

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7214

TIMOTHY DAVIS,

APPELLANT,

v.

DENIS McDONOUGH,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, *Judge*.

ORDER

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

On November 10, 2021, the Court issued mandate on the merits of this appeal. On December 7, 2021, the appellant, through counsel, filed a timely application for attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. On December 17, 2021, the appellant's counsel notified the Court that the appellant had died on November 20, 2021.

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 of Veterans' Appeals (Board) decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *See Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007) (Court not obligated to withdraw decision when party died before decision issued, but after case submitted to Court); *Zevalkink v. Brown*, 102 F.3d 1236, 1243-44 (Fed. Cir. 1996); *Landicho v. Brown*, 7 Vet.App. 42, 54 (1994); *see also Breedlove v. Shinseki*, 24 Vet.App. 7 (2010) (per curiam order) (veteran's chapter 11 disability benefits claim survives the death of the veteran, not for the purpose of providing VA benefits to a veteran, but for purpose of furthering the claim of an eligible accrued-benefits claimant). It is

ORDERED that the appellant's counsel, within 30 days after the date of this order, provide a copy of the death certificate and show cause why the Court should not dismiss the EAJA application. Proceedings on this appeal are stayed until further order of the Court.

DATED: January 13, 2022

BY THE COURT:



WILLIAM S. GREENBERG
Judge

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)