

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-7018

JOHN NICHOLAS,

Claimant-Appellant,

v.

ERIC K. SHINSEKI, Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
case no. 09-1299, Judge Alan G. Lance, Sr.

ON MOTION

Before MICHEL, Chief Judge, FRIEDMAN and LINN, Circuit Judges.

PER CURIAM.

ORDER

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(f) and dismiss for lack of jurisdiction John Nicholas' appeal or in the alternative moves for summary affirmance. Nicholas moves for leave to file a corrected informal brief.

The United States Court of Appeals for Veterans Claims dismissed Nicholas' appeal for lack of jurisdiction. Specifically, the court determined that Nicholas had failed to file a notice of appeal at the court within the 120-day statutory time period for seeking review from the date of a Board of Veterans' Appeals decision, and that the court lacked jurisdiction to review the Board's order denying reconsideration. Nicholas filed an appeal with this court seeking review of that decision.

The court's jurisdiction to review decisions of the Court of Appeals for Veterans Claims is limited. See Forshey v. Principi, 284 F.3d 1335, 1338 (Fed. Cir. 2002) (en banc). Under 38 U.S.C. § 7292(a), this court has jurisdiction over rules of law or the validity of any statute or regulation, or an interpretation thereof relied on by the court in its decision. This court may also entertain challenges to the validity of a statute or regulation, and to interpret constitutional and statutory provisions as needed for resolution of the matter. 38 U.S.C. § 7292(c). In contrast, except where an appeal presents a constitutional question, this court lacks jurisdiction over challenges to factual determinations or laws or regulations as applied to the particular case. 38 U.S.C. § 7292(d)(2).

In his informal brief, Nicholas appears to argue only that the Board failed to properly weigh the evidence related to his claim. Because that argument pertains only to issues of fact or application of law to fact and to issues that are not before us, we are without jurisdiction. To the extent that Nicholas seeks to challenge whether the Court of Appeals for Veterans Claims correctly determined that it lacked jurisdiction over his appeal, we summarily affirm. We thus grant the Secretary's motion to dismiss in part and affirm in part.

Accordingly,

IT IS ORDERED THAT:

- (1) The Secretary's motions are granted. All other motions are moot.
- (2) Each side shall bear its own costs.

FOR THE COURT

MAY 03 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

2010-7018

MAY 03 2010

**JAN HORBALY
CLERK**

cc: John Nicholas
Tara K. Hogan, Esq.

s19