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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-8529

ROGER N. YOUNG, APPELLANT,

v.

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

Before MEREDITH, *Judge*.

ORDER

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

On December 9, 2019, the appellant filed a Notice of Appeal (NOA) from an October 3, 2019, Board of Veterans' Appeals (Board) decision. The Secretary filed an unopposed motion to dismiss the appeal on March 24, 2020, asserting that the appellant filed a motion for reconsideration of the Board decision on November 14, 2019, and attached the appellant's motion. Motion to Dismiss at 1, Attachment at 1-3. The following day, the Secretary filed a motion to stay proceedings pending the Court's ruling on his motion to dismiss, which the Court granted. On April 2, 2020, the Clerk of 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 and stayed proceedings pending further order of the Court. The appellant has not filed a response.

When an 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, 249 (1991). Any NOA filed while a motion for reconsideration of a Board decision remains pending is premature because the Board decision "is nonfinal for purposes of judicial review." *Wachter v. Brown*, 7 Vet.App. 396, 397 (1995) (per curiam order); see *Pulac v. Brown*, 10 Vet.App. 11, 12 (1997) (per curiam order).

Here, the appellant's motion for reconsideration abated the finality of the Board's decision and remains pending; thus, the Court will dismiss the appeal for lack of jurisdiction over a nonfinal Board decision. See *Pulac*, 10 Vet.App. at 12; *Wachter*, 7 Vet.App. at 397. 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, 110-11 (1997). The appellant may, however, appeal the October 2019 Board decision by filing a new NOA with this Court within 120 days of 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.

DATED: May 6, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)