

NOTE: This order is nonprecedential.

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

JESSE KNIGHT,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2022-1169

Petition for review of an arbitrator's decision in No. 201211-02152 by Dennis A. Kist.

ON MOTION

Before LOURIE, TARANTO, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

The Department of Veterans Affairs moves to waive the requirements of Federal Circuit Rule 27(f) and remand to allow the arbitrator to reevaluate the determination concerning the standard of proof and the reasonableness of the choice of penalty in light of this court's decisions in *Rodriguez v. Department of Veterans Affairs*, 8 F.4th 1290 (Fed.

Cir. 2021), and *Connor v. Department of Veterans Affairs*, 8 F.4th 1319 (Fed. Cir. 2021), which Jesse Knight had raised as issues in post-arbitration briefing. Mr. Knight, through counsel, states that remand is acceptable “so long as there was no provision directing petitioner to pay the costs of the appeal i.e. attorney fees and taxable costs.” ECF No. 26 at 2.

It is within this court’s discretion to remand to allow the arbitrator to reconsider his previous position. *See SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). We agree that remand is proper here and could preserve party and judicial resources, and therefore we grant the Department’s motion. We further determine that costs should be awarded to Mr. Knight, *see* Fed. R. App. P. 39; Fed. Cir. R. 39, but he has not moved for attorney fees and this order does not address such a potential claim.

Accordingly,

IT IS ORDERED THAT:

(1) The Department’s motion is granted. The case is remanded to the arbitrator for further proceedings consistent with the motion and this order.

(2) Costs to petitioner.

FOR THE COURT

May 31, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

ISSUED AS A MANDATE: May 31, 2022