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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 05-2901

BRIAN M. OSMAN,

APPELLANT,

v.

GORDON H. MANSFIELD,
ACTING SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before KASOLD, HAGEL, and DAVIS, *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

Brian M. Osman, who is self-represented, appeals a June 22, 2005, decision of the Board of Veterans' Appeals (Board) that denied entitlement to additional Dependent's Educational Assistance under Chapter 35 of Title 38, United States Code. In April 2003, Mr. Osman was granted entitlement to Chapter 35 benefits as a result of his father's permanent and total service-connected disability. He later filed for entitlement to Chapter 35 benefits as a result of his mother's permanent and total service-connected disability. The Board denied Mr. Osman's claim, citing VA General Counsel Precedential Opinion 1-2002, which stated that "concurrent" benefits are not permitted for a child of two permanently and totally disabled parents. *See* VA General Counsel Precedent Opinion 1-2002 (Jan. 25, 2002) [hereinafter G.C. Prec. 1-2002].

The Court is interested in several issues raised by this appeal. Those are:

1. Whether a VA General Counsel Precedent Opinion is a "matter" within the meaning of 38 U.S.C. § 501(d) such that the issuance of such an opinion must comport with the requirements of 5 U.S.C. § 553.
2. If so, whether G.C. Prec. 1-2002 constitutes a "substantive rule," which must be issued according to notice and comment rulemaking procedures of 5 U.S.C. § 553(b)(A), or whether the opinion is an "interpretive rule," which is exempt from such requirements. *See Splane v. West*, 216 F. 3d 1058, 1063 (Fed. Cir. 2000); *see also* 38 U.S.C. § 501(d).
3. If G.C. Prec. 1-2002 is a substantive rule, whether the requirements of 5 U.S.C. § 553(b) were met before the opinion became effective and, if not, the

consequences of failure to comply with these requirements.

4. Whether the publication requirements of 5 U.S.C. § 552(a)(1) have been satisfied. *See* 38 U.S.C. § 501(c).
5. Whether 38 U.S.C. § 3511 or any other provision of law prohibits concurrent, dual, or consecutive eligibility for Chapter 35 benefits based upon a claimant being the eligible child of two parents that are permanently and totally disabled for VA benefits purposes.

Further, the Court notes that Mr. Osman is self-represented in this matter. Pursuant to the Court's Internal Operating Procedures, section II(f):

When a determination is made, at any point during the consideration of a case, that a case in which a party is not represented should be disposed of by other than a single judge, . . . that the matter will be stayed for 30 days to permit possible arrangements for representation of that unrepresented party.

Accordingly, the Court will stay this matter for a period of 30 days to permit Mr. Osman to arrange for representation in this matter, if he so desires.

Upon consideration of the foregoing, it is

ORDERED that the appeal is stayed for a period of 30 days to permit Mr. Osman to arrange for representation in this matter, if he so desires. It is further

ORDERED that the Clerk of the Court request, by means of transmitting a copy of this order to the Director of the Case Evaluation and Placement Component of the Veterans Consortium Pro Bono Program, that the Director investigate the possibility of appointing a particularly qualified volunteer counsel to act as amicus curiae in both briefing and oral argument regarding the disposition of the case. Other interested parties are also invited to submit briefs of amicus curiae. It is further

ORDERED that the Clerk of the Court request, by means of transmitting a copy of this order to the Director of the Veterans Consortium Pro Bono Program, that the Director within 30 days from the date of this order file with the Court a response to this order with service on the Secretary, notifying the Court whether a volunteer amicus counsel was found, and, if so, the identity of counsel and the anticipated date counsel will file an appearance.

DATED: October 29, 2007

PER CURIAM.

Copies to:

Brian M. Osman

Director, Case Evaluation and Placement Component
Veterans Consortium Pro Bono Program

VA General Counsel (027)