

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 14-2719

CARL E. KILGORE,

PETITIONER,

V.

ROBERT A. McDONALD,
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 August 15, 2014, the petitioner, Carl E. Kilgore through counsel, filed a petition for extraordinary relief in the nature of a writ of mandamus. By way of background, the petitioner asserts that a March 7, 2011, Board of Veterans' Appeals (Board) decision granted him Total disability Rating Based on Individual Unemployability (TDIU) as well as service connection for coronary artery disease. The Board decision was appealed to this Court, and the parties entered into a joint motion for partial remand, agreeing that the service-connected heart condition may impact the effective date for TDIU. The matter of an appropriate effective date for TDIU was then remanded to the Board and subsequently to the VA Nashville regional office (RO). The petitioner asserts that the RO has failed to act on his May 1, 2012, Notice of Disagreement (NOD), which was filed in response to an April 2, 2012, RO decision that assigned staged rating and effective dates for the heart condition. VA confirmed receipt of the NOD and petitioner subsequently requested review by a Decision Review Officer (DRO) on July 13, 2012. On October 26, 2012, the Board issued a remand decision directing the RO to refer the case to the Director of the Compensation and Pension Service for extra-schedular consideration for TDIU prior to March 2, 2009.

The petitioner states that he repeatedly inquired about the status of his NOD, but was informed that the RO had yet to assign a DRO to the case as of June 3, 2014, despite multiple lapsed suspense dates. Petition at 9. The petitioner requests that VA immediately issue a DRO decision or a Statement of the Case regarding the claims listed on his NOD. *Id.* at 3. The petitioner also requests that VA comply with the Board's October 26, 2012, remand order. *Id.* at 12.

On consideration of the foregoing, it is

ORDERED that the Secretary, within 14 days of the date of this order, file a response to the petition, including information regarding the status of the petitioner's claims at the Nashville RO.

DATED: September 2, 2014

BY THE COURT:



WILLIAM A. MOORMAN
Judge

Copies to:

Robert V. Chisholm, Esq.

General Counsel (027)