

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

TIMOTHY W. HARRIS,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-9045
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet. App. Rules 27 and 42, the parties hereby agree to, and move for termination of, the captioned appeal. The terms upon which the parties agree this appeal is to be terminated are contained in the attached Stipulated Agreement.

The Court has held that when the Secretary of Veterans Affairs enters into such an agreement, the Board of Veterans' Appeals decision giving rise to the appeal is overridden, thereby mooting the case or controversy. *Bond v. Derwinski*, 2 Vet.App. 376 (1992); *Kimberly-Clark v. Procter & Gamble*, 973 F.2d 911, 914 (Fed. Cir. 1992) ("Generally, settlement of a dispute does render a case moot.").

The General Counsel represents the Secretary of Veterans Affairs before the Court. 38 U.S.C. § 7263(a); 38 C.F.R. § 14.500. In entering into this settlement agreement, the General Counsel is following well-established principles regarding the Government attorney's authority to terminate lawsuits by settlement or

compromise, which principles date back well over a century. *Compare Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (“[G]overnment attorneys [should] settle cases whenever possible.”) (citing Executive Order on Civil Justice Reform, [Exec. Order No. 12,778, 3 C.F.R. § 359 (1991), *reprinted in* 28 U.S.C.S. § 519 (1992)]) *with* 2 Op. A.G. 482, 486 (1831);¹ *see also* Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412 (1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884). The parties have resolved, to their mutual satisfaction, the issues raised by this appeal and aver that (1) their agreement does not conflict with prior precedent decisions of the Court; (2) this is not a confession of error by the Secretary; and (3) this agreement disposes of the case on appeal.

WHEREFORE, the parties jointly move the Court for an order terminating the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

¹ “An attorney conducting a suit for a party has, in the absence of that party, a right to discontinue it whenever, in his judgment, the interest of his client requires it to be done. If he abuses his power, he is liable to the client whom he injures. An attorney of the United States, except in so far as his powers may be restrained by particular acts of Congress, has the same authority and control over the suits which he is conducting. The public interest and the principles of justice require that he should have this power”

Respectfully submitted,

FOR APPELLANT:

Date: April 2, 2021

/s/ Krystle D. Waldron

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/s/ Jonathan G. Scruggs

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Appellate Attorney

Date: April 2, 2021

/s/ Stuart J. Anderson

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STIPULATED AGREEMENT

WHEREAS, Timothy W. Harris (Appellant) filed an appeal to the U.S. Court of Appeals for Veterans Claims on December 30, 2019, from a September 4, 2019, Board of Veterans' Appeals (BVA) decision; and

WHEREAS, the Secretary of Veterans Affairs (Appellee) and Appellant have reached a mutually satisfactory resolution of this litigation;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Appellee agrees that Appellant's July 26, 2017, VA Form 9, Appeal to the Board was timely submitted in response to three Statements of the Case (SOCs) issued on October 7, 2016, and that those SOC's relate to rating decisions issued on August 6, 2014, January 29, 2015, and May 20, 2016, respectively.

2. Based on the timely filed VA Form 9, Appellee agrees to certify to the Board Appellant's claims for entitlement to: an evaluation in excess of 10% for tinea pedis and callouses of the bilateral feet, service connection for a sleep condition, service connection for a back disability, service connection for a left knee disability, service connection for a right knee disability, service connection for a stomach condition, and service connection for a testicular condition.

3. Because the parties agree that the July 26, 2017, VA Form 9 is timely, they also agree that the appeal of the August 6, 2014, rating decision denying entitlement to a rating in excess of 10% for tinea pedis and callouses of the bilateral feet is still pending. Thus, the additional claim stream that now exists, and is

captioned as a claim for an increased rating for the same condition, and which stems from a June 21, 2017, statement is redundant. Accordingly, because that 2017 increased rating claim stream is superfluous and is now subsumed by the timely appeal arising from the August 2014 rating decision, which Appellee has agreed to certify to the Board, Appellant agrees to withdraw his appeal of the 2017 increased rating claim, which was most recently denied in the August 27, 2020, Supplemental Statement of the Case and returned to the Board on March 4, 2021.

4. Because VA has awarded service connection for an acquired psychiatric condition and for a headache disability, the parties agree that certification of those issues to the Board is no longer required. However, because the parties agree that the appeals were timely, and that the timeliness of those appeals may impact the effective date assigned for each award, Appellee agrees to reconsider the effective dates assigned to both awards, using October 21, 2014, as the date of claim, and to issue a new decision regarding this matter.

5. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that the VBA shall take prompt action to implement this agreement.

6. Appellee does not admit that any error was committed by the Department of Veterans Affairs or any of its employees in the adjudication of the claims that are the subject of this agreement.

7. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet. App. No. 19-9045, shall be terminated, with

prejudice, as to all issues addressed in the September 4, 2019, BVA decision following execution of this agreement.

8. The parties agree that this agreement is entered into for the purpose of avoiding further litigation and the costs related thereto. Both parties agree that this settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.

Respectfully submitted,

FOR APPELLANT:

Date: April 2, 2021

/s/ Krystle D. Waldron

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