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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 13-3444

NORMAN EDWARD ROSE, PETITIONER,

V.

ERIC K. SHINSEKI,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before KASOLD, *Chief Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On November 25, 2013, the appellant filed a third motion to expedite his appeal. His motion, however, also complains of delay by a regional office (RO) in the processing of a claim. Accordingly, his filing will be construed as a motion and as a petition, and the prohibition on including more than one subject in a nondispositive motion will be suspended. *See* U.S. VET.APP. R. 2 and 27(e). The Clerk of the Court will be directed to file a copy of the appellant's construed petition and this order under a separate docket number. For the reasons stated below, the motion to expedite and the construed petition will be denied.

The appellant's motion to expedite again fails to indicate that his death is imminent or that he is in a state of failing health, and otherwise fails to present credible evidence that exceptional circumstances are present. *See* U.S. VET.APP. R. 47(a)(1)-(3). As such, the motion does not demonstrate good cause for advancing his appeal ahead of others, many of whom are similarly situated.

As to the construed petition, the petitioner fails to demonstrate entitlement to a writ of mandamus. According to the petitioner, the Board has notified him that his appeal is being processed and that it will address the remanded issue in February (approximately one year after the Board's remand). Thus, the petitioner fails to demonstrate a delay so extraordinary that it amounts to an arbitrary refusal by the Secretary to act. *See Costanza v. West*, 12 Vet.App. 133, 134 (1999) (per curiam order) (petitioner must establish that the alleged delay is so extraordinary that "given the demands and resources of the Secretary, [it] amounts to an arbitrary refusal to act"); *Chandler v. Brown*, 10 Vet.App. 175, 177-78 (1997) (per curiam order) (holding that a delay of two and one-half years in the RO's adjudication of a claim even after remand was not unreasonable under the

circumstances); *Erspamer v. Derwinski*, 1 Vet.App. 3, 10 (1990) (noting that a reasonable time to act on a remanded claim may encompass "months, occasionally a year or two, but not several years or a decade") (quoting *Cnty. Nutrition Inst. v. Young*, 773 F.2d 1356, 1361 (D.C. Cir. 1985) (some internal quotation marks omitted)); *see also Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976) ("The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.").

Upon consideration of the foregoing, it is hereby

ORDERED that the motion to expedite proceedings is DENIED. It is further

ORDERED that the motion to expedite is construed to contain a petition for extraordinary relief in the nature of a writ of mandamus, and the Clerk of the Court is directed to create a new docket number for this construed petition. It is further

ORDERED that the petition for extraordinary relief in the nature of a writ of mandamus is DENIED.

DATED: December 13, 2013

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Bruce E. Kasold", written in a cursive style.

BRUCE E. KASOLD

Chief Judge

Copies to:

Norman Edward Rose

VA General Counsel (027)