Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-2504

THOMAS MEISSGEIER, PETITIONER,

V.

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

Before LANCE, *Judge*.

O R D E R

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

On July 21, 2016, the petitioner, through counsel, filed a petition for extraordinary relief in the nature of a writ of mandamus, asserting that VA's delay in adjudicating his case "violates the Due Process Clause of the Fifth Amendment to the United States Constitution and the Secretary's statutory duties" and requesting the Court "impose a remedy sufficient to address these violations." Petition at 1. On July 27, 2016, the petitioner filed a motion to consolidate this case with 16 other petitions:

Scyphers v. McDonald, U.S. Vet. App. No. 16-2493 (Petition filed July 21, 2016);
Rose v. McDonald, U.S. Vet. App. No. 16-2494 (Petition filed July 21, 2016);
Aktepy v. McDonald, U.S. Vet. App. No. 16-2495 (Petition filed July 21, 2016);
Blakely v. McDonald, U.S. Vet. App. No. 16-2496 (Petition filed July 21, 2016);
Curry v. McDonald, U.S. Vet. App. No. 16-2497 (Petition filed July 21, 2016);
Daniels v. McDonald, U.S. Vet. App. No. 16-2498 (Petition filed July 21, 2016);
Hall v. McDonald, U.S. Vet. App. No. 16-2499 (Petition filed July 21, 2016);
Jean v. McDonald, U.S. Vet. App. No. 16-2500 (Petition filed July 21, 2016);
Keefe v. McDonald, U.S. Vet. App. No. 16-2501 (Petition filed July 21, 2016);
Martin v. McDonald, U.S. Vet. App. No. 16-2502 (Petition filed July 21, 2016);
Matthews v. McDonald, U.S. Vet. App. No. 16-2503 (Petition filed July 21, 2016);
Miller v. McDonald, U.S. Vet. App. No. 16-2505 (Petition filed July 21, 2016);
Mote v. McDonald, U.S. Vet. App. No. 16-2506 (Petition filed July 21, 2016);
Myers v. McDonald, U.S. Vet. App. No. 16-2507 (Petition filed July 21, 2016);
Punt v. McDonald, U.S. Vet. App. No. 16-2510 (Petition filed July 21, 2016); and
Rhodes v. McDonald, U.S. Vet. App. No. 16-2511 (Petition filed July 21, 2016).

The Secretary filed a response opposing to the petitioner's motion to consolidate on August 10, 2016, and the petitioner filed a reply on August 15, 2016.

"In the interest of judicial economy, matters pending before the Court may be consolidated by order of the Court sua sponte or on motion of a party." Court's Internal Operating Procedures IX(b); *see* U.S. VET. APP. R. 21(c) ("Consolidated Petitions"). "Any motion to consolidate must assert why consolidation is appropriate . . . ." U.S. VET. APP. R. 3(e).

In his motion to consolidate, the petitioner contends that his case "involves the same fundamental shortcomings regarding the Secretary's performance of his duties" as the other 16 petitions. Petitioner's Motion to Consolidate at 1. Specifically, he contends that consolidation is warranted, as each of the petitions "assert[s] that the average four-year delay in handling appeals for veterans' benefits claims violates the Due Process Clause of the Constitution and is contrary to the statutory obligations of the Secretary of Veterans Affairs." *Id.* The Secretary responds that, as each petition turns on different facts, judicial efficiency would not be served by consolidating these cases. *See generally* Secretary's Response.

The Court is not convinced that consolidation is warranted with respect to this case. The petitioner's sole argument in support of consolidation is that the 17 petitions at issue involve the same legal argument: that VA's delay violates its Constitutional and statutory duties. The petitioner, however, does not explain how the facts of this case weigh in favor of consolidation. Indeed, the petition provides *no* facts related to this case or to 14 of the other 16 petitions. Rather, it sets forth only the facts in *Scyphers*, No. 16-2493, and *Rose*, No. 16-2494, as well as a terse contention that those cases are "emblematic" of the facts in the other petitions.[1] *See* Petition at 13-17; Petitioner's Motion to Consolidate at 2; *cf.* U.S. VET. APP. R. 21(a)(2) (requiring petitions to state, inter alia, "the facts necessary to understand the issues presented by the petition").

Absent some *specific* argument regarding why the facts of this case warrant consolidation, the Court is not persuaded that consolidation would best serve the interests of judicial economy. The Court will, therefore, deny the petitioner's motion to consolidate with respect to this case and to 14 other petitions: *Aktepy*,No. 16-2495; *Blakely*, No. 16-2496; *Curry*, No. 16-2497; *Daniels*, No. 16-2498; *Hall*, No. 16-2499; *Jean*, No. 16-2500; *Keefe*, No. 16-2501; *Martin*, No. 16-2502; *Matthews*, No. 16-2503; *Miller*, No. 16-2505; *Mote*, No. 16-2506; *Myers*, No. 16-2507; *Punt*, No. 16-2510; and *Rhodes*, No. 16-2511. With respect to the issue of consolidating the remaining petitions, *Scyphers*, No. 16-2493, and *Rose,* No. 16-2494, the Court will issue an order in due course.

Upon consideration of the foregoing, it is

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[1] Assuming that the facts of those petitions are representative of the other 15 petitions that are the subject of the petitioner's motion to consolidate, it is not clear why a stay of proceedings in this case pending the resolution of those cases, rather than consolidation, would not equally serve judicial economy.

ORDERED that the petitioner's July 27, 2016, motion to consolidate this case with 16 other petitions is DENIED.

DATED: September 14, 2016

BY THE COURT:

ALAN G. LANCE, SR.
Judge

Copies to:

John A. Chandler, Esq.

VA General Counsel (027)