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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-8634

MONTE E. GASKINS, SR., APPELLANT,

v.

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

Before GREENBERG, *Judge*.

ORDER

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

On December 3, 2019, the appellant filed a Notice of Appeal (NOA) from a November 21, 2019, Board of Veterans' Appeals (Board) decision. The Secretary later moved to dismiss for lack of jurisdiction, asserting that the Board's decision does not contain any appealable issues. The Secretary reports that the Board, in its November 21, 2019, decision referred the appellant's service-connected claims for a right and left knee disability to the agency of original jurisdiction (AOJ) and dismissed the certified appeal because no timely perfected appeal was of record. The Secretary acknowledges that the Board's November 2019 decision contains language that states the Board "remanded" these claims to the AOJ. However, the Secretary contends that, read as a whole, the decision "shows that these claims were not properly before the Board and that referral was appropriate." He further states that "[e]ven if the Court were to find that the Board remanded rather than referred these claims to the AOJ, the merits of Appellant's claims are not subject to a final decision by the Board and these matters remain pending before the agency." Secretary's Feb. 18, 2020, Motion to Dismiss at 2 n.1.

On March 20, 2020, the Court ordered the appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. The appellant has failed to respond.

Pursuant to 38 U.S.C. § 7266(a), in order for a claimant to obtain review of a Board decision by this Court, that decision must be final and the person adversely affected by that decision, generally may submit an NOA to the Court within 120 days on which notice of the Board's decision was mailed. *See In re Quigley*, 1 Vet.App. 1 (1990). A Board remand is not a final decision within the meaning of 38 U.S.C. § 7252(a). *See Kirkpatrick v. Nicholson*, 417 F.3d 1361 (Fed. Cir. 2005). Because a final decision has not been issued by the Board with respect to the claims that were remanded or referred by the Board, the Court does not have jurisdiction to

review this appeal. *See Hampton v. Gober*, 10 Vet.App. 481, 483 (1997). If a final Board decision is issued on remand, any matter determined in such a decision may be appealed to this Court. *Matthews v. Principi*, 15 Vet.App. 138 (2001) (per curiam order).

Upon 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 "William S. Greenberg", with a stylized flourish extending to the right.

WILLIAM S. GREENBERG
Judge

Copies to:

Monte E. Gaskins, Sr.

VA General Counsel (027)