

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2110

ROLAND C. JOHNSON, SR.,

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 23, 2020, the pro se petitioner, Roland C. Johnson, Sr., filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to issue favorable rating decisions regarding issues that were remanded in a November 2018 Board of Veterans' Appeals (Board) remand order. Petition (Pet.) at 3-4, 14. He asserts that, in November 2018, the Board remanded issues of entitlement to disability compensation for hypertension, erectile dysfunction, renal nephropathy, diabetes mellitus, peripheral neuropathy of the bilateral upper and lower extremities, muscle group XXI damage, and retention of a metallic clip; compensation pursuant to 38 U.S.C. § 1151 for rib resection, obstructive and restrictive lung disorder, retention of a metallic clip, and chronic kidney dysfunction; special monthly compensation for the loss of use of a creative organ; and an increased initial disability rating from June 6, 2001, for a knee disorder. Pet. at 3, 8; Exhibit C. He further contends that, from April 2019 to September 2019, the VA website showed the status of his claims as being granted; on September 3, 2019, he was informed that the VA regional office appeals team reversed the grants of benefits and would issue Supplemental Statements of the Case; and on September 10, 2019, the VA website showed that he had withdrawn his appeal. Pet. at 8-11; Exhibits J, K, and L. He avers that VA has unreasonably delayed a decision on his claims, and, because remand orders are to be afforded expeditious treatment, he is clearly entitled to the writ and lacks alternative means to obtain the relief sought. Pet. at 3, 13.

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)). In *TRAC*, the U.S. Court of Appeals for the District of Columbia Circuit identified six factors relevant to that inquiry. 750 F.2d at 80.

Here, the petitioner asserts that he is clearly entitled to the writ and that he lacks adequate alternative means to obtain relief. Pet. at 13. 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 26, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Roland C. Johnson, Sr.

VA General Counsel (027)