

Appendix A

NOTE: This disposition is nonprecedential.

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

GABRIEL M. ROBLES,
Claimant-Appellant

v.

**ROBERT WILKIE, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee

2020-1460

Appeal from the United States Court of Appeals for
Veterans Claims in No. 19-4805, Judge Joseph L. Falvey,
Jr.

Decided: June 11, 2020

GABRIEL M. ROBLES, Topeka, KS, pro se.

KARA WESTERCAMP, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, for respondent-appellee. Also represented by
JOSEPH H. HUNT, ROBERT EDWARD KIRSCHMAN, JR., LOREN
MISHA PREHEIM; CHRISTINA LYNN GREGG, BRIAN D.
GRIFFIN, Office of General Counsel, United States Depart-
ment of Veterans Affairs, Washington, DC.

Before PROST, *Chief Judge*, MAYER and LOURIE, *Circuit Judges*.

PER CURIAM.

Gabriel M. Robles appeals from the decision of the United States Court of Appeals for Veterans Claims (“Veterans Court”) denying his petition for extraordinary relief. *Robles v. Wilkie*, No. 19-4805, 2019 WL 3806385 (Vet. App. Aug. 14, 2019) (“*Decision*”). For the reasons below, we *dismiss* the appeal.

BACKGROUND

On November 14, 2016, Robles filed at the United States Department of Veterans Affairs (“VA”) a claim for compensation pursuant to 38 U.S.C. § 1151 for a right wrist injury. VA denied disability compensation for the wrist condition. Robles filed a notice of disagreement (“NOD”) in which he disagreed with VA’s decision and also asserted entitlement to special monthly compensation (“SMC”) based on housebound status or need for aid and attendance. VA responded by informing Robles that his NOD was not valid because the SMC issues had not been previously presented to VA. Robles then filed another NOD in which he continued to disagree with the denial of disability compensation and assert entitlement to SMC. On June 8, 2019, a VA regional office issued two Statements of the Case (“SOCs”). The first SOC continued denial of Robles’s claim for disability compensation for his wrist injury. The second SOC determined that Robles could not file a NOD regarding the SMC issues because he had not filed a claim for that benefit.

In early July 2019, Robles simultaneously filed two appeals to the Board of Veterans’ Appeals (“Board”) as well as a petition for extraordinary relief at the Veterans Court. In each of his appeals to the Board, Robles wrote the

following in lieu of a description of why he thought that VA decided his case incorrectly:

This Veteran has filed a request to the United States Court of Appeals for Veterans Claims for “Extraordinary Relief” (Rule 21) to bypass this benefits process by the Veterans Administration.

SAppx. 28, 30.

In his petition for extraordinary relief at the Veterans Court, Robles made numerous allegations of misconduct by VA employees and expressed general disagreement with the June 8, 2019 SOCs. *See* SAppx. 12–18. The Veterans Court dismissed-in-part and denied-in-part. As it pertained to Robles’s allegations of misconduct by VA employees, the Veterans Court dismissed the petition for lack of jurisdiction. *Decision*, 2019 WL 3806385, at *1 (citing 38 U.S.C. § 7252(a)). As it pertained to Robles’s claims for VA benefits, the Veterans Court denied the petition because Robles does not lack adequate alternative means to attain the desired relief and therefore is not entitled to extraordinary relief. *Id.* (citing *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380–81 (2004)). Robles appealed.

DISCUSSION

Our jurisdiction to review decisions of the Veterans Court is limited. *Wanless v. Shinseki*, 618 F.3d 1333, 1336 (Fed. Cir. 2010). We may review a decision by the Veterans Court concerning whether to grant a petition for extraordinary relief when it raises a non-frivolous legal question. *See Beasley v. Shinseki*, 709 F.3d 1154, 1158 (Fed. Cir. 2013); *see also* 38 U.S.C. § 7292(a). “In conducting such a review, we do not interfere with the [Veterans Court’s] role as the final appellate arbiter of the facts underlying a veteran’s claim or the application of veterans’ benefits law to the particular facts of a veteran’s case.” *Beasley*, 709 F.3d at 1158; 38 U.S.C. § 7292(d)(2).

Here, the Veterans Court applied its own jurisdictional statute to dismiss the allegations in Robles's petition that do not relate to any Board decision regarding a claim for benefits. *See Decision*, 2019 WL 3806385 (citing 38 U.S.C. § 7252(a)). And the court applied Supreme Court precedent to deny Robles's attempt to bypass the Board and the established appellate procedure for his claims. *See id.* (citing *Cheney*, 542 U.S. 367 and 38 U.S.C. § 7104(a)). Accordingly, because Robles has not identified a non-frivolous legal question, we have no basis to reverse the Veterans Court's decision.

CONCLUSION

We have considered Robles's remaining arguments, but we find them unpersuasive. Thus, the appeal is *dismissed*.

DISMISSED

COSTS

No costs.

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v.

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2020-1460

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Jr.

MANDATE

In accordance with the judgment of this Court, entered
June 11, 2020, and pursuant to Rule 41 of the Federal
Rules of Appellate Procedure, the formal mandate is
hereby issued.

FOR THE COURT

August 3, 2020

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

Appendix B

Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-4805

GABRIEL M. ROBLES, PETITIONER,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before FALVEY, *Judge*.

ORDER

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

On July 17, 2019, Gabriel M. Robles, who is self-represented, filed a petition for extraordinary relief that the Court construes as a request for a writ of mandamus compelling the Secretary to pay compensation based on Mr. Robles's claims. Mr. Robles makes wide ranging allegations of misconduct by government employees, including criminal activity by VA employees, and expresses disagreement with a June 8, 2019, Statement of the Case (SOC). But, even though Mr. Robles is proceeding pro se and is thus entitled to a sympathetic reading of his arguments, *see De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992), the Court will deny his petition because we are without jurisdiction to address most of his claims and appealing to the Board of Veterans' Appeals in response to the SOC is a viable alternative remedy for those that we can address.

This Court has the authority to issue extraordinary writs in aid of its jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a). But, our jurisdiction is limited to review of Board decisions. *See* 38 U.S.C. § 7252(a). So, our authority to issue extraordinary writs is limited to situations in which the Court would have jurisdiction over the final Board decision. Thus, we will not address any of the allegations of misconduct, criminal or otherwise, unless they relate to a VA benefits claim that may be adjudicated in a Board decision subject to this Court's jurisdiction and will dismiss those allegations.

And so, we are left only with Mr. Robles's allegation that VA replaced records in his file and his general disagreement with a June 2019 SOC. We note that Mr. Robles did not attach the SOC to his petition but he cites to one statute and two regulations to identify the benefits he would like the Court to award: 38 U.S.C. §1151 and 38 C.F.R. §§ 3.352(a), 4.16. Presumably, then, Mr. Robles has claims with VA for compensation related to a disability caused by VA medical care,

total disability based on individual unemployability, and entitlement to special monthly compensation based on the need for aid and attendance. At any rate, the specifics of his denied claims are not relevant at this time. This is because Mr. Robles fails the first of the three elements that must be satisfied before a writ is warranted.

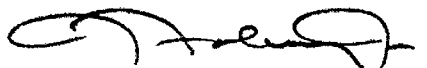
To receive a writ, a petitioner must lack adequate alternative means to attain the desired relief. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004). This is to ensure that the writ is not used as a substitute for an appeal. *Id.* But here, Mr. Robles has alternative means of resolving his disagreement with the SOC—he can file an appeal to the Board. *See* 38 U.S.C. § 7104(a) (establishing the scope of the Board's review over the Secretary's decisions). And from there, if need be, he can take his appeal to this Court. *See* 38 U.S.C. § 7266(a) (explaining how a person adversely affected by a Board decision may appeal to this Court). At each step of the way before the Board, and the Court if necessary, Mr. Robles will have the opportunity to press his disagreement with the denial of benefits and argue how VA employees altered his records. What he may not do is use a writ as a substitute for these appeals. *See Cheney*, 542 U.S. at 380. Thus, the Court will deny this portion of Mr. Robles's petition.

Upon consideration of the foregoing, it is

ORDERED that Mr. Robles's petition for extraordinary relief in the nature of a writ of mandamus is DENIED as it pertains to claims for VA benefits and DISMISSED as it pertains to allegations of misconduct by VA employees.

DATED: August 14, 2019

BY THE COURT:



JOSEPH L. FALVEY, JR.
Judge

Copies to:

Gabriel M. Robles

VA General Counsel (027)