

ROBERT S. BARR,)
Appellant,)
)
v.) Vet. App. No. 19-9104
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
Appellee.)

Pursuant to Rule 27(a) of this Court's Rules of Practice and Procedure, Appellee moves the Court to dismiss this appeal because the issue before the Board of Veterans' Appeals (Board or BVA) was resolved in Appellant's favor in the December 10, 2019, decision. As such, there is no case or controversy between the parties and the decision was not adverse to Appellant and thus cannot be appealed to the Court.

In a decision dated December 10, 2019, the BVA granted service connection for substance abuse disorder secondary to service-connected major depressive disorder. On December 27, 2019, Appellant filed a Notice of Appeal (NOA) with the Court. In his NOA, Appellant referenced the Board's December 10, 2019, decision. A copy of the Board's December 10, 2019, decision was transmitted to the Court on February 5, 2020.

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). 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, 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.

Because the issue before the Board on December 10, 2019, was resolved in Appellant's favor, there is no remaining case or controversy concerning the BVA decision, and the Court lacks jurisdiction in this matter. *See Mokal v. Derwinski*, 1 Vet.App. 12, 15 (1990). In *Mokal*, the Court adopted, as a matter of policy, the jurisdictional restrictions of the case or controversy rubric under Article III of the United States Constitution. *See Aronson v. Brown*, 7 Vet.App. 153, 155 (1994); *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) ("When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction."); *see also Shoen v. Brown*, 6 Vet.App. 456, 457 (1994).

Appellant also lacks standing to bring this appeal. As this Court has emphasized, quoting from a decision of the U.S. Court of Appeals for the Fifth Circuit, "an 'aggrieved party' has standing to challenge administrative action only if the party has suffered 'injury in fact' to an interest 'arguably within the zone of interests' protected by the underlying statute." *Gifford v. Brown*, 6 Vet.App. 269, 271 (1994) (citation omitted). The Court has also observed that "the concepts of 'case or controversy' and 'standing' emerge from common prudential principles designed to keep the judiciary in its proper case-by-case adjudicatory role and to avoid the gratuitous exercise of judicial power." *Landicho v. Brown*, 7 Vet.App. 42, 49 (1994). Where, as here, the only issue presented to the Board was decided in Appellant's favor by the Board, he has no standing to appeal that decision to this Court.

Appellant is proceeding pro se in this matter.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

On March 6, 2020, a copy of this notice and motion was mailed, postage prepaid, to:

Robert S. Barr
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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/ Amy M. Roth-Pixton
AMY M. ROTH-PIXTON
Appellate Attorney