

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-7054

WILLIAM G. WILCOX,

Claimant-Appellant,

v.

ERIC K. SHINSEKI,
Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
07-1874, Judge Donald L. Ivers.

ON MOTION

Before PROST, Circuit Judge.

ORDER

William G. Wilcox moves for leave to submit his brief out of time. Wilcox states that the Secretary of Veterans Affairs consents.

Wilcox's brief was rejected on August 10, 2009 because it was untimely, not signed by counsel, and did not contain the decision of the United States Court of Appeals for Veterans Claims. Wilcox does not address the latter deficiencies in his motion.

Upon review of Wilcox's brief and appendix, the court notes that Wilcox included in the appendix filed on August 3, 2009 items that are not part of the record on appeal and cited such items in his brief. Pursuant to Fed. R. App. P. 10, the record on appeal is confined to, inter alia, papers and exhibits filed in trial court. The appendix submitted

by counsel for Wilcox includes two documents that are dated after this appeal was docketed and thus clearly were not before the Court of Appeals for Veterans Claims: an Affidavit of William Gene Wilcox dated July 29, 2009 (appendix pages 30-36) and a June 1, 2009 article from The American Legion Magazine (appendix pages 76-89). Because these items were not before the Court of Appeals for Veterans Claims, they are not part of the record on appeal and may not be included in the appendix or cited in the briefs.

The American Legion Magazine article is cited on page 7 of Wilcox's brief and the July 29, 2009 affidavit is cited throughout the brief. Thus, Wilcox must file a replacement brief omitting references to these items and any other documents that were not before the Court of Appeals for Veterans Claims. In addition, Wilcox must correct the deficiencies noted in the August 10 rejection notice, i.e., the replacement brief must be signed and an addendum containing the decision of the Court of Appeals for Veterans Claims must be attached. Wilcox must also file a replacement joint appendix. Pursuant to the court's rules, the appendix should include all documents cited in all briefs by both parties and should be filed within seven days of the date of filing of Wilcox's reply brief. See Fed. Cir. R. 30(a)(4).

Accordingly,

IT IS ORDERED THAT:

(1) The brief submitted by Wilcox and received by the court on August 6, 2009 and the appendix filed by Wilcox on August 3, 2009 are rejected.

(2) Wilcox's motion for leave to file his brief out of time is granted to the extent that Wilcox is directed to file a replacement brief within 30 days of the date of filing of

this order. The replacement brief must be signed, must contain the decision appealed as an addendum, and must not cite any documents that are not part of the record on appeal.

(3) The Secretary of Veterans Affairs should calculate the due date for his brief from the date of service of Wilcox's replacement brief.

(4) Wilcox is directed to file a replacement joint appendix within seven days of the date of filing of his reply brief. The replacement joint appendix may contain only items that are part of the record on appeal.

FOR THE COURT

AUG 31 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Albert Wilson Luce Moore, Jr., Esq.
Ellen M. Lynch, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

AUG 31 2009

JAN HORBALY
CLERK