

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**JOHN F. MCBURNEY,**  
*Claimant-Appellant,*

v.

**ERIC K. SHINSEKI, SECRETARY OF VETERANS  
AFFAIRS,**  
*Respondent-Appellee.*

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2010-7013

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Appeal from the United States Court of Appeals for  
Veterans Claims in case no. 08-4015, Judge Robert N.  
Davis.

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**ON MOTION**

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Before NEWMAN, *Circuit Judge.*

**ORDER**

John F. McBurney moves without opposition to re-  
mand his appeal to the United States Court of Appeals  
for Veterans Claims so that that court may enter a final  
judgment.

McBurney filed a notice of appeal after the Court of Appeals for Veterans Claims issued its decision but before entry of judgment by that court. On October 5, 2009, that court entered judgment but recalled the judgment on October 6, 2009, perhaps on the belief that the court could not enter judgment after the filing of an appeal.

It appears that McBurney's unopposed motion is in response to the arguments on pp. 10-12 of the brief filed by the Secretary of Veterans Affairs that this court should dismiss this appeal so that the Court of Appeals for Veterans Claims can enter a judgment. We deem dismissal unnecessary in the circumstances and instead grant leave to the Court of Appeals for Veterans Claims to enter judgment in this case. Fed. R. App. P. 4(a)(2) (a notice of appeal filed after the court announces a decision but before the entry of judgment is treated as filed on the date of and after the entry); FirsTier Mortg. Co. v. Investors Mortg. Ins. Co., 498 U.S. 269, 276 (1991) (FRAP 4(a)(2) permits a premature appeal to serve as an effective appeal from a subsequent judgment).

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted to the limited extent that this court grants leave so that the Court of Appeals for Veterans Claims may enter its judgment.

(2) Proceedings in this court are stayed. McBurney should promptly notify this court when the Court of Appeals for Veterans Claims enters judgment. Upon receipt of such notification, the clerk may lift the stay of proceedings in this court and assign this case to a merits panel.

(3) A copy of this order and McBurney's notification of entry of judgment shall be transmitted to the merits panel to inform the panel of the subsequent action by the Court of Appeals for Veterans Claims.

FOR THE COURT

JUL 01 2010

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Mark J. McBurney, Esq.  
Meredyth Cohen Havasy, Esq.

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

JUL 01 2010

**JAN HORBALY**  
**CLERK**