

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

VICTOR B. SKAAR,)	
Appellant,)	
)	
v.)	Vet. App. No. 17-2574
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Appellee.)	

APPELLEE’S RESPONSE TO THE COURT’S JULY 25, 2023, ORDER

On July 25, 2023, the Court ordered Appellant to provide a response first “addressing whether the Court should issue mandate and return [his] individual claims to the Board for further proceedings consistent with *Skaar II* or whether there are further proceedings that must take place at this Court.” Jul. 25, 2023, Court Order (Ct. Order) at 3; *see also Skaar v. Wilkie (Skaar II)*, 33 Vet.App. 127 (2020). Second, the Court ordered Appellant to “inform the Court whether he intends to seek any further relief in this matter on a class-wide basis.” Ct. Order at 3. The Court ordered the Secretary to, within 14 days of Appellant’s response, file a response addressing Appellant’s response and whether mandate should issue in this case. Ct. Order at 3. The Secretary responds to the Court’s order.

In his August 10, 2023, response (App. Resp.), Appellant asks the Court to issue mandate and return his individual “claim” to the Board. App. Resp. at 1. The Secretary understands the Court’s reference to “individuals claims” to refer to Appellant’s claims for service-connected disability compensation for leukopenia

and skin cancer. The Secretary agrees that the Court should issue mandate and return those claims to the Board.

As for the Court's second question, Appellant does not answer it, at least not directly. Instead, he addresses a matter not raised in the Court's order, namely, that he intends to seek class certification at the Board on remand. App. Resp. at 1. He then notes that, nearly two years ago, the Board denied class certification to another Palomares veteran. App. Resp. at 3. He then "requests substantive and procedural guidance from this panel as how best to ensure the orderly and efficient adjudication of his appeal upon a similar Board denial of a motion for agency aggregation." Resp. at 2.

The Court should deny Appellant's request for "guidance" for two reasons. First, the requested "guidance" involves a matter outside the scope of the Court's order. The Court ordered Appellant to "inform the Court whether he intends to continue to seek class relief, given the limitations set by *Skaar III* and the requirements of this Court's Rules of Practice and Procedure 22 and 23, which were implemented during the course of this litigation." Ct. Order at 2; see *also Skaar v. McDonough (Skaar III)*, 48 F.4th 1323 (Fed. Cir. 2022). The Court was therefore asking for his position as to whether he intended to seek class relief at this Court, rather than whether he intended to seek similar relief from the Board on remand. Because Appellant's request goes beyond the scope of the Court's order, the Court should summarily reject it.

Second, the Court should deny the request because Appellant presents no live case or controversy, and the requested guidance would result in an advisory opinion. The Court, however, is not authorized to render advisory opinions. *Best v. Principi*, 15 Vet.App. 18, 20 (2001). Issuing advisory opinions, this Court has held, “would contravene the venerable principle that federal courts are not ‘merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding.’” *Briley v. Shinseki*, 25 Vet.App. 196, 197 (2012) (quoting *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982)). Though Appellant attaches to his response a Board letter denying another veteran’s request to aggregate appeals for certain Palomares veterans, Appellant has not pointed to any such letter denying a request to aggregate that he has made to the Board. Thus, Appellant’s request for “guidance” presents no case or controversy over which the Court has jurisdiction in this appeal. Addressing any matters concerning the Board’s ability to aggregate appeals on its docket would be premature. *See also Waterhouse v. Principi*, 3 Vet.App. 473, 474 (1992) (holding that, for there to be a case or controversy, the Court “must have the ability to resolve the conflict through the specific relief it provides”).

WHEREFORE, the Secretary respectfully responds to the Court’s July 25, 2023, order, and agrees that mandate should issue in this case.

Respectfully submitted,

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