

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4755

CATHERINE M. DELARA,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

On November 19, 2019, the Court ordered the appellant to file a brief within 60 days. The appellant's counsel has notified the Court of the appellant's death.

When an appellant dies during the pendency of an appeal for disability compensation under chapter 11 of title 38, U.S. Code, the appropriate remedy is to vacate the appealed Board of Veterans' Appeals (Board) decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *See Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007) (Court not obligated to withdraw decision when party died before decision issued, but after case submitted to Court); *Zevalkink v. Brown*, 102 F.3d 1236, 1243-44 (Fed. Cir. 1996); *Landicho v. Brown*, 7 Vet.App. 42, 54 (1994); *see also Breedlove v. Shinseki*, 24 Vet.App. 7 (2010) (per curiam order) (veteran's chapter 11 disability benefits claim survives the death of the veteran, not for the purpose of providing VA benefits to a veteran, but for purpose of furthering the claim of an eligible accrued-benefits claimant). It is

ORDERED that the Court's November 19, 2019, order is hereby revoked. It is further

ORDERED that the appellant's counsel, within 20 days after the date of this order, provide a copy of the death certificate and show cause why the July 3, 2019, Board decision should not be vacated and this appeal dismissed. 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:

Sean A. Ravin, Esq.

VA General Counsel (027)

wrn