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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4755

CATHERINE M. DELARA, APPELLANT,

v.

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

Before MEREDITH, *Judge*.

MEMORANDUM DECISION

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

MEREDITH, *Judge*: On July 17, 2019, the appellant, Catherine M. DeLara, filed a Notice of Appeal from a July 3, 2019, Board of Veterans' Appeals (Board) decision that denied entitlement to disability benefits for the veteran's cause of death. This appeal was timely, and the Court ordinarily would have jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the following reasons, the Court will vacate the Board's decision and dismiss the appeal for lack of jurisdiction.

I. DISCUSSION

On January 27, 2020, the appellant's counsel notified the Court of the appellant's death. In response to the Court's March 25, 2020, order to provide a copy of the appellant's death certificate and show cause why the July 3, 2019, Board decision should not be vacated and this appeal dismissed, on April 8, 2020, the appellant's counsel provided a copy of the appellant's death certificate that was received from the appellant's daughter, Lindalee Hinkle (Ms. Hinkle), and informed the Court that, "[b]ased on [his] conversation with Ms. Hinkle, the appellant was not survived by any spouse, parent, or dependent child," and that "Ms. Hinkle did not indicate that she

seeks reimbursement for the expense of the burial of her late mother." Appellant's Counsel's April 8, 2020, Response at 1.

When an appellant dies during the pendency of an appeal for disability compensation under chapter 11 of title 38, U.S. Code, the appropriate remedy is to vacate the appealed Board decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *Briley v. Shinseki*, 25 Vet.App. 196, 197 (2012) (per curiam order) (holding that, when an appellant dies during the pendency of an appeal and there is no eligible party for substitution, there is no case or controversy before the Court and the appeal should be dismissed for lack of jurisdiction); *Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order) ("[W]hen a[n appellant] has died while an appeal is pending [at the Court], [and] no one seeks substitution or the person seeking substitution is not an eligible accrued-benefits claimant, then Board vacatur and dismissal of the appeal would be the appropriate action.").

Here, the appellant died before her appeal could be adjudicated. Because no one is seeking substitution in this appeal as a potential accrued-benefits recipient, the Court will vacate the July 3, 2019, Board decision and dismiss the appeal for lack of jurisdiction. *See Briley*, 25 Vet.App. at 197; *Breedlove*, 24 Vet.App. at 21.

II. CONCLUSION

Accordingly, the July 3, 2019, Board decision is VACATED and this appeal is DISMISSED for lack of jurisdiction.

DATED: May 15, 2020

Copies to:

Sean A. Ravin, Esq.

VA General Counsel (027)