

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-6052

MARGARET MANNINO,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

On August 28, 2019, the Court filed the appellant's Notice of Appeal (NOA) from a September 12, 2018, Board of Veterans' Appeals (Board) decision, which granted entitlement to special monthly compensation (SMC) based on the need for regular aid and attendance of another person and determined that the grant of SMC at the aid and attendance rate rendered moot the claim for SMC based on housebound status. The NOA consists of a letter from the appellant, stating her desire to appeal the Board decision and identifying the veteran's name as Joseph A. Mannino, whose name appears on the Board decision. Additionally, the NOA indicates that the appellant is the surviving spouse of the veteran and that the veteran passed away on May 2, 2019, after the Board rendered its decision but before the NOA was filed. The appellant states that the September 12, 2018, decision "denied benefits [sic] aid and attendance for post-traumatic stress disorder dating back to the original appeal date of 2014," that "VA finally did approve aid and attendance from 2017," and that "we did disagree with the decided date and had every intention of appealing." NOA at 1.

The Court notes that a copy of the veteran's death certificate has not been received. In addition, it appears that the appellant is challenging the effective date assigned to the grant of SMC based on the need for aid and attendance but that the September 2018 Board decision did not decide that issue.

The Court notes the following:

We further hold now that an eligible accrued-benefits claimant has standing, both as a statutory and as a constitutional matter, to file an appeal on his or her own behalf when a veteran dies during the time permitted to file an NOA. This right arises upon the death of the veteran. Because Congress granted accrued-benefits claimants the right to advance a deceased veteran's appeal on the claimant's own interest, the Court sees no reason to distinguish between the standing necessary to substitute into an existing appeal and the standing necessary to initiate an appeal by filing an NOA. Therefore, an eligible accrued-benefits claimant qualifies as a "person adversely affected" by a final Board decision under section 7266 and has a sufficient injury to support standing under Article III of the Constitution.

We briefly comment on the procedure to be followed to commence proceedings in these types of appeals, at least until the Court adopts specific rules on this topic. When a veteran dies after the Board issues an adverse decision but before an NOA has been filed, a person claiming to be an eligible accrued-benefits claimant wishing to appeal should, within the 120-day appeal period, file an NOA in the accrued-benefits claimant's name and a separate statement providing the veteran's name, the date of the veteran's death, and a request that the Secretary address the person's accrued-benefits status. This statement should also include a copy of the veteran's death certificate or a statement why the death certificate is not yet available. These steps will ensure that the Court is aware of the true nature of the proceeding as well as provide information to the Secretary sufficient to locate the relevant Board decision.

Demery v. Wilkie, 30 Vet.App. 430, 438-439 (2019) (per curiam order).

On consideration of the foregoing, it is

ORDERED that the appellant, within 20 days after the date of this order, provide a copy of the veteran's death certificate. It is further

ORDERED that the Secretary, within 45 days after the date of this order, file a response, including the Secretary's position on the appellant's eligibility as an accrued-benefits claimant and providing information as to the decision that assigned the effective date for the grant of SMC based on aid and attendance. Proceedings on this appeal are stayed until further order of the Court.

DATED: January 8, 2020

FOR THE COURT:

GREGORY O. BLOCK
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold
Cynthia M. Brandon-Arnold
Chief Staff Attorney/Deputy Clerk

Copies to:

Margaret Mannino

VA General Counsel (027)

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