

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

JOHN B. WELLS)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 20-5221
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Respondent .)	

RESPONSE TO SOLZE V. SHINSEKI NOTICE TO THE COURT

In the undated notice filed pursuant to this Court’s holding in *Solze v. Shinseki*, Respondent most wistfully argues that all claims are moot. Perhaps that was arguable at the time of filing, but in light of *Military-Veterans Advocacy v. Secretary of Veterans Affairs*, No. 2019-1600, 2021 WL 3235783, at (Fed. Cir. July 30, 2021) several other cases, previously denied because they were supplemental claims filed more than one year after adjudication, are now ripe for consideration. Although VA paid Petitioner fees to liquidate the original claims, additional cases remain that will result in attorney fee payments. Petitioner has won a number of cases at the Board of Veterans Appeals that have not been rated at the Regional Office level, despite the passage of several months. While Petitioner is reasonably confident that this is a coincidence, the effect is the same as if it was an intentional act to buttress the mootness argument. Since there are cases in the pipeline that will result in attorney fee letters, the matter is not moot. Indeed, this is

they type of case that does not become moot became the issues are capable of repetition. *Monk v. Shulkin*, 855 F.3d 1312, 1317 (Fed. Cir. 2017) (a claim is not moot if it is capable of repetition and yet evades review).

Additionally, and even more important, the Court has noted additional issues including whether there is authority for the 60 day appeal period and whether or not a veteran should be allowed to waive that waiting period.

Consequently, this matter is not moot.

WHEREFORE Petitioner respectfully responds to the Respondent's *Solze* notice.

Respectfully submitted,

//s// John B. Wells
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within was served on the Court and the Secretary's Office of General Counsel via the Court's CM/ECF system this 6th day of August 2021.

//s// John B. Wells
John B. Wells