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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-2595

WILLIAM D. MYERS, PETITIONER,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before BARTLEY, *Judge*.

ORDER

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

On August 6, 2014, William D. Myers filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus. Mr. Myers asserted that a writ of mandamus is necessary to compel the Nashville VA regional office (RO) to pay him funds wrongfully withheld from his disability compensation payments to offset separation pay he received prior to being awarded disability compensation. Specifically, he asserted that, in February 2006, the RO began withholding all disability compensation payments to recoup the \$5,155.02 he received in separation pay, but ended up erroneously withholding \$15,465.06. Petition at 2-3, Exhibits (Exhs.) A, B, E. According to Mr. Myers, he sent the RO numerous requests for an accounting, but as of the date of this petition the RO had not replied. *See id.* at 3-4, Exhs. F-K. He therefore requested a writ to compel the RO to provide an accounting of his disability compensation payments and to pay any wrongfully withheld funds, along with interest and attorney fees. *See id.* at 1.

On August 20, 2014, Mr Myers filed a supplement to his original petition, which stated that, on August 15, 2014, the RO directly deposited \$5,155.02 into his account. *See* Supplement at 1, Exh. L. He therefore amended his initial petition to request that the Court issue a writ to compel the RO to pay him the remainder of the wrongfully withheld payments, which he calculated to be \$5,155.02, plus interest and attorney fees. *See id.* at 1.

On August 25, 2014, the Court ordered the Secretary to respond to the allegations in Mr. Myers's petition. On September 23, 2014, the Secretary filed his response, asserting that the Court should deny the petition because Mr. Myers had been granted the relief sought therein. Specifically, the Secretary confirmed that, on August 12, 2014, the RO had reviewed Mr. Myers's disability compensation payment history, determined that an additional \$5,155.02 had been wrongfully

withheld from those payments, and deposited that amount into the petitioner's bank account. Secretary's Response (Resp.) at 3, Exh. at 1. The Secretary further stated that, after he contacted the RO to respond to this petition, the RO did a second accounting and realized that it had originally withheld the proper amount from the petitioner's disability compensation payments and that the August 2014 payment was therefore made in error. *Id.* Accordingly, on September 17, 2014, the RO issued an administrative decision finding that Mr. Myers had been overpaid by \$5,155.02, he was not at fault in creating overpayment, and the overpayment was not recoverable by VA because it was solely the result of administrative error. *Id.* at 3-4, Exh. at 6-8. With respect to the other relief requested by the petitioner, the Secretary asserted that an award of attorney fees was not appropriate because Mr. Myers would not qualify as a prevailing party under the Equal Access to Justice Act and that an award of interest was not warranted because the RO "actually negated the recoupment of his separation pay by the August 2014 payment." *Id.* at 5-6.

On September 26, 2014, Mr. Myers filed a reply to the Secretary's response, which implicitly accepted the RO's accounting and agreed that he had now been provided the relief requested in his petition and that an award of attorney fees was inappropriate. Petitioner's Reply at 1. He therefore urged the Court to deny his petition as moot, but not before reiterating that he had been seeking that relief since 2011 and that VA did not act on any of his requests until after he had filed his petition in August 2014. *Id.*

This Court adheres to the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution. *See Mokal v. Derwinski*, 1 Vet.App. 12, 13-15 (1990). When the relief requested in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order); *see also Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam) ("When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction."). Because Mr. Myers has been afforded the relief requested in his petition, albeit belatedly, and has otherwise waived his request for attorney fees and interest, there is no continuing case or controversy before the Court. Thus, contrary to the parties' assertions, the proper remedy is to dismiss, not deny, the petition. *See Thomas*, 9 Vet.App. at 270-71; *Bond*, 2 Vet.App. at 377.

Before doing so, however, the Court feels compelled to comment on the RO's troubling practice of not responding to Mr. Myers's requests for an accounting until he filed his petition with the Court. Documents appended to the Secretary's response indicate that, when Mr. Myers first requested an accounting in October 2011, the RO "felt no action was necessary" and "filed the correspondence down in the veteran's claims folder" because "it was determined [that] the veteran's separation pay had been properly recoup[ed]." Secretary's Resp., Exh. at 7. The documents also indicate that, although Mr. Myers "continued to submit several letters" requesting an accounting (*id.*), the RO did not take any action on those letters until "[a]fter receiving notice of the petition" in August 2014 (*id.*, Exh. at 1). Had the RO simply notified Mr. Myers in October 2011 of its determination that the original recoupment was valid, he could have appealed that adverse determination and been spared years of delay and unnecessary litigation. The same is true for all of his subsequent requests, which Mr. Myers very reasonably concluded had been ignored by the RO.

By silently denying Mr. Myers's request, the RO deprived him of the right to appeal its adverse recoupment determination and precluded him from meaningfully participating in the adjudication process. There is simply no place for such artifice in the veterans benefits system, and no claimant should have to resort to a petition for a writ of mandamus to obtain a simple response to correspondence. The Court trusts that VA will take this opportunity to reevaluate its practices regarding claimant correspondence and will begin timely responding to such correspondence in the future.

Upon consideration of the foregoing, it is

ORDERED that Mr. Myers's petition for extraordinary relief in the nature of a writ of mandamus is DISMISSED as moot.

DATED: October 7, 2014

BY THE COURT:



MARGARET BARTLEY
Judge

Copies to:

J. Myers Morton, Esq.

VA General Counsel (027)