

*Not published*

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

No. 22-3957

BRUCE MOSEBY BRACK,

APPELLANT,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

**ORDER**

On July 1, 2022, the appellant filed a Notice of Appeal from a March 8, 2022, Board of Veterans' Appeals (Board) decision. On April 24, 2024, the Court issued a panel opinion affirming the Board's March 8, 2022, decision. Subsequently, the Court issued judgment on June 6, 2024.

On June 27, 2024, the appellant's counsel filed a notice informing the Court of the appellant's death on December 27, 2023. In the notice, the appellant's counsel submits that Priscilla Brack (Mrs. Brack), the appellant's widow, has filed for Dependency and Indemnity Compensation benefits and substitution at the agency. In addition, the appellant's counsel notes that Mrs. Brack, through her VA agency counsel, intends to submit a motion for substitution pursuant to Rule 43 of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 43.

When an appellant dies during the pendency of an appeal for disability compensation under chapter 11 of title 38, U.S. Code, the appropriate remedy is to vacate the appealed Board decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *See Briley v. Shinseki*, 25 Vet.App. 196, 197 (2012) (per curiam order) (holding that, when an appellant dies during the pendency of an appeal and there is no eligible party for substitution, there is no case or controversy before the Court and the appeal should be dismissed for lack of jurisdiction); *Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order) ("[W]hen a[n appellant] has died while an appeal is pending [at the Court], [and] no one seeks substitution or the person seeking substitution is not an eligible accrued-benefits claimant, then Board vacatur and dismissal of the appeal would be the appropriate action.").

On consideration of the foregoing, it is

ORDERED that the appellant's counsel, within 20 days after the date of this order, provide a copy of the death certificate and show cause why the Court's June 6, 2024, judgment should not

be recalled, the Court's April 24, 2024, opinion withdrawn, the March 8, 2022, Board decision vacated and this appeal dismissed. Proceedings on this appeal are stayed until further order of the Court.

DATED: July 10, 2024

FOR THE COURT:

TIFFANY M. WAGNER  
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold  
Cynthia M. Brandon-Arnold  
Chief Staff Attorney/Deputy Clerk

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)

mvl