

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-0607

BARRY E. MORRIS,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

It appears that the Board of Veterans' Appeals (Board) mailed its decision on September 17, 2019. The appellant's Notice of Appeal (NOA) was filed on January 24, 2020, more than 120 days after the date reflected on the Board decision filed with the Court, which is the presumed date of mailing of the Board decision. The 120th day would have been January 15, 2020. The Secretary later moved to dismiss the instant appeal for lack of jurisdiction, asserting that the appellant had filed an untimely NOA. The motion was filed within 45 days of the filing of the Board decision. U.S. VET. APP. R. 4(a)(3)(A).

Generally, an appellant may obtain Court review of an adverse Board decision only if the appellant submits an NOA to the Court within 120 days of the date on which notice of the Board's decision was mailed. 38 U.S.C. § 7266(a). If an NOA is received within 30 days after the expiration of the filing deadline and the appellant demonstrates good cause or excusable neglect, the appeal is considered timely. U. S. VET. APP. R. 4(a)(3)(B). If an NOA is received more than 30 days after the expiration of the filing deadline, equitable tolling is available when circumstances have precluded an appellant from timely filing his or her NOA despite the exercise of due diligence. *Id.*; *see Bove v. Shinseki*, 25 Vet.App. 136, 140 (2011) (per curiam order). The appellant will be directed to show cause why his appeal should not be dismissed for untimely filing. *See* U.S. VET. APP. R. 4(a), 38(b).

On consideration of the foregoing, it is

ORDERED that, within 20 days after the date of this order, the appellant must explain why the Court should not dismiss this appeal. If the appellant fails to do so, the Court may dismiss this appeal without further notice. Proceedings on this appeal are stayed until further order of the Court.

DATED: March 19, 2020

FOR THE COURT:

GREGORY O. BLOCK
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold
Cynthia M. Brandon-Arnold
Chief Staff Attorney/Deputy Clerk

Copies to:

Barry E. Morris

VA General Counsel (027)

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