

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

<b>CARMEN L. ENCARNACION,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 21-1411
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

***SOLZE V. SHINSEKI* NOTICE TO THE COURT**

Pursuant to this Court’s holding in *Solze v. Shinseki*, “In all cases before this Court, the parties are under a duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision.” 26 Vet.App. 299, 301 (2013). The Secretary of Veterans Affairs, Denis McDonough, files this Notice in accordance with such directive.

The above captioned case was called to oral argument on September 16, 2022. In the Court’s September 29, 2022, Order, the Court directed the parties to be prepared to address questions regarding whether, “if a claimant files an [notice of disagreement] as to the [Regional Office’s] implementation within 120 days of the [Board of Veterans’ Appeals] decision, does VA have a duty to sympathetically construe that NOD as a motion for reconsideration?”

The Secretary notifies the Court that the Board issued a letter on October 13, 2022, informing Appellant that it has construed Appellant’s July 18, 2018,

notice of disagreement as a request for reconsideration of the May 16, 2018, Board decision pursuant to 38 C.F.R. §§ 20.1001, 20.1002. See Attachment.<sup>1</sup>

**WHEREFORE**, the Secretary submits this information for the Court's review and any action deemed appropriate.

Respectfully submitted,

**CATHERINE C. MITRANO**  
Acting General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Drew A. Silow  
**DREW A. SILOW**  
Deputy Chief Counsel

/s/ Amanda M. Radke  
**AMANDA M. RADKE**  
Senior Appellate Attorney  
Office of the General Counsel (027M)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, DC 20420  
(202) 632-5616

Attorneys for the Secretary  
of Veterans Affairs

---

<sup>1</sup> If the Court seeks additional information with regard to how this determination impacts the issues before the Court in the oral argument, scheduled for October 27, 2022, the Secretary can provide such information in writing or at the time of argument.



DEPARTMENT OF VETERANS AFFAIRS  
Board of Veterans' Appeals  
Washington, DC

October 13, 2022

In Reply Refer To: 01C22425  
XC XX XXX 857  
APARICIO, Idilio R.

Ms. Carmen L. Encarnacion  
Calle 6 E-5  
Est De San Fernando  
Carolina, PR 00985

Dear Ms. Encarnacion:

On July 18, 2018, the Board of Veterans' Appeals ("Board") received what has been construed as a request for reconsideration of a May 16, 2018, Board decision pursuant to 38 C.F.R. § 20.1001 and 20.1002. If you wish to file any supporting argument, please do so within **14 days** from the date of this letter.

Pursuant to 38 C.F.R. § 20.1002(c) you will be notified regarding the disposition of the motion. If the motion is granted, you will be given an additional **60 days** to present additional arguments or evidence.

Sincerely,

**Office of Litigation & Customer Support**  
Board of Veterans' Appeals