

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

HERBERT N. HASKELL, II,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 22-1018
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLEE’S RESPONSE TO THE AUGUST 14, 2023, MOTION TO
SUBSTITUTE BY APPELLANT’S SURVIVING SPOUSE**

Appellee, Denis McDonough, Secretary of Veterans Affairs, hereby files this response to the August 14, 2023, motion to substitute by Appellant’s surviving spouse, Margaret Laska.

On August 14, 2023, prior the scheduled oral argument, counsel for Appellant notified the Court that Appellant passed away that day, and Ms. Laska filed a motion to substitute as the appellant. In an August 14, 2023, Order, the Court ordered that: oral argument would proceed as scheduled on August 15, 2023; for Ms. Laska, within 30 days of the Order, to submit a copy of Appellant’s death certificate and indicate the actions she has taken before VA; and for the Secretary to file a response to the motion to substitute within 30 days after Ms. Laska’s response to the Order. In a response to the Court’s August 14, 2023, Order, Ms. Laska attached Appellant’s death certificate and indicated that on September 13, 2023, she had submitted to

VA an Application for Dependency and Indemnity Compensation, Survivors Pension and Accrued Benefits by a Surviving Spouse or Child (VA Form 21P-534) and a Request for Substitution of Claimant Upon Death of Claimant (VA Form 21P-0847).

As of the filing of this response, the Agency of Original Jurisdiction (AOJ) has not made a determination of whether Ms. Laska is an eligible substitute. See *Nat'l Org. of Veterans Advocates, Inc. v. Sec'y of VA*, 809 F.3d 1359 (Fed. Cir. 2016) (holding that the AOJ are the appropriate forum to determine eligibility for substitution); *Breedlove v. Shinseki*, 24 Vet.App. 7, 20 (2010) ("This is a factual determination that, unless conceded by the Secretary on appeal, must be made by VA in the first instance."). The Secretary will update the Court when the AOJ makes a decision on Ms. Laska's September 13, 2023, substitution request.

WHEREFORE, Appellee responds to the August 14, 2023, motion to substitute by Appellant's surviving spouse.

Respectfully submitted,

RICHARD J. HIPOLIT
Deputy General Counsel
for Veterans Programs

MARY ANN FLYNN
Chief Counsel

/s/ Carolyn F. Washington
CAROLYN F. WASHINGTON
Deputy Chief Counsel

/s/ Brian S. Carey

BRIAN S. CAREY

Appellate Attorney

Office of the General Counsel (027D)

U.S. Department of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, D.C. 20420

(202) 632-4010

Attorneys for Appellee Secretary
of Veterans Affairs