

*Not published*

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 20-1187

SARAH E. NAPORA,

PETITIONER,

v.

ROBERT L. WILKIE,  
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before MEREDITH, *Judge*.

**ORDER**

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

On February 18, 2020, the petitioner and personal representative of veteran Roy M. Scott's estate, Sarah E. Napora, through counsel filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to pay to the veteran's estate past-due benefits that were transferred to the veteran's bank account prior to his death, but subsequently returned to VA by the financial institution or, in the alternative, to issue a decision on the issue. Petition (Pet.) at 1-3, 8; *see* Exhibits (Ex.) A, G. The petitioner explains that, on June 3, 2016, VA issued a rating decision dated May 31, 2016, which implemented a Board of Veterans' Appeals decision that granted service connection and assigned a 100% disability rating effective August 30, 2007. Pet. at 2; *see* Ex. C-D. She asserts, upon information and belief, that past-due benefits were transferred to the veteran's bank account on June 28, 2016; the veteran died on June 30, 2016; the funds posted to the veteran's account on July 1, 2016; and the financial institution returned the funds to VA in January 2017. Pet. at 2-3; *see* Ex. F-G.

The petitioner further asserts that, despite several requests from May to December 2019, VA has not returned the past-due benefits to the veteran's estate nor issued a decision on the petitioner's request for recoupment.<sup>1</sup> Pet. at 3-4; Ex. G-H. She contends that, as the personal representative of the estate, her time to file a Final Accounting and Petition for Discharge with the Circuit Court for Volusia County, Florida, expires on March 1, 2020, but that she is unable to complete that accounting due to this outstanding issue with VA. Pet. at 3; *see* Ex. I-J. She thus alleges that she lacks alternative means to obtain the desired relief. Pet. at 4-6.

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<sup>1</sup> The Court notes that on December 19, 2019, the VA regional office (RO) in Columbia, South Carolina, informed the petitioner's counsel that her status inquiry was forwarded to the RO in St. Petersburg, Florida, which has jurisdiction over the veteran's records. *See* Pet. at 3; Ex. K. However, the attachments to the petition also reflect that May, July, and September 2019 letters were sent directly to the Director of that office and, as indicated above, the petitioner did not receive a response. *See* Ex. G-H.

This Court has the authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *See Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998). This includes writs of mandamus to "compel action of the Secretary unlawfully withheld or unreasonably delayed." 38 U.S.C. § 7261(a)(2); *see Martin v. O'Rourke*, 891 F.3d 1338, 1343 (Fed. Cir. 2018). However, "[t]he 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). Accordingly, three conditions must be met before a court may issue a writ: (1) The petitioner must lack adequate alternative means to attain the desired relief, thus ensuring that the writ is not used as a substitute for an appeal; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004).

Presently, the Court cannot determine whether issuance of a writ of mandamus is justified in this case. Accordingly, it is

ORDERED that the Secretary, within 30 days after the date of this order, file a response to the petition.

DATED: February 24, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Amanda L. Meredith', with a stylized, flowing script.

AMANDA L. MEREDITH  
Judge

Copies to:

Eric A. Gang, Esq.

VA General Counsel (027)