

NOTE: This order is nonprecedential

United States Court of Appeals for the Federal Circuit

2010-7004

ROBERT L. MCGEE,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
04-0468 (08-11733-E), Judge Mary J. Schoelen.

ON MOTION

Before LOURIE, Circuit Judge.

ORDER

Robert L. McGee moves without opposition to stay proceedings in this appeal pending the court's disposition in Snyder v. Shinseki, 2009-7102.

McGee asserts that this case and Snyder involve the same issue, specifically, whether the Secretary can meet his burden of establishing "substantial justification" under 28 U.S.C. § 2412 on the sole basis that the issue was one of first impression before the Board of Veteran's Appeals.

We note that the reply brief in Snyder is currently due on November 19, 2009.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to stay is granted. McGee is directed to inform the court within 30 days of the disposition of Snyder how he believes this appeal should proceed. The Secretary may also respond within that time.

(2) A copy of this order shall be transmitted to the merits panel assigned to hear Snyder.

FOR THE COURT

DEC 02 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Barbara J. Cook, Esq.
Meredyth Cohen Havasy, Esq.

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THE FEDERAL CIRCUIT

DEC 02 2009

JAN HORBALY
CLERK