

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-1153

ROBERT J. HARKO,

PETITIONER,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before ALLEN, *Judge*.

ORDER

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

Robert Harko has filed a petition for extraordinary relief. He asks the Court to order the Secretary to complete the development the Board of Veterans' Appeals ordered in a November 30, 2017, remand order. Petitioner alleges that he and his counsel are not aware of any action VA has taken on this remand order. In addition, he alleges that he sent letters to the regional office handling the remand on March 29, 2019, May 15, 2019, and July 1, 2019, but has not received any response. This is troubling if true.

Pursuant to the All Writs Act, this Court has authority to issue extraordinary writs in aid of its jurisdiction. 28 U.S.C. § 1651(a). *See Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998). However, "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976). Three conditions must be met before the Court may issue a writ: (1) petitioner must demonstrate that he lacks adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004).

Based solely on the petition, the Court is unable to determine whether the issuance of a writ compelling the action petitioner seeks is warranted in this matter. Accordingly, it is

ORDERED that within 30 days of this order, the Secretary file a response to the petition addressing petitioner's claims. In his response, the Secretary shall specifically address petitioner's contention that the RO has failed to respond to any of requests for information concerning the status of his claims.

DATED: February 20, 2020

BY THE COURT:



MICHAEL P. ALLEN
Judge

Copies to:

Colin E. Kemmerly, Esq.

VA General Counsel (027)