

UNITED STATES COURT OF VETERANS APPEALS

No. 96-1663

IN THE MATTER OF THE FEE AGREEMENT OF KENNETH B. MASON, JR., IN CASE NUMBER 90-920

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

O R D E R

The appellant, Kenneth B. Mason, Jr., appeals an August 1996 decision of the Board of Veterans' Appeals (BVA or Board) that determined that he was not eligible for direct payment from the Department of Veterans Affairs (VA) of attorney fees from past-due benefits. The past-due benefits at issue resulted from the assignment by a VA regional office of a 40% disability rating for the veteran's low back disability and of a total disability rating based on individual unemployability (TDIU). On October 8, 1996, the Court heard oral arguments in this matter. Based on the parties' arguments, the Court believes that supplemental briefing is necessary on the following issue: The extent to which eligibility for a TDIU may have been an inchoate issue, in terms of 38 U.S.C. § 5904 (c), (d), in the 1990 BVA decision. Accordingly, it is

ORDERED that the appellant file, within 15 days after the date of this order, a memorandum addressing the above issue. It is further

ORDERED that the Secretary file, within 20 days thereafter, a memorandum in response.

No extensions of time will be granted for filing the parties' legal memoranda.

DATED: October 16, 1998

PER CURIAM.