

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

PERNELL D. WALKER-WHITFIELD,)
Appellant,)
)
v.) Vet. App. No. 19-2438
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
Appellee)

JOINT MOTION TO TERMINATE THE APPEAL

Pursuant to U.S. Vet. App. R. 27 and 42, the parties hereby 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 Court has held that, when the Secretary of Veterans Affairs enters into such an agreement, the Board decision giving rise to the appeal is overridden, thereby mooting the case or controversy. *Bond v. Derwinski*, 2 Vet.App. 376 (1992); see also *Kimberly-Clark v. Proctor & Gamble*, 973 F.2d 911, 914 (Fed. Cir. 1992) (“Generally, settlement of a dispute does render a case moot.”); cf. 38 C.F.R. § 14.500(a), (c), (d). The General Counsel represents the Secretary of Veterans Affairs 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, which principles 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 issue presented 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 an issue on appeal.

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

Respectfully submitted,

FOR APPELLANT:

Date: May 15, 2020

/s/ Timothy R. Franklin
TIMOTHY R. FRANKLIN
 Law Office of Sean Kendall
 2727 Pine St, Suite 6
 Boulder, CO 80302
 (303) 449-4773

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"

FOR APPELLEE:

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Dustin P. Elias
DUSTIN P. ELIAS
Deputy Chief Counsel

Date: May 15, 2020

/s/ William Hornbeck
WILLIAM HORNBECK
Appellate Attorney
Office of General Counsel (027E)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
202-632-6798

STIPULATED AGREEMENT

WHEREAS, Pernell D. Walker-Whitfield (Appellant) who filed an appeal to the U.S. Court of Appeals for Veterans Claims on April 11, 2019, from a December 17, 2018, Board of Veterans' Appeals (BVA) decision; 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 pay Appellant \$2,057.73 and reinstate 17 months and 29 days of eligibility to full-time chapter 35 benefits as of May 2015.

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 determine the appropriate effective date and 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 this appeal shall be terminated, with prejudice, as to the above-described issue, following execution of this agreement. Upon issuance of mandate by the Court, Appellant agrees to withdraw her claim for equitable relief.

5. 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,

FOR APPELLANT:

Date: May 15, 2020

/s/ Timothy R. Franklin
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