

*Not published*

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

No. 19-5738

SITTI H. PRINCE,

APPELLANT,

v.

ROBERT L. WILKIE,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*.

**ORDER**

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

On August 23, 2019, movant Sitti H. Prince, through counsel, filed a Notice of Appeal from a February 6, 2019, Board of Veterans' Appeals (Board) decision that denied certain claims of the veteran, Ronald R. Prince.<sup>1</sup> Previously, on August 6, 2019, the Board dismissed as moot a May 16, 2019, motion for Board reconsideration submitted by the veteran, based on notification that the veteran had died on May 24, 2019. On February 27, 2020, following a Rule 33 pre-briefing conference, the parties filed a joint motion for partial remand seeking to set aside and remand those claims denied by the Board in its February 2019 decision.

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. *See Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007) (the Court is not obligated to withdraw decision when party died before decision issued, but after the case was 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) ("[A] 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.").

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<sup>1</sup> "An eligible accrued-benefits claimant qualifies as a 'person adversely affected' by a final Board decision under section 7266 and has sufficient injury to support standing under Article III of the Constitution." *Demery v. Wilkie*, 30 Vet.App. 430, 438-39 (2019). At issue is Ms. Prince's status as an eligible accrued-benefits claimant to pursue the appeal. Until such time as the Court determines whether Ms. Prince qualifies as a person adversely affected by the August 23, 2019, Board decision, Ms. Prince is properly referred to as the movant.

However, Mr. Prince did not die during the pendency of an appeal at this Court. Rather, it appears that he died during the pendency of the 120-day period following the Board's February 2019 decision. The movant, Sitti Prince, filed the appeal to this Court. In this regard, the Court's decision in *Demery v. Wilkie* is instructive. 30 Vet.App. 430, 438-39 (2019). In *Demery*, the Court stated:

We further hold now that an eligible accrued-benefits claimant has standing, both as a statutory and as a constitutional matter, to file an appeal on his or her own behalf when a veteran dies during the time permitted to file an NOA. This right arises upon the death of the veteran. Because Congress granted accrued-benefits claimants the right to advance a deceased veteran's appeal on the claimant's own interest, the Court sees no reason to distinguish between the standing necessary to substitute into an existing appeal and the standing necessary to initiate an appeal by filing an NOA. Therefore, *an eligible accrued-benefits claimant* qualifies as a "person adversely affected" by a final Board decision under section 7266 and has a sufficient injury to support standing under Article III of the Constitution.

*Id.* at 438-39 (emphasis added). The Court then commented on the procedure to be followed in appeals where "an eligible accrued-benefits claimant" commences an appeal of a Board decision issued in the veteran's name:

When a veteran dies after the Board issues an adverse decision but before an NOA has been filed, a person claiming to be an eligible accrued-benefits claimant wishing to appeal should, within the 120-day appeal period, file an NOA in the accrued-benefits claimant's name and a separate statement providing the veteran's name, the date of the veteran's death, and a request that the Secretary address the person's accrued-benefits status. This statement should also include a copy of the veteran's death certificate or a statement why the death certificate is not yet available.

*Id.* at 439. Ms. Prince has not yet provided the Court with a copy of the veteran's death certificate, and the Secretary has not yet addressed the Ms. Prince's accrued-benefits status, i.e., whether she is an eligible accrued-benefits claimant, so that the Court may determine whether she qualifies as a person adversely affected by the February 6, 2019, Board decision. *See id.* This information is necessary before the Court may proceed with jurisdiction over the appeal and determine whether the relief sought by the parties, i.e., vacatur of the Board decision and remand of certain of the veteran's claims, is appropriate.

On consideration of the foregoing, it is

ORDERED that Ms. Prince, within 30 days of the date of this order, file a response showing that she is an eligible accrued-benefits claimant qualified as a person adversely affected by the final Board decision to file this appeal on her own behalf and attaching a copy of the veteran's death certificate. It is further

ORDERED that the Secretary, within 30 days of the filing of Ms. Prince's response, file a response addressing whether Sitti H. Prince is an eligible accrued-benefits claimant. It is further

ORDERED that the parties' joint motion for partial remand is held in abeyance pending further order of the Court.

DATED: April 22, 2020

BY THE COURT:



MARGARET BARTLEY  
Chief Judge

Copies to:

Jeany C. Mark, Esq.

VA General Counsel (027)