

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-8634

MONTE E. GASKINS, SR.,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

On December 3, 2019, the appellant filed a Notice of Appeal listing November 21, 2019, as the date of the Board of Veterans Appeals (Board) decision being appealed. On February 18, 2020, the Secretary filed a motion to dismiss the appeal asserting that the Board's November 21, 2019, decision does not contain any appealable issues. The Secretary asserts that, on November 21, 2019, the Board dismissed the appellant's service-connection claims for a right and left knee disability, noting that these claims were still pending before the agency of original jurisdiction (AOJ) for appropriate action. The Secretary asserts that the Board dismissed the certified appeal for these claims as there was no timely appeal of record. Although he acknowledges that there is language in the Board's November 2019 decision stating that the Board "remanded" the claims to the AOJ, he contends that, read as a whole, the decision "shows that these claims were not properly before the Board and that referral was appropriate." He states that "[e]ven if the Court were to find that the Board remanded rather than referred these claims to the AOJ, the merits of Appellant's claims are not subject to a final decision by the Board and these matters remain pending before the agency." Feb. 18, 2020, Secretary's Motion to Dismiss at 2 n.1. Under the law, this Court may review only final Board decisions which have been decided against a claimant. It is

ORDERED that the appellant show cause, within 20 days after the date of this order, why this appeal should not be dismissed for lack of jurisdiction. Proceedings on this appeal are stayed until further order of the Court.

DATED: March 20, 2020

FOR THE COURT:

GREGORY O. BLOCK
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold
Cynthia M. Brandon-Arnold
Chief Staff Attorney/Deputy Clerk

Copies to:

Monte E. Gaskins, Sr.

VA General Counsel (027)

jjw