

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-3933

JUSTIN D. GRAY,

PETITIONER,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

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

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 petitioner's October 11, 2022, motion, which seeks an order compelling the Secretary to respond to his supplemental response to the Court's August 15, 2022, order. In his supplemental response, the petitioner asserted that his counsel received information pursuant to a Freedom of Information Act (FOIA) request, indicating that the Board of Veterans' Appeals (Board) has adjudicated more than 1000 appeals with a later docket number than his, even though those appeals had not been remanded by the Court or advanced on the Board's docket. Supplemental Response at 2. He thus averred that the FOIA response "tends to undermine the Secretary's assertions that [the petitioner] asks the Court 'to prioritize his appeal above those veterans who are similar[ly] situated' and that granting [the petitioner] relief 'will result in line-jumping.'" *Id.* (quoting Secretary's Aug. 12, 2022, Response at 13).

After the Court scheduled oral argument, the petitioner filed the instant motion to compel. He argues that requiring the Secretary to respond to data obtained through the FOIA request "will facilitate preparation of an oral argument-in-chief that will most [e]ffectively assist the Court." Motion to Compel at 1. The Secretary is opposed to having to respond to the significance of the data obtained through FOIA, asserting that the petitioner's motion is late in time, speculative, and a waste of the Secretary's and the Court's finite resources. Opposition at 2. He contends that having to respond would unfairly burden the Secretary and will effectively shift the petitioner's burden to establish entitlement to a writ to the Secretary. *Id.* at 3. The Court disagrees.

Although the Secretary contends that the petitioner's allegations are speculative, the Court concludes that the Secretary is best equipped to explain the information VA provided in response to the FOIA request and how that information may inform the Court's review of the instant matter, including the Secretary's contention that granting a writ would amount to line jumping. The Court is thus unpersuaded that a written response prior to oral argument would not assist the Court. Accordingly, it is

ORDERED that the appellant's October 11, 2022, motion to compel is granted. It is further

ORDERED that the Secretary's response is due no later than November 1, 2022.

DATED: October 18, 2022

PER CURIAM.

Copies to:

Zachary M. Stolz, Esq.

VA General Counsel (027)