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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-4134

RONALD DAVIS, PETITIONER,

v.

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

Before KASOLD, *Chief Judge*.

ORDER

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

On December 4, 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 decision on his claim for benefits for post-traumatic stress disorder (PTSD). The petitioner submitted, *inter alia*, documentation of his rating decision, Statement of the Case, substantive appeal, and a copy of a March 2013 medical examination report. He states that he has contacted the regional office (RO) several times with no response, but he did not provide copies of any such correspondence or evidence of attempted contact; he does not even state whether the contacts were made before or after the March 2013 examination.

The petitioner fails to demonstrate entitlement to the writ. *See 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."); *see also Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004) (describing three conditions that must be met before a court may issue a writ of mandamus: (1) The petitioner lacks adequate alternative means to obtain the desired relief, (2) the petitioner has a clear and indisputable right to the writ, and (3) the court is convinced that issuance of the writ is warranted).

Although the petitioner asserts that no action has been taken on his claim since the March 2013 medical examination, he fails to demonstrate an arbitrary refusal by the Secretary to process his claim. *See Stratford v. Peake*, 22 Vet.App. 313, 314 (2008) (per curiam order) (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); *Chandler v. Brown*, 10 Vet.App. 175, 177-78 (1997) (per curiam order)

(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) (some internal quotation marks omitted))).

Additionally, the petitioner fails to demonstrate that he lacks an alternative means to obtain the desired relief. For example, he has not provided documentation of contact with the RO or even stated whether he has attempted to contact the RO since the March 2013 examination. Even accepting his statements of contact and assuming they were made after the March 2013 examination, he has not indicated any effort to secure assistance from superior VA officials, such as the Under Secretary for Benefits or the Secretary.

In sum, the petitioner fails to demonstrate entitlement to writ. *See Cheney and Kerr*, both *supra*.

Accordingly, it is

ORDERED that the petition for extraordinary relief is DENIED.

DATED: February 3, 2015

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Bruce E. Kasold", written in a cursive style.

BRUCE E. KASOLD
Chief Judge

Copies to:

Andrew R. Rutz, Jr., Esq.

VA General Counsel (027)