

NOTE: This order is nonprecedential.

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

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**LAWRENCE E. THOMPSON,**  
*Claimant-Appellant,*

v.

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

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2011-7015

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Appeal from the United States Court of Appeals for  
Veterans Claims in case no. 07-2103, Judge William A.  
Moorman.

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**ON MOTION**

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Before GAJARSA, Mayer, and PROST, *Circuit Judges.*  
PER CURIAM.

**O R D E R**

The Secretary of Veterans Affairs moves to vacate the  
underlying order of the United States Court of Appeals for  
Veterans Claims and to remand for further proceedings.

In the Court of Appeals for Veterans claims, Lawrence E. Thompson filed a motion to recall the mandate and judgment in a Court of Appeals for Veterans Claims case in which that court had previously dismissed his appeal as untimely, concluding that there is no equitable tolling exception to the 120 day judicial appeal period established by 38 U.S.C. § 7266(a) for appealing Board of Veterans' Appeals decisions. The Court of Appeals for Veterans Claims denied his motion to recall the mandate and judgment. In the present appeal, Thompson seeks this court's review of the order denying his motion to recall the mandate.

This court stayed the briefing schedule in this appeal pending the United States Supreme Court's disposition in *Henderson ex rel. Henderson v. Shinseki*, 131 S.Ct. 1197 (U.S.,2011). In its decision the Supreme Court reversed this court's decision in *Henderson v. Shinseki*, 589 F.3d 1201 (Fed. Cir. 2009) (en banc), concluding that the 120-day deadline for filing an appeal with the Court of Appeals for Veterans Claims does not have jurisdictional consequences. The Secretary suggests that, in light of the Supreme Court's ruling, the Court of Appeals for Veterans Claims should be provided the opportunity to consider again Thompson's arguments raised in his motion to recall the mandate and whether they constitute grounds for tolling the time to appeal from the judgment.

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted. The order denying recall of the mandate and judgment is vacated and the case is remanded for further proceedings.

(2) All sides shall bear their own costs.

FOR THE COURT

MAY 27 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Lawrence E. Thompson  
Sarah M. Bienkowski, Esq.

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Issued As A Mandate: MAY 27 2011

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

**MAY 27 2011**

**JAN HORBALY**  
**CLERK**