

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-4168

J. RONI FREUND AND MARY S. MATHEWSON,

PETITIONERS,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before ALLEN, MEREDITH, and LAURER, *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

J. Roni Freund and Mary S. Mathewson, through counsel, jointly petitioned the Court under the All Writs Act to issue a writ of mandamus directed to the Secretary concerning what they claimed to be unlawful "closings" of their legacy administrative appeals despite the filing of timely Substantive Appeals. They also sought to represent a class of purportedly similarly situated claimants. On February 10, 2022, the Court heard oral argument in this matter. It remains under submission.

On August 8, 2022, counsel for petitioner Ms. Freund submitted what counsel entitled a "Solze Notice."¹ Counsel reported that Ms. Freund unfortunately died on July 7, 2022.² Counsel further stated that he was:

seeking a copy of Ms. Freund's death certificate and [had] begun to work with Ms. Freund's survivors to determine whether any individual is eligible and desires to proceed as substitute claimant in Ms. Freund's agency-level proceedings and as a substitute petitioner in the proceedings that Ms. Freund and [p]etitioner Mary S. Mathewson initiated before this Court.³

¹ See *Solze v. Shinseki*, 26 Vet.App. 299, 302 (2013) (per curiam order) (holding that parties have a duty to inform the Court of "any development which *may conceivably affect*" the Court's jurisdiction (quoting *Fusari v. Steinberg*, 419 U.S. 379, 391 (1975) (Burger, C.J., concurring))).

² See *Solze Notice* at 1; see also *White v. West*, 11 Vet.App. 8 (1998) (per curiam order) (death of petitioner moots petition).

³ *Solze Notice* at 2.

Counsel for Ms. Freund has not yet submitted her death certificate or indicated whether anyone seeks to substitute into this action as a petitioner. While we are cognizant of the difficulties that counsel can encounter when a petitioner (or appellant) dies, we also need to consider that Mrs. Mathewson remains a petitioner. Moreover, we must consider the interests of the putative class members in having this matter resolved. Therefore, we conclude that it is appropriate to establish a timetable for counsel to address Ms. Freund's death so that the Court may resolve the matter before it for Mrs. Mathewson and the class she seeks to represent. So, it is

ORDERED that within 20 days of the date of this order counsel for petitioner J. Roni Freund provide a copy of her death certificate and show cause why her petition should not be dismissed.

DATED: August 19, 2022

PER CURIAM.

Copies to:

John D. Niles, Esq.

VA General Counsel (027)