



Department of Veterans Affairs
Office of General Counsel
Washington DC 20420

In reply refer to : **027D**

• Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Washington, DC 20004

Re: **CAROLYN CLARK**
Vet. App. No. 21-1124

April 19, 2022

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), the Secretary hereby advises the Court of additional, pertinent, and significant authority that undersigned counsel has become aware of since the Secretary filed his Motion to Dismiss in this appeal on June 8, 2021 (Mot. to Dismiss).

Specifically, the precedential opinion from this Court, *Gardner-Dickson v. Wilkie*, 33 Vet.App. 50 (2020). The Court discussed in length that it did not have jurisdiction over Board remands because Board remands do not make a final decision about the benefit sought, and are therefore not decisions within the meaning of 38 U.S.C. § 7252(a). See *id* at 55-56. It noted it could not hear interlocutory appeals. See *id* at 56. The Court also declined the Petitioner's request in that case to consider her Petition under the All Writs Act as a rare exception to section 7252, and in response to her request to find a Board remand "legally defective," it again noted it lacked the authority to do so. See *id* at 57. Finally, the Court noted that "remands are not final decisions and, so, do not lay out the Board's full assessment of the evidence." *Id* at 57, note 4.

This is relevant to the Secretary's arguments in his Mot. to Dismiss filed June 8, 2021, and in his Response to the Court's for Reconsideration of the Court's September 15, 2021, Order, filed November 22, 2021 (Resp. to Ct. Ord.), that Board remands are not final decisions within the meaning of section 7252. See *generally* Mot. to Dismiss; Resp. to Ct. Ord.

2.

Sincerely,

/s/ Nathan Paul Kirschner

NATHAN PAUL KIRSCHNER

Senior Appellate Counsel

Counsel for the Secretary