

NOTE: This order is nonprecedential.

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

GENE S. GROVES,
Claimant-Appellant,

v.

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

2010-7057

Appeal from the United States Court of Appeals for
Veterans Claims in 06-1252, Chief Judge William P.
Greene, Jr.

ON MOTION

Before GAJARSA, SCHALL, and MOORE, *Circuit Judges.*
PER CURIAM.

ORDER

The Secretary of Veterans Affairs moves to remand
this case so that the United States Court of Appeals for
Veterans Claims may rule on a motion for reconsideration
filed by Gene S. Groves. Groves opposes.

On November 25, 2009, the Court of Appeals for Veterans Claims issued a decision that affirmed a portion of the December 1, 2005 determination of the Board of Veterans' Appeals that there was no clear and unmistakable error in a September 1972 regional office decision. The decision also vacated a portion of the December 1, 2005 Board decision that denied entitlement to vocational rehabilitation services and remanded for readjudication. Also on November 25, 2009, Groves filed a motion challenging a previous order in the case that denied Groves' earlier motion that the assigned judge recuse himself. On December 9, 2009, Groves filed an additional motion seeking reconsideration of the November 25, 2009 decision on the merits of his case. In that December 9 motion, Groves asked for reconsideration by a panel or by the court en banc.

On January 14, 2010, the judge construed Groves' November 25 motion as a motion for reconsideration of his previous order refusing to recuse himself. The judge denied reconsideration of his recusal determination. The Court of Appeals for Veterans Claims entered judgment on January 14, 2010. Groves filed an appeal on February 2, 2010. However, there is no express ruling on the docket regarding Groves' December 9 motion for reconsideration of the decision on the merits. The Secretary argues that absent a ruling on the December 9 motion for reconsideration, Groves' appeal is premature.

Groves argues that he prefers to have a decision by this court "on the record as it now stands." We agree with the Secretary that judgment was prematurely entered by the Court of Appeals for Veterans Claims because it had not ruled on Groves' December 9 motion for reconsideration of the decision on the merits. Thus, we grant the Secretary's motion for remand. We anticipate that the Court of Appeals for Veterans Claims will promptly rule on the pending motion and enter judgment when appro-

priate. When judgment is entered by that court, Groves may again appeal to seek review of any issue within this court's jurisdiction for which there is a final adverse decision.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The case is remanded.

FOR THE COURT

NOV 15 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Gene S. Groves
Steven M. Mager, Esq.

Issued As A Mandate: NOV 15 2010

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

NOV 15 2010

JAN HORBALY
CLERK