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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-4327

JOSEPH W. HALLETT, PETITIONER,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before KASOLD, *Chief Judge*.

O R D E R

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On December 19, 2014, the petitioner filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus to compel the Secretary to issue a Statement of the Case (SOC) on his claim for benefits. The petitioner asserts that (1) in August 2012, he filed a Notice of Disagreement (NOD) with a July 2012 rating decision and requested traditional appellate review, (2) in November 2012, he submitted argument in support of his claim, (3) in October 2013 and March 2014, he requested issuance of an SOC, (4) in May 2014, the St. Petersburg, Florida, VA regional office (RO) acknowledged receipt of the NOD and inquired whether the petitioner desired decision review officer (DRO) processing or traditional appellate review, and (5) in June 2014, the petitioner requested DRO processing.

The petitioner fails to demonstrate a clear and indisputable right to the writ. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004) (entitlement to writ requires the petitioner to establish, *inter alia*, a clear and indisputable right to the writ); *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976) ("The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations."). Specifically, the petitioner's June 2014 response requested DRO review, and he fails to demonstrate that the passage of time since then reflects an arbitrary refusal to act. *See Stratford v. Peake*, 22 Vet.App. 313, 314 (2008) (mandamus relief warranted if the "delay is so extraordinary, given the demands on and resources of the Secretary, that it is equivalent to an arbitrary refusal by the Secretary to act," rather than merely being the product of a burdened system); *see also Chandler v. Brown*, 10 Vet.App. 175, 177-78 (1997) (noting that a delay of two and one-half years in the RO's adjudication of a claim even after remand was not unreasonable under the circumstances); *Erspamer v. Derwinski*, 1 Vet.App. 3, 10 (1990) (noting that a reasonable time to act on a remanded claim may encompass "'months, occasionally a year or two, but not several years or a decade'" (quoting *Cnty. Nutrition Inst. v. Young*, 773 F.2d 1356, 1361 (D.C. Cir.1985))).

Accordingly, it is

ORDERED that the petition for extraordinary relief in the nature of a writ of mandamus is DENIED.

DATED: January 6, 2015

BY THE COURT:



BRUCE E. KASOLD
Chief Judge

Copies to:

Ralph J. Bratch, Esq.

VA General Counsel (027)