

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 18-1009

LESLIE CLYDE LONG, JR.,

PETITIONER,

v.

DAVID J. SHULKIN, M.D.,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before ALLEN, *Judge*.

ORDER

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

On February 26, 2018, pro se petitioner Leslie Clyde Long, Jr., filed a petition for extraordinary relief seeking a writ of mandamus. Petitioner requests that the Court compel the Secretary to render a decision concerning a Notice of Disagreement (NOD) he submitted on August 4, 2016. Petition at 1.

This is not the first time Mr. Long has sought a writ of mandamus with respect to his August 4, 2016, NOD. On November 13, 2017, the Court denied Mr. Long's earlier petition concerning this matter. *Long v. Shulkin*, 2017 U.S. App. Vet. Claims LEXIS 1642 (Nov. 13, 2017). The Court did so in large measure based on certain representations contained in a declaration attached to the Secretary's Court-ordered response to the earlier petition. *See id.* at *5-*6. In particular, the declaration recited:

VA examination reports from September 26 and 28, 2017, examinations were received on October 19, 2017. The examination for ear conditions has not yet been received. The next anticipated action is for review of examinations with clarification requests to the examiners as needed, and is expected to occur within the next 90 days.

Declaration of Stephen Strobe, ¶ LXVI (dated October 26, 2017).¹ It is unclear from the petition if any of these actions were taken during the promised 90-day period after October 26, 2017, or what is the overall status proceedings concerning the NOD.

¹ The declaration was filed in *Long v. Shulkin*, CAVC docket no. 17-3214. Mr. Strobe is the Veterans Service Center Manager in the Seattle, Washington Regional Office.

The Court is not in a position to rule on the petition at this point, although candidly, the Court is not pleased with what appears to be a lack of follow through on actions promised to the Court. At the very least, there appears to have been a lack of communication about the status of this matter to petitioner. So that the Court may determine how it will address the petition, the Secretary is to provide the following information to the Court:

1. Were clarification requests made to either (or both) of the September 26 and 28, 2017, examination reports? If so, when were such clarification requests made and what is the status of such requests?
2. Was the report of the examination concerning the ear conditions received? If so, when? If not, what action has been taken to obtain that report?
3. What is the overall status of proceedings concerning petitioner's August 4, 2016, NOD?
4. Was petitioner informed of the status of proceedings concerning petitioner's August 4, 2016 NOD? If so, when and by whom? If not, why not?

Accordingly, it is

ORDERED that within 14 days of the date of this order, counsel for the Secretary provide the Court with the information described above. It is further

ORDERED that the Court will not entertain any motion for an extension of time with respect to the Secretary's response to this order.

DATED: March 5, 2018

BY THE COURT:



MICHAEL P. ALLEN
Judge

Copies to:

Leslie Clyde Long, Jr.

VA General Counsel (027)