

UNITED STATES COURT OF VETERANS APPEALS

No. 94-1179

JAMES L. FERGUSON, APPELLANT,

V.

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before NEBEKER, *Chief Judge*, and FARLEY and MANKIN, *Judges*.

ORDER

On March 28, 1996, the Secretary filed a motion to dismiss and to stay further proceedings because the appellant, James Ferguson, died on February 21, 1996.

The Court held in *Landicho v. Brown*, 7 Vet.App. 42, 44 (1994), that substitution is not permissible in this Court where the appellant is a veteran who dies while the denial by the Board of Veterans' Appeals (BVA) of the veteran's claim for disability compensation under chapter 11 of title 38, U.S. Code, is pending here on appeal. Under such circumstances, the Court held that the appropriate remedy is to vacate the BVA decision from which the appeal was taken (and cause the underlying regional office (RO) decision to be vacated as well) and to dismiss the appeal. *Landicho*, 7 Vet.App. at 54. This is done to ensure that the BVA decision and the underlying RO decision will have no preclusive effect in the adjudication of any accrued-benefits claims derived from the veteran's entitlements. *Ibid*.

On consideration of the foregoing, it is

ORDERED that the September 27, 1994, BVA decision is VACATED. This decision of the Court vacating the BVA decision has the legal effect of nullifying the previous merits adjudication by the RO because this decision was subsumed in the BVA decision. *See Yoma v. Brown*, 8 Vet.App. 298 (1995) (relying on *Robinette v. Brown*, 8 Vet.App. 69, 80 (1995)); *see also Hudgins v. Brown*, 8 Vet.App. 365 (1995) (per curiam) (any accrued benefits claim filed by a survivor will have the same character of the claim that a veteran was pursuing at the time of his or her death). It is further

ORDERED that the Secretary's motion to dismiss is granted and the appeal is therefore DISMISSED for lack of jurisdiction. The Clerk of the Court is hereby directed to cancel oral argument in this case, scheduled for April 10, 1996, at 10:00 a.m.

DATED: April 5, 1996

PER CURIAM.