

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

MURIEL A. POLK,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 19-6950
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

APPELLEE'S MOTION TO DISMISS

Pursuant to U.S. Vet. App. R. 27(a), Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, moves to dismiss this case because Appellant, Muriel A. Polk, did not file a timely notice of appeal (NOA) with respect to the January 4, 2019, Board of Veterans' Appeals (Board) decision.

SUMMARY OF PERTINENT FACTS

On January 4, 2019, the Board issued a decision that denied Appellant entitlement to accrued benefits. A signed and dated copy of the Board's January 4, 2019, decision was filed with the Court on November 13, 2019. Appellant filed a Notice of Appeal that was received by the United States Court of Appeals for Veterans Claims (Court) on October 1, 2019.

BASIS FOR DISMISSAL

An appeal to this Court is commenced by the filing of a Notice of Appeal, which must be filed within 120 days after the date on which notice of the Board

decision was mailed. 38 U.S.C. § 7266(a). In *Henderson v. Shinseki*, 131 S.Ct. 1197, 1206 (2011), the U.S. Supreme Court held that the 120-day time limit for filing a Notice of Appeal with this Court—although an important procedural rule—is not jurisdictional. In *Bove v. Shinseki*, 25 Vet.App. 136, 140 (2011), the Court held that “the 120-day period is subject to equitable tolling within the parameters established by *Bailey [v. West]*, 160 F.3d 1360 (Fed.Cir.1998) (en banc)] and its progeny, and the precedential decisions of this Court prior to [*Henderson v. Peake*, 22 Vet.App. 217 (2008), *aff’d sub nom. Henderson v. Shinseki*, 589 F.3d 1201 (Fed. Cir. 2009) (en banc), *rev’d* 131 S.Ct. 1197 (2011)].”

Appellant did not file the NOA within 120 days after the mailing of the January 4, 2019, Board decision. Consequently, the NOA that was filed with the Court on October 1, 2019, is untimely in respect to the Board’s January 4, 2019, decision, and the Court should dismiss Appellant’s appeal.

Appellant is *pro se*.

WHEREFORE, the Secretary respectfully moves the Court to dismiss Appellant’s appeal as the NOA was not timely filed.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Acting General Counsel

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Chief Counsel

/s/ James B. Cowden
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CERTIFICATE OF SERVICE

I hereby certify under the penalties of perjury under the laws of the United States of America, that on December 26, 2019, a copy of the foregoing was forwarded via first-class mail, postage prepaid, to:

Muriel A. Polk
3837 Avalon Avenue
Port Arthur, TX 77642

/s/ Kristen D. King-Holland
KRISTEN D. KING-HOLLAND
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