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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-8125

LEWIS H. DUSETT, III, APPELLANT,

v.

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

Before FALVEY, *Judge*.

ORDER

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

On November 21, 2019, the appellant filed a Notice of Appeal (NOA) from a July 22, 2019, Board of Veterans' Appeals (Board) decision. Prior to the appellant filing an NOA with the Court, the Board had received a motion for reconsideration of its decision. The Secretary later moved to dismiss the NOA for lack of jurisdiction. On March 23, 2020, the Court ordered the appellant 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. The appellant has failed to file a response.

Pursuant to 38 U.S.C. §§ 7252 and 7266(a), for a claimant to obtain review of a Board decision by this Court, that decision must be final. *See In re Quigley*, 1 Vet.App. 1, 1 (1990). When the 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 after the motion for reconsideration is filed, but before it is decided, is premature. Given that the appellant's motion for Board reconsideration has abated the finality of the Board decision, 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, 12 (1997) (per curiam order).

If the Chairman denies the appellant's motion for reconsideration, the appellant may not ordinarily appeal that denial. *See Murillo v. Brown*, 10 Vet.App. 108, 110-111 (1997). The appellant may, however, 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 is mailed.

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 29, 2020

BY THE COURT:

A handwritten signature in blue ink, appearing to read "J. Falvey, Jr.", with a stylized flourish at the end.

JOSEPH L. FALVEY, JR.
Judge

Copies to:

Lewis H. Dusetz, III

VA General Counsel (027)