

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

SAMMIE LEE BROWN

Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Appellee.

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Vet. App. No. 20-0810

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 appeal for a lack of subject matter jurisdiction.

On January 30, 2020, Appellant filed a Notice of Appeal (NOA) with the United States Court of Appeals for Veterans Claims (Court). Appellant stated that he sought to appeal a November 13, 2019, decision of the Board of Veterans' Appeals' (Board). Based on a review of the information contained in the Veterans Benefits Management System (VBMS), there is no BVA decision dated November 13, 2019, or thereafter that corresponds with the VA file number or name provided by Appellant in the NOA. Simply put, there is no identifiable BVA decision for Appellant.

BASIS FOR DISMISSAL

This Court's jurisdiction derives exclusively from statutory grants of authority provided by Congress and the Court may not extend its jurisdiction beyond that authorized by law. *Bonhomme v. Nicholson*, 21 Vet.App. 40, 42 (2007) (per curiam order); see *Bowles v. Russell*, 127 S. Ct. 2360, 2366 (2007) (statutory time limits for filing notice of appeal are jurisdictional requirements

which courts cannot equitably toll); see also *Henderson v. Peake*, 22 Vet.App. 217 (2008). The burden of establishing jurisdiction rests with Appellant. *Hampton v. Nicholson*, 20 Vet.App. 459, 460 (2006).

Pursuant to 38 U.S.C. § 7266(a), for a claimant to obtain review of a Board decision by this Court, the decision must be *final* and the person adversely affected by that decision must file an NOA within 120 days after the date the 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). Here, there is no Board decision that corresponds with the VA file number or name identified in the NOA dated November 13, 2019. Accordingly, because there is no final Board decision for the Court to review, this case must be dismissed. *Breeden v. Principi*, 17 Vet.App. 475 (2004) (per curiam order).

Appellant is *pro se* in this appeal.

WHEREFORE, the Secretary moves the Court to dismiss this appeal for lack of subject matter jurisdiction.

Respectfully submitted,

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/s/ James B. Cowden
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/s/ Kristen D. King-Holland

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on March 5, 2020, a copy of this motion was mailed, postage prepaid, to:

Sammie Lee Brown

GDC #456727

Rutledge State Prison

7175 Manor Road

Columbus, GA 31907

/s/ Kristen D. King-Holland

KRISTEN D. KING-HOLLAND

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