

NOTE: This order is nonprecedential.

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

JOSE A. DELACRUZ,
Claimant-Appellant

v.

**DENIS MCDONOUGH, Secretary of Veterans Af-
fairs,**
Respondent-Appellee

2022-2116

Appeal from the United States Court of Appeals for
Veterans Claims in No. 20-5631, Judge William S. Green-
berg.

Before LOURIE, TARANTO, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

In response to the court's September 21, 2022, order to show cause as to why this court has jurisdiction over this appeal, the Secretary of Veterans Affairs urges dismissal. Jose A. DeLaCruz also responds.

On October 22, 2021, the United States Court of Appeals for Veterans Claims entered judgment in Mr. DeLaCruz's appeal (CAVC No. 20-5631). On July 29, 2022, Mr.

DeLaCruz filed the Veterans Court's standard notice of appeal form indicating that he was seeking to appeal to the Veterans Court from an order of the Board of Veterans' Appeals entered on July 18, 2022. The Veterans Court, however, construed the submission as an appeal from its October 22, 2021, judgment in CAVC No. 20-5631 and transferred the appeal to this court.

We agree with the Secretary that "it is clear from Mr. DeLaCruz's notice of appeal that he is not challenging the October 22, 2021, judgment of the Veterans Court," and that his submission should have instead been construed by the Veterans Court as a "timely . . . appeal to the Veterans Court from a July 18, 2022[,] decision of the Board of Veterans' Appeals." Res. at 1–2.* Because Mr. DeLaCruz was not intending to seek this court's review, we dismiss and instruct the Clerk of this Court to transmit this order to the Veterans Court, so that it can docket Mr. DeLaCruz's notice of appeal, initially docketed in CAVC No. 20-5631, as a new appeal from the Board's July 18, 2022, decision.

Accordingly,

IT IS ORDERED THAT:

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

* As the Secretary notes, this court would have lacked jurisdiction over an appeal from the Veterans Court's October 22, 2021, judgment because no notice of appeal was filed within 60 days from the date of filing of that judgment. See 38 U.S.C. § 7292(a); see also 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B); cf. *Henderson v. Shinseki*, 562 U.S. 428, 438–39 (2011) (noting that § 7292(a) imposes a jurisdictional requirement).

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(3) The Clerk of Court is instructed to transmit this order to the Veterans Court, so that it can docket Mr. De-LaCruz's notice (initially docketed in CAVC No. 20-5631) as a new appeal from the Board's July 18, 2022, decision.

FOR THE COURT

December 13, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

cc: United States Court of Appeals for Veterans Claims