

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7747

CHARLIE G. JOHNSON,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

It appears that the Board of Veterans' Appeals (Board) mailed its decision on May 14, 2019. The appellant's Notice of Appeal (NOA) was filed on November 8, 2019, 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 September 11, 2019. The Secretary later moved to dismiss the instant appeal for lack of jurisdiction, asserting that the appellant had filed an untimely NOA.

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). Equitable tolling of the 120-day time limit, however, is available when circumstances have precluded an appellant from timely filing his or her NOA despite the exercise of due diligence. *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 25, 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:

Maxwell D. Kinman, Esq.

VA General Counsel (027)

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