

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-7159

ROBERT B. WISTER,

Claimant-Appellant,

v.

ERIC K. SHINSEKI,
Secretary of Veterans Affairs,

Respondent-Appellee.

Appeal from the United States Court of Appeals for Veterans Claims in
08-0196, Chief Judge William P. Greene, Jr.

Before GAJARSA, LINN, and PROST, Circuit Judges.

PER CURIAM.

ORDER

Robert B. Wister and the Secretary of Veterans Affairs each respond to the court's order concerning whether Robert B. Wister's appeal should be dismissed as premature. Wister submits a supplemental response.

The United States Court of Appeals for Veterans Claims entered an order denying Wister's motion to strike the Secretary's designation of the record on July 10, 2008. Wister filed a notice of appeal seeking review of the July 10 order. Because it appeared that the July 10 order was not a final decision, this court directed Wister to show cause why his appeal should not be dismissed as premature.

Wister responds that the court has authority to review the order on appeal pursuant to 5 U.S.C. §§ 301 and 706. Pursuant to 5 U.S.C. § 301, the head of an

executive department may prescribe regulations. 5 U.S.C. § 706 sets forth the scope of review of certain agency actions. Neither provision provides this court with jurisdiction to review interlocutory decisions of the Court of Appeals for Veterans Claims.

This court's jurisdiction is generally limited to reviewing final decisions of the Court of Appeals for Veterans Claims. See 38 U.S.C. § 7292. In this case, the Court of Appeals for Veterans Claims has not issued a final decision. Thus, the appeal is dismissed.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

FEB 6 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

cc: Robert B. Wister
Christopher A. Bowen, Esq.

FEB 06 2009

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JAN HORBALY
CLERK