

IN THE UNITED STATES COURT OF  
APPEALS FOR VETERANS CLAIMS

DARRELL SAULSBERRY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Vet. App. No. 20-1053
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Respondent.	)	

**RESPONDENT'S RESPONSE TO THE PETITION FOR WRIT  
OF MANDAMUS AND COURT'S ORDER, DATED FEBRUARY 25, 2020**

Pursuant to U.S. Vet.App. Rule 21(b) and the Order of this Court, dated February 25, 2020, Respondent, Robert L. Wilkie, Secretary of Veterans Affairs (Respondent), hereby responds to the petition for a writ of mandamus and advises the Court of action undertaken by VA regarding Petitioner's claims adjudicated in his June 9, 2017, rating decision.<sup>1</sup> For the reasons set forth below, the Court should dismiss the petition.

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<sup>1</sup> The rating decision took the following actions relevant to this Writ: 1) granted entitlement to service connection for degenerative joint disease (DJD) of the right hip, limitation of flexion at 0% disabling, effective March 16, 2017; 2) granted entitlement to service connection for DJD right hip, limitation of thigh at 0%, effective March 16, 2017; 3) continued evaluation of osteochondroma of right knee at 30%; 4) continued evaluation of DJD of the right hip, limitation of extension of the thigh at 10% disabling; and 5) denied entitlement to total disability for individual unemployability (TDIU). The RO's proposed reduction of the evaluation for Petitioner's left knee osteoarthritis is not the subject of this Writ.

## **PERTINENT FACTS AND BACKGROUND**

In Petitioner's Petition for a Writ of Mandamus (Petition), he requested that the Court issue a mandate to the Secretary of Veterans Affairs (Secretary) to process his October 13, 2017 Notice of Disagreement (NOD) with respect to "five appeals that were ripe for adjudication" contained in a June 9, 2017, rating decision and make a decision on his claims. (Petition at 1, 12). On April 2020, a Decision Review Officer (DRO) sent a letter to Petitioner and his counsel notifying them that the DRO will review Petitioner's case. Attachment (Attach) A. On April 14, 2020, Petitioner's counsel contacted undersigned counsel via email, stating:

In light of my recent phone conference with the DRO at the St. Petersburg RO, the April 9, 2020 letter sent to my client, and your representation that St. Petersburg has advised you that a DRO in the St. Paul, MN has been assigned to [Petitioner's] claims (because he was a former VA employee), I believe the writ has been rendered moot and the matter may be dismissed.

Attach B.

## **ARGUMENT**

Here, as noted above, Petitioner's claims that were subject to his Writ will be addressed by a DRO decision. (Attach A and B). Because VA issued the requested relief in the Writ and in light of Petitioner's counsel agreement as outlined above, Petitioner's Writ has been rendered moot. See *Thomas v. Brown*, 9 Vet.App. 269, 270 (1996) (per curiam order) (explaining that the Court lacks jurisdiction when there is no case or controversy or when a controversy becomes moot); *Chandler v. Brown*, 10 Vet.App. 175, 177 (1997) (per curiam order); *Mokal*

*v. Derwinski*, 1 Vet.App. 12, 15 (1990). As such, dismissal of the writ is appropriate.

**WHEREFORE**, Respondent, the Secretary of Veterans Affairs, hereby notifies the Court of the action on the matter underlying the petition for extraordinary relief, and moves the Court to dismiss the petition.

Respectfully submitted,

**WILLIAM A. HUDSON, JR.**  
Principal Deputy General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Carolyn F. Washington  
**CAROLYN F. WASHINGTON**  
Deputy Chief Counsel

/s/ Anthony D. Ortiz  
**ANTHONY D. ORTIZ**  
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(202) 632-7115

Attorneys for Appellee  
Secretary of Veterans Affairs

# ATTACHMENT A



## DEPARTMENT OF VETERANS AFFAIRS

April 9, 2020

DARRELL SAULSBERRY

[REDACTED]  
[REDACTED]  
[REDACTED]

In reply, refer to:  
317/DROC/RT  
File Number: [REDACTED]  
DARRELL  
SAULSBERRY

Dear Mr. SAULSBERRY:

We received your written disagreement with the Department of Veterans Affairs (VA) decision of June 12, 2017, in addition to your election of the Decision Review Officer (DRO) process to handle your appeal. This letter describes what happens next.

### **How Will VA Try to Resolve My Disagreement?**

This local VA office will try to resolve your disagreement through the Post-Decision Review Process. As part of this process, you elected to have a DRO assigned to your case.

### **How Does the Post Decision Review Process Work?**

**Complete review:** The DRO will review the materials in your VA claims folder, including evidence and arguments, and statements from your representative. This may lead the DRO to request additional evidence from you, your doctor or some other source. You may be asked to participate in an informal conference with the DRO to discuss your case.

**New decision:** The DRO may make a new decision. The DRO has the authority to grant benefits based on clear and unmistakable error, de novo review, or the receipt of new and material evidence. Should the DRO make a new decision, you will be notified of the decision and your appeal rights. If the DRO cannot resolve your disagreement, you will receive a Statement of the Case that is explained below.

### **What is a Statement of the Case?**

If we cannot grant your appeal based on the review and an examination of any additional evidence, we will then prepare a Statement of the Case (SOC) and send you a copy. The SOC will provide you with an explanation of the decision made on your case. The SOC will include a summary of the evidence, a citation to pertinent laws, a discussion of how these laws affect the decision, and a summary of the reasons for the decision. If you still do not agree with that decision and wish to continue your appeal, you need to submit a substantive appeal in response

File Number: [REDACTED]  
SAULSBERRY, DARRELL

to the SOC, so that your case can be sent to the Board of Veterans' Appeals. Instructions on how to file a substantive appeal will be provided in our letter notifying you of the decision.

## What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit [www.eBenefits.va.gov](http://www.eBenefits.va.gov) for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

## If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at <a href="https://iris.custhelp.va.gov">https://iris.custhelp.va.gov</a> .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Written Correspondence</i> .

In all cases, be sure to refer to your VA file number, [REDACTED].

File Number: [REDACTED]  
SAULSBERRY, DARRELL

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We sent a copy of this letter to your representative, JOHN V TUCKER, whom you can also contact if you have questions or need assistance.

Sincerely yours,

**Regional Office Director**

Enclosures: Where to Send Written Correspondence

cc: JOHN V TUCKER  
5235 16th Street North  
St. Petersburg, FL 33703-2611

# ATTACHMENT B

## **Ortiz, Anthony (OGC)**

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**From:** John Tucker <tucker@tuckerlawgroup.com>  
**Sent:** Tuesday, April 14, 2020 11:02 AM  
**To:** Ortiz, Anthony (OGC)  
**Cc:** Dana Anderson  
**Subject:** [EXTERNAL] Saulsberry Writ of Mandamus (20-1053)

Tony: In light of my recent phone conference with the DRO at the St. Petersburg RO, the April 9, 2020 letter sent to my client, and your representation that St. Petersburg has advised you that a DRO in the St. Paul, MN has been assigned to Mr. Saulsberry's claims (because he was a former VA employee), I believe the writ has been rendered moot and the matter may be dismissed.

John

**John V. Tucker**  
Disability & Life Insurance – ERISA – Veterans Service Connected Disability



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St. Petersburg, FL 33703-2611  
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John Tucker and Tucker Law Group, P.A. are "AV" rated through Martindale-Hubbell., the nation's most longstanding and recognized lawyer directory. An AV rating is the highest possible rating for legal ability and ethical standards given to a lawyer or law firm based upon peer reviews by lawyers and judges.

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