Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-4670

JEANINE FRAZIER,   APPELLANT,

V.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,   APPELLEE.

Before BARTLEY, *Chief Judge*, and ALLEN and JAQUITH, *Judges.*

O R D E R

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

This case was submitted for panel consideration with oral argument scheduled for February 8, 2024. While the parties should be prepared to discuss any issue that has been briefed, they should particularly ensure that they are prepared to discuss the following matters at oral argument in this appeal:

- Does a person who qualifies as an *accrued benefits* claimant under 38 U.S.C. 5121(a) qualify for substitution under the terms of 38 U.S.C. § 5121A for purposes of prosecuting a deceased claimant's claim for a *non-accrued benefit* (e.g., a one-time payment) that was pending at the time of the claimant's death?

- Assuming the answer to the preceding question is "yes," would a successful substitute-claimant be entitled to personally receive the full amount of that non-accrued benefit claim if, as here, the reason the substitute-claimant is allowed to substitute is that they bore the expense of the last sickness or burial of the original-claimant? *See* 38 U.S.C. 5121(a)(6).

- Continuing to assume that the answer to the first question is "yes," if VA has paid a substitute-claimant the full amount of the accrued benefits the substitute-claimant sought, does that payment have any impact on the substitute-claimant's ability to pursue non-accrued benefits that were the subject of the original-claimant's claim?

Upon consideration of the foregoing, it is

ORDERED that, in addition to all issues presented in the briefing, the parties be prepared to discuss the foregoing issues at oral argument.

DATED: January 8, 2024   PER CURIAM.

Copies to:

Kenneth M. Carpenter, Esq.

VA General Counsel (027)