

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4306

ERIC A. JOHNSON,

APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before MEREDITH, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

The appellant, Eric A. Johnson, through counsel appeals a June 4, 2019, Board of Veterans' Appeals (Board) decision. Pending before the Court is the appellant's motion for a 28-day extension of time to file his brief, from March 27, 2020, to April 24, 2020. As grounds for the motion, his counsel asserts that the parties had agreed to a joint motion for remand, but counsel has been unable to contact the appellant regarding the proposed agreement. Counsel asserts that she believes that the appellant may be deceased, and thus additional time is required to verify whether he died and, if so, whether there is anyone to substitute in the appeal.

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 decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *Briley v. Shinseki*, 25 Vet.App. 196, 197 (2012) (per curiam order) (holding that, when an appellant dies during the pendency of an appeal and there is no eligible party for substitution, there is no case or controversy before the Court and the appeal should be dismissed for lack of jurisdiction); *Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order) ("[W]hen a[n appellant] has died while an appeal is pending [at the Court], [and] no one seeks substitution or the person seeking substitution is not an eligible accrued-benefits claimant, then Board vacatur and dismissal of the appeal would be the appropriate action."). Accordingly, it is

ORDERED that the appellant's motion for an extension of time to file a brief is denied. It is further

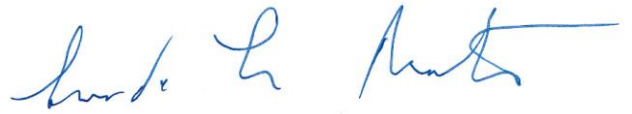
ORDERED that the appellant's counsel, within 21 days after the date of this order, inform the Court whether the appellant is deceased; if he is deceased, counsel shall provide a copy of the

death certificate and show cause why the June 4, 2019, Board decision should not be vacated and this appeal dismissed. It is further

ORDERED that proceedings are stayed pending further order of the Court.

DATED: April 8, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Diane Hester, Esq.

VA General Counsel (027)