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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-5474

PAULA SIMMES, 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 Paula Simmes is the step-daughter of the late Richard E. Spiezio who served the Nation honorably in the United States Air Force Reserve. In this appeal, which is timely and over which the Court has jurisdiction,¹ she contests a June 27, 2019, decision of the Board of Veterans' Appeals that denied entitlement to burial of Mr. Spiezio in a VA national cemetery.² Because appellant forthrightly admits that Mr. Spiezio does not meet the qualifications to be buried in a national cemetery, we must affirm the decision on appeal.

I. 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.³ But she still carries the burden of demonstrating error on appeal in the Board's determination that Mr. Spiezio was not entitled to the benefits at issue.⁴ She has not done so.

¹ See 38 U.S.C. §§ 7252(a), 7266(a).

² Record (R.) at 3-8.

³ See *De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992).

⁴ *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

The Board determined that Mr. Spiezio did not qualify as a "veteran" under the terms of 38 U.S.C. § 101(2) because his only service was for active duty for training (ACDUTRA) between April 1961 and October 1961 in the Air Force Reserve.⁵ The Board was correct about Mr. Spiezio because ACDUTRA qualifies one as a "veteran" only if a person was disabled or died from a disease or injury incurred or aggravated during ACDUTRA.⁶ It is undisputed that Mr. Spiezio was not injured or diagnosed with a disease during his ACDUTRA service, so he was not a "veteran" for statutory purposes. And because only one who has achieved status as a "veteran" is entitled to be buried in a VA national cemetery,⁷ the Board had no other option than to do what it did – deny entitlement.⁸

Appellant does not contest any of this. She acknowledges that Mr. Spiezio's "length and type of service does not qualify him for burial."⁹ And she later states that "[w]e fully agree that the current law does not allow [Mr. Spiezio] to be buried in the cemetery."¹⁰ She asks that the Court "grant a waiver" to allow her step-father to be buried in a national cemetery.¹¹

The Court is deeply sympathetic to appellant's arguments. However, our constitutional responsibility is to apply the law Congress has made. We can't make the law as we may want it to be. So, we must affirm the decision before the Court.

II. CONCLUSION

After consideration of the parties' briefs, the governing law, and the record, the Court AFFIRMS the June 27, 2019, Board decision on appeal.

DATED: May 7, 2020

Copies to:

Paula Simmes
VA General Counsel (027)

⁵ R. at 5.

⁶ See 38 U.S.C. § 101(24); 38 C.F.R. § 3.6(a) (2019).

⁷ 38 U.S.C. § 2402(a)(1); see 38 C.F.R. § 38.620 (2019).

⁸ R. at 5.

⁹ Appellant's Informal Brief (Br.) at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 1.