

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

THOMAS HOLCOMB,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 20-0772
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLEE'S NOTICE REGARDING BVA DECISION,
AND MOTION TO DISMISS**

Pursuant to U.S. Vet. App. R. 4(c), and 27(a), the Secretary hereby notifies the Court that there is no Board of Veterans' Appeals (BVA or Board) decision in the name of Appellant to transmit to the Court in this case, and moves to dismiss this appeal for lack of subject matter jurisdiction.

BACKGROUND

Appellant filed a Notice of Appeal (NOA) with this Court on January 21, 2020, that included a copy of a December 20, 2019, rating decision of a Regional Office (RO) of the Department of Veterans Affairs (VA).

Information contained in the Veterans Appeals Control and Locator System (VACOLS) (the Board's computerized appeal tracking system), has not revealed a Board decision in the name of Appellant for that date. A review of the Veterans Benefits Management System (VBMS) electronic record also reveals no indication of a Board decision of that date issued in the name of Appellant.

Rather, as shown by the attachment to Appellant's Notice of Appeal, the RO issued a rating decision.

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).

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). See 38 U.S.C. §§ 7266(a), 7252(a).

There is no Board decision in the name of Appellant. Insofar as Appellant may be attempting to appeal the December 20, 2019, rating decision that he attached to his Notice of Appeal, that decision is not a final decision of the agency and cannot be appealed directly to this Court. See 38 U.S.C. § 7266(a). Accordingly, the appeal of the December 20, 2019, rating decision should be dismissed.

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 16, 2020, a copy of this notice and motion was mailed, postage prepaid, to:

Thomas Holcomb
10660 Helber Road
Logan, OH 43138

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

/s/ Mark M. McNabb
MARK M. MCNABB
Counsel for the Secretary