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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2346

VETERANS LEGAL ADVOCACY GROUP, 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.*

The Veterans Legal Advocacy Group filed a petition for extraordinary relief seeking to enjoin the Secretary from scheduling in-person VA compensation and pension examinations during the coronavirus pandemic. Petition at 1-2, 8. The petitioner asserted that, as of April 2, 2020, VA through its contractors—Quality, Timeliness, Customer Service and Logistics Health Incorporated—was scheduling in-person examinations in New York City and elsewhere, putting veterans, their families, and examiners at risk. *Id.* at 1-6. The petitioner thus requested that the Court order the Secretary to stop conducting in-person examinations, *id.* at 8, and filed a separate motion "to suspend the Court's rules to address this petition in as expedient a manner as possible," Apr. 2, 2020, Motion at 1.

The Court, on April 9, 2020, ordered the Secretary to file a response to the petition and concurrently ordered the petitioner to submit a supplemental memorandum of law. On April 10, 2020, the petitioner filed a motion to dismiss the petition. The petitioner averred that the petition was moot because VA and its contractors have ceased providing in-person examinations and indicated that examinations will not resume until 60 days after the end of the national emergency. Apr. 10, 2020, Motion at 1. The Court stayed proceedings pending further order of the Court.

On April 16, 2020, the petitioner filed an opposed motion to resume the litigation, which the Court will also construe as a request to withdraw the motion to dismiss. Apr. 16, 2020, Motion at 1. The petitioner maintained, contrary to its April 10, 2020, motion to dismiss, that the petition is not moot, explaining that counsel was contacted by another veteran who, on April 15, 2020, was scheduled for an in-person examination to be conducted June 8, 2020. *See id.*, Attachment at 1-2 (Veterans Evaluation Services (VES) examination notice). The petitioner thus requested that the Court resume proceedings and direct the parties to respond to the April 9, 2020, order. *Id.* at 1.

Pursuant to the Court's order, the Secretary responded to the motion to resume on April 17, 2020. The Secretary urges the Court to deny both the motion to resume litigation and the petition for extraordinary relief. Secretary's Response at 1-8. First, the Secretary maintains that the petitioner, a non-profit law firm, lacks direct standing to bring this action and has otherwise failed to provide any argument or support for the suggestion that it has third-party standing. *Id.* at 2-5.

Next, the Secretary contends that the petition is indeed moot. *Id.* at 6-8. In that regard, he explains as follows: On April 3, 2020, the Veterans Benefits Administration (VBA) Program Office instructed all VBA contract examination vendors to cease all in-person examinations; a temporary suspension notice was sent to all VBA contract vendors on April 4, 2020; VA subsequently learned that its vendor, VES, erroneously sent examination notices to veterans when in fact VES had intended only to reserve time slots for future examinations once the restrictions are lifted; VES is actively working to retract those letters and inform anyone who received a letter that the notice was sent in error; and neither VBA nor its vendors are conducting in-person examinations, but instead are entering placeholder time slots to resume examinations as quickly as possible once it is deemed safe to do so. *Id.* at 6-7. In support of these contentions, the Secretary attaches a declaration by Mary Glenn, Deputy Executive Director, Contract Medical Disability Examination Program Office, Compensation Service, confirming that all contract vendors have validated their compliance with the order to cease in-person examinations as well as a copy of the April 4, 2020, Temporary Suspension of In-Person Examinations due to COVID-19 Pandemic notice. *See id.* Attachments.

This Court has adopted the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution. *Aronson v. Brown*, 7 Vet.App. 153, 155 (1994). Where all relief sought by a petition for extraordinary relief has been afforded, the petition is moot. *See Chandler v. Brown*, 10 Vet.App. 175, 177 (1997) (per curiam order); *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order). Because the Secretary's April 17, 2020, response reflects that the relief sought has been granted, the petition for extraordinary relief in the form of a writ of mandamus is moot.

Upon consideration of the foregoing, it is

ORDERED that the petitioner's motion to resume the litigation is denied. It is further

ORDERED that the petitioner's motion to dismiss the petition for extraordinary relief in the form of a writ of mandamus is withdrawn. It is further

ORDERED that the petitioner's April 2, 2020, motion to suspend the Court's rules is denied as moot. It is further

ORDERED that the petitioner's April 2, 2020, petition for extraordinary relief in the form of a writ of mandamus is DISMISSED.

DATED: April 28, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Harold H. Hoffman, III, Esq.

VA General Counsel (027)