

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-8125

LEWIS H. DUSETT III,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

On November 21, 2019, the Court filed the appellant's Notice of Appeal (NOA) from a July 22, 2019, Board of Veterans' Appeals (Board) decision. Prior to the Court receiving the appellant's NOA, the Board received the appellant's motion for reconsideration. The Secretary has filed a motion to dismiss the instant appeal for lack of jurisdiction.

When the appellant files a motion for reconsideration with the Board within the 120-day judicial appeal period, the finality of that Board decision is abated. *Rosler v. Derwinski*, 1 Vet.App. 241 (1991). Any NOA filed here after such a motion for reconsideration is filed with the Board, but before it is decided, is premature. It does not become effective unless and until the Chairman denies the motion, if the NOA is still pending before the Court. *Wachter v. Brown*, 7 Vet.App. 396 (1995) (per curiam order). Because there is no final Board decision in this matter, there is no appeal before the Court over which it could exercise its jurisdiction. *See Pulac v. Brown*, 10 Vet.App. 11 (1997) (per curiam order). 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. These proceedings are stayed until further order of the Court.

DATED: March 23, 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:

Lewis H. Dusetz III

VA General Counsel (027)

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