

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

BARRY E. MORRIS,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet.App. No. 20-0607
	)	
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 did not file a timely notice of appeal (NOA).

**SUMMARY OF PERTINENT FACTS**

On September 17, 2019, the Board of Veterans' Appeals (Board) issued a decision denying Appellant entitlement to service connection for an acquired mental health condition. On January 24, 2020, Appellant filed a Notice of Appeal (NOA) with the Court.

**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. See 38 U.S.C. § 7266(a); U.S. Vet.App. Rule 4(a).

While the Supreme Court has 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 ex rel. Henderson v. Shinseki*, 131 S. Ct. 1197, 1206 (2011). Appellant has not asserted any compelling reason for her failure to submit a timely NOA nor alleged any factors that might allow her to invoke equitable tolling. See *Bove v. Shinseki*, 25 Vet.App. 136 (2011). Because the NOA was filed after the 120-day statutory appeal period, the Court should dismiss the appeal.

Appellant is appearing *pro se* in this matter and was not contacted with respect to the filing of this motion.

**WHEREFORE**, Appellee moves the Court to dismiss this appeal.

Respectfully submitted,

**WILLIAM A. HUDSON, JR.**  
Acting General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Sarah W. Fusina  
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## **CERTIFICATE OF SERVICE**

On the February 25, 2020, a copy of the foregoing was mailed postage prepaid to:

Barry E. Morris  
Heritage Park  
1816 North State Highway 91  
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/s/ Sarah W. Fusina  
**SARAH W. FUSINA**  
Deputy Chief Counsel