

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 96-920

JOSEPH C. NIEMIEC,

APPELLANT,

v.

TOGO D. WEST, JR.,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before KRAMER, IVERS, and STEINBERG, *Judges*.

ORDER

In a September 30, 1999, single-judge order, the Court, on remand from the U.S. Court of Appeals for the Federal Circuit, affirmed the Board of Veterans' Appeals decision on appeal that, *inter alia*, dismissed as not well grounded a claim for service connection for a psychiatric disorder. On October 19, 1999, the appellant filed a timely motion for reconsideration or, in the alternative, for panel review. The Court will construe the motion for panel review as a motion for a decision by a three-judge panel.

Upon consideration of the foregoing, the parties' prior pleadings, and the record on appeal, it is by the single judge

ORDERED that the appellant's motion for reconsideration is DENIED. It is by the panel

ORDERED that the appellant's motion for a decision by a panel is DENIED.

DATED: December 1, 1999

PER CURIAM.

KRAMER, *Judge*, concurring: In the absence of any showing in the appellant's motion for reconsideration or panel review that his claim is well grounded under *Savage v. Gober*, 10 Vet.App. 488 (1997), I vote to deny his motion.

STEINBERG, *Judge*, dissenting: I voted for the motion for reconsideration because I believe that the appellant is correct in his contention that he should have been afforded the opportunity, no matter how futile it might appear for him to have exercised it, to present to the Court argument as to how his claim was well grounded under 38 C.F.R. § 3.303(b) (1998) as construed by *Savage v. Gober*, 10 Vet.App. 488 (1997), and that the Court's single-judge dispositive order should have applied the Court's precedential *Savage* opinion to the facts of this case in determining whether the claim was well grounded under § 3.303(b).