

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

SONJA D. GLOVER,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-8949
)	
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 November 8, 2019, the Board of Veterans' Appeals (Board or BVA), issued a decision that remanded Appellant's sole claim regarding the propriety of the severance of service connection for bilateral pes planus, for further development and adjudication. A copy of the decision was transmitted and filed on January 21, 2020. Appellant filed a Notice of Appeal (NOA) with this Court on December 18, 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,

WILLIAM A. HUDSON, JR.
Acting General Counsel

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/s/ Kenneth A. Walsh
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/s/ Bobbiretta E. Jordan
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For the Secretary of Veterans Affairs

CERTIFICATE OF SERVICE

On this 24th day of February 2020, a copy of this motion was mailed,
postage

prepaid, to:

Sonja D. Glover
P.O. Box 1141
Orangeburg, SC 29115

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

/s/ Bobbiretta E. Jordan
BOBBIRETTA E. JORDAN
Appellate Attorney