

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-5738

SITTI H. PRINCE, APPELLANT,

v.

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

Before BARTLEY, *Chief Judge*.

ORDER

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

On February 6, 2019, the Board of Veterans' Appeals (Board) issued a decision denying certain claims of veteran Ronald R. Prince. On May 16, 2019, he filed a motion for Board reconsideration with the Board Chairman. However, Mr. Prince died on May 24, 2019.

On August 6, 2019, the Board Chairman dismissed the motion for reconsideration as moot due to Mr. Prince's death. On August 23, 2019, appellant Sitti H. Prince, surviving spouse of Mr. Prince, filed, through counsel, a Notice of Appeal (NOA) of the February 2019 Board decision.¹ On February 27, 2020, following a Rule 33 pre-briefing conference, the parties filed a joint motion for partial remand (JMPR) seeking to set aside and remand those claims denied by the Board in its February 2019 decision.

The veteran died during the pendency of the 120-day period following the Board's February 2019 decision. Ms. Prince filed the NOA with this Court. In *Demery v. Wilkie*, the Court stated as follows:

[A]n eligible accrued-benefits claimant has standing, both as a statutory and as a constitutional matter, to file an appeal on his or her own behalf when a veteran dies during the time permitted to file an NOA. This right arises upon the death of the veteran. Because Congress granted accrued-benefits claimants the right to advance a deceased veteran's appeal on the claimant's own interest, the Court sees no reason

¹ Because Mr. Prince filed the motion for Board reconsideration within 120 days of the February 2019 Board decision and Ms. Prince filed the NOA within 120 days of the Chairman's decision on the motion for reconsideration, the NOA is considered timely filed. *See, e.g., Rosler v. Derwinski*, 1 Vet.App. 241, 249 (1991).

to distinguish between the standing necessary to substitute into an existing appeal and the standing necessary to initiate an appeal by filing an NOA. Therefore, *an eligible accrued-benefits claimant* qualifies as a "person adversely affected" by a final Board decision under section 7266 and has a sufficient injury to support standing under Article III of the Constitution.

30 Vet.App. 430, 438-39 (2019).

On April 22, 2020, the Court held the JMPR in abeyance pending resolution of the standing issue; specifically, whether Ms. Prince qualified as an eligible accrued-benefits claimant and person adversely affected by the February 6, 2019, Board decision. The Court ordered Ms. Prince to file a response addressing her status and attaching a copy of the veteran's death certificate. The Court also ordered the Secretary to file a response addressing whether Ms. Prince is an eligible accrued-benefits claimant.

That same day, Ms. Prince responded to the Court order and included with her response a copy of the veteran's death certificate, as well as a January 2020 decision from the Manila regional office (RO) granting eligibility for substitution. On April 23, 2020, the Secretary notified the Court of the Manila RO's determination accepting Ms. Prince's application for benefits as the surviving spouse of Ronald R. Prince.

On consideration of the foregoing, it is

ORDERED that that JMPR is granted. The portion of the February 6, 2019, Board decision denying entitlement to a disability evaluation in excess of 50% prior to September 16, 2008, and in excess of 70% prior to December 22, 2010, for post-traumatic stress disorder is SET ASIDE, and the matter REMANDED, pursuant to 38 U.S.C. § 7252(a), for action consistent with the terms of the joint motion. *See Forcier v. Nicholson*, 19 Vet.App. 414, 425 (2006); *Stegall v. West*, 11 Vet.App. 268, 271 (1996). Under Rule 41(b) of the Court's Rules of Practice and Procedure, this order is the mandate of the Court.

DATED: May 5, 2020

BY THE COURT:



MARGARET BARTLEY
Chief Judge

Copies to:

Jeany C. Mark, Esq.

VA General Counsel (027)