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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-6052

MARGARET MANNINO, APPELLANT,

v.

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

Before FALVEY, *Judge*.

MEMORANDUM DECISION

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

FALVEY, *Judge*: On August 28, 2019, the appellant filed a Notice of Appeal (NOA) from a September 12, 2018, decision of the Board of Veterans' Appeals (Board). In that decision, the Board granted entitlement to special monthly compensation (SMC) based on the need for regular aid and attendance of another person and determined that the grant of SMC at the aid and attendance rate rendered moot the claim for SMC based on housebound status. The appellant states that the decision "denied benefits [for]aid and attendance for post-traumatic stress disorder dating back to the original appeal date of 2014," that "VA finally did approve aid and attendance from 2017," and that "we did disagree with the decided date and had every intention of appealing." NOA at 1.

On January 8, 2020, the Court issued an order (1) noting that it appeared the appellant was challenging the effective date assigned to the grant of SMC based on the need for aid and attendance, but that the September 2018 Board decision did not decide that issue; and (2) ordering the Secretary to file a response providing information as to the decision that assigned the effective date for the grant of SMC based on aid and attendance. On February 24, 2020, the Secretary responded to the Court order. In his response, the Secretary informed the Court that (1) he contends that the appeal of the September 12, 2018, Board decision should be dismissed because that Board

decision was favorable to the appellant; and (2) he reports that a regional office (RO) issued a decision on November 26, 2018, assigning an effective date of August 24, 2017, for entitlement to SMC based on the need for aid and attendance.

On March 13, 2020, the Court ordered the appellant to show cause, within 20 days after the Court's order, why this appeal should not be dismissed for lack of jurisdiction. On March 23, 2020, the appellant responded to the Court's order reasserting her request for an earlier effective date for SMC but not addressing the issue of the Court's jurisdiction. The problem with the appellant's request is that the Board did not decide the effective date; the RO assigned the effective date in a November 2018 decision—a decision not before this Court. The September 2018 Board decision the appellant seeks to appeal was entirely favorable.

Under the statutes laying out the authority of this Court, only those adversely affected by a Board decision may seek our review. *See* 38 U.S.C. §7266(a). What's more, this Court adheres to the case-or-controversy jurisdictional restraints provided for in Article III of the U.S. Constitution; this means that the Board decision sought to be appealed must have been adverse to the appellant for a case or controversy to exist. *See Mokal v. Derwinski*, 1 Vet.App. 12, 13-15 (1990); *see also McRae v. Brown*, 9 Vet.App. 229, 233 (1996). Thus, any way we look at it, an appellant may not appeal a Board decision that is entirely favorable.

Yet, that's what the appellant is trying to do. In the decision on appeal, the Board granted entitlement to SMC—the only issue before the Board. It said nothing about the effective date, a downstream issue. *See Grantham v. Brown*, 114 F.3d 1156, 1158 (Fed. Cir. 1997). Because entitlement to SMC was the only issue on appeal to the Board and the Board granted that benefit, the Board decision was fully favorable to the appellant. It was not an adverse decision that she can appeal to the Court. And so, we are without jurisdiction to address her appeal. *See Mokal*, 1 Vet.App at 13-15.

If she remains dissatisfied with the effective date for SMC assigned by the RO, she is free to appeal that decision to the Board.¹ But for now, there is not a decision that the appellant may appeal to this Court. *See* 38 U.S.C. §7266(a).

¹ We express no opinion about how the appellant's efforts in appealing the effective date to this Court impact her deadline to appeal the RO decision. We leave it to the Secretary to consider whether the documents expressing disagreement with the RO decision that were received by the VA General Counsel had any impact on her appellate rights and whether her efforts before this Court should inform any equitable tolling analysis by VA. *See Hunt v. Nicholson*, 20 Vet.App. 519, 524-25 (2006) (holding that equitable tolling can apply to filings before VA).

Accordingly, this appeal is DISMISSED for lack of jurisdiction.

DATED: April 30, 2020

Copies to:

Margaret Mannino

VA General Counsel (027)