

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

| | | |
|--------------------------------|---|----------------------|
| MICHAEL WEBB, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet.App. No. 21-7148 |
| |) | |
| DENIS MCDONOUGH, |) | |
| Secretary of Veterans Affairs, |) | |
| |) | |
| Appellee. |) | |

JOINT MOTION TO TERMINATE THE APPEAL

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

The Court has held that when the Secretary of Veterans Affairs (Secretary) enters into such an agreement, the Board of Veterans' Appeals decision giving rise to the appeal is overridden, thereby mooting the case or controversy. *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992); *see also Kimberly-Clark v. Procter & Gamble*, 973 F.2d 911, 914 (Fed.Cir. 1992) ("Generally, settlement of a dispute does render a case moot.").

The General Counsel represents the Secretary before the Court. 38 U.S.C. § 7263(a). In 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—principles that 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 No. 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412, 422 (1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884). The parties have resolved, to their mutual satisfaction, the issue raised by this appeal and aver that (1) their agreement does not conflict with prior precedential 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.

Pursuant to U.S. Vet. App. Rule 41(c)(2), the parties agree to unequivocally waive further Court review of, and any right to appeal, the Court’s order on this Joint Motion to Terminate and respectfully ask that the Court enter mandate upon granting this motion.

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[.]”

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.

Respectfully submitted,

DATE: October 6, 2023

FOR THE APPELLANT:

Harold H. Hoffman, III
HAROLD H. HOFFMAN, III
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2776 S. Arlington Mill Drive, Suite 804
Arlington, VA 22206
(202) 677-0303

DATE: October 6, 2023

FOR THE APPELLEE:

RICHARD J. HIPOLIT
Deputy General Counsel for Veterans
Programs

MARY ANN FLYNN
Chief Counsel

/s/ Mark J. Hamel
MARK J. HAMEL
Deputy Chief Counsel

/s/ Anita U. Koepcke
ANITA U. KOEPCKE
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810 Vermont Avenue, N.W.
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STIPULATED AGREEMENT

WHEREAS, Michael Webb (Appellant) filed an appeal to the United States Court of Appeals for Veterans Claims on November 3, 2021, from an August 13, 2021, Board of Veterans' Appeals decision; and

WHEREAS, the Secretary (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 that VA will award Appellant a 30% disability rating for service-connected ulnar and median neuropathy of the left hand, previously rated as partial loss, distal phalanx, left (non-dominant) middle finger, effective February 27, 2013.

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

3. Appellee does not admit that any error was committed by VA 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. 21-7148, shall be terminated, with prejudice, following the execution of this agreement.

5. Upon Appellant's submission of a jurisdictionally valid application to

the Court for attorney fees and expenses under the provisions of the Equal Access to Justice Act, 28 U.S.C. § 2412(d), Appellee will not contest that Appellant is a prevailing party and that Appellee's position was not substantially justified. Appellee agrees that upon the timely filing of a jurisdictionally sufficient application for attorney fees and expenses under the Equal Access to Justice Act, 28 U.S.C § 2412, he will not contest an award in an amount not to exceed \$19,000.00 (nineteen-thousand dollars); and Appellant agrees that he will not claim any more than that amount in EAJA fees and expenses for this case.

6. The parties agree that this agreement is entered into for the purpose of avoiding further litigation and the costs related thereto. 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,

DATE: October 6, 2023

FOR THE APPELLANT:

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MARY ANN FLYNN

Chief Counsel

/s/ Mark J. Hamel

MARK J. HAMEL

Deputy Chief Counsel

/s/ Anita U. Koepcke

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