

Not published

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.*

Pending before the Court is the Veterans Legal Advocacy Group's May 19, 2020, motion for reconsideration or, in the alternative, panel review of the Court's April 28, 2020, order that dismissed as moot the petitioner's April 2, 2020, 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. In its motion, the petitioner asserts that, contrary to what the Secretary informed the Court on April 17, 2020, VA has continued to schedule in-person examinations. Motion at 1-5; *see* Secretary's Apr. 17, 2020, Response at 6-8 (maintaining that the petition was moot because 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; and, to the extent that veterans received notice of scheduled examinations, those notices were sent in error and steps were being taken to retract those letters).

Because the ultimate burden of establishing standing and jurisdiction rests with the petitioner, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 188-89 (1936); *Bethea v. Derwinski*, 2 Vet.App. 252, 255 (1992), on May 20, 2020, the Court ordered the petitioner to submit a supplemental memorandum of law addressing both issues before the Court acted on the pending motions. The petitioner responded that it has organizational and third-party standing to pursue the requested relief, alleging that VA's practices directly injure the petitioner, its members, and its clients, in distinct but concrete ways.

Upon consideration of the foregoing, it is

ORDERED that the Secretary, within 7 days after the date of this order, file a supplemental memorandum of law, not exceeding 20 pages, addressing (1) the petitioner's standing to seek and the Court's jurisdiction to provide the relief requested in the petition for extraordinary relief, and (2) the merits of the petitioner's motion for reconsideration or, in the alternative, panel review.

DATED: May 28, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Harold H. Hoffman, III, Esq.

VA General Counsel (027)