

United States Court of Appeals for the Federal Circuit

STANLEY L. DAVIS,
Claimant-Appellant

v.

DENIS MCDONOUGH, SECRETARY OF
VETERANS AFFAIRS,
Respondent-Appellee

2022-1247

Appeal from the United States Court of Appeals for
Veterans Claims in No. 18-4371, Judge Joseph L. Toth,
Judge Joseph L. Falvey, Jr., Chief Judge Margaret C.
Bartley.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

FOR THE COURT

February 14, 2023
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

NOTE: This disposition is nonprecedential.

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Appeal from the United States Court of Appeals for
Veterans Claims in No. 18-4371, Chief Judge Margaret C.
Bartley, Judge Joseph L. Falvey, Jr., Judge Joseph L. Toth.

Decided: February 14, 2023

KENNETH DOJAQUEZ, Carpenter Chartered, Topeka,
KS, argued for claimant-appellant.

ASHLEY AKERS, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, argued for respondent-appellee. Also represented
by BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR., PATRICIA M.
MCCARTHY; BRIAN D. GRIFFIN, ANDREW J. STEINBERG,

Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before STOLL, SCHALL, and CUNNINGHAM, *Circuit Judges*.

STOLL, *Circuit Judge*.

Stanley L. Davis appeals the decision of the United States Court of Appeals for Veterans Claims (Veterans Court) affirming the Board of Veterans Appeals' (Board) denial of an earlier effective date for Mr. Davis's service-connected disability under 38 C.F.R. § 3.156(b) and vacating and remanding the Board's denial under § 3.156(c). Because the Veterans Court's decision is not final, we dismiss.

Remand orders from the Veterans Court are not final judgments. *See Williams v. Principi*, 275 F.3d 1361, 1363–64 (Fed. Cir. 2002). We generally decline to review a non-final order of the Veterans Court, and we deviate from this rule on finality only when a case meets each requirement of *Williams*'s three-pronged test. *Id.* At issue here is *Williams*'s third prong, which requires “a substantial risk that the decision would not survive a remand, *i.e.*, that the remand proceeding may moot the issue.” *Id.* This prong is not met if (1) there is a single claim or (2) there are separable claims that are “inextricably intertwined because both claim compensation for the same disability.” *Joyce v. Nicholson*, 443 F.3d 845, 850 (Fed. Cir. 2006). Here, regardless of whether we view Mr. Davis's claim under § 3.156(b) and (c) as a single claim or as separable claims “inextricably intertwined” because they claim compensation for the same disability, this case does not meet *Williams*'s third prong. We thus dismiss for lack of jurisdiction.

DISMISSED

COSTS

No costs.