

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-1411

CARMEN L. ENCARNACION,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before TOTH, FALVEY, and JAQUITH, *Judges*.

ORDER

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

On October 13, 2022, the appellant and the Secretary filed *Solze* notices apprising the Court that the Board, in an October 13 letter, informed the appellant that it construed her July 18, 2018, Notice of Disagreement as "a request for reconsideration of the May 16, 2018, Board decision pursuant to 38 C.F.R. §§ 20.1001, 20.1002." Secretary's October 13 *Solze* Notice.

"Once an appellate body takes jurisdiction over a claim, the lower tribunal may not consider the same issues." *Cerullo v. Derwinski*, 1 Vet.App. 195, 197 (1991). This Court assumed jurisdiction over the matter upon the filing of the Notice of Appeal (NOA), which was filed on February 27, 2021. Such jurisdiction "cannot be divested by the action of an inferior tribunal." *Id.* at 198. And because the Board lacked jurisdiction to order reconsideration once the NOA was filed, any legal rulings it makes are null.

Although the Board's actions do not affect this Court's jurisdiction, the parties should still be prepared to discuss the implications, if any, of the Board's October 13 letter construing the appellant's 2018 NOD as a motion for reconsideration.

Upon consideration of the foregoing, it is

ORDERED that the Board of Veterans Appeals take no action related to any claim or issue currently pending before this Court relating to this case. If the Board intends to take action in this matter while it remains pending before this Court, it can move to do so in accordance with the procedures spelled out in *Cerullo*, 1 Vet.App. at 200—01. Further, it is

ORDERED that the parties should be prepared to discuss the legal implications, if any, of the Board's October 13 letter.

DATED: October 21, 2022

PER CURIAM.

Copies to:

Julia N. Giesecking, Esq.

VA General Counsel (027)