

*Not published*

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

No. 21-5284

PABLO R. MARTINEZ,

APPELLANT,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before ALLEN, MEREDITH, and FALVEY, *Judges.*

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

In an October 24, 2022, memorandum decision, the Court affirmed a May 20, 2021, Board of Veterans' Appeals decision that denied an effective date before February 9, 2010, for a total disability rating based on individual unemployability. On November 14, 2022, Mr. Martinez moved for single-judge reconsideration or, in the alternative, for a panel decision.

On November 18, 2022, in a single-judge order, the Court granted the motion for single-judge reconsideration, dismissed the motion for panel review as moot, withdrew the October 24, 2022, memorandum decision, and ordered the Clerk of the Court (Clerk) to issue an order submitting the case to panel. The single judge, sua sponte, identified the panel issue as the interplay between 38 U.S.C. § 7104(a) (a Board decision must be based on all evidence of record) and the Court's interpretation of 38 C.F.R. § 19.55 (withdrawal of appeal) in *Hembree v. Wilkie*, 33 Vet.App. 1 (2020). The Clerk submitted this matter to the panel on November 23, 2022.

The Court finds that a response from the Secretary to Mr. Martinez's motion for reconsideration would be beneficial, particularly where the Secretary's brief does not comprehensively address the panel issue, including Mr. Martinez's contention about whether VA's regulation governing the validity of a written withdrawal can limit the Board's statutory obligation to base its decision on consideration of all evidence.

Thus, it is

ORDERED that the Secretary, within 21 days of the date of this order, file a response, not to exceed 10 pages, to Mr. Martinez's November 14, 2022, motion for reconsideration. It is further

ORDERED that Mr. Martinez, within 14 days of the date that the Secretary files the response, may file a reply to the Secretary's response, not to exceed 10 pages.

DATED: November 28, 2022

PER CURIAM.

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)