

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2626

DARNELL TREADWAY,

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 April 9, 2020, the pro se petitioner, Darnell Treadway, filed a petition for extraordinary relief in the form of a writ of mandamus compelling a VA regional office (RO) to reopen appeals of entitlement to disability compensation for a left leg condition, bilateral hip disability, and bilateral ankle disability; and entitlement to an increased disability rating for adjustment disorder with anxious stress. Petition (Pet.) at 5-9, 11-13, 17¹. He makes the following assertions in support of his petition: He filed a VA Form 9 with respect to those claims and his appeal was merged with a separate appeal before the Board of Veterans' Appeals (Board), Pet. at 5, 8, 11-13; in a November 2019 decision, the Board noted that he had perfected an appeal of those matters, but found that they were not currently before the Board and would be addressed in a subsequent decision, Pet. at 17; he was informed that his appeal was "mixed up" because the RO closed the appeal before merging it with the appeal before the Board, Pet. at 9; and he attempted to resolve the matter by writing letters to various VA parties, his congressman, and his attorney, Pet. at 4. He avers that he has not been provided due process in the appeal procedure and that VA has delayed the adjudication of his claims. Pet. at 6-7.

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

¹ The Court's references to the petition refer to the overall pagination of the Portable Document Format (PDF) document.

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 entitled to the writ because the RO refuses to act on his VA Form 9 and ensure that his appeal is docketed at the Board. Pet. at 8. 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: April 17, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Darnell Treadway

VA General Counsel (027)