

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-7035

MILTON J. KERN, JR.,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in 08-1013, Judge Robert N. Davis.

ON MOTION

Before MAYER, SCHALL, and MOORE, Circuit Judges.

PER CURIAM.

ORDER

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and to dismiss Milton J. Kern, Jr.'s appeal from the United States Court of Appeals for Veterans Claims' judgment in Kern v. Peake, 08-1013, for lack of jurisdiction.

Kern sought review by the Court of Appeals for Veterans Claims of a Board of Veterans' Appeals decision denying Kern's request to reopen his claim for service connection for a psychiatric disorder. In its decision, the Board determined that reopening the claim was not warranted because there was no new, material evidence related to the claim. The Court of Appeals for Veterans Claims dismissed Kern's appeal, finding that his notice of appeal was untimely filed. Kern appeals to this court.

Under 38 U.S.C. § 7292, this court has limited jurisdiction over appeals from decisions of the Court of Appeals for Veterans Claims. See Forshey v. Principi, 284 F.3d 1335, 1338 (Fed. Cir. 2002) (en banc). This court “may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.” 38 U.S.C. § 7292(d)(2).

In his informal brief, Kern argues that the Court of Appeals for Veterans Claims erred in reviewing the evidence and finding that his notice of appeal was untimely. Kern also appears to argue that the Board erred in reviewing the evidence in denying his claim for benefits. Because Kern fails to raise an issue within our jurisdiction, we must dismiss this appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The Secretary’s motions are granted. The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

MAR 27 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Milton J. Kern, Jr.
Steven M. Mager, Esq.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

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JAN HORBALY
CLERK

ISSUED AS A MANDATE: _____