

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

CHRISTOPHER S. SCALLORN,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-7713
)	
ROBERT L. WILKIE)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

APPELLEE'S MOTION TO DISMISS

Pursuant to Rule 27(a) of this Court's Rules of Practice and Procedure, Appellee moves the Court to dismiss this case because Appellant did not file a timely notice of appeal (NOA).

BACKGROUND

On November 30, 2018, the Board of Veterans' Appeals (Board or BVA) rendered and mailed to Appellant the decision at issue in this appeal. The NOA was due to be filed with the Court on or before April 1, 2019. Appellant filed an NOA with this Court on November 2, 2019, 337 days after the BVA decision was mailed.

BASIS FOR DISMISSAL

In order to obtain judicial review of a final Board decision in this Court, a claimant must file an NOA with the Court within 120 days after the date the decision is mailed. 38 U.S.C. § 7266(a).

While, the Supreme Court recently held that the 120-day appeal period does not have jurisdictional attributes, it recognized that “[t]he 120-day limit is nevertheless an important procedural rule.” *Henderson v. Shinseki*, 131 S.Ct. 1179, 1206 (2011). Additionally, thus far, Appellant has not asserted any compelling reason for his failure to submit a timely NOA nor alleged any factors that would allow him to invoke equitable tolling of the appeal period. See e.g. *Irwin v. Dept. of Veterans Affairs*, 498 US 89, 96 (1990).

Because the NOA was filed after the 120-day statutory appeal period, the Court should dismiss the appeal.

Appellant is pro se.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/S/ Carolyn F. Washington
CAROLYN F. WASHINGTON
Deputy Chief Counsel

/S/ Lori M. Jemison
LORI M. JEMISON
Senior Appellate Attorney
Office of General Counsel (027D)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-8393

Attorneys for Appellee Secretary of
Veterans Affairs

CERTIFICATE OF SERVICE

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

Christopher S. Scallorn
1229 Biloxi St.
Hernando, MS 38632

I certify under 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

Counsel for Appellee