

UNITED STATES COURT OF VETERANS APPEALS

No. 95-993

SAMUEL B. THOMAS,

APPELLANT,

AND

VA FILE NO. 29 666 976

No. 96-107

MICHAEL D. HERNDON,

PETITIONER,

V.

VA FILE NO. 23 262 407

JESSE BROWN,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE AND RESPONDENT.

Before FARLEY, MANKIN, and STEINBERG, *Judges*.

ORDER

On March 19, 1996, the Court consolidated the above-captioned cases. On March 28, 1996, the Secretary filed a motion for leave to respond to the parties' petitions for extraordinary relief.

Upon consideration of the pleadings, it is

ORDERED that the Secretary's motion for leave to respond to the parties' petitions for extraordinary relief is granted. It is further

ORDERED that, within 30 days after the date of this order, the Secretary file (and serve on the other parties) a response to the petitions. The response shall address, but not be limited to, the following:

Whether 38 U.S.C. § 7104 requires VA to allow the petitioners' appeal of the issue of "clear and unmistakable error" in the respective VA regional office decisions to proceed (by issuing a Statement of the Case) despite the apparent lack of legal merit to the claim. *See Smith (William) v. Brown*, 35 F.3d 1516, 1527 (Fed. Cir. 1994); *Duran v. Brown*, 7 Vet.App. 216 (1994); *Winslow v. Brown*, 8 Vet.App. 469 (1996).

It is further

ORDERED that, within 30 days after service of the Secretary's response, the other parties may file replies.

DATED: April 9, 1996 PER CURIAM.