

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 further 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.

On March 12, 2021, the Court ordered the appellants to respond regarding how each planned to proceed if we granted deconsolidation: 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. We stated that if one appellant planned to pursue further action in this Court and the other planned to do so at the Federal Circuit, the parties were to explain how both this Court and the Federal Circuit could have jurisdiction over the same matter. If both appellants planned to pursue further action in this Court, but under separate dockets, they were to explain how and why the Court would allow this. If one appellant averred that he did not plan to take further action on this matter, no explanation was required.

On March 15, 2021, the appellants responded. Mr. Carpenter stated that he intended to move for panel reconsideration or en banc review at this Court. Mr. Chisholm averred that he will not take further action on this matter at this Court or at the Federal Circuit.

Because Mr. Chisholm has averred that he will not take any further action on this matter, Mr. Carpenter has asserted good cause in support of his motion for an extension, and the Secretary does not oppose either motion, we will grant the motion for deconsolidation and the motion for extension.

On consideration of the above, it is

ORDERED that the March 12, 2021, stay of proceedings is lifted. It is further

ORDERED that the appellants' unopposed motion to deconsolidate is granted. It is further

ORDERED that the Clerk of the Court shall reopen docket number 19-1137 and include all docket entries made under docket number 19-1136 after May 31, 2019, (including this order) in docket number 19-1137. It is further

ORDERED that Mr. Carpenter's unopposed March 10, 2021, motion for extension until May 3, 2021, to move for panel reconsideration or en banc review of the February 24, 2021, panel decision is granted.

DATED: March 16, 2021

PER CURIAM.

Copies to:

Jay I. Alexander, Esq.

VA General Counsel (027)