

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2009-7006

DAVID L. HENDERSON,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in 05-0090, Chief Judge William P. Greene, Jr.

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.

PER CURIAM.

## ORDER

This case was argued before a panel of this court on June 5, 2009. Thereafter, a poll of the judges in regular active service was conducted to determine whether the appeal should be heard en banc.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The court by its own action grants a hearing en banc.
- (2) This appeal will be heard en banc on the basis of the parties' original briefs. The parties and amicus Allen G. Halseth are each directed to file 30 additional copies of their original briefs within 10 days of the filing of this order.
- (3) Briefs for additional amici curiae may be entertained if accompanied with a motion for leave of court and if the briefs comply with Federal Rule of Appellate

Procedure 29 and Federal Circuit Rule 29. Any such briefs are due within 30 days of the date of filing of this order, shall not exceed 7,000 words in length, 30 copies shall be filed and shall address the following question:

Does the Supreme Court's decision in Bowles v. Russell, 127 S. Ct. 2360 (2007), require or suggest that this court should overrule its decisions in Bailey v. West, 160 F.3d 1360 (Fed. Cir. 1998) (en banc), and Jaquay v. Principi, 304 F.3d 1276 (Fed. Cir. 2002) (en banc), holding that 38 U.S.C. § 7266 is subject to equitable tolling?

(4) Oral argument will be resolved at a later date.

FOR THE COURT

June 29, 2009

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Thomas W. Stoeber, Jr., Esq.  
Todd M. Hughes, Esq.  
Martin V. Totaro, Esq.