

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

DEBRA SIMMONS,
Petitioner-Appellant

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES,**
Respondent-Appellee

2024-1688

Appeal from the United States Court of Federal Claims
in No. 1:23-vv-00121-UNJ.

Before STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

ORDER

In response to this court's April 25, 2024 show cause order, the Secretary of Health and Human Services urges dismissal while Debra Simmons argues, in part, difficulties in prosecuting her case due to her alleged disability.

The special master dismissed Ms. Simmons's petition for compensation under the National Vaccine Injury Compensation Program ("Vaccine Act"). Having received no motion for review, the United States Court of Federal

Claims entered judgment. *See* 42 U.S.C. § 300aa-12(e)(3). Ms. Simmons then filed a notice of appeal to this court.

The statutory scheme governing Vaccine Act cases generally “makes appeal to the Court of Federal Claims a prerequisite for appeal to this court.” *Grimes v. Sec’y of Dep’t of Health & Hum. Servs.*, 988 F.2d 1196, 1198 (Fed. Cir. 1993); *see* 42 U.S.C. § 300aa-12(e), (f); *Mahaffey v. Sec’y of Dep’t of Health & Hum. Servs.*, 368 F.3d 1378, 1382–83 (Fed. Cir. 2004). Ms. Simmons did not seek review at the Court of Federal Claims before filing this appeal, and she provides no basis for allowing this appeal to proceed under such circumstances. Although the government urges the court to dismiss without taking further action, we deem it more appropriate to transmit her filings to the Court of Federal Claims for that court to consider whether Ms. Simmons’s filings can be construed as a motion for review under 42 U.S.C. § 300aa-12(e)(1) and to decide in the first instance whether such a motion would be time-barred, or whether her filings can otherwise be construed as seeking relief from judgment. *See Ling v. Sec’y of Health & Hum. Servs.*, No. 2023-1072, 2023 WL 8447276, at *2 n.2 (Fed. Cir. Dec. 6, 2023) (“We have not resolved whether or not [the Supreme Court’s] recent guidance affects our holding in *Widdoss v. Sec’y of Dep’t of Health & Hum. Servs.*, 989 F.2d 1170 (Fed. Cir. 1993).”); *Greenberg v. Sec’y of Health & Hum. Servs.*, 646 F. App’x 985, 888 (Fed. Cir. 2016) (noting the Court of Federal Claims’s review of special master’s decision under similar circumstances).

Accordingly,

IT IS ORDERED THAT:

(1) The appeal is dismissed.

(2) The Clerk of Court is directed to transmit a copy of this order and ECF Nos. 1-2, 5, and 6 to the Court of Federal Claims for further proceedings consistent with this order.

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(3) Each side shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

June 25, 2024
Date