

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

LUIS NEGRON-ORTIZ,

Petitioner,

v.

ROBERT L. WILKIE,

Secretary of Veterans Affairs,

Respondent.

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Vet.App. No. 20-3907 WRIT

**SECRETARY'S RESPONSE TO PETITION FOR EXTRAORDINARY RELIEF
AND COURT ORDER DATED JUNE 9, 2020**

Pursuant to U.S. Vet. App. R. 21(d), and the Court's June 9, 2020, order, Respondent, Secretary of Veterans Affairs (Secretary), hereby answers the petition for extraordinary relief filed on June 5, 2020.

SUMMARY OF PERTINENT FACTS

On December 6, 2019, the Board of Veteran's Appeals (Board) issued a decision which, in pertinent part, granted Petitioner's claims of entitlement to (1) an increased rating of 20 percent for right lower extremity diabetic peripheral neuropathy throughout the claim period; (2) an increased rating of 20 percent for left lower extremity diabetic peripheral neuropathy throughout the claim period; (3) an increased rating of 70 percent for posttraumatic stress disorder (PTSD) throughout the claim period; and (4) a total disability rating based on individual unemployability (TDIU) from January 1, 2009.

On June 5, 2020, Petitioner filed a petition to compel the Regional Office (RO) to issue a rating decision implementing the awards granted in the Board's December 2019 decision. (Petition at 1-7). Petitioner asserted that he has contacted the RO on four occasions since the issuance of the Board decision to request implementation of the Board's grants, but that the RO has not responded. *Id.* Petitioner further stated that upon his own review of the Veterans Benefits Management System (VBMS), his claim was marked "completed." *Id.* Petitioner argues that as a result the RO has unreasonably delayed his claim and frustrated any potential jurisdiction of this Court over that claim. *Id.*

On June 9, 2020, undersigned counsel for the Secretary contacted the San Juan Regional Office and inquired about the status of Appellant's claims that are the subject of this petition. The RO responded that it would forward these claims to a rating team to review what action still needed to be taken by the RO. On June 15, 2020, the RO issued a rating decision which implemented the Board's December 6, 2019, decision and granted Petitioner's claims of entitlement to (1) an increased rating of 20 percent for right lower extremity diabetic peripheral neuropathy throughout the claim period; (2) an increased rating of 20 percent for left lower extremity diabetic peripheral neuropathy throughout the claim period; (3) an increased rating of 70 percent for posttraumatic stress disorder (PTSD) throughout the claim period; and (4) a total disability rating based on individual unemployability (TDIU) from January 1, 2009. (Exhibit 1).

RESPONSE TO PETITION

Pursuant to *Lane v. West*, 12 Vet.App. 220, 221 (1999) citing *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976), “the remedy of mandamus is a drastic one, to be invoked in only extraordinary situations.” The Court has stressed the need for a Petitioner seeking an extraordinary writ to demonstrate a “clear and indisputable entitlement” and the lack of an adequate alternative means to obtain the requested relief. *Erspamer v. Derwinski*, 1 Vet. App. 3, 9 (1990), quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384, 74 S. Ct. 145, 148, 98 L.Ed. 106 (1953).

When the basis of a petition is an allegation of unreasonable agency delay in processing an appeal, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has provided new guidance as to the criteria that the Court must consider in determining whether to issue a writ based on that alleged delay. The factors are six:

(1) the time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find “any impropriety lurking behind agency lassitude” in order to hold that agency action is unreasonably delayed.

Martin v. O'Rourke, 891 F.3d 1338, 1344 (Fed. Cir. 2018) (quoting *Telecomms. Research & Action Ctr. v. FCC* ("TRAC"), 750 F.2d 70, 80 (D.C. Cir. 1984)). However, where the particular relief sought by a petitioner has been afforded, the petition is moot. See *Chandler v. Brown*, 10 Vet.App. 175, 177 (1997) (citing *Mokal v. Derwinski*, 1 Vet.App. 12 (1990) (adopting the Article III case-or-controversy requirement for exercising jurisdiction)).

The petition in this matter requested relief in the nature of compelling the RO to issue a rating decision implementing the awards granted by the Board in its December 6, 2019 decision. (Petitioner at 1-7) (Court Order at 1). As the RO has since issued this rating decision implementing the Board's grants, the petition for extraordinary relief should now be considered moot and should be dismissed by the Court. See *Chandler*, 10 Vet.App. at 177; *Mokal*, 1 Vet.App. at 15.

CONCLUSION

Respondent, Secretary of Veterans Affairs, hereby notifies the Court of the action by VA on the matter underlying the petition for extraordinary relief and moves the Court to dismiss as moot the petition.

Respectfully submitted,

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EXHIBIT 1