

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-7145

ARMANDO DIAZ,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
01-1426 (08-11201-E), Judge William A. Moorman.

ON MOTION

Before MAYER, LOURIE, and BRYSON, Circuit Judges.

PER CURIAM.

ORDER

Armando Diaz moves for reconsideration of the court's March 4, 2010 order dismissing his appeal for failure to file a brief.

Diaz's appeal was first dismissed for failure to file a brief on December 17, 2009. The appeal was reinstated, a submitted brief was accepted for purposes of reinstating the appeal, and the brief was rejected for failure to comply with various court rules. The court ordered that Diaz file a corrected brief no later than January 19, 2010. Diaz did not file a corrected brief, and the court dismissed the appeal again on March 4, 2010. Diaz now submits a corrected brief and requests reinstatement.

The belatedly submitted corrected brief also does not comply with the court's rules. Among other errors, the brief does not contain a jurisdictional statement (see

Fed. Cir. R. 28(a)(5)) and the text of the brief is not double-spaced (see Fed. R. App. P. 32(a)(4)). Counsel offers no explanation for the untimely submission.

"It is well settled that a person is bound by the consequences of his representative's conduct, which includes both his acts and omissions." Rowe v. Merit Sys. Prot. Bd., 802 F.2d 434, 437 (Fed. Cir. 1986). See also Link v. Wabash Railroad Company, 370 U.S. 626, 633-635 (1962); Huston v. Ladner, 973 F.2d 1564, 1567 (Fed. Cir. 1992). The court has put counsel on notice that it will dismiss an appeal for failure to prosecute. Julien v. Zeringue, 864 F.2d 1572 (Fed. Cir. 1989) (failure to file a brief can be the basis for dismissal of a case). See also Fed. Cir. R. 45 (the court may dismiss an appeal for failure to follow the rules); Fed. Cir. R. 31(d) (the clerk is authorized to dismiss a case for failure to file the opening brief). Diaz did not timely submit the corrected brief, did not offer any explanation for the untimely submission, and has not shown why the appeal should be reinstated.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

MAY 03 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Lawal Momodu, Esq.
Joshua E. Kurland, Esq.

FILED
U.S. COURT OF APPEALS FOR
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JAN HORBALY
CLERK