

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

LARRY G. TYRUES,
Claimant-Appellant,

v.

ERIC K. SHINSEKI, SECRETARY OF VETERANS
AFFAIRS,
Respondent-Appellee.

2010-7011

Appeal from the United States Court of Appeals for
Veterans Claims in Case No. 04-584, Judge William A.
Moorman.

O R D E R

Before RADER, *Chief Judge*, LINN and DYK, *Circuit Judges*.

RADER, *Chief Judge*.

The United States Court of Appeals for Veterans Claims (“Veterans Court”) dismissed Larry J. Tyrues’s appeal from the Board of Veterans Appeals (“Board”) for lack of jurisdiction. *Tyrues v. Shinseki*, 23 Vet. App. 166, 177 (2009). This Court affirmed, reasoning the Veterans Court correctly interpreted 38 U.S.C. § 7266 to require an

appeal within 120 days. The Supreme Court of the United States vacated this court's judgment and remanding for further proceedings in light of *Henderson v. Shinseki*, 131 S.Ct. 1197 (2011). See *Tyrues v. Shinseki*, 132 S.Ct. 75 (2011). Accordingly, this court reinstated the appeal.

In *Henderson*, the Supreme Court reversed this court's decision and concluded that the 120-day deadline for filing an appeal with the Court of Appeals for Veterans Claims does not have jurisdictional consequences. Because the Veterans Court erroneously treated the appeal deadline as jurisdictional, we vacate the Veterans Court's judgment and remand for further proceedings to determine whether the non-jurisdictional nature of the 120-day deadline should lead to a different result.

Accordingly,

IT IS ORDERED THAT:

- (1) The judgment is vacated and the case is remanded for further proceedings.
- (2) Each side shall bear its own costs.

FOR THE COURT

April 12, 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Mark R. Lippman, Esq.
Martin F. Hockey, Jr., Esq.