

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

MISC. No. 15-17

IN RE: TIMELINESS OF NOTICES OF APPEAL

Before DAVIS, *Chief Judge*, and SCHOELEN, PIETSCH, BARTLEY, GREENBERG,
ALLEN, MEREDITH, and TOTH, *Judges*.

ORDER

To obtain review of an adverse Board of Veterans' Appeals (Board) decision, an appellant must file a Notice of Appeal (NOA) with the Court within 120 days after the date on which notice of the Board decision is mailed. 38 U.S.C. § 7266(a); U.S. VET. APP. R. 4(a). The Supreme Court of the United States has determined that this 120-day period is not jurisdictional. *Henderson v. Shinseki*, 562 U.S. 428 (2011).

The Court has had a practice of sua sponte identifying NOAs that appear to have been filed outside the 120-day appeal period. Thereafter, the Court would issue an order directing the appellant to show cause why the appeal should not be dismissed. The Court has determined, effective Wednesday, December 6, 2017, that it will discontinue its practice of sua sponte raising the untimeliness of any NOA filed. Accordingly, all parties are hereby notified that for all appeals filed beginning on December 6, 2017, the Court will act on matters of timeliness of an appeal only if the Secretary of Veterans Affairs (Secretary) raises the issue in a motion to dismiss.

The Court is working to revise its Rules of Practice and Procedure to incorporate this change and to identify the time period during which a motion for dismissal based on timeliness will be permitted. Any proposed Rule will be made available for public comment before being adopted. As an interim measure, effective immediately, if the Secretary intends to raise the issue of an untimely filed NOA, the Secretary must file a motion to dismiss not later than 45 days after the Secretary files the Board decision pursuant to Rule 4(c).

SO ORDERED.

DATED: December 20, 2017

PER CURIAM.