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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-1289

WAYNE HUNT, APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before BARTLEY, *Chief Judge*.

MEMORANDUM DECISION

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

BARTLEY, *Chief Judge*: On February 28, 2021, appellant Wayne Hunt filed through counsel a Notice of Appeal from a December 2, 2020, Board of Veterans' Appeals (Board) decision that found that his character of discharge was a bar to receipt of VA benefits.¹ On April 3, 2023, and after additional proceedings not at issue here, the matter was stayed pending alternative resolution.

On April 21, 2023, counsel for the appellant notified the Court that Mr. Hunt died on October 24, 2022. On May 4, 2023, the Court ordered Mr. Hunt's counsel to provide the Court with a copy of his death certificate and to show cause why the December 2020 Board decision should not be vacated and this appeal dismissed. On July 7, 2023, Mr. Hunt's counsel advised the Court that no eligible substitute could be located for this appeal and requested additional time, which the Court granted, to present argument as to why the Court should not dismiss this appeal.

In an August 21, 2023, response, Mr. Hunt's counsel argued that this appeal should not be dismissed because there is precedent for a posthumous acknowledgement of veteran status; the benefit at stake is entitlement to interment in a national cemetery; and, even though Mr. Hunt was

¹ This matter was referred to a panel of the Court. On September 12, 2023, this Court determined that the appeal should proceed before a single judge and dissolved the panel.

interred in a national cemetery, which implicitly confers a finding of veteran status, such action conflicts with the Board decision on appeal and must be resolved to ensure Mr. Hunt's continued interment in a national cemetery. August 2023 Response at 1-3.

When an appellant dies while an appeal for VA disability compensation is pending, the appropriate remedy is to vacate the appealed Board decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *Briley v. Shinseki*, 25 Vet.App. 196, 197 (2012) (per curiam order) (holding that, when an appellant dies while an appeal is pending and there is no eligible party for substitution, there is no case or controversy before the Court and the appeal should be dismissed for lack of jurisdiction); *Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order) ("[W]hen a[n appellant] has died while an appeal is pending [at the Court], [and] no one seeks substitution or the person seeking substitution is not an eligible accrued-benefits claimant, then Board vacatur and dismissal of the appeal would be the appropriate action.").

The Court appreciates counsel's advocacy on behalf of Mr. Hunt. However, even assuming that VA might, in the future, disinter Mr. Hunt based on the Board's finding that his character of discharge was a bar to VA benefits, that case or controversy is not before the Court today. *See Cardona v. Shinseki*, 26 Vet.App. 472, 474 (2014) (per curiam order) (noting that this Court adheres to the case or controversy jurisdictional requirements imposed by Article III of the U.S. Constitution); *Mokal v. Derwinski*, 1 Vet.App. 12, 13 (1990). Furthermore, well-established caselaw compels a holding that this appeal has become moot by virtue of Mr. Hunt's death and, because no individual seeks substitution in this appeal as a potential accrued-benefits recipient, the Court will vacate the December 2020 Board decision, and dismiss the appeal for lack of jurisdiction. *See Briley*, 25 Vet.App. at 197; *Breedlove*, 24 Vet.App. at 21.

Accordingly, the December 2, 2020, Board decision is VACATED with respect to the matter appealed to the Court and this appeal is DISMISSED for lack of jurisdiction.

DATED: September 28, 2023

Copies to:

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