret and enforce the contents of that order.").

Accordingly, in addition to the issues raised by the parties in their briefs, the parties should be prepared to discuss the Court's jurisdiction and authority to provide the relief Mr. Constantine seeks.

Upon consideration of the foregoing, it is

ORDERED that Mr. Constantine's unopposed motion for clarification of the issues to be addressed at oral argument is granted. The parties should be prepared to discuss the above issue at oral argument.

DATED: September 22, 2020

PER CURIAM.

Copies to:

Christopher F. Attig, Esq.

VA General Counsel (027)