

*Not published*

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

No. 20-3907

LUIS NEGRON-ORTIZ,

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 June 5, 2020, the petitioner, Luis Negron-Ortiz, through counsel filed a petition for extraordinary relief in the form of a writ of mandamus compelling the Secretary to take immediate action to implement a December 6, 2019, Board of Veterans' Appeals (Board) decision that granted benefits for a disability rating of 20% for right and left lower extremity diabetic peripheral neuropathy throughout the claim period, a 70% disability rating for post-traumatic stress disorder (PTSD) throughout the claim period, and a total disability rating based on individual unemployability from January 1, 2009; and remanded the issue of entitlement to an effective date for PTSD earlier than May 30, 1997. Petition (Pet.) at 1-2, 8; Appendix at 9-18. He contends that he sent letters to a VA regional office (RO) on December 11, 2019, and February 7, 2020, requesting that it implement the Board's grant of benefits but received no response. Pet. at 2; Appendix at 19-22. Additionally, although VA complied with the Board remand order on the issue of the proper effective date for PTSD by issuing a Statement of the Case (SOC) on March 6, 2020, the RO did not implement the Board's grant of benefits. Pet. at 2.

The petitioner avers that, following issuance of the SOC, his counsel "noticed that the 'claim' associated with the Board's December 6, 2019[,] decision[] had been marked completed [on the Veterans Benefits Management System] by . . . VA without implementing [the petitioner's] granted benefits." Pet. at 2-3; Appendix at 23. He further states that, in March 2020, his counsel sent an email to the RO requesting the status of his claim, Pet. at 3; Appendix at 24, received no response, and sent another letter in April 2020 "demanding that [the RO] take action to implement the Board's grant of benefits." Pet. at 3; Appendix at 25-27. He avers that he "has exhausted his means of compelling the . . . [RO] to take appropriate action" and has "a clear and indisputable right to the relief sought." Pet. at 7.

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).

Presently, the Court cannot determine whether issuance of a writ of mandamus is justified in this case. Accordingly, it is

ORDERED that the Secretary, within 30 days after the date of this order, file a response to the petition.

DATED: June 9, 2020

BY THE COURT:



AMANDA L. MEREDITH  
Judge

Copies to:

Sean A. Ravin, Esq.

VA General Counsel (027)