

This version includes the errata dated 18Nov02 -e

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 98-354

RICHARD D. SIMMONS,

APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before HOLDAWAY, STEINBERG, and GREENE, *Judges*.

ORDER

On June 7, 2002, the Court issued a per curiam order withdrawing the August 30, 2002, panel decision and ordering the parties to file supplemental memoranda regarding the Secretary's supplemental response and the effect, if any, on the instant appeal of *Roberson v. Principi*, 251 F.3d 1378 (Fed. Cir. 2001), *Disabled American Veterans v. Gober*, 234 F.3d 1378 (Fed. Cir. 2001), *Hayre v. West*, 188 F.3d 1327 (Fed. Cir. 1999), and *Livesay v. Principi*, 15 Vet.App. 165 (2001) (en banc). On September 23, 2002, the Secretary filed his response to the Court's June 2002 order; he requests that the Court's decision be stayed pending the outcome in the United States Court of Appeals for the Federal Circuit (Federal Circuit) of *Cook v. Principi*, No. 00-7171. Response (Resp.) at 1-2. In *Cook*, on January 4, 2002, the Federal Circuit, sitting en banc, 275 F.3d 1365, 1366 (Fed. Cir. 2002), ordered the parties to brief the efficacy of *Hayre, supra*, and heard oral argument on July 9, 2002. The Secretary argues here that "the outcome of *Cook*, although perhaps not controlling, will be of great assistance to the Court". Resp. at 2. In his October 3, 2002, reply, the appellant indicates that he does not object to such a stay. Reply at 1-2.

The issues in the two cases regarding the application of the Secretary's duty to assist in connection with claims of clear and unmistakable error (CUE) are substantially similar, and the disposition of *Cook* could materially affect the instant proceedings. Therefore, in the interest of judicial economy, the Court will stay further proceedings in the instant case pending the disposition of *Cook*.

Upon consideration of the foregoing, it is

ORDERED that the Secretary's unopposed request to stay proceedings pending the disposition of *Cook, supra*, is granted pending further order of the Court.

DATED: November 13, 2002

PER CURIAM.