

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

OPINION AND ORDER

This matter is before the court on Appeal of Magistrate Judge's Decision, filed by the Plaintiff, Harold Pettit ("Pettit"), on September 4, 2014. The Defendant, United States of America ("Government"), filed a response on September 26, 2014, to which Pettit replied on October 2, 2014.

## Discussion

Pettit has brought a Federal Tort Claims Act claim against the Government arising from Pettit's fall at the Jesse Brown Veterans Affairs Medical Center (JBVAMC) in Chicago in July 2012. Pettit requested documents relating to his fall, which the Government withheld on the basis of a privilege created by 38 U.S.C. § 5705. The Government claims that the documents are privileged because they are quality assurance documents. Pettit argues that the Government is abusing the privilege to shield fact witnesses. Pettit states he needs the documents because the witnesses the Government has identified have forgotten important facts and he believes the contemporaneous witness statements may reveal both forgotten facts and additional undisclosed witnesses.

Pettit requests an *in camera* review of the documents identified in Privilege Logs 1-3,

which consist of a “Patient Fall Report”, “Report of an Adverse Event”, and “Root Cause Analysis”. The Government insists that Pettit has no need for the privileged documents because equivalent information is in medical records produced to Pettit.

The court will grant Pettit’s request for an *in camera* review of the documents. The court also requests the Government to submit to the court the medical records it claims provide the equivalent information to Pettit.

#### Conclusion

The court hereby GRANTS Pettit’s request for *in camera* review of the documents identified in Privilege Logs 1-3. The Government is ORDERED to submit the documents to the court, along with the equivalent medical records, within 30 days. Pettit’s appeal remains UNDER ADVISEMENT.

Entered: December 29, 2014.

s/ William C. Lee  
William C. Lee, Judge  
United States District Court