UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 20-8291

VETERANS LEGAL ADVOCACY GROUP, PETITIONER,

V.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before GREENBERG, MEREDITH, and LAURER, *Judges*.

O R D E R

The Veterans Legal Advocacy Group (VLAG) petitioned the Court for extraordinary relief in the nature of a writ of mandamus. In its petition, VLAG contended that VA repeatedly sends correspondence to incorrect addresses despite petitioner's efforts to notify the Agency of petitioner's change in mailing address. Petitioner requested that the Court compel VA to update petitioner's mailing address in the VA system and to cease sending documents and records to petitioner's clients at addresses no longer associated with the firm. Petitioner also argued that sanctions are warranted to deter VA from sending future mailings to incorrect addresses. In response to a Court order, the Secretary provided the Court with proof that VA has updated its databases to reflect petitioner's correct address in Arlington, Virginia, and the Secretary has clarified that VA pulls mailing addresses from these databases when sending correspondence. Because of this, the Court determines that petitioner has obtained the relief requested. Thus, the Court will dismiss the petition as moot.

I. BACKGROUND

On December 2, 2020, VLAG petitioned the Court for extraordinary relief, seeking to enjoin the Secretary from sending correspondence to incorrect addresses.[1] Petitioner asserted that it notified VA of a change in the firm's mailing address from Indiana in April 2018 and from Alaska in April 2014, but VA continued to send mail to these former addresses and failed to update its system to reflect VLAG's updated Arlington, Virginia, address.[2] Petitioner requested that the Court (1) order VA to update VLAG's address in the VA system and to stop sending claims documents and private medical records to the wrong address and (2) impose sanctions.[3] Petitioner also stated that the Court should not dismiss the petition as moot if VA confirms that it updated its

[1] Petition (Pet.) at 1-10.

[2] Pet. at 1-2.

[3] Pet. at 2.

systems and ceased sending mail to the wrong address.[4] Petitioner argued that the Court should instead keep the petition open for at least 1 year.[5]

On December 8, 2020, the Court ordered petitioner to file a supplemental memorandum of law addressing its standing. Following petitioner's response, the Court issued an order on January 15, 2021, for the Secretary to file a supplemental memorandum of law addressing the merits of the petition and whether petitioner had standing to seek the requested relief. On March 2, 2021, the Secretary responded to the Court's January 15, 2021, order, and on March 30, 2021, petitioner replied to the Secretary's response.[6]

On April 9, 2021, the Court sought additional information from the Secretary on how VA maintains and updates addresses for claimants' attorneys. On May 14, 2021, the Secretary responded to the Court's inquiries, stating first that the proper, most effective procedure for an attorney to update his or her contact information involves submitting a VA Form 21-22a, Appointment of Individual as Claimant's Representative, for each claimant that the attorney represents.[7] And the Secretary instructed that each individual attorney, rather than a law firm as a whole, must submit an updated form if the firm changes its contact information.[8] The Secretary noted that this procedure applies to all cases pending before the Veterans Benefits Administration (VBA) and the Board of Veterans' Appeals (Board), and each attorney should file an updated VA Form 21-22a with the entity having jurisdiction of the claim at the time of submission.[9] The Secretary also responded that, whenever an attorney submits a VA Form 21-22a, VA updates the power of attorney (POA) information in the electronic claims files (i.e., Veterans Benefits Management System (VBMS)) for each of the attorney's clients.[10] And while VA may identify claimants related to a certain POA code, there is no way to identify all claimants represented by petitioner without going through the POA code assigned to each VLAG attorney.[11]

The Secretary noted that there is also a subdivision within VA's Office of General Counsel (OGC) responsible for attorney accreditation,[12] and an attorney may also contact that subdivision to update his or her contact information.[13] But the Secretary cautioned that contacting the accreditation office might not lead to an update within VA's central database because OGC and

[4] Pet. at 2.

[5] Pet. at 2.

[6] As discussed below, petitioner has received the relief sought, and the petition is moot. So the Court need not address the matter of standing. *See Burke v. Barnes*, 479 U.S. 361, 363 (1987) (electing not to resolve whether respondents lacked standing because the case was moot).

[7] Secretary's May 14, 2021, Response (Res.) at 3.

[8] Secretary's May 14, 2021, Res. at 6.

[9] Secretary's May 14, 2021, Res. at 4.

[10] Secretary's May 14, 2021, Res. at 7.

[11] Secretary's May 14, 2021, Res. at 7-8.

[12] Secretary's May 14, 2021, Res. at 2.

[13] Secretary's May 14, 2021, Res. at 5.

VBA operate with different databases and because VBA's records are not attorney-specific.[14] VA uses the information within VA's central database to generate correspondence, but VBA must check its stored contact information for attorneys against OGC's list.[15] The Secretary also noted that an accredited attorney with access to VBMS should be able to see whether his or her contact information is correct for each of his or her clients.[16]

On June 14, 2021, petitioner replied to VA's May 14, 2021, response. Petitioner asserted that VA cited no "law, regulation, rule, or even instruction from . . . VA" showing that VA requires an attorney to file a VA Form 21-22a to update his or her contact information.[17] And petitioner contended that, even when it files an updated VA Form 21-22a, VA continues to mail correspondence to incorrect addresses.[18] Petitioner also stated that while VA has also offered other ways in which to update attorney information aside from filing a VA Form 21-22a, these have not proved to be solutions.[19]

On July 16, 2021, the Court submitted the case to panel, and on October 29, 2021, the panel held oral argument. During oral argument, counsel for the Secretary argued that VLAG's petition was moot because all addresses for the "attorneys identified in this petition have been updated within VA's central database."[20] And she stated that VA uses its central database to pull addresses for all mailings,[21] so VA would send future mailings for the attorneys identified in VLAG's petition to the correct Arlington, Virginia, address.[22] In response to a question on whether the Secretary could provide proof that VA had resolved the issue, counsel for the Secretary offered to provide an affidavit from a VA official.[23]

The panel determined that an affidavit confirming that VA will send all future correspondence for attorneys identified in VLAG's petition to the correct address would help the Court to decide whether to dismiss the petition as moot. Thus, on November 5, 2021, the Court (1) ordered petitioner to provide the Secretary with file numbers for all its clients with matters

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[14] Secretary's May 14, 2021, Res. at 5. In her response to the April 2021 Court order, counsel for the Secretary used the term "VBA databases," and she used the term "VA central database" in her response to the November 2021 Court order. *Compare* Secretary's May 14, 2021, Res. at 5, *with* Secretary's Jan. 11, 2022, Res. at 2. The Court notes that the "VA central database" appears to be synonymous with the "VBA Corporate Database," but for clarity and consistency, the Court will solely call this database the "VA central database." *See* Secretary's Jan. 11, 2022, Res. at 4; *see also* Secretary's Jan. 11, 2022, Res., Exhibit (Ex.) B at 2.

[15] Secretary's May 14, 2021, Res. at 9-10.

[16] Secretary's May 14, 2021, Res. at 11-12.

[17] Petitioner's June 14, 2021, Reply at 3.

[18] Petitioner's June 14, 2021, Reply at 6-7, 10.

[19] Petitioner's June 14, 2021, Reply at 3-5.

[20] Oral Argument (OA) at 18:17-23, 24:44-25:22, *Veterans Legal Advoc. Grp. v. McDonough*, U.S. Vet. App. No. 20-8291 (argued Oct. 29, 2021), https://www.uscourts.cavc.gov/documents/VLAG.MP3.

[21] OA at 24:54-58.

[22] OA at 26:09-18.

[23] OA at 27:02-47.

pending before VA and (2) ordered the Secretary to submit an affidavit, signed by several VA officials, explaining the following:

1. Whether VA uses the addresses within the VA central database for all correspondence related to veterans benefits, to include correspondence from the regional offices (ROs), Board, and General Counsel's office;

2. whether VLAG's correct Arlington, Virginia, address is within the VA central database and associated with all attorneys identified in the petition and all clients identified by VLAG in its response to this order; and

3. the policy purportedly developed by VA to be published on its website as guidance to ensure that attorneys generally, and VLAG specifically, have the information necessary to update their addresses in a manner that VA will implement Agency-wide, including the exact process for attorneys to update their addresses to ensure that VA properly updates an address for all Agency purposes.

On November 12, 2021, petitioner certified that it sent counsel for the Secretary the names and file numbers for all its clients with matters pending before VA. On January 11, 2022, the Secretary responded to the Court's November 5, 2021, order with details on the client list submitted by petitioner and with attached affidavits from VA General Counsel, Mr. Richard Sauber; Board Chairman, Ms. Cheryl Mason; and Acting Under Secretary for Benefits of the VBA, Mr. Thomas J. Murphy.[24] Counsel for the Secretary noted that petitioner identified three attorneys associated with VLAG at the Arlington, Virginia, address and two attorneys associated with VLAG at an address in Greensboro, North Carolina.[25] Of the 223 clients listed by petitioner, the Secretary confirmed that VA registered the correct address, as specified in petitioner's November 2021 correspondence, to 203 of them.[26] The Secretary sought clarification from petitioner about the remaining 20 identified clients,[27] and petitioner responded that it no longer represented 8 of the remaining 20 and provided updated information for 2 others.[28] Petitioner could not provide updated paperwork or other information for the last 10 identified clients.[29] And as a result, the Secretary could not confirm that the addresses associated with those 10 clients reflect petitioner's

[24] Regarding the third question in the Court's November 5, 2021, order, VA responded that information about its new policy will be available at *Accreditation, Discipline & Fees Program*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/ogc/accreditation.asp. Secretary's Jan. 11, 2022, Res. at 4.

[25] Secretary's Jan. 11, 2022, Res. at 2.

[26] Secretary's Jan. 11, 2022, Res. at 2-3.

[27] The Secretary specifically asked about six of the clients identified by petitioner who had passed away before petitioner submitted its client list to Secretary's counsel. Secretary's Jan. 11, 2022, Res. at 3. According to the Secretary, some of the clients' electronic records showed that they had not appointed petitioner to represent them. Secretary's Jan. 11, 2022, Res. at 3.

[28] Secretary's Jan. 11, 2022, Res. at 3-4.

[29] Secretary's Jan. 11, 2022, Res. at 4.

correct address because the relationship between petitioner and those clients remained unclear.[30] Thus, the Secretary confirmed that VA updated petitioner's addresses within the VA central database for all identified attorneys and clients, only excepting the 10 clients for whom petitioner could not supply updated information.[31] The Court provided petitioner a chance to respond to the Secretary's January 11, 2022, filing, but VLAG elected not to respond.

II. ANALYSIS

Under the All Writs Act, this Court may issue extraordinary writs in aid of its jurisdiction.[32] This includes the authority to issue writs of mandamus to "compel action of the Secretary unlawfully withheld or unreasonably delayed."[33] But this Court adheres to the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution.[34] And "when the issues presented are no longer 'live,'"[35] or when petitioner obtains the requested relief, the appropriate course is for the Court to dismiss the petition as moot.[36]

Here, petitioner requested that the Court compel VA (1) to ensure that its correct mailing address appeared in the VA system and (2) to cease sending claims documents and private medical records for its clients to incorrect addresses.[37] The Secretary's January 2022 response evidences that the correct address appears within VA's central database and matches that in the OGC database.[38] In the affidavits attached to the Secretary's response, VA officials further attested that the ROs and the Board use addresses stored within VA's central database to send correspondence and that for correspondence originating from OGC, VA pulls addresses from the OGC database.[39] Put simply, VA will pull the correct mailing address from the VA central and OCG databases to send petitioner correspondence. Petitioner disputed nothing in the Secretary's January 2022 response or attached affidavits. Thus, the Court sees no reason to find that petitioner has not received the requested relief, rendering the petition moot.

Petitioner also asserted in its petition, and reiterated during oral argument, that the Court should sanction VA to deter the Agency from sending future mailings to an incorrect address.[40]

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[30] Secretary's Jan. 11, 2022, Res. at 4.

[31] Secretary's Jan. 11, 2022, Res. at 4.

[32] 28 U.S.C. § 1651(a); *see Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998).

[33] 38 U.S.C. § 7261(a)(2); *see Martin v. O'Rourke*, 891 F.3d 1338, 1343 (Fed. Cir. 2018).

[34] *Cardona v. Shinseki*, 26 Vet.App. 472, 474 (2014) (per curiam order); *Mokal v. Derwinski*, 1 Vet.App. 12, 13 (1990).

[35] *Godsey v. Wilkie*, 31 Vet.App. 207, 218 (2019) (quoting *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979)).

[36] *Mokal*, 1 Vet.App. at 13-15; *see Chandler v. Brown*, 10 Vet.App. 175, 177 (1997) (per curiam order).

[37] Pet. at 2.

[38] *See* Secretary's Jan. 11, 2022, Res. at 4; *see also* Secretary's Jan. 11, 2022, Res., Ex. B at 2.

[39] Secretary's Jan. 11, 2022, Res., Ex. B at 2, Ex. C at 1-2, Ex. D at 2.

[40] Pet. at 2; OA at 3:47-53, 50:52-51:12.

The Court finds sanctions inappropriate here, as the Secretary has not violated a Court order and no further Court action is warranted given the steps taken by VA to resolve petitioner's concerns.[41] Further, the Secretary has "developed a process for accredited attorneys and claims agents to initiate contact change requests."[42] The Court also notes that, while petitioner first requested that the Court leave the petition open for at least 1 year, petitioner did not raise this point during oral argument.[43] Even so, this Court emphasizes that VA has proved by signed affidavits that it has updated its databases to reflect petitioner's correct mailing address. What's more, VLAG's petition has already remained open for nearly 14 months while VA actively worked with petitioner to ensure that it properly addressed petitioner's allegations. As for the pending December 2020 petition, the Secretary shows that petitioner has received the requested relief. Thus, the Court will dismiss the petition as moot.[44]

III. CONCLUSION

For these reasons, it is

ORDERED that the December 2, 2020, petition requesting extraordinary relief is DISMISSED as moot.

DATED: February 14, 2022 PER CURIAM.

[41] *See Pousson v. Shinseki*, 22 Vet.App. 432, 436 (2009) (per curiam order) (holding that sanctions are reserved for situations in which (1) there is a Court order that is clear and unambiguous, (2) there is clear and convincing proof of noncompliance with that Court order, and (3) it is clear that the party at fault was not reasonably diligent in trying to abide by the Court order).

[42] Secretary's Jan. 11, 2022, Res., Ex. D at 2; *see* Secretary's Jan. 11, 2022, Res., Ex. A.

[43] *See* Pet. at 2.

[44] *See Mokal*, 1 Vet.App. at 13-15.