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The Court has proper jurisdiction pursuant to 38 U.S.C. § 7252(a), which grants the United States Court of Appeals for Veterans Claims exclusive jurisdiction to review final decisions of the Board.

## **B. Nature of the Case**

Appellant seeks payment of a transportation allowance for the funeral of the Veteran (Appellant's father), which the Board denied in the opinion below. (R. at 3-5). Appellant argues that he is entitled to transportation benefits because he would be entitled to these benefits "had my dad been admitted to VA hospital before he had." (App. Br. at 1). However, the Board reasonably concluded that Appellant is not entitled to a transportation allowance.

## **C. Statement of Facts and Procedural History**

The Veteran served in the Army from January 1942 to May 1945. (R. at 103). The Veteran died in January 2017. (R. at 129).

In February 2017, Appellant submitted a claim for "the maximum burial benefits," noting his father's burial at the Massachusetts Veterans Memorial Cemetery. (R. at 131-36). The RO denied the claim in a May 2017 letter because "the funeral home statement of account that you submitted to us did not list any plot or interment costs and no costs were shown on your application for burial benefits." (R. at 113 (113-15)). Appellant's July 2017 notice of disagreement clarified that he was seeking "reimbursement of transportation costs to VA cemetery." (R. at 108-09). Appellant attached an invoice from the funeral of his father from Berube-Comeau Funeral Home. (R. at 111-12).

In October 2017, the RO issued a Deferred Rating Decision noting that Appellant "was denied NSC burial and plot because he submitted a bill from the funeral home without evidence of payment. No decision was made on

transportation charges.” (R. at 86). The RO noted that Appellant’s “NOD is filed for transportation charges” and noted the need for a SOC on that issue, while granting the remainder of the “NSC burial allowance.” (*Id.*). The RO issued the requested SOC the next day, concluding that Appellant was not entitled to transportation charges because the Veteran neither died at a VAMC nor was buried at a national VA cemetery. (R. at 77 (50-79)). Four days later, Appellant filed a Form 9, asserting that he had wanted to obtain emergency care for his father at a VA hospital shortly before his death, but that his father’s primary care doctor at VA recommended against it. (R. at 20-22).

In the August 2019 Board decision below, the Board found that Appellant was not entitled to a transportation allowance. (R. at 3-5). The Board noted that the only issue on appeal was Appellant’s entitlement to a transportation allowance, and found that Appellant was not entitled to a transportation allowance because the Veteran was not buried in a national cemetery. (R. at 4).

### **III. SUMMARY OF THE ARGUMENT**

The Board correctly concluded that Appellant was not entitled to a transportation allowance. As the Board noted, the Veteran’s death and burial did not meet the requirements for reimbursement of Appellant’s funeral-related transportation expenses.

### **IV. ARGUMENT**

Appellant seeks payment of a transportation allowance. The Secretary, “in the Secretary’s discretion,” may “pay a sum not exceeding \$300 to such person as

the Secretary prescribes to cover the burial and funeral expenses of the deceased veteran and the expense of preparing the body and transporting it to the place of burial.” 38 U.S.C. § 2302. However, transportation costs are only payable “for burial in a national cemetery.” 38 C.F.R. § 3.1709. The Secretary must also “pay the actual cost ... of the burial and funeral” of any veteran who dies in a “facility of the Department ... to which the deceased was properly admitted for hospital, nursing home, or domiciliary care.” 38 U.S.C. § 2303. A determination of whether a cemetery is a “national cemetery” is a question of fact that this Court should review under the clearly erroneous standard of review. 38 U.S.C. § 7261(a)(4). Under the “clearly erroneous” standard, the Court cannot overturn the Board’s factual finding if it is supported by a plausible basis in the record, even if the Court may not have reached the same factual determination. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 53 (1990).

The Board correctly found that Appellant was not entitled to a transportation allowance because the Veteran was not buried in a “national cemetery.” (R. at 4-5). As Appellant noted in the claim itself, the Veteran was buried at the Massachusetts Veterans Memorial Cemetery, a state cemetery in Winchendon, MA. (R. at 132); VETERANS’ CEMETERIES, <https://www.mass.gov/service-details/veterans-cemeteries>. Transportation costs are only payable “for burial in a national cemetery.” 38 C.F.R. § 3.1709. Appellant is therefore not entitled to a transportation allowance.

Appellant asserts that he is entitled to a transportation allowance because he would be entitled to these benefits “had my dad been admitted to VA hospital before he had.” (App. Br. at 1). Appellant conflates the benefit he is seeking (a transportation allowance) with a benefit he has already been granted (non-transportation burial expenses). Appellant submitted a claim in February 2017 for “the maximum burial benefits.” (R. at 131-36). Lacking adequate documentation to grant any benefits, the RO initially denied burial expenses. (R. at 113-15). Once Appellant submitted an invoice from the funeral home, the RO granted all burial benefits except for transportation benefits, which it denied because the Veteran was not buried in a national cemetery. (R. at 86).

Appellant’s arguments regarding where the Veteran died or would have died if he had been admitted to the VAMC do not change Appellant’s entitlement to a transportation allowance, as they do not change whether the Veteran was buried in a state or national cemetery. 38 C.F.R. § 3.1709. These arguments would impact Appellant’s entitlement to non-transportation burial expenses under 38 U.S.C. § 2303, but Appellant has already been awarded these expenses. (R. at 86). Appellant’s arguments are therefore irrelevant to the question that was before the Board and is now before the Court.

## **V. CONCLUSION**

WHEREFORE, in light of the foregoing, the Secretary respectfully contends that the Court should affirm the August 6, 2019, Board decision which denied Appellant payment of a transportation allowance.



Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

On the 5th day of March 2020 a copy of the foregoing was mailed, postage prepaid, to:

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

/s/ William Hornbeck  
**William Hornbeck**  
Appellate Attorney