

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

MISC. NO. 17-11

IN RE: TIMELINESS OF APPEALS

ORDER

By order of the full-Court:

This order amends Miscellaneous Order No. 10-11 (issued June 24, 2011).

On June 24, 2011, cases potentially affected by the U.S. Supreme Court's decision in *Henderson v. Shinseki*, 131 S. Ct. 1197 (2011), were stayed while a panel considered whether equitable tolling was warranted in the remanded *Henderson* case, U.S. Vet. App. No. 05-0090. See Miscellaneous Order No. 10-11. The stay was in effect until further order of the Court. *Id.* On September 26, the Court granted the *Henderson* parties' joint motion to terminate. Subsequently, a panel was convened in *Lopez (Alfonso) v. Shinseki*, U.S. Vet. App. No. 10-2139 (submitted to panel Sept. 30, 2011), to address an equitable tolling issue similar to the issue raised in *Henderson*.

This Court's disposition of the equitable tolling issue in *Lopez* may have a direct bearing on the disposition of many cases pending before the Court, including many of those cases currently stayed by the Court's June order. However, it appears that there may be no final underlying Board decision in a number of the cases currently stayed. In these cases, listed in Appendix I, the stay will be lifted, and the parties will be instructed by separate order to show cause why their appeals should not be dismissed.

All other cases stayed by the Court's June order will remain stayed pending further order of the Court. Additionally, other cases filed since the June order that may be affected by a decision in *Lopez* shall be stayed pending further order of the Court; these cases are listed in Appendix II.

Further, as of the date of this order, the Clerk of the Court (Clerk) is directed to stay any Notice of Appeal (NOA) filed after the 120-day filing period provided in Rule 4(a) of the Court's Rules of Practice and Procedure, and for which there is evidence that an underlying Board decision has been issued; such stay shall be effective until further order of the Court.

It is hereby

ORDERED that the stay imposed on June 24, 2011, by Miscellaneous Order No. 10-11 is lifted with regard to the cases listed in Appendix I, and the appellants in those cases shall be directed by separate order issued by the Clerk to show cause why their appeals shall not be dismissed. It is further

ORDERED that all cases listed in Appendix II are stayed pending further order of the Court.

It is further

ORDERED that the Clerk shall stay cases in which an NOA is filed after the date of this order and after the 120-day filing period provided in Rule 4(a) of the Court's Rules of Practice and Procedure, and for which there is evidence that an underlying Board decision has been issued; such stay shall be effective until further order of the Court.

DATED: October 5, 2011

FOR THE COURT:

/s/Gregory O. Block
GREGORY O. BLOCK
Clerk of the Court

Appendix I

Dilworth, 11-1586
Fleishman, 11-0521
Hodge, 10-4000
Lowery, 11-0737
Martin, 11-0375
Matuskovic, 11-1147
Miner, 11-1525
Smith, 11-0650

Appendix II

Barraia, 11-2106
Caliyo-Viloria, 11-2184
Carter, 11-2216
Compton, 11-2390
Croce, 11-2737
Daniels, Sr., 11-2109
Darrow, 11-2805
Deborde, 11-2509
Eaddy, 11-2064
Florita, 11-2671
Ginter, 11-2908
Gray, 11-2394
Gulley, 11-2464
Hall, 11-2742

Harvey, Jr., 11-2672
Henri, 11-2340
Hobbs, 11-2861
Hudson, 11-2803
Johnson, 11-2030
Johnson, 11-2164
Kostelecky, 11-2323
LaClaire ,11-2204
Latsko, 11-2825
Madson, II, 11-2262
McDonald, 11-2883
Meaux, 11-2884
Mitchell, 11-2400
Ored, 11-2592
Padlan, 11-2412
Payne, 11-2051
Placino, 11-2032
Pryor, 11-2346
Raphael, 11-2360
Reynolds, 11-2828
Stephenson, 11-2889
Swan, 11-2083
Terry, 11-2912
Upshaw, 11-2547