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

No. 20-1053

DARRELL SAULSBERRY, PETITIONER,

v.

ROBERT L. WILKIE,  
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

*Before FALVEY, Judge.*

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

On February 12, 2020, veteran Darrell Saulsberry filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus.

In his petition, he notes that on June 9, 2017, a VA regional office (RO) granted noncompensable ratings for degenerative joint disease (DJD) of the right hip with limitation of flexion and limitation of the thigh; denied a rating in excess of 30% for right knee osteochondroma, a rating in excess of 10% for DJD of the right hip with limitation of extension of the thigh, and a total disability rating based on individual unemployability (TDIU); and proposed to reduce his 40% left knee osteoarthritis rating to 10%. Petition (Pet.) at 3-4, Exhibit (Ex.) 1. On October 13, 2017, Mr. Saulsberry filed a Notice of Disagreement (NOD) as to all claims in the June 2017 RO decision. Pet. at 4, Ex. 2 (NOD specifically listing all six claims with which he disagreed).

On October 24, 2017, VA sent the veteran two letters. The first letter acknowledged receipt of the NOD and indicated the next steps of the appeal, including that a decision review officer (DRO) would review his case and may issue a new decision, or the RO would issue a Statement of the Case (SOC). The second letter informed him that his NOD as to the left knee rating reduction was premature because VA had not yet made the reduction. Pet. at 4, Ex. 3-4. Mr. Saulsberry asserts that, based on these letters, he assumed VA was processing the other five claims listed in his NOD that were not premature. Pet. at 5.

On September 19, 2019, VA sent the veteran a letter indicating that it had failed to send him notification of the June 2017 decision. Pet. at 5, Ex. 6. Mr. Saulsberry states that he was confused by this letter because he had received notification and had filed an NOD as to that decision. Pet. at 5. Thus, on October 8, 2019, he alerted VA that he had timely filed his NOD in

October 2017 and asked VA to decide the claims contained therein. Pet. at 5, Ex. 7 (he also attached the 2017 NOD). On October 20, 2019, Mr. Saulsberry called VA and was informed that his only pending appeals in the system were recently filed appeals unrelated to the 2017 NOD. Pet. at 6. On December 19, 2019, he again asked VA to decide the issues presented in his October 2017 NOD. Pet. at 6.

On December 24, 2019, VA sent Mr. Saulsberry a letter stating that "[o]n October 8, 2019[,] we received mail indicating that you would like us to review a claim we previously denied"; and instructing him that, "[i]n response to VA Form 21-0958 [NOD] received October 8, 2019," he had to file the proper form before VA would begin processing his request. Pet. at 6, Ex. 9. He asserts that he was again confused because it appeared that VA had construed his October 2019 letter inquiring about the status of his timely filed 2017 NOD to be an attempt to file a new appeal. Pet. at 6. On January 8, 2020, the veteran's counsel contacted VA and he avers that VA confirmed receipt of the NOD on October 16, 2017 (3 days after it was filed); noted the October 24, 2017, letter indicating that the NOD as to the left knee rating reduction was premature; and stated that the system showed no pending appeals for the other five claims addressed in the October 2017 NOD. *Id.*

Mr. Saulsberry argues that a writ is necessary to compel VA to properly process and act on the five non-premature claims addressed in his October 13, 2017, NOD—i.e., the right hip DJD (limitation of flexion, limitation of the thigh, and limitation of extension of the thigh), right knee osteochondroma, and TDIU claims.

On February 25, 2020, the Court ordered the Secretary to respond to the veteran's petition. On April 27, 2020, he filed his response, explaining that on April 9, 2020, VA sent a letter to Mr. Saulsberry notifying him that a DRO would review his case. Secretary's Resp. at 2; Attachment A (noting the veteran's NOD as to the June 2017 decision and his election of the DRO process to handle his appeal). He further stated that on April 14, 2020, the veteran's counsel sent him an email indicating that:

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[, RO] has been assigned to [Petitioner's] claims . . . I believe the writ has been rendered moot and the matter may be dismissed.

*Id.*; Attachment B. Therefore, the Secretary argues that, because VA issued the requested relief in the petition and considering Mr. Saulsberry's counsel's agreement, the petition has been rendered moot and should be dismissed. *Id.* at 2.

This Court adheres to the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution. *See Mokai v. Derwinski*, 1 Vet.App. 12, 13-15 (1990). When the relief requested in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order); *see also Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam) ("When there is no

case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction.").

Because VA has averred that a DRO will review Mr. Saulsberry's case, *see* Secretary's Resp. at 2; Attachment A, the veteran has been afforded the relief requested in his petition, as his counsel agrees in the April 14, 2020 email, *id.*; Attachment B. Therefore, because there is no continuing issue before the Court, we will dismiss the petition as moot. *See Thomas*, 9 Vet.App. at 270-71; *Bond*, 2 Vet.App. at 377.

Upon consideration of the foregoing, it is

ORDERED that Mr. Saulsberry's petition for extraordinary relief in the nature of a writ of mandamus is DISMISSED.

DATED: May 6, 2020

BY THE COURT:

A handwritten signature in blue ink, appearing to read "J. Falvey, Jr.", with a stylized flourish at the end.

JOSEPH L. FALVEY, JR.  
Judge

Copies to:

John V. Tucker, Esq.

VA General Counsel (027)