

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-0707

THOMAS LEE KIRK,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

The appellant's Notice of Appeal states that the Board of Veterans' Appeals (Board) decision on appeal was mailed on January 7, 2020. The Secretary reports that no final Board decision, issued on or about that date, exists in the appellant's name. As a result, the Secretary moves to dismiss the instant appeal for lack of jurisdiction. Under the law, this Court may only review final Board decisions which have been decided against a claimant.

The Secretary further reports that the appellant received a September 3, 2019, Board decision. The Secretary notes that the 120-day period to appeal that decision expired on January 2, 2020, and that if the appellant intended to appeal that decision, his January 22, 2020, Notice of Appeal would be untimely.

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). See U.S. VET. APP. R. 4(a), 38(b). 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. Such an explanation should include a copy of the decision he seeks to 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 31, 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:

Thomas Lee Kirk

VA General Counsel (027)

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