

UNITED STATES COURT OF VETERANS APPEALS

No. 93-1189

THOMAS W. KEEL, APPELLANT,

v.

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

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

ORDER

The counsel who had represented the appellant in the appeal to this Court [hereinafter referred to as "counsel"] advises that the appellant died on February 3, 1995. On July 24, 1995, this Court, unaware of the appellant's death, vacated the September 17, 1993, Board of Veterans' Appeals (Board) decision and remanded a matter for readjudication. *Keel v. Brown*, 8 Vet.App. 82 (1995). On November 9, 1995, counsel filed an application for attorney fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). On the same date, due to the appellant's death, counsel, noting his unawareness of the appellant's death at the time of this Court's July 1995 opinion, moved to substitute Salina Rice, executrix of the appellant's estate, as the appellant.

On November 29, 1995, citing *Landicho v. Brown*, 7 Vet.App. 42 (1994), this Court ordered counsel to show cause why the Court's opinion in *Keel*, *supra*, should not be withdrawn and its judgment recalled under *Landicho*, and the instant EAJA application be dismissed. On December 27, 1995, counsel filed a response which included a voluntary withdrawal of the EAJA application. On April 8, 1996, the Court recalled the judgment and mandate and withdrew the July 24, 1995, opinion.

On consideration of the foregoing, it is

ORDERED that the appeal is DISMISSED for lack of jurisdiction. It is further

ORDERED that counsel's voluntary withdrawal of the EAJA application filed on December 27, 1995, is duly noted by the Court and accepted as a matter of record as of the date filed.

DATED: April 25, 1996

PER CURIAM.