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

No. 19-0253

MARIA MARLINA T. TOMAS, APPELLANT,

v.

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

Before ALLEN, *Judge*.

**MEMORANDUM DECISION**

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

ALLEN, *Judge*: Self-represented appellant Maria Marlina Tomas is the surviving spouse of veteran Francisco T. Tomas, who served the Nation honorably in the United States Army as a Philippine Scout during World War II. In this appeal, which is timely and over which the Court has jurisdiction,<sup>1</sup> she contests a September 8, 2017, decision of the Board of Veterans' Appeals that determined that she had not filed a timely appeal of an April 2011 rating decision denying service connection for the cause of the veteran's death.<sup>2</sup> Because appellant presents no arguments about why the Board's decision is incorrect, and we can independently find none, we will affirm.

**I. BACKGROUND**

Francisco Tomas fought for the country during World War II as a Philippine Scout from August 1942 until April 1943.<sup>3</sup> He passed away in August 1981.<sup>4</sup>

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<sup>1</sup> See 38 U.S.C. §§ 7252(a), 7266(a).

<sup>2</sup> Record (R.) at 2-6.

<sup>3</sup> R. at 740-41.

<sup>4</sup> R. at 657-58.

In September 2010, appellant filed a claim seeking service connection for the cause of her husband's death.<sup>5</sup> A regional office (RO) denied the claim in an April 2011 rating decision.<sup>6</sup> In September 2011, appellant timely submitted a Notice of Disagreement (NOD) concerning the April 2011 rating decision.<sup>7</sup> In June 2012, the RO issued a Statement of the Case (SOC) continuing to deny appellant's claim.<sup>8</sup> In December 2012, appellant filed a VA Form 9, attempting to perfect her Substantive Appeal to the Board.<sup>9</sup>

Later in December 2012, the RO informed appellant that she had not filed her Form 9 within 60 days after the SOC was issued, and, therefore, her Substantive Appeal was not timely.<sup>10</sup> In February 2013, appellant submitted an NOD with respect to the RO's determination that her Substantive Appeal was untimely.<sup>11</sup> In September 2013 the RO issued an SOC in which it continued to maintain that appellant's December 2012 Form 9 was untimely.<sup>12</sup> Appellant perfected her appeal in October 2013 and the matter came before the Board.<sup>13</sup> In the decision before the Court, the Board determined that appellant's December 2012 Form 9 was not timely filed.<sup>14</sup> This appeal followed.

## II. ANALYSIS

Because appellant is proceeding pro se, she is entitled to both a sympathetic reading of her informal brief and a liberal construction of her arguments.<sup>15</sup> But on appeal she still carries the burden of demonstrating error in the Board's determination that she was not entitled to the benefits at issue.<sup>16</sup> Here, appellant raises no arguments about the only question before the Court, namely

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<sup>5</sup> R. at 218-19.

<sup>6</sup> R. at 150-56.

<sup>7</sup> R. at 143-44.

<sup>8</sup> R. at 110-33.

<sup>9</sup> R. at 78-80.

<sup>10</sup> R. at 75-77.

<sup>11</sup> R. at 72-74.

<sup>12</sup> R. at 65-66.

<sup>13</sup> R. at 45-47.

<sup>14</sup> R. at 5-6.

<sup>15</sup> See *De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992).

<sup>16</sup> *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

whether she filed a timely Substantive Appeal concerning the April 2011 rating decision that denied her claim for service connection for the cause of her late husband's death. Rather, she focuses on the merits of the April 2011 rating decision that denied her claim, which is not a matter before the Court.

We could affirm the Board's decision solely on the ground that appellant presents no argument about the decision the Board rendered. However, in recognition of the veteran's service to the Nation, we have independently reviewed the Board's decision. We can find no error.

"Appellate review will be initiated by a[n NOD] and completed by a [S]ubstantive [A]ppeal after a [S]tatement of the [C]ase is furnished as prescribed in this section."<sup>17</sup> When an NOD is filed, an agency of original jurisdiction (AOJ), such as the RO here, will attempt to favorably resolve the disagreement; if it cannot, it will prepare an SOC, which must be submitted to the claimant.<sup>18</sup> A claimant has 60 days from the date the SOC is mailed or whatever time remains in the 1-year period to disagree with the rating decision at issue, whichever is longer, to file a Substantive Appeal by submitting a VA Form 9.<sup>19</sup>

Here, the RO issued an SOC in June 2012.<sup>20</sup> This was more than 1 year after the April 2011 rating decision appellant sought to appeal. Therefore, appellant had 60 days from the issuance of the June 2012 SOC to perfect her appeal by filing a VA Form 9.<sup>21</sup> She did not file her Form 9 until December 2012, well outside the 60-day appeal period.<sup>22</sup> There is no dispute about this fact. Moreover, we note that there is also no question that appellant received the SOC, because she admits that fact in her February 2013 NOD.<sup>23</sup>

In sum, while we appreciate the veteran's service and are sympathetic with appellant's situation, we don't see error in the Board's decision. So, we must affirm.

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<sup>17</sup> 38 U.S.C. § 7105(a).

<sup>18</sup> 38 U.S.C. § 7105(d)(1), (3).

<sup>19</sup> 38 U.S.C. § 7105(d)(3); *see also* 38 C.F.R. § 20.302(b) (2019).

<sup>20</sup> R. at 110-33.

<sup>21</sup> 38 U.S.C. § 7105(d)(3); *see also* 38 C.F.R. § 20.302(b).

<sup>22</sup> R. at 78-80.

<sup>23</sup> R. at 72-74.

## **II. CONCLUSION**

After consideration of the parties' briefs, the governing law, and the record, the Court AFFIRMS the September 8, 2017, Board decision on appeal.

DATED: April 30, 2020

Copies to:

Maria Marlina T. Tomas

VA General Counsel (027)