

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-7025

WALTER W. MCDANIEL,

Claimant-Appellee,

v.

R. JAMES NICHOLSON,
Secretary of Veterans Affairs,

Respondent-Appellant.

ON MOTION

Before RADER, Circuit Judge.

ORDER

The Secretary of Veterans Affairs moves without opposition to stay proceedings in this appeal pending the court's disposition of Mlechick v. Nicholson, 2006-7362. The court considers whether the parties should be directed to respond concerning whether the judgment of the United States Court of Appeals for Veterans Claims should be summarily affirmed.

In Mayfield v. Nicholson, 444 F.3d 1328, 1333 (Fed. Cir. 2006), we held that:

[T]he duty of affirmative notification [as to the evidence that is needed and who shall be responsible for providing it] is not satisfied by various post-decisional communications from which a claimant might have been able to infer what evidence the VA found lacking in the claimant's presentation [S]ection 5103 requires the VCAA notification to be issued prior to the initial decision on the claim, not afterwards.

In the decision on appeal, the Court of Appeals for Veterans Claims remanded to the Board of Veterans' Appeals, determining that "the Board relied on decisional and post decisional documents to support its conclusion that VA had satisfied its duty-to-

notify obligations.” It appears that the Court of Appeals for Veterans Claims correctly determined that remand was required pursuant to Mayfield.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to stay is held in abeyance.
- (2) The parties are directed to respond concerning whether the decision of the Court of Appeals for Veterans Claims should be summarily affirmed.
- (3) The briefing schedule is temporarily stayed.

February 15, 2007

Date

/s/ Randall R. Rader

Randall R. Rader
Circuit Judge

cc: Allan T. Fenley, Esq.
Martin F. Hockey, Jr., Esq.

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