

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

ERIC A. JOHNSON,)

Appellant,)

)

v.)

)

Vet. App. No. 19-4306

ROBERT L. WILKIE,)

Secretary of Veterans Affairs,)

Appellee.)

UNDERSIGNED’S RESPONSE TO THE COURT’S APRIL 8, 2020 ORDER

Pursuant to the Court’s April 8, 2020 Order directing the undersigned to provide a copy of Appellant’s death certificate and to “show cause why the June 4, 2019 Board decision should not be vacated and this appeal dismissed,” the undersigned responds as follows.

The undersigned has attempted to obtain the Veteran’s death certificate but has been unable to do so.

Following the January 27, 2020 Rule 33 conference, the undersigned made several unsuccessful attempts to email and call the Veteran. The undersigned then sent a letter via priority mail through the United States Postal Service. That letter was returned with the message that the property was vacant.

The Veteran provided no alternative contacts during the course of representation.

The undersigned then did a rudimentary internet search and found several

news articles that described a tragic motorcycle accident that occurred on October 29, 2019 near the Veteran's residential town, involved someone of his same name and age and also involved a son with the same unique name. Attached to this response as Exhibit A are two news articles about that accident.

The undersigned then made several attempts to reach out to the Veteran's ex-wife and his adult children but never received any response. The undersigned was unable to find an obituary for the Veteran but did find one for his son. She reached out to the funeral home who provided services for the son. The funeral home director agreed to pass along a message to the Veteran's ex-wife, but she never responded. Similarly, attempts to reach some of the Veteran's adult children through Facebook were unsuccessful.

The undersigned also attempted to get information from the Veteran's service organization, the VA and the Office of General Counsel with no success.

The undersigned then sought assistance from the Secretary who shared the following the documents: VA Notice Termination of Benefits, terminating VA benefits as of November 19, 2019 after receiving notification of Veteran's death (attached hereto as Exhibit B); SSA Benefits Record, listing the Veteran's date of death as October 29, 2019 (attached hereto as Exhibit C); and SSA Benefits Inquiry, listing the Veteran's date of death as October 29, 2019 (attached hereto as Exhibit D). Such documentation has been accepted in lieu of a death certificate in

similar cases. *See, e.g., King v. Wilkie*, No. 18-2485, 2019 U.S. App. Vet. Claims LEXIS 494, at *2 (Vet. App. Mar. 29, 2019) (letter from the regional office suspending payment of VA benefits effective August 1, 2018, based on notification of the death of the appellant); *Collins v. Wilkie*, No. 19-3712, 2020 U.S. App. Vet. Claims LEXIS 654, at *1-2 (Vet. App. Apr. 14, 2020) (Social Security Administration Inquiry); *Stewart-Currie v. Wilkie*, No. 19-1564, 2019 U.S. App. Vet. Claims LEXIS 1960, at *1-2 (Vet. App. Nov. 6, 2019) (on evidence from the Social Security Administration).¹

From the Veteran's records, it is apparent that he has been divorced from his ex-wife since 2017, and his four surviving children from that marriage are independent adults. (R583)² The undersigned has been otherwise unable to identify any other persons with legal standing to substitute into the action on behalf of the Veteran.

Ultimately, she is unable to show cause as to why this appeal should not be dismissed. 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 decision and dismiss the appeal unless there has been an

¹ Unreported cases cited only for the persuasive value of their logic and reasoning and not as precedent, in accordance with Rule 30.

² "R___," as used herein, refers to pages of the Record Before the Agency in connection with this matter.

appropriate substitution by a qualified accrued-benefits claimant. *See Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007).

WHEREFORE, the undersigned respectfully responds to the Court's April 8, 2020 Order.

Dated: April 21, 2020
Albany, NY

Respectfully Submitted,

FOR APPELLANT:

/s/ Diane Hester

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