

NOTE: This order is nonprecedential.

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

STANLEY PRZYBYLSKI,
Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veteran Affairs,
Respondent-Appellee.

2011-7190

Appeal from the United States Court of Appeals for
Veterans Claims in case no. 09-0145 Judge Mary J.
Schoelen.

ON MOTION

Before LOURIE, PROST, and MOORE, *Circuit Judges.*
PER CURIAM.

O R D E R

The Secretary of Veterans Affairs ("Secretary") moves to voluntarily remand this case for a new medical opinion. The Secretary also requests that we waive the requirement of Federal Circuit Rule 27(f) which requires his argument in support of remand be made in his brief.

Mr. Przybylski filed a claim with the Department of Veterans Affairs ("VA") for entitlement to service connection for morbid obesity. When his claim reached the Board of Veterans Appeals ("Board"), the Board remanded the case for compliance with the VA's notice requirements and to obtain additional evidence. In its remand, the Board stated that it believed that "for the purpose of establishing entitlement to VA disability benefits obesity is a symptom, rather than a disease or disability in its own right." Following a VA medical examination on remand, the doctor concluded that he could not find any etiology for Mr. Przybylski's obesity other than eating. The doctor opined that Mr. Przybylski's obesity was less likely as not related to military service.

The Secretary notes that it was not clear from the doctor's report as to whether the doctor was influenced by the Board's statements that suggested obesity could not be considered a disease for the purpose of service connection. As a result, the Secretary requests we vacate and remand this appeal for a new medical opinion that is not potentially influenced by the Board's remand opinion.

Upon consideration thereof,

IT IS ORDERED THAT:

- 1) The motion to vacate and remand is granted. The United States Court of Veterans Claims is ordered to remand Mr. Przybylski's claim to the VA for a new medical opinion determining whether Mr. Przybylski's obesity is a disease on its own that may be service connected.
- 2) The requirement of Rule 27(f) is waived, and the present motion is accepted as the Secretary's argument.
- 3) Costs are awarded to Mr. Przybylski.

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PRZYBYLSKI V. DVA
FOR THE COURT

FEB 06 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Stanley Przybylski
Renee Gerber, Esq.

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Issued As A Mandate: FEB 06 2012

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

FEB 06 2012

JAN HORBALY
CLERK