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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7511

ROBERT L. VIEIRA, APPELLANT,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, *Judge*.

ORDER

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

On October 17, 2019, Robert L. Vieira filed a Notice of Appeal (NOA) from a September 19, 2019, Board of Veterans' Appeals (Board) decision. On October 11, 2019, before he filed an NOA with the Court, Mr. Vieira had filed with the Board a motion for reconsideration of its decision. Based on that fact, the Secretary filed a motion to dismiss Mr. Vieira's appeal for lack of jurisdiction. On March 17, 2020, the Court ordered Mr. Vieira to show cause, within 20 days after the date of the Court's order, why this appeal should not be dismissed for lack of jurisdiction. Mr. Vieira has not filed a response.

When an appellant files a motion for reconsideration with the Board within the 120-day judicial appeal period, the finality of that Board decision is abated. *Rosler v. Derwinski*, 1 Vet.App. 241 (1991). Any NOA filed with the Court after the motion for reconsideration is filed, but before the motion for reconsideration is decided, is premature. Given that Mr. Vieira's motion for Board reconsideration has abated the finality of the Board decision and remains pending, there is no final Board decision. Accordingly, the Court cannot exercise jurisdiction and will dismiss the appeal. *See Pulac v. Brown*, 10 Vet.App. 11 (1997) (per curiam order).

If the Chairman denies Mr. Vieira's motion for reconsideration, he may not ordinarily appeal that denial. *See Murillo v. Brown*, 10 Vet.App. 108, 110-11 (1997). However, he may then appeal this Board decision by filing a new NOA in this Court within 120 days from the date the notice of the Chairman's denial of reconsideration is placed in the mail.

On consideration of the foregoing, it is

ORDERED that the Secretary's motion is granted and this appeal is DISMISSED for lack of jurisdiction.

DATED: April, 27, 2020

BY THE COURT:

A handwritten signature in blue ink, reading "Coral W. Pietsch". The signature is fluid and cursive, with the first name "Coral" and last name "Pietsch" clearly legible.

CORAL W. PIETSCH
Judge

Copies to:

Robert L. Vieira

VA General Counsel (027)