

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

VIETNAM VETERANS OF AMERICA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 08-1934 (RBW)
)	
JAMES B. PEAKE, M.D., in his official capacity as)	
Secretary of the Department of Veterans Affairs,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO DISMISS AND
OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
VIETNAM VETERANS OF AMERICA AND)	
THE VETERANS OF MODERN WARFARE)	
)	
Plaintiffs)	
)	Civil Action No. 08-CV-01934 (RBW)
v.)	
)	
JAMES B. PEAKE, M.D.,)	
SECRETARY OF VETERANS AFFAIRS)	
)	
Defendant)	
_____)	

DECLARATION OF STEVEN L. KELLER

I, Steven L. Keller, declare as follows:

1. I am currently employed as the Principal Deputy Vice Chairman of the Board of Veterans' Appeals (Board). I have held this position since 2008. Before selection to this position, I served as the Board's Senior Deputy Vice Chairman from 1997 to 2008. Between 1982 and 1997, I served as a staff attorney, Counsel to the Chairman, and Chief Counsel for the Board. The information contained in this declaration is based on my personal knowledge and information made available to me as a senior executive within the Board.

2. In my current capacity as the Principal Deputy Vice Chairman of the Board, I direct, coordinate, and supervise the professional and administrative activities of the Board. Among other things, I am responsible for overseeing the development and approval of long-range plans, and guiding the development of policy and policy changes in response to legislative, judicial, and organizational needs and requirements.

3. I am aware of this litigation and plaintiffs' motion for a preliminary injunction set for hearing before the Court on December 17, 2008.

4. The Board's composition, jurisdiction, and operations are prescribed under the authority of Chapter 71 of Title 38, United States Code. Regulations governing the processing of appeals by the

agency of original jurisdiction and rules of practice for the Board are located in parts 19 and 20 of Title 38, Code of Federal Regulations. The Board makes final decisions on appeals to the Secretary of Veterans Affairs (VA) under laws affecting the provision of veterans benefits. Final decisions of the Board may be appealed to the United States Court of Appeals for Veterans Claims (Veterans Court), an independent Article I Federal Court established by Congress in 1988.

5. The Board is currently composed of 60 Veterans Law Judges (VLJs). An appeal from a decision by a Veterans Benefits Administration (VBA) Regional Office (RO) is generally heard by one VLJ, assisted by a staff attorney. The Board currently employs 320 staff attorneys to assist VLJs decide their cases. Each staff attorney is expected to review 3.5 case files and draft a decision in each of those cases per week, or 156 per year. Each VLJ is expected to review, revise, and decide 19 cases per week, or 752 per year. In addition, each VLJ is expected to complete at least three week-long Travel Board trips per year, in which they hold hearings at the 57 ROs. If a veteran chooses to have the hearing at his local regional office, the hearing must await the next time that a Board VLJ travels to that office to hold hearings. Travel Board hearings are held once or twice a year at each RO, more frequently at the larger ROs. Last year, the Board decided 43,757 cases. In addition to VLJs and staff attorneys, the Board has 101 support personnel and senior managers. No qualified VLJs (excluding the Board Chairman and Vice Chairman) and 2 qualified staff attorneys are not currently assigned to reviewing and deciding cases.

6. In contrast to appeals before the Veterans Court and the United States Court of Appeals for the Federal Circuit (Federal Circuit), the appeals process within VA, which involves both the Board and local VA ROs, is non-adversarial. See Forshey v. Principi, 284 F.3d 1335, 1355 (Fed. Cir. 2002) (en banc). The ROs are administered by the VBA, a separate and distinct VA component from the Board. Features of this non-adversarial process include VA's statutory duty to assist under 38 U.S.C. §§ 5103(a) and 5103A, an open evidentiary record, time periods prescribed by regulation and statute requiring VA to defer adjudication while waiting for a claimant's response or action during appeals, the opportunity for review of a RO decision by a VBA Decision Review Officer (DRO), *de novo* review by the Board, and the opportunity for a hearing before an appeal is decided by the Board. The same features that assist a

veteran in perfecting his or her claim for benefits necessarily add time to the adjudication of claims and the processing of appeals and are in tension with plaintiffs' desire for adjudication of claims and processing of appeals according to an arbitrary time schedule.

7. A claimant seeking appellate review of a VA decision initiates the process by filing a notice of disagreement (NOD) with the local RO of jurisdiction within one year of the issuance of the RO decision in dispute. The Board does not obtain the ability to actually decide the appeal until it physically receives the certified appeal from the RO, which requires both the RO and the claimant to complete additional steps in order to perfect the appeal.

8. Upon receipt of the NOD, the RO must conduct additional development and review as appropriate. If the claim has not been resolved through either a complete award of benefits or withdrawal of the NOD, the RO must issue a statement of the case (SOC) summarizing the evidence considered, the applicable statutes and regulations and how they affect the determination reached. With the SOC, the RO provides the claimant with a VA Form 9, by which the claimant may file a "substantive appeal." In the substantive appeal, the claimant explains why he or she believes the RO's decision was in error and may also indicate whether he or she desires a Board hearing.

9. Upon receiving the SOC, the claimant must file his or her substantive appeal within 60 days from the date VA mailed the SOC, or within the remainder of the one year period to file an appeal from the date VA mailed notice of the decision being appealed, whichever is later. After the RO receives the completed substantive appeal and ensures that all necessary development has been met to comply with VA's statutory duty to assist under 38 U.S.C. §§ 5103(a) and 5103A, it certifies the appeal to the Board, and transfers the appellate record to the Board.

10. The Board of Veterans' Appeals conducts *de novo* review of all evidence and material of record and applies the same standard of proof as the ROs – the evidence must preponderate against the veteran for a claim for benefits to be denied. The Board decides appeals only after a claimant has been given the opportunity for a hearing.

11. By law, decisions of the Board shall be based on the entire record in the proceedings and upon consideration of all evidence and material of record and applicable provisions of law and regulation. Each Board decision must contain a written statement of the reasons or bases for the Board's findings and conclusions on all material issues of law and fact presented on the record. The Board may grant, deny, or dismiss a claim, or may remand the claim to the RO for further development or other action. If the Board remands a claim, the RO must take any necessary actions and review the claim to determine whether the benefit sought on appeal may be granted. If any benefit remains denied, in whole or in part, the RO must issue a Supplemental Statement of the Case (SSOC) detailing the additional actions that were taken and provide the claimant an opportunity to respond. Unless all benefits are allowed or the claim is withdrawn, the appeal must be returned to the Board for final decision on the appeal.

12. Plaintiffs' allegation that the Board has a policy of deciding one issue at a time on appeal is incorrect. *See* Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction (Memorandum) at 5. The Board's practice is to decide all issues presented on appeal that can properly be decided, and Board decisions routinely address multiple issues covering multiple benefit claims. Because benefit claims may contain numerous issues that must be decided sequentially (e.g., veteran status, service connection, disability rating, and effective date), an appeal may relate solely to an RO decision on a preliminary issue, such as service connection. In that case, the Board's appellate review is necessarily limited to the issues decided by the RO and may not finally resolve all issues ultimately presented in the underlying claim. If the Board rules in the appellant's favor on such an issue, such as service connection for a disability, the case must be returned to the RO for initial decision on the "downstream" issues of disability rating and effective date. In multiple issue cases where the Board determines that one or more issues must be remanded for further development or correction of a procedural defect, the Board may need to defer making a decision on other issues that are inextricably intertwined with the issue being remanded (such as a claim for a total disability rating based on individual unemployability (TDIU) being inextricably intertwined with a claim for an increased rating that needs to be remanded for additional development).

13. Appeals Resolution Time (ART) is the average length of time it takes VA to process an appeal from the date a claimant files a NOD until the case is finally resolved, including resolution at the RO or by issuance of a final, non-remand decision by the Board. As will be discussed in more detail below, several factors contribute to the overall ART including time periods prescribed by statute and regulation for claimants to take action, an open evidentiary record, and changing precedent in the Veterans Court and the Federal Circuit. During FY 2008, the ART was 644.6 days, based on a total of 101,566 appeals that were finally resolved during this period of time. Because the ART is a joint measurement of appeals processing time for both the ROs and the Board, the total number of cases included in the measurement entails both final Board decisions and RO decisions that became final based either on a favorable decision being issued or a claimant's decision to not continue to prosecute an appeal following the filing of a NOD.

14. VA regulations governing the administrative appeals process allow claimants time to respond to requests from VA (usually 30 or 60 days), submit evidence or argument in support of his or her claim for benefits, and pursue the next step in the adjudication and/or appeals process. VA regulations require VA to wait a specific amount of time before it may proceed with a case, potentially adding 300 days or more to the adjudication process after the point at which a NOD is filed in a case. (This does not include the statutory one year period that a claimant is provided to file an NOD in the first place following the issuance of an unfavorable RO decision.) For example:

a. If a NOD is unclear, VA must contact the claimant and seek clarification. In such situations, the claimant has 60 days to respond to the request for clarification, or one year from the date of the decision being appealed, whichever is later. 38 C.F.R. § 19.26(c)(1).

b. Once a claimant has filed a NOD, the RO sends a notice to the claimant informing him or her of the right to have the decision reviewed by a DRO. The claimant is provided a period of 60 days after VA mails the notice to elect DRO review during which time VA must defer action on the claim, unless the appellant responds to the notice before that time. 38 C.F.R. § 3.2600(b).

c. If the claimant does not select the DRO process, or if the review process is complete and the decision remains unfavorable, the RO sends a SOC to the claimant. The claimant is then provided a period of 60 days from the date of the SOC, or the remainder of the one-year period from the date of mailing of the notification of the determination being appealed, whichever is later, to file a Substantive Appeal. 38 C.F.R. § 20.302(b). A claimant may request extension of this period. 38 C.F.R. §20.303.

d. If additional evidence is received after the Substantive Appeal is filed, the RO must issue a SSOC. A claimant is provided a period of 30 days to respond to the SSOC, 38 C.F.R. § 20.302(c), and the claimant may request an extension of this period, for good cause. (This response period was recently changed from 60 days to 30 days. 73 Fed. Reg. 40,745 (July 16, 2008).)

e. If an appellant requests a hearing before the Board, written notice must be provided to the appellant not less than 30 days prior to the date a hearing will be held. 38 C.F.R. § 19.76.

f. Once an appeal is before a VLJ (per statute, a Member of the Board of Veterans' Appeals) for adjudication, if the VLJ determines that a legal or medical opinion is required in the case, the appellant is provided a copy of the legal or medical opinion and provided a period of 60 days to respond after the opinion has been received. 38 C.F.R. § 20.903(a).

15. The evidentiary record remains open during both the adjudication of claims and processing of appeals and claimants may submit additional evidence at any time. *See* 38 C.F.R. § 19.37; 38 C.F.R. § 20.800. Following certification and physical transfer of an appeal to the Board, a claimant has, as a matter of right, 90 days in which to submit a request for a change in representation, a request for a personal hearing, or to submit additional evidence. After this 90 day period, good cause must first be shown. 38 C.F.R. § 20.1304. In cases before the Board, each time a veteran submits additional evidence, unless the veteran waives initial RO consideration of the evidence, the claim can be granted in full, or an exception is provided by law, a remand is required to permit the RO to evaluate the evidence in the first instance and to reconsider its decision, delaying a final decision on the matter. If the new evidence does not resolve the claim, either through an award of benefits or withdrawal of the NOD, the RO must issue a SSOC summarizing the decision, the evidence considered, and the applicable statutes and regulations.

Although a claimant need not respond for the appeal to go forward, claimants are allowed a period of 30 days to respond to the SSOC.

16. In over half (58%) of the 31,616 original appeals certified to the Board in FY 2008 (18,479), claimants submitted additional evidence requiring VA to issue at least one SSOC. In 23 percent of the same cases, claimants submitted additional evidence requiring VA to issue two SSOCs. As mentioned earlier, VA is now obligated to wait 30 days each time it issues a SSOC; however, in FY 2008, this response period was still 60 days. VA's liberal evidentiary policy, codified in regulations, allows claimants to submit evidence in a piecemeal fashion, often adding time to both claims and appeals processing.

17. As previously discussed, we recognize that time limits imposed by statute and regulation contribute to the time required to adjudicate claims and process appeals. Toward that end, the Board recently published regulations launching an initiative for accelerated claims and appeals processing that will be tested as a pilot project at four VA facilities by volunteer claimants represented throughout the process. *See Board of Veterans' Appeals: Expedited Claims Adjudication Initiative — Pilot Program*, 73 Fed. Reg. 65726 (Nov. 5, 2008) (to be codified at 38 C.F.R. § 3.161 and §§ 20.1500-20.1510). The Expedited Claims Adjudication Initiative (ECA) is designed to determine whether VA can improve the timeliness of claims and appeals processing by (1) obtaining waivers to statutorily- and regulatorily-imposed time periods for claimant response, and (2) using the Board's authority to pre-screen cases upon receipt to ensure the record is adequate for a decision when it reaches its place on the Board's appeals docket. Among other things, the ECA requires claimants to accept reduced times for —(1) filing a NOD (ECA participants agree to accept 60 days instead of the one-year period provided by 38 U.S.C. § 7105); (2) filing a substantive appeal (ECA participants agree to accept 30 days from receipt of the SOC instead of 60 days or the remainder of the one-year period from the date of mailing of the notification of the determination being appealed, whichever is longer), and (3) filing post-certification requests to request a personal hearing, change representation, or submit additional evidence (ECA participants agree to accept 30 days instead of 90 days). Under the ECA, the RO of jurisdiction is required to certify covered claims

and transfer these to the Board within 30 days of the receipt of the substantive appeal or within 30 days of receipt of additional submissions, but no later than 60 days from the receipt of the substantive appeal. However, if, after issuance of the SOC, additional assistance in obtaining evidence is required to comply with VA's statutory duty to assist, such as providing a medical examination, under 38 U.S.C. § 5103A(d), the RO must certify covered claims and transfer the appellate record to the Board within 60 days after the requisite action is completed.

18. Evolving precedent involving the notice requirements of 38 U.S.C. § 5103(a) has also significantly impacted the processing of appeals. Under section 5103(a), VA is required, upon receipt of a complete or substantially complete claim, to notify a claimant of the information and evidence necessary to substantiate the claim and the respective obligations of VA and the claimant to obtain the requisite information and evidence. Although section 5103(a) notice takes place early in the claims-adjudication process, it is actually the first step in a series of ongoing communications between VA and the claimant that continues throughout the development, adjudication, and appeal of the claim.

19. Under the Veterans Claims Assistance Act of 2000 (VCAA), VA is required to provide section 5103(a) notice in virtually all disability-compensation claims filed each year except those based on clear and unmistakable error. Although the precise content of the notice may vary with the nature of each claim, VA generally employs similar language and content in its notice in each of the hundreds of thousands of disability-compensation claims filed each year. If a reviewing court finds a defect in the generally-applicable notice template VA uses, a similar defect potentially exists in all other cases in which the same type of notice was provided. Under precedent established by two cases in the Federal Circuit, each time the Veterans Court finds that a particular type of VCAA notice letter is inadequate, the erroneous notice that VA provided in all similar cases before the decision will be presumptively prejudicial to appellants and will likely require a remand. *See Sanders v. Nicholson*, 487 F.3d 881 (Fed. Cir. 2007) (holding that a VCAA notice error is presumed prejudicial, requiring remand, unless VA affirmatively shows otherwise) *cert. granted*, 76 U.S.L.W. 3529, 76 U.S.L.W. 3649, 76 U.S.L.W. 3654 (U.S. June 16, 2008) (No. 07-1209); *Simmons v. Nicholson*, 487 F.3d 892 (Fed. Cir. 2007).

Accordingly, each judicial decision identifying a defect in a VCAA notice provided in disability-compensation claims could result in remands of hundreds or thousands of cases. See Dambach v. Principi, 14 Vet. App. 307, 309 (2001) (“there have been an extraordinary number of remands by this Court and the Federal Circuit because of the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096 (Nov. 9, 2000), which, no doubt, greatly exacerbates the administrative problems faced by the Department.”).

20. Even without the precedential effect of Sanders and Simmons, the Veterans Court’s imposition of claim-specific notice requirements in several cases in recent years has adversely impacted adjudication and appeals timeliness. See e.g., Vazquez-Flores v. Peake, 22 Vet. App. 37, 43 (2008) (imposing additional notice requirements in claims for increased disability-compensation ratings); Kent v. Nicholson, 20 Vet. App. 1, 9-10 (2006) (imposing additional notice requirements in claims to reopen previously-denied claims, including disability-compensation claims); Dingess v. Nicholson, 19 Vet. 473, 488-89 (2006) (imposing additional notice requirements in disability-compensation claims). Each new notice requirement requires additional analysis and screening by the Board potentially requiring the remand of previously adjudicated cases involving similar section 5103(a) notice, all of which adds to appeals times. Although a recently enacted statute designed to clarify VCAA notice requirements requires VA to publish regulations providing for content-specific notice in different types of claims, it is unclear whether the new law will prevent future and differing judicial interpretations of section 5103(a) notice requirements from further adding to delays. See The Veterans Benefits Improvement Act of 2008, Pub. L. No. 110-389, § 101, 122 Stat. 4145, 4147 (2008).

21. In FY 2008, the Board’s “cycle time,” the time from the date an appeal is physically received at the Board until a decision is dispatched, was 155 days. Cycle time does not include the time an appeal is with a Veterans Service Organization (VSO) representative for preparation of written argument in support of the appeal. In approximately 80 percent of appeals, claimants are represented by a VSO before the Board. Generally, when a claimant before the Board is represented by a VSO, and a formal hearing was not held in the appeal, the Board provides the claims file to the VSO representatives

that are co-located in the Board's facility, on request, and allows the representative time to prepare written argument in support of the appeal. This process occurs in approximately 50 percent of the Board's cases. Plaintiffs' allegation that it takes an average of 336 days for the Board to issue a decision is misleading because it does not account for the time an appeal is with a VSO representative, a factor beyond the Board's control. *See* Memorandum at 5. In FY 2008, VSO representatives held these appeals an average of 227 days per case during the period between the date the Board physically received the appeal and the date of the Board's decision. Plaintiff Vietnam Veterans of America, which represented hundreds of claimants before the Board in FY 2008, held appeals an average of 273 days during that period. Accordingly, plaintiffs' cited figure of 336 days for the Board to make a decision wrongly attributes to the Board delay imposed by a claimant's veterans service organization representative.

22. Plaintiffs' allegation that the Board is responding to its increasing workload by denying more claims is both incorrect and unsupported. *See* Memorandum at 7. For FY 2008, the Board, as part of its *de novo* review of appeals received from local VA offices, denied approximately 39% and remanded approximately 37% of the cases it decided. In other words, the Board's determination was consistent with VBA's determination approximately 39% of the time and contributed to a higher rate of final (non-remand) decisions. For purposes of comparison, in FY 2004, the Board's decision to deny benefits was the same as ROs in only approximately 24% of the appeals it decided. The reason for the lower rate in FY 2004 is related to the high percentage of cases that were remanded that year, approximately 57%, for purposes of correcting a procedural or development defect that existed at the time of the Board's review. As a result of making more final decisions in FY 2008, the Board remanded fewer cases back to VBA for further development. Since 2004, both the Board and VBA have been making a concerted effort through training and other means to reduce the number of avoidable remands, i.e., remands that contain a defect that should have been caught and corrected before a case was certified and physically transferred to the Board, or an appeal that contains a nonprejudicial error such that the Board may proceed to issue a final decision without a remand, and issue more final decisions on claims for veterans benefits at the earliest possible time. The fact that the percentage of final decisions (denials +

allowances) made by the Board increased from 41% in Fiscal Year 2004 to 61% in Fiscal Year 2008 is a reflection of the success of this initiative. Further, the increase in the number of final decisions in FY 2008 is also likely related to previous remands—approximately 75 percent of cases that are remanded are subsequently returned to the Board—being returned to the Board for review (the remand rate in FY 2004 was 56.8 percent). Given that the Board previously identified the developmental and procedural defects that required correction, it is not surprising that more final decisions were able to be made.

23. Since FY 2005, the Board's annual remand rate has averaged less than 40% of the cases it decides. A remand does not necessarily mean that the VBA made any error. Changes in the law and new court precedent may provide the reason for some remands, as well as the submission of additional evidence that was not considered by the RO. Indeed, following the passage of the VCAA, the Board's remand rate jumped significantly due to the requirements of the new law that applied, for the most part, to all pending claims and appeals, as well as ongoing and myriad court interpretations of the requirements of this law.

24. An avoidable remand is defined by the Board as an appeal in which an error occurred prior to the VBA certifying the case to the Board. A given appeal may have more than one avoidable remand reason in it. In FY 2008, 19,644 Board decisions contained a remand. Of those 19,644 cases, 53% (10,464) of the remands were due, in all or in part, to an avoidable remand reason. For purposes of comparison, many remands are not avoidable, either because the veteran submits new evidence to the Board (the evidentiary record remains open) or because of intervening changes in the law that are applicable to pending appeals. Of those cases that are remanded, the vast majority (75%) are returned to the Board and ultimately are reflected in the 20% allowance or the 40% denial rates.

25. During the past few years the Board has received additional funding to support the hiring and replacement of much needed attorney and administrative support staff. Each increase in staffing has produced additional decisions and reduced backlog. In FY 2005, the Board had 433 authorized Full Time Equivalent (FTE) employees and issued 34,175 appeal decisions. In FY 2007, the Board had 444 FTE and issued 40,401 decisions, an increase of 6,226 decisions from the decisions issued in FY 2005. In

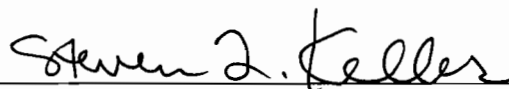
FY 2008, the Board had 487 authorized FTE who completed 43,757 appeals (with appeal receipts of 40,916 cases) representing over 9,500 more decisions than in FY 2005. In that same period, the backlog of cases at the Board was reduced from its peak of 22,560 in FY 2006 to its current level of 16,539 cases, representing a reduction in the backlog of 6,021 cases. For FY 2009, the Board is authorized 519 FTE and projects that it will decide 41,000 appeals. While the goal of 41,000 decisions that was selected as part of the FY 2009 budget formulation is fewer than that produced in FY 2008, this number was formulated on the assumption that no overtime dollars would be available for attorney work during FY 2009. During the past few years, approximately an additional 2,000 decisions per year have been drafted by Board attorney staff while working on overtime. Given that VA is one of the few Departments to have a budget for FY 2009, and that money for overtime is available, it is expected that the number of decisions issued by the Board in FY 2009 will be at least the same as that issued during FY 2008, and most likely higher.

26. Plaintiff's allegation of entitlement to an injunction that requires VA to ensure that appeals are fully and finally resolved within 180 days after the veteran files an NOD would result in the worst harm falling primarily on our nations' veterans and their families. It is exceedingly unlikely that VA would be able to meet these timelines without severely compromising the substantive and due process rights of claimants and appellants. Appeals take time to properly develop the record and afford the due process required by law. As required by VA's statutory duty to assist under 38 U.S.C. § 5103A, VA is obligated to fully develop the record in each appeal, which frequently requires the cooperation of other federal agencies and private information sources, such as health care providers, employers and learning institutions, over which VA has no control. This is often a lengthy process, involving multiple contacts with the custodian(s) of the necessary records. This could not be done in many cases within the requested time parameters. In addition, certain timeframes are built into the adjudication process by law and regulation. As referenced earlier, if an appellant made full use of the time allotted to him or her in the appeals system, it would consume up to 300 days. Additionally, the VA adjudication system is open to the receipt of additional evidence and argument throughout the adjudication process with little restriction.

Clearly, these rights would have to be abridged to meet the terms of such an injunction. For example, in order to meet the imposed deadline, the Board would be unable to afford thousands of appellants their statutory right to a BVA hearing, as there are simply insufficient resources available to do so. The ultimate result would be that, in order meet an artificial and arbitrary deadline, appeals would be passed along the system in an undeveloped state and rights would be ignored. In fairly deciding these appeals under the law, the Board would have no option but to remand them to the originating agency in order to cure any procedural defect or properly develop the record. The resulting huge spike in the Board's remand rate would result in even greater processing delays throughout the adjudication system. Finally, the Board has no additional sources of funding available to provide resources to meet such an artificial deadline.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of December, 2008.

A handwritten signature in black ink that reads "Steven L. Keller". The signature is written in a cursive style and is positioned above a horizontal line.

STEVEN L. KELLER
Principal Deputy Vice Chairman
Board of Veterans' Appeals
Washington, D.C.