

MOTION GRANTED

July 28, 2021

For the Panel



Joseph L. Falvey, Jr.
Judge

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

KENNETH M. CARPENTER)
) **Appellant,**)
))
))
) v.)
))
DENIS McDONOUGH)
Secretary of Veterans Affairs,)
))
) **Appellee.**)

No. 19-1136

**APPELLANT KENNETH M. CARPENTER’S UNOPPOSED
MOTION FOR AN EXTENSION OF TIME UNTIL SEPTEMBER 13, 2021,
IN WHICH TO MOVE FOR FULL COURT REVIEW**

Pursuant to Rule 26(b) of this Court’s Rules of Practice and Procedure, Appellant Kenneth M. Carpenter (“Mr. Carpenter”) respectfully requests a 45-day extension of time in which to move for full court review of the July 9, 2021, decision that this Court’s three-judge panel issued on reconsideration of its February 24, 2021, decision.¹ But for this requested

¹ Mr. Carpenter’s appeal, Vet. App. No. 19-1136, previously was consolidated with *Chisholm v. McDonough*, Vet. App. No. 19-1137. On March 10, 2021, Mr. Carpenter moved unopposed to deconsolidate the appeals. The Court issued an Order dated March 12, 2021, requiring Mr. Carpenter and then-coparty Robert V. Chisholm (“Mr. Chisholm”) to provide additional information in relation to the motion to deconsolidate. On March 15, 2021, in response to that Order, Mr. Chisholm advised that he did not intend to take further action on this case before either this Court or the U.S. Court of Appeals for the Federal Circuit. The Court granted the motion to deconsolidate the appeals on March 16, 2021. When the Court granted panel reconsideration of Mr. Carpenter’s appeal, it also sua sponte granted panel reconsideration of Mr. Chisholm’s appeal to avoid having two different precedential decisions on the same matter.

Mr. Carpenter’s appeal and Mr. Chisholm’s appeal remain unconsolidated. Before filing this Motion, Mr. Carpenter through counsel asked whether Mr. Chisholm intends, in the light of this Court’s July 9 decision, any future proceedings with respect to Vet. App. No. 19-1137. Mr. Chisholm advised that he does not intend to take further action with respect to Vet. App. No. 19-1137 before either this Court or the Federal Circuit.

extension of time, the time to move for full court review of the July 9 decision would expire on July 30, 2021. The forty-fifth day after July 30, 2021, is September 13, 2021.

This is Mr. Carpenter's first request for an extension of time to move for full court review of the July 9 decision. Mr. Carpenter was granted a 45-day extension of time in which to file the initial brief, a 45-day extension of time in which to file the reply brief, and a 45-day extension of time in which to move for panel and/or full court review of the February 24 decision, for a total of 135 days of extension time granted to Mr. Carpenter. The Secretary was granted a 45-day extension of time to file the Record Before the Agency and a 45-day extension of time to file the Secretary's brief, for a total of 90 days of extension time granted to the Secretary. The total extension time that has been granted to all parties in this case is 225 days.

Mr. Carpenter requests this 45-day extension of time to permit him more comprehensively to evaluate the Court's July 9 decision on reconsideration and as appropriate to research, prepare, and review a motion for full court review. Mr. Carpenter is, in candor, continuing to evaluate whether moving for full court review of the July 9 decision would be appropriate. These items require more time than initially anticipated in the light of multiple developments postdating the July 9 decision, including the issuance of new, relevant precedent from the U.S. Court of Appeals for the Federal Circuit. Mr. Carpenter and his counsel also have had and continue to have many competing professional commitments, including before this Court, the Federal Circuit, and the Department of Veterans Affairs.

For all of these reasons, Mr. Carpenter respectfully requests an extension of time until September 13, 2021, to move for full court review of the Court's July 9 decision.

The Secretary, through counsel, has informed Mr. Carpenter, through counsel, that the Secretary is unopposed to this Motion.

Respectfully submitted,

July 27, 2021

/s/ John D. Niles
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