

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

MARK J. STILES,	)	
Appellant,	)	
	)	
v.	)	Docket No. 20-3523
	)	
DENIS MCDONOUGH,	)	
Acting Secretary of Veterans Affairs,	)	
Appellee.	)	

**APPELLANT’S OPPOSED MOTION FOR LEAVE TO FILE A REPLY TO THE  
SECRETARY’S RESPONSE TO THE COURT’S JUNE 8, 2021 ORDER**

Pursuant to U.S. Vet. App. R. 27, Appellant respectfully moves the Court for leave to file a reply to the Secretary’s Response to the Court’s June 8, 2021 Order (Response), filed on June 30, 2021.

The Secretary’s counsel was contacted via email on July 12, 2021 concerning this motion and indicated the Secretary’s position as opposed.

On March 12, 2021, the Court dismissed Appellant’s case, holding that: (1) it lacked jurisdiction because the remand order from the Board of Veterans’ Appeals (Board) was not a final decision; and (2) Appellant did not challenge the Board’s jurisdiction to adjudicate any pending claims.

Appellant respectfully asked the Court to reconsider its dismissal. (*See generally* Appellant’s Motion for Reconsideration (App. Mtn. Recon.)). As reasons therefor, Appellant indicated that the Court’s dismissal rendered 38 C.F.R. § 20.904(b) meaningless, as it defied the regulation’s mandatory language compelling referral of unadjudicated claims from the Board to the Agency of Original Jurisdiction (AOJ). (App. Mtn. Recon. at

3-4). Appellant expanded that the Court's order also undercut longstanding precedent requiring the Board to adjudicate all issues reasonably raised by the record and *expressly raised by the veteran*. (App. Mtn. Recon. at 4-5 (citing *Robinson v. Peake*, 21 Vet. App. 545, 552 (2008))). Appellant closed by referencing a recent CAVC memorandum decision characterizing the Board's failure to acknowledge claims explicitly raised by the claimant as an implicit jurisdictional determination suitable for review by the Court. (App. Mtn. Recon. at 5-6 (citing *Trachsel v. Wilkie*, 2021 U.S. App. Vet. Claims LEXIS 46, \*20)). The Court ordered the Secretary to respond to Appellant's reconsideration request.

The Secretary responds that Appellant's points are immaterial because the Board decision in question is a remand order that does not constitute a final decision eligible for appeal to this Court. (Response at 2-5).

Appellant maintains that the issue before this Court is unrelated to the Board's remand on the issues of the appropriate disability ratings for sinusitis and allergic rhinitis; rather, the issue is whether the Board can refuse to acknowledge claims explicitly raised before it when the regulations require that it take action, and this issue is ripe for review. Appellant requests leave to file a Reply, limited to 10 pages, to respond to the Secretary's point. He asserts that the Reply will assist the Court in clarification of the salient jurisdictional questions before it relevant to the Board's obligation to address explicitly-raised claims and the Court's ability to review its nonadherence.

Respectfully submitted on this 13th day of July 2021 by:

/s/ Adam R. Luck  
Attorney for Appellant  
TX bar #24073567  
GloverLuck, L.L.P.  
1910 Pacific Ave.  
Suite 13300  
Dallas, TX 75201  
Phone: 214-741-2005  
Fax: 214-741-2007  
Email: Adam@gloverluck.com

### **CERTIFICATE OF SERVICE**

On July 13, 2021, a copy of the foregoing Motion for Leave to File a Reply to the Secretary's Response the Court's June 8, 2021 Order was filed and served via electronic filing for the United States Court of Appeals for Veterans Claims on: Attorney Katerina M. Georgiev, counsel for Respondent, Secretary of Veterans Affairs at Katerina.georgiev@va.gov. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Adam R. Luck  
Attorney for Appellant  
TX bar #24073567  
GloverLuck, L.L.P.  
1910 Pacific Ave.  
Suite 13300  
Dallas, TX 75201  
Phone: 214-741-2005  
Fax: 214-741-2007  
Email: Adam@gloverluck.com