

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

LEWIS BROWN,)	
Appellant,)	
)	
v.)	Vet. App. No. 21-3218
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Appellee.)	

APPELLEE’S RESPONSE TO THE COURT’S NOVEMBER 2, 2023, ORDER

The Secretary files this response to the Court’s November 2, 2023, Order (“Order”), wherein the Court directed the parties to “address whether the appeal presents any remaining case or controversy[.]” and “[w]hen informing the Court about any remaining case or controversy, the parties should also identify the precise harm experienced by [A]ppellant.” Order at 1.

In response, the Secretary states there does not appear to remain any case or controversy. As the Court noted, “when benefits on a claim have been paid, a case is generally moot.” Order at 1 n.3 citing *Cardona v. Shinseki*, 26 Vet.App. 472, 474 (2014); see also *Hamill v. McDonough*, --- Vet.App. ---, No. 22-7344, slip op. at *5 (Dec. 18, 2023) (“[W]hen the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome,’ the case or controversy becomes moot.” (citations omitted)).

There remains no case or controversy because the issues Appellant initially sought to have reviewed have been decided by the Board in the course of the standard appellate process. Appellant’s October 27, 2023, *Solze* notice informed

the Court that on October 25, 2023, the Board issued a decision that granted, in pertinent part, earlier effective dates of May 2, 1977 (the date Appellant filed his claim for service connection for a back condition), for his 40% evaluation for left lower extremity radiculopathy and his 10% evaluation for right lower extremity radiculopathy. Order at 1. These issues were those (at that time, favorably) decided in the Board's August 13, 2019, decision, and that were then purely implemented by the August 19, 2019, rating decision, from which Appellant inappropriately requested Higher Level Review (HLR) in August 2020, and this appeal is therefore moot. See *Cardona*, 26 Vet.App. at 474. If Appellant remains dissatisfied with a portion of the October 25, 2023, Board decision, he may appeal that decision to this Court.

Insofar as Appellant may believe any other case or controversy remains, the Secretary preserves his arguments made during briefing and at oral argument.

WHEREFORE, the Secretary responds to the Court's November 2, 2023, order.

Respectfully submitted,

RICHARD J. HIPOLIT

Deputy General Counsel for Veterans
Programs

MARY ANN FLYNN

Chief Counsel

/s/ Dustin P. Elias

DUSTIN P. ELIAS

Deputy Chief Counsel

/s/ Nathan Paul Kirschner

NATHAN PAUL KIRSCHNER

Senior Appellate Counsel

Office of General Counsel (027D/E)

U.S. Dept. of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, DC 20420

202-632-4352

Telecommuting: 414-256-1891

Attorneys for Respondent,

Secretary of Veterans Affairs