

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 18-4489

LUTHER D. SPICER, JR.

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before PIETSCH, ALLEN, and TOTH, *Judges*.

ORDER

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

On March 8, 2023, the United States Court of Appeals for the Federal Circuit issued a decision vacating this Court's September 14, 2021,¹ decision and remanding this matter for further proceedings.² On March 22, 2023, appellant's counsel notified the Federal Circuit that appellant had passed away on March 13, 2023 and provided appellant's obituary. Neither party requested that the Federal Circuit take any action in response to the notification of appellant's death and the Federal Circuit took no action on its own initiative. Mandate with respect to the Federal Circuit's decision entered on May 1, 2023. This matter is now properly before this Court.

When an appellant dies during the pendency of an appeal for disability compensation under chapter 11 of title 38, U.S. Code, the appropriate remedy is to vacate the appealed Board of Veterans' Appeals decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant.³ Given the long procedural history and the final Federal Circuit decision, the Court has determined it would benefit from the parties' views about how the Court should proceed, including whether there is, or may be, an appropriate substitute for appellant.

Upon consideration of the foregoing, it is

¹ *Spicer v. McDonough*, 34 Vet.App. 310 (2021).

² *Spicer v. McDonough*, 61 F.4th 1360 (Fed. Cir. 2023).

³ See *Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007); *Zevalkink v. Brown*, 102 F.3d 1236, 1243-44 (Fed. Cir. 1996); *Landicho v. Brown*, 7 Vet.App. 42, 54 (1994); see also *Breedlove v. Shinseki*, 24 Vet.App. 7 (2010) (per curiam order).

ORDERED that, within 20 days of the date of this order, appellant's counsel file a copy of appellant's death certificate. It is further

ORDERED that, within 30 days after the filing of appellant's death certificate, both appellant's counsel and the Secretary file a response (not exceeding 5 pages) explaining their position about how the Court should proceed in light of appellant's death.

DATED: May 3, 2023

PER CURIAM.

Copies to:

Christopher Glenn Murray, Esq.

VA General Counsel (027)