

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-8176

VIRGINIA T. MAYFIELD,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before MEREDITH, TOTH, and LAURER, *Judges*.

ORDER

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

Before the Court is the motion of Jacquelyn W. Covington to be substituted for her grandmother, Virginia T. Mayfield, as the appellant in this case. Ms. Covington asserts that she is a qualified accrued benefits claimant, and thus a proper substitute, because she bore at least some of the expense of Ms. Mayfield's funeral. The Secretary opposes substitution based on the regional office's denial of Ms. Covington's request to substitute filed with the Agency. The reason given for the regional office's denial was that Ms. Covington "did not send in the required VA Form 21P-601, Application for Accrued Amounts due a Deceased Beneficiary." Secretary's Response, Exhibit 1, at 2 (Dec. 12, 2022). "The VA 21-0847, Request for Substitution of Claimant Upon Death of Claimant[,] that was submitted," the regional office advised, "is not considered a prescribed form for accrued benefits for claimants other than a surviving spouse that meets the criteria as a substitute claimant." *Id.* Ms. Covington now seeks the opportunity in this Court to challenge the propriety of the regional office's substitution denial, particularly its requirement that she file a specific form.

To assist the Court in its consideration of this matter, the parties are directed to file supplemental memoranda of law of not more than 12 pages addressing the following issues:

- (1) Under *Breedlove v. Shinseki*, 24 Vet.App. 7 (2010) (per curiam order), and Rule 43 of the Court's Rules of Practice and Procedure, what is the scope of the Court's authority to rule on a motion for substitution after the Secretary opposes substitution—such as where the regional office denies a parallel request for substitution before the Agency—and the would-be substitute seeks to contest here the propriety of the regional office's denial?
- (2) To what extent is the Federal Circuit's opinion in *Merritt v. Wilkie*, 965 F.3d 1357 (Fed. Cir. 2020), relevant to the preceding question?

- (3) When a motion for substitution is pending in this Court, and the Secretary wholly conditions his position regarding the motion on the regional office's adjudication of a parallel request for substitution before the Agency, does the Court have any authority to prescribe the timing or manner of the regional office's adjudication?

Accordingly, it is

ORDERED that, within 30 days from the date of this order, the parties file supplemental memoranda of law of not more than 12 pages addressing the issues specified above.

DATED: January 20, 2023

PER CURIAM.

Copies to:

Douglas J. Rosinski, Esq.

VA General Counsel (027)