

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-1136

KENNETH M. CARPENTER,

APPELLANT,

AND

ROBERT V. CHISHOLM,

APPELLANT,

V.

DENIS McDONOUGH,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, MEREDITH, and FALVEY, *Judges*.

ORDER

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

Before the Court is Kenneth M. Carpenter's and Robert V. Chisholm's March 10, 2021, motion to deconsolidate and Mr. Carpenter's March 10, 2021, motion for extension.

Previously, on May 31, 2019, the Court granted the appellants' motions to consolidate, transferred all documents filed under docket number 19-1137 (Mr. Chisholm's) to docket number 19-1136 (Mr. Carpenter's), and terminated all proceedings under docket number 19-1137 (i.e., the Court closed the case under this docket). Mr. Carpenter's and Mr. Chisholm's case then proceeded, consolidated, under docket number 19-1136.

On February 24, 2021, the Court issued a panel decision affirming an October 31, 2018, Board of Veterans' Appeals decision denying entitlement to remote, read-only access to automated VA claims records for Mr. Carpenter's unaccredited paralegals and staff and an October 29, 2018, Board decision denying entitlement to remote, read-only access to automated VBA claims records for Mr. Chisholm's unaccredited paralegals.

On March 10, 2021, the appellants filed a motion to deconsolidate to allow them to continue in their own capacities because appellants disagree on how to proceed, including whether to pursue future appellate action. On the same day, Mr. Carpenter filed a motion requesting an extension until May 3, 2021, to move for panel reconsideration or en banc review of the February 24, 2021, panel decision. The Secretary is unopposed to both motions.

Before the Court decides the motion to deconsolidate, it requires additional information from the appellants. Mr. Carpenter, in his motion for extension, has indicated that he will likely seek reconsideration or en banc review of the Court's February 24, 2021, decision. It is unclear what action Mr. Chisholm plans to take. Thus, the Court will order the appellants to respond, in one joint document, how each plans to proceed: no further action, a motion for reconsideration or en banc review at this Court, or an appeal to the U.S. Court of Appeals for the Federal Circuit.

If one appellant plans to pursue further action in this Court and the other plans to do so at the Federal Circuit, the parties must explain, with cited authority, how both this Court and the Federal Circuit can have jurisdiction over the same matter. If both appellants plan to pursue further action in this Court, but under separate dockets, they must explain, with cited authority, how and why the Court would allow this. If one appellant avers that he does not plan to take further action on this matter, no explanation is required.

On consideration of the above, it is

ORDERED that appellants, within 10 days of the date of this order, file one joint response, not to exceed 5 pages, addressing the questions the Court raises in this order concerning their March 10, 2021, motion to deconsolidate. It is further

ORDERED that Mr. Carpenter's March 10, 2021, motion for extension is held in abeyance pending the appellants' response. It is further

ORDERED that proceedings are otherwise stayed pending further order of the Court.

DATED: March 12, 2021

PER CURIAM.

Copies to:

Jay I. Alexander, Esq.

VA General Counsel (027)