

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 17-2574

VICTOR B. SKAAR,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before BARTLEY, *Chief Judge*, and ALLEN and MEREDITH, *Judges*.

ORDER

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

This case has had a long history. We won't recount it here, given the limited purpose this order serves. Suffice it to say, on July 25, 2023, the Court ordered the parties to address whether mandate should issue so that Victor B. Skaar's individual claims seeking entitlement to service connection for leukopenia and skin cancer could return to the Board of Veterans' Appeals for readjudication, following a Federal Circuit decision in this matter.¹ The Court also ordered appellant to state whether he intended to continue pursuit of class relief in this appeal.

In an August 10, 2023, response, appellant requested that the Court issue mandate to return his individual claims to the Board.² Unfortunately, appellant did not expressly address his intention to pursue a class action before the Court. We will take appellant's silence on the question we asked as an implicit acknowledgement that he does not intend to pursue class relief in this matter.

We should be able to stop here. However, while appellant did not explicitly respond to our question about class relief before this Court in his response, he did notify the Court that he intended to "petition the Board to certify an 'agency class action' to aggregate his claim with those of similarly situated veterans."³ Appellant detailed the procedural history of another claimant's case in which that claimant apparently sought aggregate action before the Board, which the Board denied because his claim became moot. In light of this situation, appellant requests "substantive or 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."⁴

¹ *Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022).

² Appellant's Corrected Response (Resp.) at 1.

³ *Id.*

⁴ *Id.* at 2.

On August 22, 2023, the Secretary responded, agreeing that mandate should issue in this matter.⁵ The Secretary argues that the Court should not address appellant's request to seek aggregate action before the Board because the request (1) is outside the scope of the Court's order, and (2) presents no live case or controversy and would result in an advisory opinion.⁶

We agree with the Secretary, and we will not rule on appellant's request for guidance. Not only is appellant's request non-responsive to the Court's order, but it is also not contemplated by the Court's Rules of Practice and Procedure (Rules) because appellant did not follow the appropriate procedure for making a motion.⁷

But even if appellant had properly filed his request for guidance as a separate motion, we would still decline to provide the requested guidance. Appellant asks us to weigh in on a matter that is not yet the subject of a Board decision, so it is outside of our jurisdiction.⁸ Furthermore, we don't issue advisory opinions.⁹ "[F]ederal courts are to decide only 'actual controversies by judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in the case before it.'"¹⁰ Appellant requests that the Court weigh in on a matter that he has yet to even file before the Agency, and that VA has not had an opportunity to address. We could not provide the requested guidance even if appellant had followed the appropriate procedure.

Because the parties agree that mandate should issue so that Mr. Skaar's individual claims may return to the Board for readjudication, we will enter mandate.¹¹

Accordingly, it is

ORDERED that, pursuant to Rule 41(c)(2) and (3) of the Court's Rules, this order is the mandate of the Court.

DATED: September 6, 2023

PER CURIAM.

Copies to:

Michael J. Wishnie, Esq.

VA General Counsel (027)

⁵ Secretary's Resp. at 2.

⁶ *Id.* at 2-3.

⁷ See U.S. VET. APP. R. 27.

⁸ See *Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998) ("[T]he court's jurisdiction is premised on and defined by the Board's decision.").

⁹ See *Waterhouse v. Principi*, 3 Vet.App. 473, 474 (1992).

¹⁰ *Teva Pharms. USA, Inc. v. Novartis Pharms. Corp.*, 482 F.3d 1330, 1337-38 (Fed. Cir. 2007) (quoting *Local No. 8-6, Oil, Chem. & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 367 (1960)).

¹¹ See *Bly v. Shulkin*, 883 F.3d 1374 (Fed. Cir. 2018); see also U.S. VET. APP. R. 41(c)(2), (3).