

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

BRUCE MOSEBY BRACK,
Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

VET. APP. NO. 22-3957

RESPONSE TO COURT'S JULY 10, 2024 ORDER

On July 10, 2024, this Court issued an order to show cause why this Court's judgment in this matter should not be recalled, the Court's April 24, 2024 opinion withdrawn, the March 8, 2022 Board decision vacated, and the appeal dismissed. Mr. Bruce's counsel submits the following response:

1. Mr. Brack died on December 27, 2023. At the time, we were awaiting a decision from the Court on his appeal. After the Court's decision we attempted to contact Mr. Brack, and were eventually notified by his agency representative that he had passed.
2. Mr. Brack's appeal should not be dismissed because Priscilla Brack, Appellant's widow, is in the process of filing with VA a request to be substituted under 38 U.S.C. § 5121A as an eligible recipient of accrued benefits due under the provisions of 38 U.S.C. § 5121(a)(6). As of the filing of this response, no request has been filed, but

Mrs. Brack has hired a representative and they are in the process of submitting these forms.

3. This Court's judgment should be recalled until Mr. Brack's surviving spouse's motion for substitution has been decided. Mrs. Brack, by separate motion, has moved to be substituted and continue her late husband's appeal. She intends to appeal to the Federal Circuit, but not until the Court substitutes her for her husband as appellant. Until such time, no appeal can be filed. Thus, judgement should be recalled until such time as Mrs. Brack's motion for substitution is decided.

4. Additionally, Mrs. Brack is filing with this Court a request to be substituted under this Court's Rule 43(a)(2) as an appropriate person to be substituted to continue this appeal with the filing of a notice of appeal to the Federal Circuit.

WHEREFORE, Mr. Bruce Brack's counsel and now Mrs. Priscilla Brack's counsel asks that this Court recall its judgment in this matter, grant Mrs. Brack's motion to substitute which would allow her as the substituted appellant to file her notice of appeal with this Court's order issued with Mrs. Brack as appellant.

Respectfully submitted this the 25th day of July 2024.

Respectfully submitted,
/s/ Kenneth H. Dojaquez, Esq.

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