

MOTION GRANTED

For the Panel



Margaret Bartley
Chief Judge

April 13, 2021

IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

JAMES R. RUDISILL,

Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,

Appellee.

No. 16-4134

APPELLANT'S OPPOSED MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF HIS MOTION FOR AN INJUNCTION PENDING APPEAL

Mr. Rudisill respectfully moves for leave to file a reply in support of his Opposed Motion for an Injunction Pending Appeal. Counsel for the Secretary is opposed to this motion and will file a response.¹

In support of this motion, Mr. Rudisill states as follows:

1. On March 5, 2021, Mr. Rudisill filed an opposed motion for an injunction pending appeal, which seeks an order directing the Secretary to provide Mr. Rudisill with the Post-9/11 GI Bill benefits called for under his victory in *BO v. Wilkie*, 31 Vet. App. 321 (2019), pending appeal.

¹ Mr. Rudisill notes that the Court need not wait for the Secretary's opposition to this motion to grant Mr. Rudisill's injunction motion. Vet. App. R. 27(b)(1).

2. On March 17, 2021, the Secretary filed an unopposed motion for an extension of time to respond to Mr. Rudisill's injunction motion. The Court granted the Secretary's motion on March 18, 2021.

3. On April 2, 2021, the Secretary filed his response to Mr. Rudisill's injunction motion, wherein he questions the Court's jurisdiction and authority to grant an injunction pending appeal like the one Mr. Rudisill seeks here—an issue with far-reaching implications for this Court. The Secretary also disputes whether the Court should grant Mr. Rudisill relief on the merits, if it does have jurisdiction.

4. Mr. Rudisill now seeks leave to file the proposed reply brief attached as Exhibit A. The Court should grant leave to file this proposed reply to provide Mr. Rudisill an opportunity to address the arguments raised in the Secretary's response. Among other things, Mr. Rudisill explains in his proposed reply why the Court does have jurisdiction to grant the relief he seeks pending appeal.

5. The Court recently saw fit to, *sua sponte*, direct the parties in another case to address a similar jurisdictional question, where the Secretary seeks a stay pending appeal and takes the position there that the Court has jurisdiction to grant the Secretary such relief. Order, *Wolfe v. McDonough*, Vet. App. No. 18-6091 (Mar. 10, 2021). Mr. Rudisill submits that his proposed reply will similarly benefit the Court on the far-reaching question of whether the Court has jurisdiction to issue the type of injunction Mr. Rudisill seeks.

WHEREFORE, Mr. Rudisill respectfully requests that the Court grant this motion and accept the attached proposed reply brief in support of his Opposed Motion for an Injunction Pending Appeal.

Counsel for the Secretary is opposed to this motion and has indicated she will file a response.

Dated: April 5, 2021

Respectfully submitted,

/s/ Timothy L. McHugh

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