

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-2832

JAMES C. CHILDERS,

APPELLANT,

v.

DAVID J. SHULKIN, M.D.,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

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

On August 5, 2016, the appellant appealed an April 5, 2016, Board of Veterans' Appeals (Board) decision. On October 2, 2017, this matter was submitted to panel for a decision. On November 1, 2017, the Secretary notified the Court that the appellant died on September 22, 2017.

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 vacate¹ the appealed Board decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *See Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order); *see also Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007). Accordingly, upon the death of a veteran-appellant, an individual who asserts he or she meets the eligibility requirements of an accrued-benefits claimant, 38 U.S.C. § 5121(a), may file with the Court a motion to be substituted in the appeal. *See Breedlove*, 24 Vet.App. at 20-21.

The Court observes that the *VA Adjudication Procedures Manual (M21-1)* directs VA to advise individuals who are potentially eligible for benefits of that eligibility following notification of the death of a claimant. *See* M21-1, pt. III, sbpt. ii, ch. 8, sec. A.1.e ("When a VA employee processes [the notice of a veteran's death] NOD, the Hines Information Technology Center (ITC) automatically issues a letter to the [v]eteran's estate containing information about survivor benefits to which the [v]eteran's survivors and others may be entitled . . . The letter from the Hines ITC does not discuss accrued benefits.").

Upon consideration of the foregoing, it is

¹ Because the timeliness of the appellant's appeal is at issue, vacating the April 5, 2016, Board decision may not be the appropriate remedy here. Nonetheless, the Court must first determine whether an eligible accrued beneficiary intends to seek substitution in this matter.

ORDERED that the appellant's estate, within 60 days after the date of this order, provide a copy of the death certificate and show cause why the appeal should not be dismissed and it is further

ORDERED that within 60 days from the date of this order, the Secretary respond to the Court with the following information. The Secretary shall advise the Court whether the appellant has a survivor eligible to receive accrued benefits and, if so, provide the survivor's contact information. Second, advise the Court whether VA has yet received a request from such survivor for substitution on the appellant's pending claim. And third, advise the Court whether VA has yet undertaken any steps to identify and notify the survivor, if any, of the survivor's eligibility for substitution and, if not, whether and how VA intends to do so. It is further

ORDERED that proceedings on this appeal are stayed until further order of the Court.

DATED: November 16, 2017

PER CURIAM.

Copies to:

The estate of James C. Childers

VA General Counsel (027)