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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-0442

ROBERT B. GOSS, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before FALVEY, *Judge*.

MEMORANDUM DECISION

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

FALVEY, *Judge*: Attorney Robert B. Goss, through counsel, appeals a November 3, 2020, Board of Veterans' Appeals decision finding it unreasonable to award any amount of attorney fees to Mr. Goss for his representation of veteran John H. Casey and thus granting Mr. Casey relief from his payment of attorney fees to Mr. Goss.¹ The appeal is timely, the Court has jurisdiction to address this matter, and single-judge disposition is appropriate. *See* 38 U.S.C. §§ 7252(a), 7266(a); *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

The Secretary has conceded that the Board acted beyond its jurisdiction when it addressed the reasonableness of the amount of attorney fees awarded. We are asked to decide the appropriate remedy. Because we accept the Secretary's concession that the Board lacked jurisdiction to address the reasonableness of the amount of fees awarded to Mr. Goss, we will vacate that part of the Board's decision and dismiss this appeal for lack of jurisdiction.

In June 2010, Mr. Goss and Mr. Casey entered into an attorney-client relationship and a fee agreement for Mr. Goss to represent the veteran before VA; Mr. Goss was to receive 20% of any benefits awarded. R. at 2248-59. In January 2011, Mr. Casey terminated the attorney-client

¹ The Board also determined that the fee agreement between Mr. Goss and Mr. Casey was valid. Record (R.) at 3-4, 10-11. This is a favorable finding of fact that the Court may not disturb. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007), *aff'd in part sub nom. Medrano v. Shinseki*, 332 F.App'x 625 (Fed. Cir. 2009).

relationship and Mr. Goss informed VA of his withdrawal as the veteran's representative. R. at 2166, 2170.

In September 2011, the regional office (RO) granted disability benefits to Mr. Casey. R. at 2077-78. The RO also found the veteran's attorney fee agreement with Mr. Goss to be valid, withholding 20% of the veteran's award and paying it to Mr. Goss per the fee agreement. R. at 1645, 2046.

In October 2011, Mr. Casey filed a Notice of Disagreement with the RO's decision to award attorney fees to Mr. Goss. R. at 2025. After receiving a Statement of the Case, Mr. Casey perfected his appeal to the Board in November 2012. R. at 1611-17, 1631.

In November 2020, after a series of remands to the RO, the Board issued the decision on appeal. R. at 3-16. The Board determined that the fee agreement was valid but found that the amount awarded was unreasonable because Mr. Goss had provided no evidence that he contributed to the veteran's eventual receipt of benefits. R. at 3, 13-16. The Board therefore ruled that Mr. Casey was entitled to the fees that had been paid to Mr. Goss. R. at 3, 16.

Mr. Goss appealed the Board's decision to the Court. He asserted that the Board lacked jurisdiction to review the reasonableness of the amount of attorney fees awarded under his valid fee agreement with Mr. Casey because VA's Office of the General Counsel (OGC) has exclusive jurisdiction to review a fee agreement's reasonableness in the first instance and had not done so here. Appellant's Brief (Br.) at 8-12 (citing 38 C.F.R. § 14.636(i) (2022)). He asserted that the Court should reverse the Board's finding that it had jurisdiction over the reasonableness issue. Appellant's Br. at 13. The Secretary at first opposed Mr. Goss's argument, contending that the Board had acted within its jurisdiction and that the Court should affirm the Board's decision. Secretary's Br. at 8-15.

This case was originally sent to a panel of the Court for a decision, and oral argument was scheduled for September 7, 2022. But about two weeks before oral argument, the Secretary informed the Court that he had changed his position and now agreed with Mr. Goss that the OGC has exclusive authority to review a fee agreement's reasonableness in the first instance, that the OGC did not do so here, and that the Board therefore exceeded its jurisdiction in addressing the reasonableness of the fees awarded. Secretary's Notice (Not.) at 1. The Secretary asked the Court to vacate the Board's decision and dismiss the appeal. Secretary's Not. at 1-2. Mr. Goss responded to the Secretary's concession and asserted that reversal of the Board's decision—not vacatur and

dismissal—was the appropriate remedy. Appellant's Response at 2-3. Given the Secretary's concession of error and the parties' agreement on issues other than the appropriate remedy, the panel issued a September 19, 2022, order that returned the case to a single judge for a decision.

On September 30, 2022, Mr. Goss filed an opposed motion to suspend the Court's Rules of Practice and Procedure regarding motions for reconsideration and then to reconsider the September 19, 2022, order returning the case to a single judge. Sept. 30, 2022, Motion at 1, 4-5 (citing U.S. VET. APP. R. 2, 27). Noting that one member of the panel had attached a separate statement to the Court's order dissolving the panel, Mr. Goss asserted that the separate statement had raised points of law that required a panel decision. *Id.* at 2-5. On October 5, 2022, the Secretary filed an opposition to the appellant's motion.

Because we find below that we lack jurisdiction, our resolution of this appeal need not reach the points addressed in Mr. Goss's motion and we thus are unconvinced that suspension of the Court's Rules is appropriate here. *See* U.S. VET. APP. R. 2. We will therefore deny his motion to suspend the Court's Rules and to reconsider the order dissolving the panel.

Seeing no reason to reject the parties' agreement on the issue, the Court accepts the Secretary's concession that the Board exceeded its jurisdiction when it addressed the reasonableness of the amount paid under the fee agreement between Mr. Goss and Mr. Casey. *See Checo v. Shinseki*, 748 F.3d 1373, 1378 n.5 (Fed. Cir. 2014). Now we must decide the appropriate remedy.

Our jurisdiction "is premised on and defined by the Board's decision concerning the matter being appealed." *Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998). For that reason, if the Board lacks jurisdiction to address a matter, "the Court likewise lacks jurisdiction to review it, and th[e] appeal must be dismissed." *Garcia v. Shulkin*, 29 Vet.App. 47, 53 (2017). Since we find that the Board had no jurisdiction to address the reasonableness of the amount of fees awarded, we find that the Court also lacks jurisdiction over the matter. *See id.* We will therefore vacate the part of the Board's decision that addressed the reasonableness of the awarded fees and dismiss the appeal for lack of jurisdiction.² *See id.* And as stated above, we will leave undisturbed the part of the Board decision finding the fee agreement valid. *See Medrano*, 21 Vet.App. at 170.

² Although Mr. Goss also argues that the Board erred by failing to ensure that VA complied with all notice requirements, we note that this is an alternative argument brought in case the Court rejected Mr. Goss's main argument and found that the Board had jurisdiction to address the reasonableness of the awarded fees. *See* Appellant's Br. at 13-15. Because we find that the Board lacked jurisdiction over the reasonableness matter, we need not address Mr. Goss's

Based on the above considerations, Mr. Goss's September 30, 2022, motion to suspend the Court's Rules and to reconsider the September 19, 2022, order is denied.

Also based on the above considerations, the part of the November 3, 2020, Board decision that found the amount of attorney fees awarded to Mr. Goss to be unreasonable and thus granted Mr. Casey relief from his payment of attorney fees to Mr. Goss is VACATED and this appeal is DISMISSED for lack of jurisdiction.

DATED: October 17, 2022

Copies to:

Kenneth M. Carpenter, Esq.

VA General Counsel (027)

alternative argument.