

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

TELLISON FORDE,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 20-1295
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

APPELLEE'S MOTION TO DISMISS

Pursuant to U.S. Vet. App. R. 27(a), Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, moves to dismiss this appeal for a lack of subject matter jurisdiction.

On February 21, 2020, Appellant filed a Notice of Appeal (NOA) with the United States Court of Appeals for Veterans Claims (Court). In the NOA, Appellant identified January 21, 2020, as the date of the Board of Veterans' Appeals' (Board) decision that he sought to appeal. Pursuant to the undersigned counsel's review of the information contained in the Veterans Appeals Control and Locator System (VACOLS) (the Board's computerized appeal tracking system) and the Veterans Benefits Management System (VBMS) pertaining to Appellant, there is no Board decision for this Appellant dated on January 21, 2020. In fact, the undersigned's review failed to show any Board decision issued for Appellant.

BASIS FOR DISMISSAL

This Court's jurisdiction derives exclusively from statutory grants of authority provided by Congress and the Court may not extend its jurisdiction beyond that authorized by law. *Bonhomme v. Nicholson*, 21 Vet.App. 40, 42 (2007) (per curiam order); see *Bowles v. Russell*, 127 S. Ct. 2360, 2366 (2007) (statutory time limits for filing notice of appeal are jurisdictional requirements which courts cannot equitably toll); see also *Henderson v. Peake*, 22 Vet.App. 217 (2008). The burden of establishing jurisdiction rests with Appellant. *Hampton v. Nicholson*, 20 Vet.App. 459, 460 (2006).

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 was mailed. “A claimant seeking to appeal an issue to the Court must first obtain a *final* BVA decision on that issue.” *Horowitz v. Brown*, 5 Vet.App. 217, 225 (1993) (emphasis in original). In this appeal, the Board has not issued a final decision dated January 21, 2020. Accordingly, because there is no final Board decision dated January 21, 2020, for the Court to review, this case must be dismissed. *Breeden v. Principi*, 17 Vet.App. 475 (2004) (per curiam order).

Appellant is *pro se*.

WHEREFORE, the Secretary moves the Court to dismiss this appeal for lack of subject matter jurisdiction.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Anna Whited
ANNA WHITED
Deputy Chief Counsel

/s/ Nicholas R. Esterman
NICHOLAS R. ESTERMAN
Senior Appellate Attorney
Office of the General Counsel (027F)
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
(202) 632-8392

Counsel for the Secretary

CERTIFICATE OF SERVICE

On or before March 26, 2020, a copy of the foregoing was mailed postage prepaid to:

Tellison Forde
90-02 78th Street
Wood Haven, NY 11421

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Nicholas R. Esterman
NICHOLAS R. ESTERMAN
Counsel for Appellee