

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-1018

HERBERT N. HASKELL, II,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and FALVEY and LAURER, *Judges*.

ORDER

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

On February 18, 2022, veteran Herbert N. Haskell, II, appealed a January 27, 2022, Board of Veterans' Appeals (Board) decision. On June 29, 2023, the case was submitted to a panel of this Court for consideration.

On August 14, 2023, Margaret Laska notified the Court that the veteran had passed away and filed a motion to substitute as the appellant. Later that day, the Court ordered Ms. Laska to file a copy of the death certificate and indicate actions she has taken before VA to establish her eligibility to substitute in this matter. The Court also ordered the Secretary to respond to Ms. Laska's substitution motion. Oral argument was held on August 15, 2023, at the University at Buffalo School of Law. On September 13, 2023, Ms. Laska filed a copy of the death certificate and indicated that she had filed with VA an application for dependency and indemnity compensation and a request for substitution. On October 13, 2023, the Secretary responded, indicating that the agency of original jurisdiction (AOJ) had not made a determination on whether Ms. Laska is an eligible substitute.

On November 13, 2023, the Court ordered the Secretary to provide an update concerning whether the AOJ had determined Ms. Laska's status. On November 16, 2023, the Secretary responded that the AOJ had granted Ms. Laska's request for substitution.

The Court is satisfied that it has jurisdiction over this appeal and, pursuant to *Breedlove v. Shinseki*, 24 Vet.App. 7, 13 (2010) (per curiam order), will grant Ms. Laska's motion for substitution. Specifically, with regard to substitution, the Court in *Breedlove* held that the enactment of 38 U.S.C. § 5121A, although not directly applicable to this Court, nonetheless altered the underpinnings of this Court's jurisprudence on substitution, and that "a veteran's chapter 11 disability benefits claim survives the death of the veteran, not for the purpose of providing VA

benefits to a veteran, but for purposes of furthering the processing of the claim of an eligible accrued-benefits claimant." *Breedlove*, 24 Vet.App. at 8.

Upon consideration of the foregoing, it is

ORDERED that Ms. Laska's August 14, 2023, motion for substitution as the appellant is granted. It is further

ORDERED that the Clerk of the Court shall change the caption of this case to reflect that Margaret Laska is now the appellant.

DATED: November 20, 2023

PER CURIAM.

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)