

UNITED STATES COURT OF VETERANS APPEALS

No. 94-763

KEVIN J. KLUGERMAN,

APPELLANT,

v.

VA FILE No. 591 38 8471

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before NEBEKER, *Chief Judge*, and HOLDAWAY and IVERS, *Judges*.

ORDER

The Court's October 27, 1995, order in this case is hereby withdrawn and this order issued in its stead. On May 26, 1995, the appellant, through counsel, filed a unilateral motion for remand, asking the Court to allow the appellant to file a brief if the Court denied the motion. On September 8, 1995, the Secretary filed a brief arguing that the Board of Veterans' Appeals decision was not clearly erroneous. The Court construes the appellant's motion as one for summary disposition.

The criteria for summary disposition are set forth in *Frankel v. Derwinski*, 1 Vet.App. 23 (1990); *see Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (summary disposition by court of appeals is appropriate when position of one party is so clearly correct as matter of law that no substantial question regarding outcome of appeal exists). For the Court to dispose of a contested matter at a stage before there has been full briefing on the merits, the party seeking summary disposition must demonstrate that the *Frankel* criteria are met. Here, the parties dispute the way the record should be read, and the outcome is not clearly foreordained. *See Frankel*, 1 Vet.App. at 24, 26; *Joshua*, *supra*.

On consideration of the foregoing, it is

ORDERED that the appellant's unilateral motion for remand is denied. It is further

ORDERED that, within 30 days after the date of this order, the appellant either file a brief or advise the Court that the motion for remand should be accepted in lieu of a brief. Should the appellant choose to file a brief, the Secretary may seek leave to file a response to it.

DATED: October 30, 1995 PER CURIAM.