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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-2430

RESTITUTO D. BARRAQUIAS, APPELLANT,

V.

ROBERT A. MCDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before LANCE, *Judge*.

MEMORANDUM DECISION

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

LANCE, *Judge*: The pro se appellant, Restituto D. Barraquias, appeals a December 5, 2014, Board of Veterans' Appeals (Board) decision, which determined that new and material evidence had not been submitted to reopen a claim for entitlement to service connection for the death of veteran Jesus R. Barraquias, to include recognition of the appellant as the veteran's child for the purpose of entitlement to death benefits. Record (R.) at 2-12. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely, and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266. For the reasons that follow, the Court will affirm the December 5, 2014, decision.

The appellant is the son of veteran Jesus R. Barraquias. *See* R. at 246. In a December 2009 decision, the Board determined that the appellant was not entitled to recognition as a helpless child of the deceased veteran for VA benefit purposes. R. at 245-55. Specifically, the Board determined that the appellant was over 18 at the time of the veteran's death, that he was not incapable of supporting himself before turning 18 years old, and that there was no evidence that he was enrolled in an approved educational institution at the time of the veteran's death. R. at 251-52. The appellant did not appeal that decision, but he subsequently submitted a request to reopen and additional evidence.

In the decision on appeal, the Board determined that the additional evidence submitted by the appellant since the December 2009 decision, although new in part, was not material, as it did not "raise the reasonable possibility of substantiating" the underlying claim. R. at 9-10. The Board accordingly determined that the appellant had not submitted evidence to reopen his claim. R. at 10.

The appellant, in his informal brief and reply brief, argues that the Board erred by failing to consider the fact that he was 16 when his father was hospitalized and that he served as his father's "[c]aretaker, [c]aregiver, and [n]ursing [a]id" from 1980 to 1985, when the veteran died. Appellant's Informal (Inf.) Brief (Br.) at 1-2. Construing his brief liberally, *see Calma v. Brown*, 9 Vet.App. 11, 15 (1996), he also contends that the Board failed to consider the fact that he was enrolled in school between the ages of 18 and 23 and that the Board clearly erred when it determined that VA satisfied its duty to assist, as VA failed to notify him of the evidence necessary to satisfy his claim and to obtain records confirming that he began serving as his father's caretaker in 1980, at the age of 16. *Id.* The Secretary responds that the appellant has not demonstrated Board error, and he asks the Court to affirm the Board's decision. Secretary's Br. at 4-10.

For purposes of VA death benefits, a veteran's surviving child is an unmarried person who (1) is under the age of 18 years; (2) became permanently incapable of self-support before attaining the age of 18 years; or (3) is between the ages of 18 and 23 and is pursuing a course of instruction at an approved educational institution. 38 U.S.C. § 101(4)(A); 38 C.F.R. § 3.57(a)(1)(i)-(iii) (2016). To be eligible for recognition as a child based on attendance at an approved educational institution, a claim must be received within 1 year from either the child's 18th birthday or the date that the course of instruction commenced. 38 C.F.R. § 3.667(a) (2016).

Here, the parties agree that the appellant turned 18 in December 1982, prior to the veteran's death. *See* Appellant's Inf. Br. at 1; Secretary's Br. at 8. Although the appellant contends that he was under 18 when his father was hospitalized, Appellant's Inf. Br. at 1-2, he offers no explanation as to why this is a material fact, particularly in light of the uncontroverted evidence that he was over 18 at the time of the veteran's death. *See Locklear v. Nicholson*, 20 Vet.App. 410, 416-17 (2006) (holding that the Court will not entertain underdeveloped arguments); 38 C.F.R. § 3.57(a)(1)(i). Similarly, although the appellant appears to argue that the Board should have determined that evidence of his enrollment in a course of study in the 1980s was new and material, *see* Appellant's Inf. Br. at 1-2, the Board specifically considered this evidence but noted that the appellant was older

than 23 at the time he applied for benefits and, thus, ineligible on that basis, R. at 9; *see* 38 C.F.R. §§ 3.57(a)(1)(iii), 3.667(a).

The appellant makes no other arguments regarding the Board's determination that no new and material evidence had been submitted, and the Court, although mindful that he is self-represented, cannot manufacture arguments on his behalf. *See Coker v. Nicholson*, 19 Vet.App. 439, 442 (2006) ("The Court requires that an appellant plead with some particularity the allegation of error so that the Court is able to review and assess the validity of the appellant's arguments."), *rev'd on other grounds sub nom. Coker v. Peake*, 310 F. App'x 371 (Fed. Cir. 2008) (per curiam order). The Court thus cannot conclude that the Board clearly erred when it determined that the evidence submitted by the appellant was not new and material. *See Elkins v. West*, 12 Vet.App. 209, 216 (1999) (the Court reviews the Board's determination of whether new and material evidence has been submitted under the "clearly erroneous" standard).

Finally, although the appellant appears to contend that the Board clearly erred when it determined that VA satisfied its duty to assist, arguing that VA erred by failing to notify him of the type of evidence he was required to submit or by failing to obtain evidence demonstrating that he served as his father's caretaker prior to turning 18, Appellant's Inf. Br. at 1-2, the Court is not persuaded, *see Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) ("An appellant bears the burden of persuasion on appeals to this Court."), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table). As the Secretary argues, the record contains multiple VA notices informing the appellant of the evidence needed to substantiate his claim, Secretary's Br. at 10 (citing R. at 134-42, 389-92), and the Court cannot hold that the Board clearly erred when it determined that VA satisfied its notification duties, *see Nolen v. Gober*, 14 Vet.App. 183, 184 (2000) (the Court reviews the Board's determination that VA satisfied its duty to assist under the "clearly erroneous" standard).

Likewise, the Court cannot agree that VA violated its duty to assist the appellant in obtaining evidence. The Secretary is required to "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for benefits," so long as the records are potentially relevant and the claimant "adequately identifies" those records and authorizes the Secretary to obtain them. 38 U.S.C. § 5103A; *Golz v. Shinseki*, 590 F.3d 1317, 1321 (Fed. Cir. 2010). Here, the appellant cites no evidence that he identified any outstanding records, nor does he

explain why any such records are relevant to his claim, and the Court again discerns no clear error in this regard. *See Nolen*, 14 Vet.App. at 184; *see also Locklear*, 20 Vet.App. at 416-17.

Ultimately, the Board's decision is understandable and facilitates judicial review, and the appellant has not demonstrated any clear error in the Board's factual findings. *See* 38 U.S.C. § 7104(d)(1); *Elkins*, 12 Vet.App. at 216; *Allday v. Brown*, 7 Vet.App. 517, 527 (1995). The Court will, therefore, affirm the Board's decision.

After consideration of the parties' briefs and a review of the record, the Board's December 5, 2014, decision is AFFIRMED.

DATED: December 28, 2016

Copies to:
Restituto D. Barraquias
VA General Counsel (027)

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

RESTITUTO D. BARRAQUIAS,
Claimant-Appellant

v.

DAVID J. SHULKIN, Secretary of Veterans Affairs,
Respondent-Appellee

2017-2043

Appeal from the United States Court of Appeals for Veterans Claims in No. 15-2430, Senior Judge Alan G. Lance Sr.

Before LOURIE, REYNA, and STOLL, *Circuit Judges*.

PER CURIAM.

ORDER

The parties respond to this court's June 19, 2017 order. Because the appeal was untimely, the court dismisses.

On February 21, 2017, the United States Court of Appeals for Veterans Claims entered judgment in Mr. Barraquias' case. His notice of appeal was received on May 8, 2017, 76 days after judgment.

To be timely, a notice of appeal must be received by the Veterans Court within 60 days of the entry of judgment. *See* 38 U.S.C. § 7292(a); *see also* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1). Like appeals from district courts, the statutorily prescribed time for filing appeals from the Veterans Court to this court is mandatory and jurisdictional. *See Wagner v. Shinseki*, 733 F.3d 1343, 1348 (Fed. Cir. 2013); *see also Henderson v. Shinseki*, 562 U.S. 428, 438–39 (2011) (indicating jurisdictional restrictions on the time for taking an appeal under section 7292(a)). Because Mr. Barraquias' appeal was filed outside of the statutory deadline for taking an appeal to this court, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

(1) The stay of proceedings is lifted.

(2) The appeal is dismissed.

(3) Each side shall bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

RESTITUTO D. BARRAQUIAS,
Claimant-Appellant

v.

DAVID J. SHULKIN, Secretary of Veterans Affairs,
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2017-2043

Appeal from the United States Court of Appeals for Veterans Claims in No. 15-2430, Senior Judge Alan G. Lance, Sr.

ON MOTION

Before LOURIE, REYNA, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Restituto D. Barraquias moves for reconsideration of this court's September 12, 2017 order that dismissed his appeal as untimely filed.

Mr. Barraquias has provided no basis for reconsideration of the court's dismissal order.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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