

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 98-772

ROBERT F. KESSEL, APPELLANT,

v.

HERSHEL W. GOBER,
ACTING SECRETARY OF VETERANS AFFAIR, APPELLEE.

Before KRAMER, *Chief Judge*, and FARLEY,
HOLDAWAY, IVERS, STEINBERG, and GREENE, *Judges*.

ORDER

On September 20, 1999, a majority of the Court, sitting en banc, issued an opinion in the instant case affirming the April 8, 1998, decision of the Board of Veterans' Appeals (Board) that denied the appellant's claim for service connection for residuals of a head injury with syncope and possible brain lesion. *Kessel v. West*, 13 Vet.App. 9 (1999). The Court's judgment was entered on October 13, 1999. The appellant appealed to the United States Court of Appeals for the Federal Circuit (Federal Circuit).

After submission of the appeal to the Federal Circuit, but before that court issued a decision, the appellant died. On August 14, 2000, the Federal Circuit issued an order dismissing the appeal and denying a motion for substitution of heirs in the pending appeal. *Kessel v. Gober*, No. 00-7011 (Fed. Cir. Aug. 14, 2000).

This Court held in *Landicho v. Brown* that when a veteran dies during the pendency of the appeal, the appropriate remedy is to vacate the Board decision from which the appeal was taken and to dismiss the appeal. 7 Vet.App. 42, 54 (1994); *see also Morton v. Gober*, ___ Vet.App. ___, No. 96-1517 (Nov. 6, 2000). Such action ensures that the Board decision and the underlying regional office (RO) decision(s) will have no preclusive effect in the adjudication of any accrued-benefits claims derived from the veteran's entitlements. It also nullifies the previous merits adjudication by the RO because that decision was subsumed in the Board 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, 368 (1995) (per curiam order).

Based upon the foregoing, sua sponte, it is

ORDERED that the Court's judgment in the instant case is recalled and its September 20, 1999, opinion is withdrawn. It is further

ORDERED that the April 8, 1998, decision of the Board is VACATED. It is further

ORDERED that this appeal is DISMISSED for lack of jurisdiction.

DATED: November 20, 2000

PER CURIAM.