



Department of Veterans Affairs
Office of General Counsel
Washington DC 20420

In reply refer to: **027D**

• Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Washington, DC 20004

Re: **CAROLYN CLARK**
Vet. App. No. 21-1124

April 21, 2022

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), the Secretary hereby advises the Court of additional, pertinent, and significant authority that undersigned counsel has become aware of since the Secretary filed his Motion to Dismiss in this appeal on June 8, 2021 (Mot. to Dismiss).

Specifically, the Court's nonprecedential order in *Smith v. McDonough*, Docket No. 21-1244 (Apr. 19, 2022). In *Smith*, the Court dismissed the appellant's appeal of a Board remand for lack of jurisdiction. See *Smith*, Order dated Apr. 19, 2022 (Dismissal Order). In the Dismissal Order, the Court noted that pursuant to 38 U.S.C. § 7266(a), "in order for a claimant to obtain review of a Board decision by this Court, that decision must be final and the person adversely affected by that decision must file an NOA within 120 days after the date on which the Board decision was mailed." *Id.* at 2. Citing *In re Quigley*, 1 Vet.App. 1 (1990). The Court stated that, "A Board remand is not a final decision within the meaning of 38 U.S.C. § 7252(a)." *Id.* citing *See Kirkpatrick v. Nicholson*, 417 F.3d 1361 (Fed. Cir. 2005). The Court concluded that, "Because a final decision has not been issued by the Board with respect to the claim that was remanded by the Board, the Court does not have jurisdiction to review this appeal." *Id.* citing *Hampton v. Gober*, 10 Vet.App. 481, 483 (1997). The Court also stated that, "If and when a final Board decision is issued on remand, any matter determined in such a decision may be appealed to this Court." *Id.* at 2-3, citing *Matthews v. Principi*, 15 Vet.App. 138 (2001) (per curiam order).

This is relevant to the Secretary's arguments in his Mot. to Dismiss filed June 8, 2021, and in his Response to the Court's for Reconsideration of the Court's September 15, 2021, Order, filed November 22, 2021 (Resp. to Ct. Ord.), that Board remands are not final decisions within the meaning of section 7252.

2.

See *generally* Mot. to Dismiss; Resp. to Ct. Ord. Furthermore, Appellant listed *Smith* as a “related case” in his Notice of Related Cases (Notice) filed in this case on August 2, 2021, and stated *Smith* was one of several cases “sharing an issue or close permutation of an issue relating to this case’s jurisdictional proceedings[.]” See Notice at 1, 2-3.

Sincerely,

/s/ Nathan Paul Kirschner
NATHAN PAUL KIRSCHNER
Senior Appellate Counsel
Counsel for the Secretary