

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

RALPH EARL McKINNEY,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 18-5582
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLEE'S NOTICE REGARDING BVA DECISION,
AND UNOPPOSED MOTION TO DISMISS**

Pursuant to U.S. Vet. App. R. 4(c), and 27(a), the Secretary hereby notifies the Court that there is no Board of Veterans' Appeals (BVA or Board) decision in the name of Appellant dated June 7, 2018, to transmit to the Court in this case, and moves to dismiss this appeal for lack of subject matter jurisdiction.

BACKGROUND

Appellant filed a Notice of Appeal (NOA) with this Court on October 5, 2018, referencing a June 7, 2018, decision of the Department of Veterans Affairs (VA).

Information contained in the Veterans Appeals Control and Locator System (VACOLS) (the Board's computerized appeal tracking system), has not revealed a Board decision in the name of Appellant for that date. A review of the Veterans Benefits Management System (VBMS) electronic record also reveals no indication of a Board decision of that date or any date in 2018 issued in the name of Appellant.

BASIS FOR DISMISSAL

The jurisdiction of this Court derives exclusively from statutory grants of authority provided by Congress and the Court may not extend its jurisdiction beyond that authorized by law. See *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 818 (1988); *Machado v. Derwinski*, 928 F.2d 389, 391 (Fed. Cir. 1991); *Dudley v. Derwinski*, 2 Vet.App. 602, 603 (1992) (en banc).

Pursuant to 38 U.S.C. § 7266(a), for a claimant to obtain review of a Board decision by this Court, the decision must be final and the person adversely affected by that decision must file an NOA within 120 days after the date the BVA decision was mailed. “A claimant seeking to appeal an issue to the Court must first obtain a *final* BVA decision on that issue.” *Horowitz v. Brown*, 5 Vet.App. 217, 225 (1993) (emphasis in original). See 38 U.S.C. §§ 7266(a), 7252(a).

There is no Board decision in the name of Appellant dated June 7, 2018. Accordingly, the appeal should be dismissed.

Counsel for Appellant was contacted and indicated that Appellant has no opposition to a motion to dismiss.

WHEREFORE, the Secretary moves the Court to dismiss this appeal for lack of subject matter jurisdiction.

Respectfully submitted,

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