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**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 a number of issues that were remanded in a November 2018 Board of Veterans' Appeals (Board) remand order. Petition (Pet.) at 3-4, 14. He asserted that, from April 2019 to September 2019, the VA website showed the status of the remanded claims as being granted; on September 3, 2019, he was informed that the grants were reversed and that he would receive Supplemental Statements of the Case; and on September 10, 2019, the VA website showed that he had withdrawn his appeal.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.

The Secretary filed a response to the petition on April 27, 2020, outlining the actions VA has taken on the adjudication of the claims remanded in the November 2018 Board decision. Specifically, the Secretary avers that, pursuant to the Board's remand directives, the VA regional office (RO) obtained additional service and VA medical records, informed the petitioner that it was unable to obtain VA medical records pertaining to a January 1985 surgery, and requested that the petitioner submit a copy of his records. Secretary's Response at 3; Exhibits 3-6. The Secretary further avers that the petitioner submitted copies of VA medical records dated from January to February 1985. Secretary's Response at 3; Exhibit 7. Additionally, the Secretary asserts that on April 9, 2019, the RO granted the petitioner entitlement to a 100% rating for obstructive pulmonary disease with sleep apnea and entitlement to special monthly compensation (SMC) based on housebound criteria. Secretary's Response at 2; Exhibit 2. Last, the Secretary states that on April 8, 2020, the RO requested that the necessary VA examinations be scheduled and that the claims will be adjudicated in a timely manner after the examinations are completed. Secretary's Response at 3-4; Exhibit 8.

Based on the RO's development of the claims, the Secretary argues that "VA has taken appropriate action on [the p]etitioner's claims, and, as such, [he] has not demonstrated a clear and indisputable right to the writ of mandamus he seeks." Secretary's Response at 4. The Secretary further avers that, although "there was some delay in conducting the additional development in [the p]etitioner's claims, the RO has been actively and consistently taking the necessary steps to ensure that the Board's November 2018 remand directives have been satisfied." Secretary's Response at 6.

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).

Here, the Court cannot conclude that the petitioner has demonstrated a clear and indisputable right to a writ. *See Cheney*, 542 U.S. at 380-81. Rather, the Secretary's response reflects that the Board-ordered development is now underway: VA granted entitlement to a 100% rating for obstructive pulmonary disease with sleep apnea and to SMC and obtained the petitioner's service and VA treatment records. Secretary's Response at 2-3; Exhibits 1-7. At this time, the only remaining development is for VA to obtain the requested examinations regarding the pending claims. Secretary's Response at 3, Exhibit 8. In that regard, the Court notes that, in a separate petition before the Court, VA informed the Court that VA and all Veterans Benefits Administration contract examination vendors have ceased all in-person examinations during the COVID-19 national emergency. *Veterans Legal Advocacy Grp. v. Wilkie*, No. 20-2346, 2020 WL 2027775, at \*1 (Vet. App. Apr. 28, 2020).

In light of the recent developments, the Court will deny the petition. However, the Court notes that, if VA fails to take further action on the claims within a reasonable period, including completing the requested examinations within a reasonable time after resuming in-person examinations, the petitioner may return to the Court and file a new petition asking it to compel VA to act. *See DiCarlo v. Nicholson*, 20 Vet.App. 52, 56-57 (2006); *see also Martin*, 891 F.3d at 1345.

Accordingly, it is

ORDERED that the petitioner's March 23, 2020, petition for extraordinary relief in the form of a writ of mandamus is DENIED.

DATED: May 8, 2020

BY THE COURT:



AMANDA L. MEREDITH  
Judge

Copies to:

Roland C. Johnson, Sr.

VA General Counsel (027)