

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

REGINALD BROWN,  
Appellant,

v.

ROBERT L. WILKIE,  
Secretary of Veterans Affairs,  
Appellee.

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Vet.App. No. 19-1507

**APPELLEE’S MOTION TO DISMISS**

Pursuant to U.S. Vet. App. R.27(a), Appellee, the Secretary of Veterans Affairs, respectfully moves the Court to dismiss this appeal for lack of subject matter jurisdiction, as Appellant has not exhausted his administrative remedies.

**BACKGROUND**

On January 17, 2019, the Board of Veterans’ Appeals (Board), issued a decision that remanded the only issue before it (entitlement to bilateral hearing loss) for further development and readjudication. The Board determined that remand was necessary to develop the record. (See Record Before the Agency (R. at 8-9 (4-9)). Appellant filed a Notice of Appeal with this Court on February 13, 2019.

**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 (1998); *Machado v. Derwinski*, 928 F.2d 389, 391 (Fed. Cir. 1991); *Dudley v. Derwinski*, 2 Vet.App. 602, 603 (1992) (en banc order).

Pursuant to 38 U.S.C. § 7266(a), in order for a claimant to obtain review of a Board decision by this Court, that decision must be final, and the person adversely affected by that decision must file a Notice of Appeal within 120 days after the date on which the notice of that Board 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).

The Secretary asserts the January 17, 2019, Board decision is not a final decision of the agency and is therefore not within the jurisdiction of the Court. “A BVA remand decision ‘is in the nature of a preliminary order and does not constitute a final Board decision.’ 38 C.F.R. § 20.1100(b).” *Zevalkink v. Brown*, 6 Vet.App. 483, 488 (1994). Because the January 22, 2018, Board decision is not a final decision, Appellant has not exhausted his administrative remedies. See *In re Quigley*, 1 Vet.App. 1 (1990). Since there is no final Board decision for the Court to review, this case must be dismissed. *Breeden v. Principi*, 17 Vet.App. 475 (2004) (per curiam order).

Appellant is proceeding pro se.

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

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

Pursuant to U.S. Vet.App. Rule 10(a)(5), I certify under penalty of perjury under the laws of the United States of America that on September 26, 2019, a copy of the foregoing was mailed, postage prepaid, to:

Reginald Brown  
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/s/ Monique A. S. Allen  
MONIQUE A. S. ALLEN  
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