

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN P. HASSAN — PETITIONER
(Your Name)

DENIS McDONOUGH VS. SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR FEDERAL CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN PATRICK HASSAN
(Your Name)

43 CYNTHIA LANE
(Address)

CENTER MORICHES, NEW YORK 11934
(City, State, Zip Code)

631 878-8572
(Phone Number)

QUESTION(S) PRESENTED

- 1 - IS THERE A LEGALLY VALID DECISION BY THE BOARD OF VETERANS APPEALS AND SHOULD THE NEW YORK REGIONAL OFFICE, VOCATIONAL REHABILITATION AND EDUCATION BE COMPELLED TO OBEY THE BVA DECISION TO REINSTATE ME AT A PUBLIC LIBRARY OR OTHER LOCATION SUCH AS VA HOSPITAL AT NORTHPORT?
- 2 - CAN VRLE CONDITION MY REINSTATEMENT THAT I MUST ALLOW THEIR GUYS TO REMOVE ANY OR ALL OF MY POSSESSIONS PERMANENTLY OR IS THAT UNLAWFUL COERCION AND THREAT?
- 3 - DO I HAVE A LEGAL RIGHT TO THE VRLE PROGRAM OF COMPUTER INSTRUCTION AND DOES VRLE VIOLATE MY CONSTITUTIONAL RIGHTS 1ST AMENDMENT.
- 4 - IS THE ATTORNEY REPRESENTATION FOR APPEALS ILLEGAL OR UNCONSTITUTIONAL
- 5 - DID BVA FAIL TO HONOR MY CLAIM OF ILLEGALLY VRLE COMPELLING ME TO ALLOW THEIR GUYS TO SEIZE MY POSSESSIONS (PROPERTY) WITHOUT DUE PROCESS OF LAW.
- 6 - WAS THERE A CONSTITUTION RIGHT FOR ME THAT VRLE REFUSED TO FILE A STATEMENT OF THE CASE FROM 2014 TO AS ANY TIME THEREAFTER AND IS IT EVIDENT THAT VRLE DID HAVE CONTACT WITH BVA UNKNOWN TO ME AND THAT ANY FINDINGS OF FACTS UNFAVORABLE TO ME ARE UNCONSTITUTIONAL

LIST OF PARTIES KNOWN TO ME
INCLUDING ALL THOSE WHO ENTERED MY HOME ARE CONSIDERED
TO BE DEPARTMENT OF VETERANS AFFAIRS IN THE CAPTION OF THIS
CASE ON THE COVER PAGE

I DO NOT KNOW ABOUT ANY RELATED CASES AND I HAVE BEEN DENIED ACCESS TO A LAWYER. I WAS TERMINATED BY VETERANS COALITION BECAUSE BVA MADE THEIR DECISION FALSELY, DUPLICITOUSLY AND SUBTERFUGE MADE IT APPEAR THAT I WAS THE WINNER AND THE WINNER CANNOT APPEAL. I WON NOTHING AND BVA AND DVA KNOWS IT TO. BVA HEAR APPEALS ONLY WITH PERMISSION FROM VHA. THE OPERATIONS EXECUTIVE COMITEE FOR BVA OWN CONTROLS AND AUTHORIZES BVA, SOCIAL WORKERS, PATIENT REPRESENTATIVES, HOSPITAL AND OTHER DIRECTORS AREN'T CHS VHA IS THE DVA IN ALL RESPECTS

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TO ORDER DVA TO REINSTATE ME IN
REASONS FOR GRANTING THE WRIT WRITE COMPUTER INSTRUCTION AND NOT
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PROGRAM

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1ST AMENDMENT: MY RIGHT TO RECEIVE COMPUTER OPERATING
INSTRUCTIONS FOR VOCATIONAL EDUCATION AND REHABILITATION FOR
SERIOUSLY DISABLED VETERANS

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CASES

PAGE NUMBER

I DON'T KNOW OF ANY OTHERS CASES

STATUTES AND RULES

I DON'T KNOW THE STATUTES OR RULES

John P. Hassan.
April 7 2024

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B AND C to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished. **NON PRECEDENTIAL**

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was FEBRUARY 20 2024 ~ 30TH COMPANION CASE
23-1732 and 23-1832.

No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE: SUPREME COURT OF THE UNITED STATES
THE FEDERAL CIRCUIT AND US COURT OF APPEALS FOR
CIVIL APPEAL FROM THE US COURT OF APPEALS FOR
THE FEDERAL CIRCUIT AND US COURT OF APPEALS FOR
CIVIL APPEAL OF THE CASES 2

JOHN HASSAN #3 CYNTHIA LANE CENTERPOINT MOBILE
NEW YORK 11934 631 878-8571 EXCELSIOR 242024

STATEMENT OF THE CASE

ANOTHER VA & COUNSELOR, MELANIE STETTNER, SAID SHE DID NOT HAVE TO OBEY ANY COURT DECISION SHE SENT A WOMAN TO INSPECT MY HOME WHO SAID IT WAS TERRIBLE AND I SHOULD BE IN AN INSTITUTION - I DEVELOPED A RUMMAGE LEAK. I ASKED VA FOR HELP - THE VA NEVER OFFERED TO HELP ME. A PLUMBER TOLD ME I HAD TO REMOVE A LOT OF POSSESSIONS. I WORKED VERY HARD, DAY AND NIGHT TO REMOVE MY POSSESSIONS AND THREW A LOT IN THE GARBAGE. I WAS 90 YEARS OLD AND HAD HEART DISEASE. I WAS AFRAID OF DYING FROM HARD LABOR. THE PLUMBER RETURNED AND INSTALLED NEW SINK AND TOILET - ALL NEW PLUMBING AND LED LIGHTING IN BATHROOM AND KITCHEN TOO BUT NOT ALLOWING VA PEOPLE TO STEAL MY POSSESSIONS IS CALLED NOT COOPERATING AND I TOLD MELANIE STETTNER I DON'T WANT HER IN MY HOME EITHER.

THE US CONSTITUTION PROTECTS ME, MY PROPERTY AND MY POSSESSIONS AS WELL.

THE FEDERAL CIRCUIT IGNORES MY CONSTITUTIONAL RIGHTS AND STATUTORY, AND MUST NOT QUESTION ANY ALLEGATIONS OR DECISIONS OF FACTS SUBMITTED BY DVA AND VA & BVA. THAT IS ALLOWING THEM TO FABRICATE FACTS AND DENY VETERANS ANY DUE PROCESS OF LAW WHATSOEVER. I WAS ALSO DENIED A IPAD BECAUSE VA SOCIAL WORKER'S ORIGINAL DETERMINATION THAT I WANTED TO USE IT TO OBTAIN OTHER INFORMATION BESIDES CONTACTS WITH VA HOSPITAL - BUT THERE IS OTHER INFORMATION ON THE IPAD AND FABRICATING MEETOR SEEING IT IS A VIOLATION OF 1ST AMENDMENT. BVA IS ALSO DENYING ME THE IPAD BECAUSE I GOT A TALKING WATCH FROM SOUND SCIENCE CLINIC - AND AFTER BEING TREATED FOR SEVERE PAIN IN EMERGENCY ROOM AND REFERRED TO PM&R FOR CONSULTATION I WAS EXPELLED FROM PM&R BECAUSE THEY DOCTORS - BUT MAYBE CLERKS AND SOCIAL WORKERS VENEERED BECAUSE THEY SAID I HAD BUGS IN MY HOME WHICH THEY DISCOVERED IN A HOT IN THEIR COMPUTER. THERE IS ALSO A NOTE THAT I PAID \$235.00 TO AN EXTERMINATOR. ~~HERE~~ THEY NEVER EXAMINED ME BUT I HAD A STRIP-NAKED, EYE CONTACT EXAM BY TWO DEPARTMENT OFFICERS ON FEB. 22 2024 AND THEY NEVER SAID THERE IS ONE SINGLE BUG ON ME.

I WROTE THE ABOVE FINAL PARAGRAPH ABOVE TO ILLUSTRATE HOW VA AUTHORITY IS BEING ABUSED EXTREMELY AND I AM AND OTHER VETERANS MAY BE ABUSED AND HARMED & DENIED LEGAL RIGHTS TO MEDICAL CARE NOW.

I HOPE THE SUPREME COURT WILL ALLOW ME TO APPEAL.

FEB. 24, 2022



I ALSO BELIEVE THAT DVA/VA & SOCIAL SCIENTISTS DEFENDING THE VA COMPUTER INSTITUTION (ON EDUCATION BUT IT ISN'T) BECAUSE THEY WILL NOT ALLOW THEM AND THEIR MASTERS AND THIEVES TO STEAL MY POSSESSIONS VIOLATES MY 1ST AND 4TH AMENDMENT RIGHTS.

United States Court of Appeals
for the Federal Circuit

JOHN HASSAN,
Claimant-Appellant

v.

DENIS McDONOUGH, SECRETARY OF VETERANS
AFFAIRS,
Respondent-Appellee

2023-1732

Appeal from the United States Court of Appeals for Veterans
Claims in No. 22-4742, Judge Joseph L. Toth.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

FOR THE COURT



February 20, 2024

Date

Jarrett B. Perlow
Clerk of Court

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOHN HASSAN,
Claimant-Appellant

v.

**DENIS MCDONOUGH, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2023-1732

Appeal from the United States Court of Appeals for
Veterans Claims in No. 22-4742, Judge Joseph L. Toth.

Decided: February 20, 2024

JOHN HASSAN, Center Moriches, NY, pro se.

MATNEY ELIZABETH ROLFE, Commercial Litigation
Branch, Civil Division, United States Department of Justice,
Washington, DC, for respondent-appellee. Also represented by BRIAN M. BOYNTON, ERIC P. BRUSKIN, PATRICIA
M. McCARTHY; RICHARD STEPHEN HUBER, Office of General
Counsel, United States Department of Veterans Affairs,
Washington, DC.

including a decision about the interpretation or validity of any statute or regulation. *Id.* § 7292(a), (d)(1). However, we lack jurisdiction to entertain a challenge to a factual determination or a challenge to the application of a law or regulation to the facts of a particular case, unless the appeal presents a constitutional issue. *Id.* § 7292(d)(2).

We have reviewed the decision of the Veterans Court and have considered all the arguments raised by Mr. Hassan in his appeal of the court's decision dismissing his appeal. Mr. Hassan does not argue that 38 U.S.C. § 7266 is invalid or was misinterpreted by the Veterans Court, nor does he raise any legitimate constitutional issues. Rather, it is clear that Mr. Hassan's appeal boils down to a challenge to factual determinations concerning the feasibility of reinstating his computer training; and a challenge to the Veterans Court's application of its jurisdictional statute to the facts of his case. Those are matters beyond our jurisdiction.

CONCLUSION

For the foregoing reasons, we lack jurisdiction to adjudicate Mr. Hassan's appeal. The appeal is therefore dismissed.

DISMISSED

COSTS

No costs.

United States Court of Appeals
for the Federal Circuit

JOHN P. HASSAN,
Claimant-Appellant

v.

DENIS McDONOUGH, SECRETARY OF VETERANS
AFFAIRS,
Respondent-Appellee

2023-1832

Appeal from the United States Court of Appeals for Veterans
Claims in No. 22-6701, Chief Judge Margaret C. Bartley.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

February 20, 2024
Date

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOHN HASSAN,
Claimant-Appellant

v.

**DENIS McDONOUGH, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2023-1832

Appeal from the United States Court of Appeals for
Veterans Claims in No. 22-6701, Chief Judge Margaret C.
Bartley.

Decided: February 20, 2024

JOHN HASSAN, Center Moriches, NY, pro se.

ANNE DELMARE, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, for respondent-appellee. Also represented by
BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR., PATRICIA M.
MCCARTHY.

Before PROST, SCHALL, and REYNA, *Circuit Judges*.
PER CURIAM.

DECISION

John Hassan appeals the order of the United States Court of Appeals for Veterans Claims (“Veterans Court”) that denied his petition for extraordinary relief in the form of a writ of mandamus. *Hassan v. McDonough*, No. 22-6701 (Vet. App. Feb. 13, 2023), App. 1.* For the reasons set forth below, we *dismiss* for lack of jurisdiction.

DISCUSSION

I

This appeal arises out of what appears to be a long-running dispute between Mr. Hassan and the Department of Veterans Affairs (“VA”). The dispute came to the Veterans Court on October 27, 2022, when Mr. Hassan petitioned the court to compel the VA to assist with plumbing repairs in his home. App. 1. In support of his petition, Mr. Hassan alleged that the VA would not respond, or respond appropriately, to his calls for help. *Id.* On December 2, 2022, the court ordered the Secretary to respond to Mr. Hassan’s petition. Doing so, the Secretary stated that, between 2012 and 2016, the VA had attempted to assist Mr. Hassan with necessary plumbing repairs so that he could receive vocational rehabilitation and educational services in his home, but that Mr. Hassan had declined to cooperate in the effort. *Id.* at 1–2. On December 29, 2022, Mr. Hassan submitted correspondence to the Veterans Court. In it, he stated that the Secretary’s response was inaccurate and that he had never refused the VA’s services. *Id.* at 2.

* “App.” citations are to the appendix filed with Respondent-Appellee’s Informal Response Brief, ECF No. 7.

In its February 13, 2023 Order, the Veterans Court determined that Mr. Hassan had failed to demonstrate entitlement to a writ of mandamus. *Id.* Rejecting Mr. Hassan's claims to the contrary, the court found that the VA is willing to assist Mr. Hassan with plumbing repairs in his home but is unable to do so because Mr. Hassan has refused to remove extreme clutter, including boxes piled to the ceiling that prevent access. *Id.* The court concluded:

Ultimately, Mr. Hassan's assertion that VA is refusing to facilitate repairs and will not return his calls is contradicted by the evidence provided by the Secretary—and Mr. Hassan himself—demonstrating that VA has been ready to assist Mr. Hassan with plumbing repairs for more than a decade, that it is currently actively engaged with Mr. Hassan and continuing to offer services, and that it is Mr. Hassan who is refusing to facilitate repairs and who has declined VA's assistance. . . . [U]nder the circumstances present here, the Court concludes that Mr. Hassan has not demonstrated a clear and indisputable right to a writ or that a writ is warranted because he refused VA's assistance and prevented access to the areas of his home in which repairs are needed.

Id. at 2–3. Accordingly, the Veterans Court denied Mr. Hassan's petition. *Id.* at 3.

II

Our jurisdiction to review decisions of the Veterans Court is limited by statute. 38 U.S.C. § 7292. We have jurisdiction to decide an appeal insofar as it presents a challenge to the court's decision regarding a rule of law, including a decision about the interpretation or validity of any statute or regulation. *Id.* § 7292(a), (d)(1). However, we lack jurisdiction to entertain a challenge to a factual determination or a challenge to the application of a law or regulation to the facts of a particular case, unless the

appeal presents a constitutional issue. *Id.* § 7292(d)(2). Although we possess “jurisdiction to review the [Veterans Court’s] decision whether to grant a mandamus petition that raises a non-frivolous legal question,” and although we may determine whether the veteran “has satisfied the legal standard for issuing the writ,” we may not “review the factual merits of the veteran’s claim.” *Beasley v. Shinseki*, 709 F.3d 1154, 1158 (Fed. Cir. 2013).

We have reviewed the decision of the Veterans Court and have considered the arguments raised by Mr. Hassan in his appeal. Based upon the part of the Veterans Court’s decision that we have quoted above, however, it is clear that the court denied Mr. Hassan’s petition based solely upon what it found to be the facts of the case. Specifically, the court determined that, based upon those facts, Mr. Hassan had failed to establish entitlement to a writ of mandamus. Mr. Hassan disputes the court’s determination, but he does so only by challenging the court’s findings of fact. He thus presents a claim beyond our jurisdiction.

Indeed, we have consistently refused to exercise jurisdiction in appeals of denials of a writ of mandamus by the Veterans Court when the appeals challenge only factual determinations or the application of law to fact. *See Fermin v. McDonough*, No. 2023-1482, 2023 WL 6994232, at *2–3 (Fed. Cir. Oct. 24, 2023) (dismissing an appeal of the denial of a petition for writ of mandamus as it related to challenges to factual determinations or the law as applied to the facts); *Hooper v. McDonough*, No. 2022-1738, 2022 WL 4091865, at *2–3 (Fed. Cir. Sept. 7, 2022) (dismissing an appeal for lack of jurisdiction, noting that the veteran’s arguments “merely raise issues about factual findings and the application of a settled (and un-challenged) legal standard to the facts of this case”); *McLean v. Wilkie*, 780 F. App’x 892, 895 (Fed. Cir. 2019) (dismissing an appeal presenting only issues challenging factual determinations and the application of law to fact); *Peet v. Shulkin*, 686 F. App’x 914, 916 (Fed. Cir. 2017) (“[E]ven if Mr. Peet addressed the

Veterans Court's findings, we could not review them. The findings in question involve both findings of fact . . . and an application of law to disputed facts."); *Spear v. McDonald*, 586 F. App'x 591, 592 (Fed. Cir. 2014) ("[W]hether Mr. Spear satisfied the requirements for a writ of mandamus is a challenge to the Veterans Court's application of law to facts, over which we have no jurisdiction.").

CONCLUSION

For the foregoing reasons, we lack jurisdiction to adjudicate Mr. Hassan's appeal. The appeal is therefore dismissed.

DISMISSED

COSTS

No costs.

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-4742

JOHN HASSAN, APPELLANT,

V.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before TOTH, *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 August 6, 2022, the appellant filed a Notice of Appeal (NOA) from a July 25, 2022, Board decision that determined that the discontinuance of Veteran Readiness and Employment (VR&E) services under the provisions of 38 U.S.C. Chapter 31 was improper. The Secretary filed a motion to dismiss this appeal for lack of jurisdiction, asserting there is no existing case or controversy for the Court to adjudicate. He notes that the appellant may intend this appeal to address downstream issues regarding services provided through VR&E; however, the Board did not, and could not, decide any downstream issues because they have not been first decided by a VA regional office and are not the subject of a Notice of Disagreement or appeal to the Board. The appellant filed a response to the Secretary's motion to dismiss asserting, among other things: "They never issued an enforceable order that granted my appeal. It was an instruction to VR&E to correct their legal faults and legitimize their continued refusal to reinstate me." Dec. 30, 2022, Appellant's Response at 1.

This Court's jurisdiction is limited to reviewing final Board decisions that are adverse to a claimant. 38 U.S.C. § 7266(a). Here, the Board, in the decision on appeal, granted the appellant's appeal and determined that the discontinuance of VR&E services was improper. Because that was the only issue on appeal to the Board, the Board's decision was fully favorable to the appellant and there is no adverse decision that he can appeal to the Court. To the extent that he might be dissatisfied with the services provided during VR&E by the agency, he is free to seek review of any adverse RO decision at VA.

On consideration of the foregoing, it is

ORDERED that the Secretary's motion to dismiss is granted and this appeal is DISMISSED for lack of jurisdiction.

DATED: February 9, 2023

BY THE COURT:



JOSPEH L TOTH
Judge

Copies to:

John Hassan

VA General Counsel (027)

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-6701

JOHN P. HASSAN, PETITIONER,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before BARTLEY, *Chief Judge*.

ORDER

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

On October 27, 2022, self-represented veteran John P. Hassan filed correspondence that the Court construed as a petition for extraordinary relief in the nature of a writ of mandamus.¹ Mr. Hassan asserted that a writ of mandamus was necessary to compel VA to assist him with emergency plumbing repairs to his home. Petition at 1. He stated that VA would not respond or responded inappropriately to his calls for help. *Id.*

On December 2, 2022, the Court ordered the Secretary to respond to Mr. Hassan's assertions. The Secretary responded to the Court's order on December 21, 2022. The Secretary explained that Mr. Hassan's plumbing issues are a known problem, as VA had previously, between January 2012 and March 2016, attempted to assist Mr. Hassan with necessary plumbing repairs so that he could receive vocational rehabilitation and education services in his home, but that Mr. Hassan declined to cooperate with the process. Response at 2-3.

As for Mr. Hassan's more recent request for assistance, the Secretary explained that he had been assigned a new vocational readiness and employment (VR&E) counselor in August 2022 and that a preliminary independent living assessment was performed in September 2022. *Id.* at 3. A comprehensive independent living assessment was performed in October 2022, the conclusion of which was that Mr. Hassan "is unable to live on his own, needs social services intervention, and is better suited for assisted living." *Id.* at 4; *see Exhibit Q.* The written report includes photos documenting the condition of Mr. Hassan's home. *Id.*, *Exhibit Q.* It also includes Mr. Hassan's

¹ The correspondence was initially filed in conjunction with a petition on a separate matter, which remains pending adjudication under docket number 22-5516.

report that he had recently called a plumber, but that the plumber was not able to make the needed repairs because there was no way to access the bathroom. *Id.*

The Secretary noted that the plumber contacted VA directly on October 26, 2022, to explain that no repairs could be made until Mr. Hassan declutters his home; that Mr. Hassan was notified the same day of the need to declutter before scheduled repairs; and that Mr. Hassan declined to proceed. *Id.* at 4. In November 2022, Mr. Hassan notified VA that he was declining all services and did not want anyone in his home. *Id.* at 5; *see Exhibit R.* Therefore, the Secretary contends, Mr. Hassan's assertions in his petition are contrary to the evidence. *Id.* at 6. The Secretary urges the Court to dismiss the petition as moot because VA has attempted—and continues to attempt—to provide Mr. Hassan the services that he has requested, but he has consistently declined the assistance, most recently after filing this petition. *Id.* at 5.

On December 29, 2022, Mr. Hassan submitted correspondence to the Court, stating that the Secretary's response was inaccurate and that he has never refused services, but that he will not allow VA to dictate what he is allowed to keep in his home. Appellant's December Correspondence at 1-2.

This Court has authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *See Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998). This includes issuing writs of mandamus to "compel action of the Secretary unlawfully withheld or unreasonably delayed." 38 U.S.C. § 7261(a)(2); *see Martin v. O'Rourke*, 891 F.3d 1338, 1342-43 (Fed. Cir. 2018). However, "[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976). Three conditions must be met before the Court can issue a writ: (1) The petitioner must demonstrate the lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004).

The Court concludes that Mr. Hassan has failed to demonstrate entitlement to a writ of mandamus. The Secretary explained that VA is willing to assist Mr. Hassan with plumbing repairs in his home as requested but is unable to do so because he refuses to remove the extreme clutter, including boxes piled to the ceiling and preventing access. *See Response, Exhibit Q.* The Secretary's explanation is supported both by recent photographs of the residence, which confirm the plumber's report that the bathroom is completely inaccessible due to the clutter, and by Mr. Hassan's own correspondence confirming his refusal to address the clutter that is preventing repairs from being made.

Ultimately, Mr. Hassan's assertion that VA is refusing to facilitate repairs and will not return his calls is contradicted by the evidence provided by the Secretary—and Mr. Hassan himself—demonstrating that VA has been ready to assist Mr. Hassan with plumbing repairs for more than a decade, that it is currently actively engaged with Mr. Hassan and continuing to offer services, and that it is Mr. Hassan who is refusing to facilitate repairs and who has declined VA's assistance. The Secretary urges dismissal, but to the extent that Mr. Hassan has not received—as a result of his own refusal to act—the plumbing repairs requested, the Court cannot conclude that

Mr. Hassan has received the relief requested. Rather, under the circumstances present here, the Court concludes that Mr. Hassan has not demonstrated a clear and indisputable right to a writ or that a writ is warranted because he refused VA's assistance and prevented access to the areas of his home in which repairs are needed. *See id.* Accordingly, the petition will be denied.

Upon consideration of the foregoing, it is

ORDERED that the October 27, 2022, petition for extraordinary relief is DENIED.

DATED: February 13, 2023

BY THE COURT:



MARGARET BARTLEY
Chief Judge

Copies to:

John P. Hassan

VA General Counsel (027)



**BOARD OF VETERANS' APPEALS
FOR THE SECRETARY OF VETERANS AFFAIRS**

**IN THE APPEAL OF
JOHN HASSAN**

**C 18 249 884
Docket No. 21-00 438A
Advanced on the Docket**

DATE: July 25, 2022

ORDER

Discontinuance of Veteran Readiness and Employment (VR&E) services under the provisions of 38 U.S.C. Chapter 31 (Chapter 31) was improper and the appeal is granted.

FINDING OF FACT

The Veteran's VR&E services, specifically private computer training for independent living services, were improperly discontinued without consideration of mitigating circumstances, and without completion of a mandatory special review of the proposed discontinuation by the VR&E Officer.

CONCLUSION OF LAW

The discontinuance of VA VR&E services under Chapter 31 was improper. 38 U.S.C. § 3111; 38 C.F.R. §§ 21.197, 21.198, 21.362, 21.364, 21.4265.

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from June 1952 to April 1954. He appeals a March 2016 determination letter by the Department of Veterans Affairs (VA)

Regional Office (RO) discontinuing his vocational rehabilitation program, specifically private computer training under independent living services.

Originally, the Veteran requested a hearing before the Board of Veterans' Appeals (Board). *See* April 2021 VA Form 9. However, the Veteran withdrew his hearing request in June 2022. *See* June 2022 Veteran correspondence. Accordingly, the Veteran's hearing request is considered withdrawn. *See* 38 C.F.R. § 20.704(e). Finally, in a March 2017 letter, the Veteran withdrew his representative's representation; since he has not appointed new representation, the Board will proceed with the Veteran *pro se*.

VA's rehabilitation services program under Chapter 31 has changed its name from "Vocational Rehabilitation and Employment" to "Veteran Readiness and Employment." The acronym "VR&E" will be used to refer to this program throughout the period on appeal.

The provisions of Chapter 31 are intended to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. 38 C.F.R. § 21.1.

The successful development and implementation of a program of rehabilitation services requires the full and effective participation of the veteran in the rehabilitation process. 38 C.F.R. § 21.362(a). The veteran is responsible for satisfactory conduct and cooperation in developing and implementing a program of rehabilitation service under Chapter 31. 38 C.F.R. § 21.362(a)(1).

In this case, the Veteran's basic eligibility for VR&E benefits is not in dispute. In October 2011, the Veteran was found entitled to benefits under Chapter 31. In June 2012 a rehabilitation plan was developed and approved by all parties. *See* June 2012 VA Form 28-8872. The agreed upon program goal was to "maximize independence in daily living and increase quality of life" for the Veteran by developing his computer skills from June 2012 to July 2013. *Id.* The record reflects the Veteran received weekly one-on-one tutoring at his local public library from August 2012 to October 2012. In November 2012, the Veteran's computer

browser was “hijacked” and the operating system had to be reset, then Hurricane Sandy halted all tutoring. In January 2013, it was noted the Veteran had been “in and out of the hospital” with two eye surgeries. In May 2013, the Vocational Rehabilitation Counselor (VRC) noted the Veteran’s medical appointments and health were interfering with his ability to actively pursue his computer classes, and he placed the Veteran’s plan in “interrupted” status until he was healthy and could resume regular instruction at the public library. *See* May 2013 VR-16 interruption letter.

During a veteran’s rehabilitation program, a temporary suspension of a program, including an independent living program, may be warranted based on a variety of situations. 38 C.F.R. § 21.197. A veteran’s case must be assigned to “interrupted” status prior to the discontinuance and assignment of “discontinued” status. 38 C.F.R. § 21.197(c)(4).

The Veteran immediately stated he wished to have training resumed. *See* May 2013 Veteran letter. In an October 2013 letter, the VRC stated if the Veteran could get internet in his home, he could enroll in a self-paced on-line computer course and remove the Veteran from interrupted status. The record reflects the Veteran had internet installed. *See* July 2013 Veteran letter. In a November 2013 letter, the VRC stated again he would take the Veteran’s case out of interrupted status and requested the Veteran contact him to resume training. In a December 2013 letter to the VRC’s supervisor, the Veteran stated his vision had worsened and he needed a bigger computer screen and keyboard, but he wanted to restart the computer tutoring program. After this, correspondence between the Veteran and VRC grew nonproductive. The VRC noted the Veteran was a hoarder and determined his home was unsafe for in-person instruction. It appears from the record that the Veteran, at one point, agreed to have his garage cleaned out so items could be removed from his house, his house could be tidied, and in-person tutoring could be conducted at his home. *See* July 2014 VRC letter. Unfortunately, communication between the VRC and Veteran broke down. *See* July 2014 VRC correspondence (the VRC received a “scathing letter...tried to call [the Veteran]...he hung up...he would not answer” the VRC’s calls). In July 2014, the Veteran’s case was placed in “interrupted” status for the second time. In August 2014, the VRC told the Veteran that although computer lessons could not resume at his home, lessons

could resume at the public library, as before. However, the Veteran ceased responding to any contact from his VRC from August 2014 through December 2015, despite numerous letters from the VRC. In January 2016, the VRC informed the Veteran that his case was “due to be closed,” and in March 2016, the VRC sent the Veteran a discontinuance letter, to which the Veteran pursued the current appeal.

The March 2016 discontinuance letter noted the Veteran’s computer instructor was unable to work in the Veteran’s home and stated the instructor “relayed concerns of feasibility of...continuing training” as the Veteran had not used his computer during the interruption and his “skills had deteriorated.” The VRC stated “this combined with the inability to have instructions [at home, and the] inability to consistently and reliably meet with the instructor at the public library, makes me believe further training is infeasible.” The Board finds the VRC ultimately found the Veteran’s conduct and cooperation unsatisfactory.

After being placed in interrupted status, if VA determines that a veteran has failed to maintain satisfactory conduct or cooperation, VA may, after determining that all reasonable counseling efforts have been made and are not found reasonably likely to be effective, discontinue services and assistance to the veteran, unless the case manager determines that mitigating circumstances exist. 38 C.F.R. § 21.364. Mitigating circumstances include, among others, the effects of the Veteran’s service- and nonservice-connected conditions. *Id.* Finally, and most importantly for this Veteran’s case, the VR&E Officer shall conduct a special review of each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. 38 C.F.R. § 21.198(b)(7).

During the appeal period, the Veteran’s service-connected schizophrenia was rated at 50 percent disabling and he received a total disability rating based on individual unemployability (TDIU). *See* January 2020 rating decision codesheet. The record does not reflect the VR&E Officer conducted a special review of the Veteran’s proposed discontinuance prior to his case being placed in discontinued status.

Additionally, the Veteran’s service-connected left-eye conditions created a serious handicap during his training as the record reflects his left-eye required various

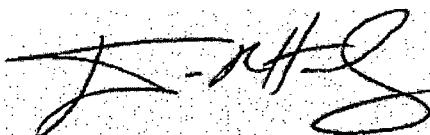


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surgeries that halted his training, and his vision further decreased to the extent he required a larger computer screen for training, which was not provided. Additionally, the severity of the Veteran's service-connected psychiatric disorder symptoms resulted in occupational and social impairment with reduced reliability and productivity, which potentially affected his communication, living situation, and difficulty in establishing effective relationships. *See* 38 C.F.R. § 4.130, DC 9205. Thus, providing the Veteran the benefit of the doubt, mitigating circumstances existed that were not considered at the time the Veteran's case was placed in discontinued status. Additionally, as the discontinuance was not procedurally proper under 38 C.F.R. § 21.198(b)(7), the Board finds it was not proper to discontinue his VR&E claim and the Veteran's appeal is granted in this respect.

As such, the Veteran's VR&E services will be placed back into interrupted status with the intent that he will follow through with the required steps needed to restart a computer training program at his local public library. The Board reminds the Veteran that he is responsible for satisfactory conduct and cooperation during his receipt of services, and failure to do so may result in another discontinuance of his case in the future.



DONNIE R. HACHEY
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

J. Bona, Associate Counsel



YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. Your local VA office will implement the Board's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court *before* you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you, you will have another 120 days from the date the Board decides the motion for reconsideration or the motion to vacate to appeal to the Court.* You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time.* Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: <http://www.uscourts.cavc.gov>, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

