

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-7098

HENRY J. PALMER,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

ON MOTION

Appeal from the United States Court of Appeals for Veterans Claims in
08-2783, Judge John J. Farley, III.

Before SCHALL, PROST, and MOORE, Circuit Judges.

PER CURIAM

ORDER

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and dismiss this appeal for lack of jurisdiction or, in the alternative, summarily affirm the judgment of the United States Court of Appeals for Veterans Claims in Palmer v. Peake, No. 08-2783. Palmer opposes.

Palmer appealed to the Court of Appeals for Veterans Claims from a February 1, 2008 letter from the Board of Veterans' Appeals granting his motion to advance his case on the docket. The Court of Appeals for Veterans Claims dismissed the appeal, finding that it lacked jurisdiction over Palmer's appeal of the February 1 letter because the letter did not constitute a denial of his claim or an appealable final decision.

Summary affirmance of a case is appropriate "when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.") Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994). Because we agree with the Court of Appeals for Veterans Claims that it lacked jurisdiction to review Palmer's appeal of the February 1 letter, summary affirmance is appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) The Secretary's motion to dismiss is denied. The motion for summary affirmance is granted.
- (2) Any other motions are denied.
- (3) Each side shall bear its own costs.

FOR THE COURT

SEP - 2 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Henry J. Palmer
Kenneth S. Kessler, Esq.
s20

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

ISSUED AS A MANDATE: SEP - 2 2009

SEP - 2 2009
JAN HORBALY
CLERK