

IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SAMMIE LEE BROWN
APPELLANT PRO SE

Vet. APP. NO. 20-0810

US COURT OF APPEALS
FOR VETERANS CLAIMS

MAR 23 2020

RECEIVED

V.

ROBERT L. WILKIE
SECRETARY OF VETERANS AFFAIRS
APPELLEE

APPELLANT MOTION FOR INJUNCTION / RESTRAINING ORDER
ON APPELLEE MOTION FOR DISMISSAL

Pursuant to U.S. Vet. APP. R. 4(c); 10(a)(5) and 27, Appellant Sammie Lee Brown Appellant pro se in the above-captioned petition, makes this motion in the interest of equal access to the courts and judicial efficiency. Appellant moves this pending on the COURT review and consideration of the Appeal Merits and VA claim folder in order to make an independent of direct evidence to ensure the appellant the protection provided by the Due process clause and Equal protection clause of the United States Federal Constitution and The Constitution of the STATE OF GEORGIA. Appellant filed a NOTICE OF APPEAL within the statutory time limit of 120 days, A clerical error on the date of the final decision does not warrant dismissal; NOTICE OF APPEAL was filed January 30, 2020, BVA Claim Filed Number to include Appellant Name correspond with the BVA Final decision. The COURT must note that the General Counsel ~~DOES~~ NOT assert the notice of Appeal after the 120 days statutory time limit for filing a NOTICE OF APPEAL with this court, then there would be a jurisdictional issue. Therefore this COURT does have jurisdiction on APPELLANT APPEAL AND Grant APPELLANT Motion and APPEAL.

REASONS and BASIS FOR INJUNCTION / RESTRAINING ORDER

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 is mailed.

In this COURT the Honorable Gregory O. Block Clerk of the COURT by Nicole Kosky, Deputy Clerk received Appellant's Notice of APPEAL on January 30, 2020, Appeal the Board decision, Docket NO: 20-810, VA File NO 256 21 6855. Pursuant to 38 U.S.C. 7266(a) an NOA must be filed within the 120 days, the criteria has been met to give this COURT jurisdiction to hear Appellant's Appeal and jurisdiction has been established. Hampton v. Nicholson 20 Vet. APP. 459, 460 (2006).

ON FEBRUARY 21, 2020, Chris Green Administrative Officer, [refer to (021) Brown, Sammie] from the Department of Veterans Affairs Office of General Counsel requested consent of disclosure of the information within appellant's records in custody of the Department of Veterans Affairs, the Office of General Counsel informed the COURT that there was not a final decision for the COURT to review to prevent the COURT from reviewing Appellant's Claim Folder from the VA which would have established that the VA failed to comply with 38 CFR 3.103(c) and the BVA prejudiced Appellant by not obtaining an expert opinion from the Veteran Health Administration in the determination of Appellant's claims acquired psychiatric disorder due to Frontal Cortex Injury in a January 1984 Motor Vehicle Accident (MVA). [At the time of the commission of the offenses in December 1984 that led to the other than honorable characterization of service, the Appellant's behavior was a product of a traumatic brain injury diagnosed as post-concussive syndrome and the behavior met the VA criteria of "Insanity". There was a duty to assist the Appellant including obtaining a medical opinion even though the Appellant may not qualify for veteran status prior to a favorable determination. Gardner 22 Vet. APP. At 421-22.] This COURT instruction is that 38 CFR 3.103(c) requires VLT to fulfill two duties, (1) Fully explain the issues and (2) the duty to suggest the submission of evidence that ⁵⁻²⁻⁸ has been overlooked. "All federal courts have the power to issue writs necessary to ensure substantive justice" 28 U.S.C. (656). The Supreme COURT gave authorization of the appellate courts to reach the merits of the appeal to determine jurisdiction to hear Appeal

Because "a federal COURT always has jurisdiction to determine its own jurisdiction" U.S. v. BUTZ 536 U.S. 622 (2002), ^{See also} U.S. v. UNITED MINE WORKERS 330 U.S. 258 (1947). "A COURT OF Appeals could reach Merit of a case to determine jurisdiction regardless of whether claim ultimately found to authorize Appeals".

After giving any notice it consider appropriate the COURT may At any time correct a Clerical Error in any part in the record arising from an oversight. Smith v. Johnson 216 F.3d 521 (5th cir. 2000). Accordingly, within appellant VA Claim folder there is a Board decision that correspond with the VA File Number and Name identified in the NOA for the COURT REVIEW, this case must not be dismissed based on a simple Clerical Error, due process demand the General Counsel under U.S. vet. APP. R. 10(a)(5) Filed a Notice certifying that VA Filed Folder Records NO. 256216855 Brown, Sammie LEE is before the Court and Appellant for inspection.

Wherefore, the Appellant moves the COURT For AN Injunction/Restraining Order on the Appellee Motion For Dismissal in order for this Court can make a Independent Judgement on the merit of the Appeal to determine it's jurisdiction to hear the Appeal and to prevent a miscarriage justice.

Under the penalty of perjury Appellant swears the above is true and correct to the best of his knowledge.

Respectfully Submitted

Sammie Lee Brown Appellant

CERTIFICATE OF SERVICE

I certify under penalty of perjury, that on 13th March 2020 this motion was mailed post prepaid to:

William A. Hudson Sr. Acting General Counsel

Mary Ann Flynn, Chief Counsel

James B. Lowden Dep. Chief Counsel

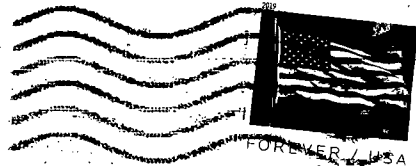
Kristen D. King-Holland
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Sammie Brown
Appellant
VA APP. NO. 20-0810

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