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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7266

JERRY J. JENNINGS, 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 October 18, 2019, self-represented veteran Jerry J. Jennings filed a Notice of Appeal (NOA) purporting to appeal a March 26, 2019, decision of the Board of Veterans' Appeals (Board) that granted service connection for right and left ankle sprains and thoracolumbar spine arthritis and remanded the matter of service connection for cervical spine arthritis. On December 3, 2019, the Secretary moved to dismiss the appeal for lack of jurisdiction, asserting that the NOA was not timely and that there are no appealable issues in the March 2019 Board decision. The Secretary filed a concurrent motion to stay proceedings pending resolution of the motion to dismiss. The same day, the Court stayed proceedings pending further order of the Court.

On February 25, 2020, the Court ordered Mr. Jennings to show cause, within 20 days, why the appeal should not be dismissed for lack of jurisdiction.¹ Mr. Jennings responded on March 10, 2020. In his response, he indicated that he wanted to correct false statements in the March 2019 Board decision regarding his initial back and ankle injuries. He also asserted that VA relied on an inadequate evaluation when assigning an evaluation for his thoracolumbar spine arthritis condition, and he included medical evidence relevant to his remanded cervical spine arthritis claim.

This Court adheres to the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution. *Cardona v. Shinseki*, 26 Vet.App. 472, 474 (2014) (per curiam order); *Mokal v. Derwinski*, 1 Vet.App. 12, 13 (1990). "When there is no case or controversy, or when a once live case or controversy becomes moot, the court lacks jurisdiction." *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam order). "A justiciable controversy is []

¹ The Court's February 25, 2020, order did not direct Mr. Jennings to respond to the Secretary's assertion that his October 2019 NOA was untimely.

distinguished from a difference or dispute of a hypothetical or abstract character It must be definite and concrete, touching the legal relations of parties having adverse legal interests." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937); *see Anderson v. United States*, 344 F.3d 1343, 1349 (Fed. Cir. 2003) (quoting *Aetna Life Ins. Co.*); *see also* 38 U.S.C. § 7266(a) (providing that, for a claimant to obtain review of a Board decision by this Court, that decision must be final and the person adversely affected by that decision must timely file an NOA).

In its March 2019 decision, the Board granted service connection for right and left ankle sprains and thoracolumbar spine arthritis and remanded the matter of service connection for cervical spine arthritis. The grants of service connection for three conditions are favorable determinations not subject to the Court's review. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007). The Board's remand of the remaining issue is not a final decision that can be subject to an appeal. *See Kirkpatrick v. Nicholson*, 417 F.3d 1361, 1364 (Fed. Cir. 2005); *Breeden v. Principi*, 17 Vet.App. 475, 478 (2004) (per curiam order); 38 C.F.R. § 20.1100(b) (2019). In addition, the evaluation assigned for thoracolumbar spine arthritis was not addressed in the March 2019 Board decision and is not properly before the Court at this time. *See* 38 U.S.C. §§ 7252(a), 7266(a). Therefore, the Court is not presented with an acceptable case or controversy over which it could assert jurisdiction. If and when a final Board decision is issued on the remanded claim, any matter adverse to the appellant determined in such a decision may be appealed to this Court. *See Matthews v. Principi*, 15 Vet.App. 138 (2001) (per curiam order).

Upon consideration of the foregoing, it is

ORDERED that the stay of appellate proceedings imposed on December 3, 2019, is lifted. It is further

ORDERED that the Secretary's motion is granted, and the appeal is DISMISSED for lack of jurisdiction.

DATED: May 7, 2020

BY THE COURT:



MARGARET BARTLEY
Chief Judge

Copies to:

Jerry J. Jennings

VA General Counsel (027)