

DESIGNATED FOR PUBLICATION

Note: Pursuant to 38 U.S.C. § 4067(d) (1988),
this decision will become the decision of the
Court thirty days from the date hereof.

UNITED STATES COURT OF VETERANS APPEALS

No. 90-1127

STEVEN A. SCHREINER, APPELLANT,

v.

EDWARD J. DERWINSKI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before FARLEY, HOLDAWAY, and STEINBERG, *Associate Judges*.

ORDER

PER CURIAM.

On December 12, 1990, this case was dismissed for lack of jurisdiction because the appellant did not file a timely Notice of Appeal with this Court. In a letter dated January 8, 1991, and received by the Court on January 11, 1991, appellant voiced his strong disagreement with the decision of the Court and noted that he had never been instructed by the Providence, Rhode Island, Regional Office of the Veterans' Administration as to the steps to be taken to appeal. We have construed appellant's letter as a request under Interim General Rule 35(b) and 38 U.S.C. § 4067(d)(1) (1988) for review of a single judge decision by a three judge panel.

On December 3, 1990, the Supreme Court decided *Irwin v. Veterans Admin.*, 111 S.Ct. 453 (1990), which extended the principles of equitable tolling to cases where the United States government is a party. However, the Supreme Court also noted that "the principles of equitable tolling . . . do not extend to what is best a garden variety claim of excusable neglect." *Irwin*, 111 S.Ct. at 458; *see also Elsevier v. Derwinski*, U.S. Vet. App. No. 90-436 (Feb. 28, 1991).

On consideration of the appellant's motion for review and the absence of any basis on the facts alleged here for applying the principles of equitable tolling as enunciated in *Irwin*, it is

ORDERED that the motion is DENIED.

DATED: March 1, 1991

Copies to:

Steven A. Schreiner
24 Jepson Lane
Portsmouth, RI 02871

General Counsel (027)
Department of Veterans Affairs
810 Vermont Ave., N.W.
Washington, D.C. 20420