

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-3006

FRANK L. ROBINSON, III,

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 September 10, 2014, veteran Frank L. Robinson, III, filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus. The petition alleges that the St. Petersburg VA regional office (RO)—following a December 2010 Board of Veterans' Appeals (Board) decision that granted service connection for a psychiatric disorder and remanded the issue of entitlement to a total disability evaluation based on individual unemployability (TDIU)—issued a January 2011 rating decision assigning staged evaluations for the psychiatric disorder and granting TDIU. Petition at 3 & Appendix at 1-24. The petition further alleges that Mr. Robinson filed a timely, December 2011 Notice of Disagreement (NOD) as to the disability evaluations and effective dates assigned. *Id.* at 4 & Appendix at 25. Last, the petition indicates that, despite numerous enquiries from the veteran's counsel and a statement of financial hardship, the RO has not yet issued a Statement of the Case (SOC) but continues to advise Mr. Robinson that his NOD will be addressed in due course. *See id.* at 4-7 & Appendix at 26-80.

Mr. Robinson asks the Court to issue a writ of mandamus ordering the Secretary, via the St. Petersburg RO, to issue an SOC in response to his December 2011 NOD. *Id.* at 3. He argues that he meets the criteria for this relief, *see Freeman v. Shinseki*, 24 Vet.App. 404, 408-09 (2011) (outlining requirements), and that the delay of, in this case, almost three years, amounts to an arbitrary refusal to act. *See* Petition at 8-11; *see also* 38 U.S.C. § 7105 (stating that an RO "shall prepare" an SOC in response to an unresolved NOD); *Vargas-Gonzalez v. Principi*, 15 Vet.App. 222, 225-30 (2001) (holding that remand by the Board of any element of a claim requires expeditious treatment of all elements of that claim).

In light of the allegations in Mr. Robinson's petition, and pursuant to this Court's Rules of Practice and Procedure, the Court will defer ruling and order the Secretary to file an answer to the

petition. *See* U.S. VET. APP. R. 21(d).

Upon consideration of the foregoing, it is

ORDERED that the Secretary, within 21 days from the date of this order, file an answer to Mr. Robinson's petition for extraordinary relief in the nature of a writ of mandamus, addressing the specific allegations contained therein and providing any documentation pertinent to the Court's resolution of this matter.

DATED: September 30, 2014

BY THE COURT:



MARGARET BARTLEY
Judge

Copies to:

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VA General Counsel (027)