

AARON N. ADAMS,)
)
 Appellant,)
)
 v.) Vet.App. No. 21-3239
)
 DENIS MCDONOUGH,)
 Secretary of Veterans Affairs,)
)
 Appellee.)

Pursuant to U.S. Vet. App. Rules 27 and 42, the parties agree to and move for termination of the captioned appeal. The terms upon which the parties agree this appeal is to be terminated are contained in the attached Stipulated Agreement.

The General Counsel represents the Secretary of Veterans Affairs before the Court. 38 U.S.C. § 7263(a); 38 C.F.R. § 14.500. By entering into this settlement agreement, the General Counsel is following well-established principles

regarding the government attorney's authority to terminate lawsuits by settlement or compromise, which date back well over a century. *Compare Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (“[G]overnment attorneys [should] settle cases whenever possible.”) (citing Executive Order on Civil Justice Reform, [Exec. Order No. 12,778, 3 C.F.R. § 359 (1991), *reprinted in* 28 U.S.C.S. § 519 (1992)]) *with* 2 Op. A.G. 482, 486 (1831);¹ see also Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412 (1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884). The parties have resolved, to their mutual satisfaction, the issues raised by this appeal and aver that (1) their agreement does not conflict with prior precedent decisions of the Court; (2) this is not a confession of error by the Secretary; and (3) this agreement disposes of the case on appeal.

WHEREFORE, the parties jointly move the Court for an order terminating the captioned appeal pursuant to Rule 42 of the Court's Rules of Practice and Procedure.

¹ “An attorney conducting a suit for a party has, in the absence of that party, a right to discontinue it whenever, in his judgment, the interest of his client requires it to be done. If he abuses his power, he is liable to the client whom he injures. An attorney of the United States, except in so far as his powers may be restrained by particular acts of Congress, has the same authority and control over the suits which he is conducting. The public interest and the principles of justice require that he should have this power”

Respectfully submitted,

FOR APPELLANT:

Date: March 14, 2023

/s/ Benjamin R. Binder
BENJAMIN R. BINDER
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FOR APPELLEE:

Date: March 14, 2023

RICHARD J. HIPOLIT
Deputy General Counsel
for Veterans Programs

MARY ANN FLYNN
Chief Counsel

/s/ Kenneth A. Walsh
KENNETH A. WALSH
Deputy Chief Counsel

/s/ Stephanie Noronha
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STIPULATED AGREEMENT

WHEREAS, Aaron N. Adams (Appellant), filed an appeal to the Court of Appeals for Veterans Claims on May 13, 2021, from an April 12, 2021, Board of Veterans' Appeals (BVA) decision that denied entitlement to Dependents' Educational Assistance (DEA) benefits under 38 U.S.C. Chapter 35 (Chapter 35) prior to August 23, 2018; and

WHEREAS, the Secretary of Veterans Affairs (Appellee) and Appellant have reached a mutually satisfactory resolution of this litigation;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Appellee agrees to assign Appellant the date of August 19, 2010, as the beginning date for Appellant's eligibility for DEA benefits; payment shall be subject to courses or trainings approved for Chapter 35 benefits.

2. Appellee agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that the VBA shall take prompt action to implement this agreement.

3. Appellee does not admit that any error was committed by the Department of Veterans Affairs or any of its employees in the adjudication of the claim that is the subject of this appeal.

4. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet.App. No. 21-3239, shall be terminated, with

prejudice, as to all issues addressed in the April 12, 2021, BVA decision following execution of this agreement.

5. The parties make this agreement to avoid further litigation and the related costs. Both parties agree that this settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.

Respectfully submitted,

FOR APPELLANT:

Date: March 14, 2023

/s/ Benjamin R. Binder
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