

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

LARRY D. REAVES,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-7503
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

APPELLEE’S MOTION TO DISMISS

Pursuant to U.S. Vet. App. R. 27(a), Appellee respectfully moves the Court to dismiss this appeal for lack of subject matter jurisdiction, as appellant has failed to exhaust his administrative remedies.

BACKGROUND

On August 5, 2019, the Board of Veterans’ Appeals (Board or BVA), issued a decision that remanded the issue of whether the Veteran is competent to handle the disbursement of the Department of Veterans Affairs (VA) funds. Appellant filed a Notice of Appeal (NOA) with this Court on October 28, 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 (1988); *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 BVA decision by this Court, that decision must be final and the person adversely affected by that decision must file an NOA within 120 days after the date on which notice of that 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). “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). In the instant appeal, the BVA has not issued a final decision, and thus, Appellant has not exhausted his administrative remedies. See *In re Quigley*, 1 Vet. App. 1 (1990). Since there is no final BVA 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* in this matter.

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

Respectfully submitted,

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Acting General Counsel

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/s/ Carolyn F. Washington
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/s/ Lori M. Jemison

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CERTIFICATE OF SERVICE

On the 23rd day of December 2019, a copy of the foregoing was mailed postage prepaid, to:

Larry D. Reaves
7600 20th Avenue, Suite 224
Hialeah, FL 33016

I certify under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Lori M. Jemison

LORI M. JEMISON

Senior Appellate Attorney