

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2006-7307

BOBBY R. JONES,

Claimant-Appellant,

v.

R. JAMES NICHOLSON,  
Secretary of Veterans Affairs,

Respondent-Appellee.

ON MOTION

Before SCHALL, GAJARSA, and LINN, Circuit Judges.

LINN, Circuit Judge.

### ORDER

Bobby R. Jones moves without opposition to vacate the final judgment of the United States Court of Appeals for Veterans Claims in Jones v. Nicholson, No. 03-1996 (Vet.App. June 9, 2006), and remand for reconsideration in light of our decision in Barrett v. Nicholson, 466 F.3d 1038 (Fed. Cir. 2006).

Jones filed an untimely appeal with the Court of Appeals for Veterans Claims. The court dismissed his appeal for lack of jurisdiction, stating that he failed to establish entitlement to equitable tolling of the 120-day period. The court rejected Jones' argument that the Secretary had a duty to assist him in developing evidence relevant to the issue of equitable tolling.

In Barrett, this court held that when a veteran alleges facts to show entitlement to equitable tolling, and jurisdiction is called into question, the government must assist the

court by providing and, where necessary, procuring further evidence helpful in deciding jurisdiction. Barrett, 466 F.3d at 1044.

Because the Court of Appeals for Veterans Claims rejected the assistance endorsed by this court in Barrett, we vacate the court's judgment and remand the case for reconsideration in light of Barrett.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted.
- (2) All sides shall bear their own costs.

FOR THE COURT

June 5, 2007

Date

/s/ Richard Linn

Richard Linn  
Circuit Judge

cc: Mark R. Lippman, Esq.  
Phyllis Jo Baunach, Esq.

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ISSUED AS A MANDATE: June 5, 2007