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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-1264

LARRY E. HAMBLIN, PETITIONER,

v.

SLOAN D. GIBSON,
ACTING 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 April 29, 2014, the petitioner filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus to compel the Secretary to, inter alia, (1) provide a statement of accounting for unawarded retroactive benefits and to make retroactive payments, and (2) act on his claims that require readjudication pursuant to a May 2013 provisional rating decision. On May 23, the Court found that the first part of the petition did not warrant entitlement to the writ, but ordered that the Secretary respond to the second part of the petition, and specifically address (1) why the VA regional office (RO), Office of General Counsel (OGC), and Under Secretary of Benefits (USB) had not responded to the petitioner's letters, (2) why the Secretary stated in response to the petitioner's previous petition that the USB was the appropriate official to contact regarding delays, when the USB was not responding to the petitioner's inquiries, and (3) what action the Secretary will take to ensure timely responses to veterans' inquiries regarding the status of their claims so that petitions for mandamus are not necessary when there is an appearance of delay that could be improper.

In his response, the Secretary noted – as to the first question – that ROs have been focusing their efforts on claim adjudication to reduce the claims backlog in the VA system, such that responses to claimant inquiries are at times delayed. The Secretary specifically chronicled the petitioner's inquiries in the last year and noted the actions that were undertaken in response to his inquiries. The Secretary argued that the delayed actions and responses reflect difficulties associated with an overburdened system, rather than an arbitrary refusal to respond. *See Stratford v. Peake*, 22 Vet.App. 313, 314 (2008) (per curiam order) (mandamus relief warranted if the "delay is so extraordinary, given the demands on and resources of the Secretary, that it is equivalent to an arbitrary refusal by the Secretary to act," rather than merely being the product of a burdened system).

As to the second question, although he admitted that it is not clear what happened to the claim inquiries sent by the petitioner's counsel to the USB, the Secretary reiterated that the USB is an appropriate contact regarding delayed claims, as well as the Veterans Service Center manager (VSCM) at the relevant RO or the director of the RO. The Secretary further noted that the petitioner's counsel was in receipt of a specific rating official's telephone number, which he could have called, but did not, according to the VSCM's review of the claims file for telephone reports of contact, which are kept in the normal course of business.

As to the third question, the Secretary explained that new procedures are being implemented this year to better account for and respond to claimant inquiries, including (1) the Centralized Mail program that electronically converts all compensation correspondence, in order to hasten the accessibility of that correspondence to rating officials, (2) the Digits-to-Digits project, which will allow electronic submission of claim data and attachments, thus reducing the amount of paper mail received and improving rating officials' responsiveness, and (3) expansion of the Stakeholder Enterprise Portal, which will allow attorneys to check claims status without submitting correspondence.

As to the instant petition, the Secretary noted with supporting documentation that the claims requiring readjudication in the May 2013 provisional rating decision now have been readjudicated in a May 30, 2014, rating decision. The Secretary did not provide a reason for the delay in readjudicating these claims, but asserted that the relief sought by the petitioner has been afforded and that the petition should be dismissed as moot.

Although the May 30, 2014, rating decision readjudicated the petitioner's claims, the readjudication was based on May 2013 examinations, *see* Secretary's Response, App'x at 8, and the Secretary proffers no explanation why it took a year to apply the results of those examinations in an initial rating decision if the RO has been focusing on reducing claims backlog. The Secretary appropriately devoted the majority of his response to the Court's questions regarding claimant inquiries, but another troubling issue underlying this case is that the May 2013 provisional rating decision was issued in response to a petition, and it took another petition for a May 2014 rating decision to be issued. Despite the "actions" taken in response to the petitioner's inquiries, the RO has adjudicated the petitioner's claims at issue only after a petition has been filed, which creates a perception that incentivizes the filing of petitions and burdens the Court. Although sanctions are not appropriate at this point, *see Pousson v. Shinseki*, 22 Vet.App. 432, 436 (2009) (noting Court's authority to impose sanctions), the failure of the USB and RO staff to respond to claimant inquiries and the rendering of decisions only after a petition has been filed are two overly-common practices that warrant focused leadership. To this end, the Clerk of the Court will be directed to send a copy of this order directly to Acting Secretary Gibson. As new procedures are being implemented to decrease the delay in claims adjudication and improve responsiveness to correspondence, it is expected that the delays in claims adjudication will be decreased and that responsiveness to correspondence will be improved.

As to the instant petition, however, the submitted evidence reflects that the Secretary has, acted on the petitioner's claims at issue in a May 30, 2014, rating decision, rendering this part of the petition moot. *See Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order) (when the relief sought by a petition for extraordinary relief has been afforded, the petition is moot); *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) ("When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction.").

On consideration of the foregoing, it is

ORDERED that the Clerk of the Court send a copy of this order directly to Acting Secretary Gibson. It is further

ORDERED that the part of the April 29, 2014, petition for extraordinary relief in the nature of a writ of mandamus to compel the Secretary to act on the petitioner's claims that require readjudication pursuant to a May 2013 provisional rating decision is DISMISSED as moot.

DATED: June 23, 2014

BY THE COURT:



BRUCE E. KASOLD
Chief Judge

Copies to:

Theodore C. Jarvi, Esq.

VA General Counsel (027)