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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-1042

KYLE T. WILLIAMS, PETITIONER,

V.

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

Before MOORMAN, *Judge*.

ORDER

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

On April 10, 2014, the petitioner, through counsel, filed a petition for extraordinary relief in the nature of a writ of mandamus. The petitioner seeks an order directing the Secretary to "take action in light of a September 2012 Notice of Disagreement." The petitioner states that he received correspondence from VA in January 2014 that stated that the petitioner elected to have a decision review officer (DRO) process handle his appeal.

This Court has authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). However, "[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *see also Lamb v. Principi*, 284 F.3d 1378, 1384 (Fed. Cir. 2002) ("[E]xtraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial." (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953))). Before the Court may issue a writ, three conditions must be satisfied: (1) The petitioner must demonstrate that he lacks adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004) (citing *Kerr*, 426 U.S. at 403); *Erspamer v. Derwinski*, 1 Vet.App. 3, 9 (1990).

Although the Court understands the petitioner's frustration, "[t]he delay involved . . . must be unreasonable before a court will inject itself into an administrative agency's adjudicative process" and "the mere passage of time in reviewing a matter does not necessarily constitute" unreasonable delay. *Bullock v. Brown*, 7 Vet.App. 69, 69 (1994) (per curiam order); *see also Nash v. West*,

11 Vet.App. 91, 93 (1998) (en banc). The petitioner has failed to demonstrate VA delay so extraordinary that it amounts to an arbitrary refusal by the Secretary to act. *See Costanza v. West*, 12 Vet. App. 133 (1999). While it appears that VA may have failed to respond to three inquiries, the petitioner did receive a response in January 2014. The Court concludes that the petitioner has not demonstrated a clear and undisputable right to the writ, and the Court will deny the petition. However, the petitioner is free to once again petition this Court for a writ of mandamus compelling VA to act if VA processes the claims in so untimely a manner as to constitute an arbitrary refusal to act. Here, the Court is not convinced that the delay is the result of anything other than an overburdened system.

Upon consideration of the foregoing, it is

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

DATED: May 5, 2014

BY THE COURT:

A handwritten signature in black ink, appearing to read "William A. Moorman", with a stylized, flowing script.

WILLIAM A. MOORMAN
Judge

Copies to:

Daniel G. Krasnegor, Esq.

VA General Counsel (027)