

*Not published*

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

No. 20-1518

WILFRED D. BEAN,

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 March 2, 2020, the petitioner, Wilfred D. Bean, through counsel filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to adjudicate his disability compensation claim for anxiety and depression, which he alleges has been pending since 1997. Petition (Pet.) at 1, 6-7, 14-15. He makes the following allegations in support of his petition: He filed a disability compensation claim for post-traumatic stress disorder (PTSD) in 1997, Pet. at 2, Record (R.) at 828-31<sup>1</sup>; his service records and VA examination reflect diagnoses of anxiety reaction, major depressive disorder, and generalized anxiety, Pet. at 2, R. at 69, 70, 731-34; in July 1997, a VA regional office (RO) denied disability benefits for PTSD and, although the RO noted diagnoses of depression and generalized anxiety disorder, it did not address whether he was entitled to benefits for those conditions, Pet. at 2, R. at 727-29; he was ultimately awarded disability benefits for PTSD effective August 2006, the date of an informal claim for an acquired psychiatric disorder, including depression and PTSD, Pet. at 2-4, R. at 498-501, 644; he twice argued that he had a pending unadjudicated claim from 1997, but in a May 2012 Board of Veterans' Appeals (Board) decision, the Board found no basis for an earlier effective date for PTSD and informed him that the appropriate way to assert that he had a pending claim would be through a motion for revision based on clear and unmistakable error (CUE), Pet. at 4-5, R. at 321, 441-43, 473-74; in July 2012, he again asserted that he had a pending claim, Pet. at 5, R. at 296, but the RO treated his CUE motion as a freestanding earlier effective date claim, Pet. at 5-6, R. at 237-38;

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<sup>1</sup> The Court notes that the petitioner also has an appeal pending before the Court under docket #19-4116, and that the pages to the record referenced herein, and the documents attached to the petition, are from the record before the agency in that appeal. *See* Pet. at 1 n.1.

and the Board, in May 2019, dismissed his appeal without addressing whether he had a claim pending from 1997, Pet. at 6, R. at 5-9.<sup>2</sup>

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). When delay is alleged as the basis for a petition, "the overarching inquiry in analyzing a claim of unreasonable delay is 'whether the agency's delay is so egregious as to warrant mandamus.'" *Martin*, 891 F.3d at 1344 (quoting *Telecomms. Research & Action Ctr. v. FCC (TRAC)*, 750 F.2d 70, 79 (D.C. Cir. 1984)).

Here, the petitioner asserts that the Secretary's delay in adjudicating his 1997 claim is *per se* unreasonable. Pet. at 7. He further asserts that the *TRAC* factors weigh in his favor. *See id.* at 10-14. However, the Court cannot presently 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: March 10, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Amanda L. Meredith", with a stylized flourish at the end.

AMANDA L. MEREDITH  
Judge

Copies to:

Jennifer A. Zajac, Esq.

VA General Counsel (027)

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<sup>2</sup> On March 3, 2020, the petitioner filed a motion to stay proceedings in his appeal of the May 2019 Board decision pending disposition of the current petition. The Court has not yet acted on that motion. *See Bean v. Wilkie*, U.S. Vet. App. No. 19-4116.