

"APPENDIX A"

NOTE: This disposition is nonprecedential.

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

CURTIS R. GAYLORD,
Claimant-Appellant

v.

**DAT TRAN, ACTING SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee

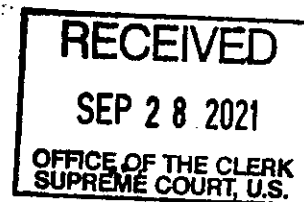
2020-1957

Appeal from the United States Court of Appeals for
Veterans Claims in No. 20-2184, Judge Amanda L. Meredith.

Decided: February 2, 2021

CURTIS R. GAYLORD, Joliet, IL, pro se.

IN KYU CHO, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by JEFFREY B. CLARK, ROBERT EDWARD KIRSCHMAN, JR., LOREN MISHA PREHEIM; AMANDA BLACKMON, Y. KEN LEE, Office of General Counsel, United States Department of Veterans Affairs.



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GAYLORD v. TRAN

Before LOURIE, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

Curtis R. Gaylord appeals from a decision of the United States Court of Appeals for Veterans Claims (the “Veterans Court”) denying his petition for a writ of mandamus to compel the Department of Veterans Affairs (“VA”) to recognize an earlier claim for benefits and amend the effective date of disability compensation for his service connection for flat feet. *See Gaylord v. Wilkie*, No. 20-2184, 2020 WL 1685834 (Vet. App. Apr. 7, 2020) (“*Decision*”). Because Gaylord only challenges the application of law to fact, over which we lack jurisdiction, we *dismiss* the appeal.

BACKGROUND

Gaylord served in the United States Army from October 1974 to March 1976. Gaylord filed a claim for entitlement to service connection for flat feet on July 29, 2002. On October 5, 2012, the VA granted his claim for entitlement and assigned a 10 percent disability rating with an effective date of July 29, 2002. On January 8, 2016, Gaylord requested that the VA change the effective date to March 16, 1976, the date of his separation from service. Gaylord asserted that he had filed an earlier claim for entitlement to service connection for flat feet on March 22, 1976.

On August 22, 2016, the VA’s Chicago Regional Office (“RO”) denied Gaylord’s request to revise the effective date in the RO’s Statement of the Case (“SOC”). The RO stated that the VA had no evidence that a claim for service connection for flat feet was received by the VA prior to July 29, 2002. The VA mailed Gaylord a letter dated July 23, 2019 regarding a hearing scheduled for September 30, 2019. The record does not indicate that Gaylord attended that hearing. The VA mailed Gaylord a letter dated February

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GAYLORD v. TRAN

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5, 2020 regarding a second hearing scheduled for May 6, 2020.

On March 24, 2020, Gaylord filed a petition for a writ of mandamus asking the Veterans Court to compel the VA to amend the effective date of disability compensation for his flat feet. Gaylord asserted that the August 22, 2016 SOC is null and void because he states, the VA lied when it stated that the RO had no evidence of a March 22, 1976 claim for entitlement to service connection for flat feet.

On April 7, 2020, the Veterans Court denied Gaylord's petition for a writ of mandamus. The court stated that "[i]t appears to the Court that the petitioner seeks a writ as a substitute for the appellate process." *Decision*, 2020 WL 1685834, at *1. The court noted that the VA had scheduled several hearings for Gaylord with the Board of Veterans' Appeals. *Id.* The court also noted that if Gaylord "continues to pursue alternative means to obtain a decision on his request for an earlier effective date and VA fails to respond within a reasonable period of time, he may return to the Court and file a new petition asking the Court to compel VA to respond." *Id.*

On April 28, 2020, Gaylord moved for reconsideration. On May 8, 2020, the Veterans Court denied Gaylord's motion for reconsideration and entered judgment. Gaylord timely appealed.

DISCUSSION

We have limited jurisdiction over appeals from the Veterans Court. *See* 38 U.S.C. § 7292. We decide "relevant questions of law, including interpreting constitutional and statutory provisions." 38 U.S.C. § 7292(d)(1). "Unless an appeal presents a constitutional issue, we may not review challenges to factual determinations or challenges to a law or regulation as applied to the facts of a particular case." *Harris v. Shinseki*, 704 F.3d 946, 948 (Fed. Cir. 2013)

(citing 38 U.S.C. § 7292(d)(2)). The Veterans Court has authority to grant a writ of mandamus if the veteran has established: “(1) that he has a clear legal right to relief; (2) that there are no adequate alternative legal channels through which the petitioner may obtain that relief, and (3) that the grant of mandamus relief is appropriate under the circumstances.” *Beasley v. Shinseki*, 709 F.3d 1154, 1157 (Fed. Cir. 2013); see also *Cheney v. United States Dist. Court*, 542 U.S. 367, 380–81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). But “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. United States Dist. Court*, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976).

On appeal, Gaylord argues that the VA did not afford him a fair and meaningful proceeding. Gaylord argues that the VA has violated his constitutional rights. He asserts that his March 22, 1976 claim is a property right, and that the VA has deprived him of due process by offering an inadequate process for appeal. The government responds that we lack jurisdiction to review the Veterans Court’s denial because Gaylord only disagrees with the Veterans Court’s application of the law to his factual circumstances—specifically, whether there are no adequate alternative legal channels through which Gaylord may obtain his requested relief. The government therefore argues that we should dismiss Gaylord’s appeal. The government alternatively argues that we should affirm the Veteran’s Court’s decision because Gaylord identified no error.

We agree with the government that we lack jurisdiction to consider the merits of Gaylord’s appeal. Gaylord’s characterization of the issue on appeal as “constitutional in nature” does not confer upon us jurisdiction that we otherwise lack.” *Helper v. West*, 174 F.3d 1332, 1335 (Fed. Cir. 1999). Gaylord’s appeal presents only issues challenging factual determinations and the application of law to fact. Gaylord continues to argue on appeal that he has been

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denied a fair and meaningful proceeding and there can be no regular appellate process based on the RO's alleged misrepresentation that the RO had no evidence of a March 22, 1976 claim for entitlement to service connection. But this argument is merely a challenge to the Veterans Court's factual determination that Gaylord sought a writ as a substitute for an appellate process. *See also Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953) (“[E]xtraordinary writs cannot be used as substitutes for appeals. . .”).

Finally, Gaylord argues that the Veterans Court's application of case law on availability of writs was misplaced. *See Decision*, 2020 WL 1685834, at *1 (citing *DiCarlo v. Nicholson*, 20 Vet. App. 52, 56–57 (2006); *Lamb v. Principi*, 284 F.3d 1378, 1384 (Fed. Cir. 2002)). But the application of case law to the facts of a particular case is a quintessential application of law to fact over which we lack jurisdiction. Accordingly, we lack jurisdiction over Gaylord's appeal.

CONCLUSION

We have considered Gaylord's remaining arguments and conclude that they are without merit. For the reasons discussed above, we *dismiss* for lack of jurisdiction.

DISMISSED

COSTS

No costs.

Congress intent at VA

v. Congress intent

+ The Const Cushman

to promote justice not proclude

Q Is it Harris v. Shinseki, 704 F.3d 946 (Fed Cir 2013) or Wilke?

"APPENDIX B"

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

CURTIS R. GAYLORD,
Claimant-Appellant

v.

**DAT TRAN, ACTING SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2020-1957

Appeal from the United States Court of Appeals for
Veterans Claims in No. 20-2184, Judge Amanda L.
Meredith.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

DISMISSED

ENTERED BY ORDER OF THE COURT

February 2, 2021

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS
"APPENDIX C"

CURTIS GAYLORD,

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Claimant-Appellant,

v.

ROBERT WILKIE

Secretary of Veterans Affairs,

Respondent-Appellee.

MEMORANDUM IN/TEU DEFORAL ARGUMENT

NOW COMES Curtis Gaylord, appearing pro se, and hereby respectfully submits his discussion of items the opposing party raised in its brief, states as follows:

The congressional intent below at the Department of Veterans Affairs (VA) is paternalistic, pro-claimant, veteran friendly and non-adversarial. On the contrary the VA has treated this appellant utterly adversarially, see the record.

The VA i.e. the government, the Secretary continues with its cavalier attitude, cavalierly stating, "he the DRD," said that there was no evidence," stating that the VA had no evidence of receiving appellant's application for his flat feet within one year of his separation. Stating, that the RO's decision to deny an earlier request was based solely on the factual finding that the VA had found no evidence that appellant submitted his application within one year after his separation. Stevie Wonder can see that appellant filed his original claim for flat feet on March 22, 1976 only six (6) days after his separation from active service, well

Within the one (1) year period under 38 U.S.C. Sec. 5110(b)(1). Please see appellant's Reply Brief and Appendix, without unnecessary redundancy Exhibit B, the actual original claim for flat feet date stamped March 22, 1976. Notice RBA, notice date signed by appellant 3-22-76, Notice box item 38, Just Release From Military, Notice box item 25 FLAT FEET. The evidence is clear, obvious, and overwhelming of the original March 22, 1976 claim for flat feet. Exhibits A through H are indisputable and undebatable. All were in the RO's VA's possession at the time of its intentional "lie" Exhibit I page 30 of the 08/22/2016 SOC. Please note VA stating, "There is no evidence that a claim for service connection for flat feet was received within a year of your separation of service or prior to July 29, 2002." This is obviously not true and a "lie", beyond an "error" and the like. In addition VA appellee does not state any facts nor evidence, nor any "reasons and/or bases for its intentional "lie" fraud. The VA absolutely knew about the original March 22, 1976 claim for flat feet. See Exhibit J the VA discuss Equity might preclude relief; Lamb vs Peake regarding Hyson, etc., instead of addressing appellant's NOD and his Eight (8) specifications/clarifications to said NOD, in which VA decided not to address any of appellant's issues which were CUE, Constitutional, and an issue under 38 U.S.C. Sec. 1523 and the Secretary paying the greater which also was not addressed. More importantly is the EED issue that this appellant is shining the spotlight on. The Notice To Report, Exhibit F was sent to an incorrect address on two occasions, 10 Apr 1976 Exhibit D and 30 Apr 1976 Exhibit E, the Notice to Report was on both occasions returned, "MAIL UNDELIVERABLE" and subsequently "DISALLOWED" Exhibit H, 5-24-76. No notice of the examination. Appellant in his Eight Specifications/Clarifications cited Hyson, Woods, Cross, Davis, Thompson

(Charles), Ashley I & II, et al, cited 3.158 and Manual 21-1 requirement of Notice. This appellant rebutted the VA's Regular Mailing Presumption, there were other addresses in the file at both times of the mailing of the Notice TO Report and the "Disallowance" see Exhibit M the CERTIFIED LIST, A Record In VA's Possession, signed by Veterans Law Judge, Charles E. Hogeboom, number 2 that's the Original Claim for flat feet filed March 22, 1976, plus number 6 DD-214 was received in March 1976 see at Exhibit A with appellant's correct address of 5512 W. Fulton St, Chicago, IL 60644, including other evidence in the C file, Medical Board Proceeding and Educational Benefits granted within the relevant period under Tyson, The VA could not shoulder their burden so they "lied" page 30 of the 8/22/2016 SDC "employee fraud". That "lie" "stragem and subterfuge" "prejudiced" this appellant, Appellant was precluded his day in Court. No original claim filed within one (1) year of separation from active service no 5110 (b)(1) and no 38 C.F.R. 3.160 pending claim. Appellant has submitted evidence of the original March 22, 1976 claim for flat feet. Where's the appellees which say we, where's there evidence, "reasons or bases", there's absolutely none. Plus appellant has submitted two (2) "Declarations" regarding the truth and genuineness of documents. What has the VA submitted besides "Hoqwash" and misrepresentations in their Appellees Brief. Notice that VA does not adequately address why there is no evidence and again does not submit any evidence at all, never has to support no evidence, again see Exhibit I and appellees S Appx 14 through S Appx 45, appellee S Appx 45 is different than appellants Exhibit I page 30, appellant should of had the same page as appellees. Appellees "lie" has taken away appellants property right under Cushman, see the Reply Brief. Under

Cushman, the original claim dated March 22, 1976 is a property right protected under the United States Constitution 5th Amendment and is not discretionary. Appellees "lie" violated appellees property right, it was unfair and unmeaningful in intent and a lack of due process, under Cushman. That constitutional issue is and was jurisdictional under 38 U.S.C. Sec. 7261 and Sec. 7292. The "lie" was "extraordinary", "egregious" and "odious", how many bites of the apple will appellee get. There was and is continued a "failure to act" and an "unreasonable delay". The SOC of 8/22/16, the meeting set by Senator Durbin, the injury by Congressman Foster, Tammy Duckworth, two or three Motions for Advancement on the Docket and much more, please see writ and Briefs. Including letters and sending evidence of the original claim of March 22, 1976 to Hugh Turner Director of the Chicago RO and Cheryl L. Mason Board Chairman to no avail.

Regarding the SOC, see Cushman where the SOC was "tainted" by "altered" documents in that same light this appellant's SOC was tainted by the "lie". There can be no fair hearing, this appellant considers the SOC "void" and everything the proceedings the timely VA Form 9 (Substantive Appeal) filed timely on Oct. 21, 2016 appealing all issues. The question is also if the VA can violate a constitutional right and then use anything after that to the detriment of a veteran, claimant, appellant. The property right is not discretionary; NO SOC; NO hearing, NO Substantive Appeal.

There was no regular or fair appellate procedure because of the "tainted" "lie" cause the SOC to be considered no SOC at all and in a sense void and everything after. A fair appellate process was precluded prejudicing appellant.

Please see of the importance of the SOC and in part pertaining to "Extraordinary Award" that the VA is not permitted, that is not simply permitted to infringe upon the rights of the Veteran, even if protecting those rights comes at a cost to the Agency. *Macklem v. Shinseki*, 24 Vet. App. 63 (2010). Denying appellants writ as being used as a substitute for the appellate process an abuse of discretion. Appellant contends that there is no cure, he can't be made whole, that there was "irreparable harm". Appellees violations cannot lead to a detriment (cite omitted)

WHEREFORE, the appellant prays for judicial intervention with instructions (Orders) and continues to ask that justice prevails.

Respectfully Submitted,
Curtis Gaylord

Dated: January 14, 2021

Curtis Gaylord
103 S. May St.
Joliet, IL 60436
(773) 512-7909

CERTIFICATE OF SERVICE

I Curtis Gaylord hereby certify under penalty of perjury that on January 14, 2021, I caused the mailing of an entire copy of this Memorandum In Lieu of Oral Argument to the following by Regular, First Class Mail, Joliet, IL 60432

IN K CHO
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

AMY M. ROTH-PIXTON, Esq., Attorney
[COR LO NTC]
Department of Veterans Affairs,
OGC (O27C)
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Washington, D.C. 20044

"APPENDIX D"

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Designated for electronic publication only

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2184

CURTIS R. GAYLORD, PETITIONER,

v.

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

Before MEREDITH, *Judge*.

ORDER

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

On March 24, 2020, the self-represented petitioner, Curtis R. Gaylord, filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to recognize an original claim for benefits for pes planus that he asserts he filed in March 1976. Petition at 2. He contends that an August 2016 Statement of the Case (SOC) is "null and void" because the Secretary "intentionally, knowingly, falsely, fraudulently . . . lied" about the existence of his original claim. Petition at 2-3.

This Court has the 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 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, 1343 (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). Accordingly, three conditions must be met before a court may issue a writ: (1) The petitioner must lack adequate alternative means to attain the desired relief, thus ensuring that the writ is not used as a substitute for an appeal; (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).

It appears to the Court that the petitioner seeks a writ as a substitute for the appellate process. *See* Petition at 12 (referring to a hearing before a Board of Veterans' Appeals (Board) member scheduled for September 2019), 108 (July 2019 letter from the Board advising the petitioner that a video hearing before a Board member had been scheduled for September 2019), 109 (February 2020 letter from the Board advising the petitioner that a video hearing is scheduled

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2184

CURTIS R. GAYLORD, PETITIONER,

SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before MEREDITH, Judge.

ORDER

Note: Pursuant to E.S. 141, App. R. 30(a), this action may not be cited as precedent.

On March 24, 2020, the self-represented petitioner, Curtis R. Gaylord, filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to recognize an original claim for benefits for oss plans that he asserts he filed in March 1976. Petition at 2. He contends that an August 2016 statement of the Secretary (SOC) is "null and void" because the Secretary "intentionally, knowingly, falsely, fraudulently, . . . lied" about the existence of his original claim. Petition at 2-3.

This Court has the 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 writs of mandamus to "compel action of the Secretary unlawfully withheld or unreasonably delayed." 38 U.S.C. § 5261(a)(2); see *Winters v. Wilbanks*, 891 F.3d 1338, 1343 (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*, 438 U.S. 394, 402 (1978). Accordingly, three conditions must be met before a court may issue a writ: (1) The petitioner must lack adequate alternative means to attain the desired relief, thus certifying that the writ is not used as a substitute for an appeal; (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 *Chavez v. Martinez*, 552 U.S. 283, 288-81 (2007).

It appears to the Court that the petitioner seeks a writ as a substitute for the appellate process. See Petition at 12 (referring to a hearing before a Board of Veterans' Appeals (Board) member scheduled for September 2019) 108 (July 2019 letter from the Board advising the petitioner that a video hearing before a Board member had been scheduled for September 2019). 109 (February 2020 letter from the Board advising the petitioner that a video hearing is scheduled

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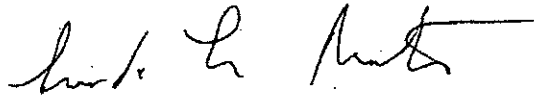
for May 6, 2020). "[E]xtraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial." *Lamb v. Principi*, 284 F.3d 1378, 1384 (Fed. Cir. 2002) (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953)). The Court notes that, if the petitioner continues to pursue alternative means to obtain a decision on his request for an earlier effective date and VA fails to respond within a reasonable period of time, he may return to the Court and file a new petition asking the Court to compel VA to respond. *See DiCarlo v. Nicholson*, 20 Vet.App. 52, 56-57 (2006).

Upon consideration of the foregoing, it is

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

DATED: April 7, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

Copies to:

Curtis R. Gaylord

VA General Counsel (027)

for May 6, 2020. "[E]xtraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and both are necessary rights." *Leung v. Principal*, 284 F.3d 1378, 1384 (Fed. Cir. 2002) (quoting *Bowers v. Colwell*, 346 U.S. 370, 383 (1953)). The Court notes that if the petitioner continued to pursue alternative means to obtain a decision on his request for an earlier effective date and VA fails to respond within a reasonable period of time, he may return to the Court and file a new petition asking the Court to compel VA to respond. See *Dickens v. Nicholson*, 20 Vet.App. 22, 26-27 (2006).

Upon consideration of the foregoing, it is

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

DATED: April 7, 2020

BY THE COURT:

AMANDA L. MERIDITH
Judge

Copies to:

Curtis R. Gaylor

VA General Counsel (027)

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS
"APPENDIX E"

CURTIS GAYLORD
Petitioner,

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)
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v.

) No. 20-2184
)
)
)

ROBERT WILKE
Secretary of Veterans Affairs,
Respondent.

MOTION FOR RECONSIDERATION

NOW COMES Curtis Gaylord, as self represented petitioner, pro se, respectfully submitting his Motion for Reconsideration, and in support of states as follows:

On March 24, 2020, petitioner filed a Petition for Extraordinary Relief in the Form of a Writ of Mandamus. On April 7, 2020 this Honorable Court DENIED his said petition. Eliciting this timely Motion for Reconsideration, deemed filed on April 28, 2020.

This Court has curtailed this petitioners contentions as he stated or attempted to state in his said Petition, is an abuse of discretion and legal error. In the first paragraph of this Court's "Denial" it states that petitioner filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to recognize an original claim for benefits for pes planus that he asserts he filed in March 1976. Petition at 2. He contends that an August 2016 Statement of the Case (SOC) is "null and void" because the Secretary "intentionally, knowingly, falsely, fraudulently... lied" about the existence of his original claim. Petition at 2-3.

That opinion and description of petitioners articulations has fallen far short. The actuality and fact that petitioner did file his original claim for "flat feet" pes planus in March 1976 well within the one year

period under 38 U.S.C. Sec. 5110 and 38 C.F.R. Sec. 3.400 as clearly shown within said petition with "Exhibits A-Z" attached thereto. Not just asserted, its "beyond a reasonable doubt" that there was and is said original claim filed on March 22, 1976, only six days (6) after petitioner's separation from active service on March 16, 1976, evincing an EED. Petitioner hereby incorporates his petition with Exhibits and the pertinent "Denial" by reference. The original claim filed on March 22, 1976 is "uncontestable", see especially "Exhibits A-I". The second claim for pes planus "flat feet" filed on July 29, 2002 was granted on September 10, 2012, its well-established that the original March 22, 1976 claim for that same disability is a part of the granted claim. In order to preclude the EED the Secretary "lied", that there is no evidence of said March 22, 1976 claim. That "lie", fraud, intentional false misrepresentation, knowingly unlawfully violating the non adversarial, paternalistic nature contemplated by the Congressional intent. Under *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) petitioner's original March 22, 1976 and second July 29, 2002 pes planus claim granted on September 10, 2012 are a property right protected under the 5th Amendment of the United States Constitution. The Secretary has not afforded petitioner a "fair and meaningful" proceeding nor "due process, the Writ, again is warranted. Petitioner contended CUE in his Eight Specifications/Clarifications to his NOD and that the "Disallowance" of his March 1976 original claim was "CUE", see said "Exhibits" especially A-I "Exhibit H" the "DISALLOWANCE" of the original claim after mail had been returned to Secretary twice as "UNDELIVERABLE", Exhibits D, E, G. The Secretary did not address those issues the "CUE" nor the "Constitutional" pertaining to the original 1976 original claim, "lied" that there was no evidence of a claim filed by petitioner within a year, one (1) year of his separation from active service, see the 8/22/2016 SOC, "Exhibit X", with the "lie" and no mention of the "CUE" nor "Constitutional" issues, intentionally. The Secretary's actions are no less than a refusal to act and the 5th Amendment Constitutional rights violation in 1976 and 2012, see petition, please read petition in its entirety. The Secretary's intentional "lie" has also

"prejudiced" petitioner in his other lower extremity (LE) claims as stated in all SOC's, see petition at pg 9 concerning 02/06/2020, read petition in its entirety, petitioner contends that all LE claims are directly or secondarily related to his March 22, 1976 original claim with continuity to the present. The original March 1976 claim needs to be addressed for petitioner to have his day in court, lawfully. The constitutional issues need to be addressed by the Secretary and this Honorable Court. Cushman, supra and in the petition, Specifications/Clarifications that were also attached held that in that case, the presentation of altered medical document was indeed prejudicial. This petitioner was prejudiced by the "lies" intentionally stated by the Secretary, all the SOC's are tainted by the "lie", after receiving "Exhibits A-I" on numerous occasions as stated throughout petition the Secretary did not provide a SSDS upon receiving that evidence and continue adamantly to hold its ground that there is no evidence of a claim filed by petitioner within one (1) year of his separation from active service, which is obviously untrue. Petitioner is trying to figure out why this Court believes honestly that after the contumacy of the Secretary, the Congressional disrespect, being evasive with the Congressman, Bill Foster's office, Senator Dick Durbin's office, Senator Tammy Duckworth's office and much more including notifying the Chicago Regional Office Director Hugh Turner, the Board Chairman Cheryl L. Mason, the Assistant Chicago Regional Office Director Anna Mc Barron, inter alia, how is the Secretary expected to concede the March 22, 1976 original claim and then address the FED and the "Regular Mailing Presumption" Hyson Woods, Thompson (Charles) Cross et al. Please read petition in its entirety and sympathetically proceeded to no avail, under these circumstances in light of a forty-five (45) year pending claim still open and at least seven (7) years of the NOD with its Eight Specifications/Clarifications and more, to no avail. What more is needed to evince the Secretary unreasonably delaying and protracting the proceedings tainted by a "lie". No proceeding can be "harmless error" based on a "lie" "fraud". While this Court condone such egregiousness, stated respectfully but calling a spade a spade

Substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial. The circumstance in Lamb are far off base from the circumstances of this instant petition and Motion for Reconsideration. Mr. Lamb did not raise a constitutional issue or challenged the validity or interpretation of a statute or regulation. Mr. Lamb did argue that the Department's termination of his benefits in 1957 without receiving notice of that proposed action denied him due process — a constitutional claim in which that Honorable Court had jurisdiction. Mr. Lamb did not contend that the Secretary "intentionally, knowingly, falsely, fraudulently... lied" about the existence of his original claim, or any egregious action of the Secretary, as this petitioner contends. The Lamb Court opined that, "there is nothing extraordinary about the present case. It is an ordinary case in which a veteran who has been awarded disability benefits seeks an earlier date for their commencement than the Department allowed. We see a significant number of such cases. Although the issues in the present case are different from those in most of such cases, that does not alter the essential nature of this case as an ordinary one not involving extraordinary circumstances." That mandamus was not an appropriate remedy for dealing with that issue. Cf. Bankers Life, 346 U.S. at 382-84, 74 S. Ct. 445. The denying of that mandamus, the Veterans Court did not abuse its discretion or commit other legal error.

In contrast and on the contrary to Lamb and Bankers Life, petitioner aggressively and continually contend that the Secretary's "fraud" "lie" "intentional" false misrepresentation was drastic, extraordinary and warranting mandamus and there has been "unreasonable delay" intentionally based tainted due to said Secretary's "lie" which in part has precluded petitioner from having his so-to-speak day in court contending his "CUE" "Constitution" "Notice" "Regular Mailing Presumption" and the like pertaining to his forty-five (45) year original March 1976 claim. To allow the Secretary to get away with this travesty is disrespectful and incredible. This

Veterans Court has abused its discretion and has committed legal error, grossly. Bankers Life, supra, the AWA is meant to be used only in exceptional cases where there is clear abuse of discretion or usurpation of judicial power. Petitioner contends this is an instance under the circumstances, a "lie".

38 C.F.R. Sec. 3.901 Fraud

(a) Definition. An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Department of Veterans Affairs (except laws relating to insurance benefits).

VA has also defined "fraud" as "an intentional failure to disclose pertinent facts for the purpose of obtaining or retaining... eligibility for [VA] benefits with knowledge that misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits."

Black's Law Dictionary, Sixth Edition, "Fraud" - An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture. *DeJahanty v. First Pennsylvania Bank, N.A.*, 318 Pa. Super. 90, 414 A.2d 1042 (1981)

Black's Law Dictionary, Sixth Edition, "Lie" - A falsehood uttered for the purpose of deception; an intentional statement of an untruth designed to mislead another; anything which misleads or deceives; it means an untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; intentional misstatement.

Black's Law Dictionary, Sixth Edition, "Error" - A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of a law. Such a mistaken or false conception or application of the law to the facts of a cause will furnish ground for a review of the proceedings upon a writ of error. A mistake of law, or false or irregular application of it, such as vitiates the proceedings and warrants the reversal of the judgment. An act involving a departure from truth or accuracy; a mistake; an inaccuracy; as, an error in calculation.

Respectfully Submitted,
Curtis Gaylord

WHEREFORE, because there was no "error" but a "lie", petitioner prays that justice will prevail.

Curtis Gaylord

Dated: April 28, 2020

Curtis Gaylord
103 S. May St.
Joliet, IL 60436
(773) 512-7909

APPENDIX F
21a
Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-2184

CURTIS R. GAYLORD,

PETITIONER,

v.

ROBERT L. WILKIE,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before MEREDITH, *Judge*.

ORDER

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

On March 24, 2020, the self-represented petitioner, Curtis R. Gaylord, filed a petition for extraordinary relief in the form of a writ of mandamus compelling VA to recognize an original claim for benefits for pes planus that he asserts he filed in March 1976. Petition at 2. He argued that an August 2016 Statement of the Case issued by VA is "null and void" because the Secretary "intentionally, knowingly, falsely, fraudulently . . . lied" about the existence of a March 1976 original claim for benefits. Petition at 2-3. The Court denied the petition on April 7, 2020, and the petitioner filed a motion for reconsideration on April 28, 2020.

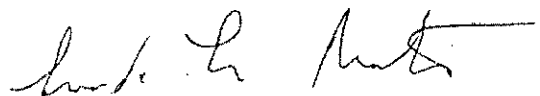
A motion for reconsideration must set forth the points of law or fact that the movant believes the Court overlooked or misunderstood. U.S. VET. APP. R. 35(e)(1). Here, the petitioner essentially reiterates the arguments presented in his petition, which the Court already considered in denying his petition, and he has not demonstrated that the Court erred in concluding that he was seeking a writ as a substitute for the ongoing appellate process as to his request for an earlier effective date.

Upon consideration of the foregoing, it is

ORDERED that the petitioner's motion for reconsideration is denied.

DATED: May 8, 2020

BY THE COURT:



AMANDA L. MEREDITH
Judge

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
"APPENDIX B"

CURTIS R. GAYLORD
Claimant - Appellant,

22a

v.

No. 2020-1957

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Respondent - Appellee.

INFORMAL PETITION FOR PANEL REHEARING AND REHEARING EN BANC

NOW COMES, Curtis Gaylord, Claimant - Appellant (Petitioner), appearing pro se, pursuant to Fed. R. App. P. 35 and 40, hereby respectfully requests the granting of the instant Informal Petition For Panel Rehearing And Rehearing En Banc, in support of states as follows:

Petitioner understands that such petitions are rarely granted but believes that in light of this Honorable Court's norm of upholding the fifth amendment of the United States Constitution, following its own existing decisions, the Congressional intent and the like. The panel's dismissal dated February 2, 2021 falls short in many respects, in part by not thoroughly considering petitioner's arguments, articulations, contentions, theories, explanations, causing misunderstanding and misinterpretation. Please see the unfair, errant said dismissal attached hereto as an addendum. Under these circumstances petitioner hereby incorporates the "entire" record by reference. This petitioner did articulate a "separate constitutional issue" warranting jurisdiction of this Court under § 7292.

Defective And Erroneous Dismissal Of February 2, 2021

Petitioner will attempt to analyze said 5 (five) dismissal by its thirteen (13) paragraphs, the conclusion being the thirteenth (13th)

paragraph.

Paragraph one, beginning at page two (2) states that petitioner's writ of mandamus was to compel the ("VA") VA to recognize an earlier claim for benefits and amend the effective date of disability compensation for his service connection. In disagreeing, petitioner absolutely and vigorously continually request that his original claim for pes planus "Flat feet" be rightfully recognized under 38 U.S.C. 5110(b)(1) and 38 C.F.R. 3.160(c). Petitioner never ever requested that the July 29, 2002 effective date be amended by the Veterans Court nor this Federal Circuit. Please see petitioner's writ of mandamus at pg 1 and throughout including the "Exhibits" attached thereto. Stating that specifically the VA its Chicago Regional Office (RO) had precluded the original/initial claim for "flat feet" by the "lie" "fraud" intentionally that there is no evidence of a claim filed by petitioner within one (1) year of his separation from active service. That he had rebutted the RO's regular mailing presumption amongst other things, that the RO couldn't shoulder its burden, so the RO "lied" and said that there is no evidence, the evidence evincing the March 16, 1976 original/initial claim for "flat feet" is undisputable and is clearly and obviously not true, intentionally, which is a violation of this petitioner's fifth amended rights under Cushman as stated at the RO, and to many others including the Veterans Court and this Honorable Court, to no avail. Again its that "lie" which you call a "misrepresentation", which precludes a normal, regular, appellate "process". It's the "process" which was and is continually being violated. As stated before petitioner articulated all that about the regular mailing presumption under Hyson, et al was to show, uncover, the RO's "subterfuge strategem". Petitioner has presented a challenge constitutionally under Cushman stating a property right (interest), if necessary please construe liberally as a pro-se litigant, under these "egregious circumstances". Not forgetting that understanding is important in order to give the proper consideration. Petitioner's writ of mandamus presented 3 issues (1) failure to act, (2) unreasonable delay and (3) constitutional

issue. The Veterans Court never addressed those 3 (three) issues, focusing on the "hearing(s)". Please see *London v. McDonough*, 2020-1915. Recently this Court held that while awaiting a Board hearing or after a Board hearing. In relevant part, holding that when the Veterans Court has failed the requisite TRAC analysis, 750 F.2d 70, 80 (D.C. Cir. 1984), we will remand for it to do so. The Board did not specifically apply the six-factor standard in this instant case. Petitioner believes that in part there should be a remand for that purpose.

The hearing(s) according to the appellee, after that petitioner contends that the Department of Veterans Affairs (VA) erroneously denied him an earlier effective date for disability benefits and that he is entitled to a writ of mandamus to compel the VA to amend the effective date. Again, see the "record" but repeatedly that the original March 16, 1976 a property right (interest) under Cushman must be conceded, this has "tainted" the "process", again, there is no regular, normal "process". This Court took the appellee's interpretation and ran with it. See Respondent-Appellee's Informal Brief and Supplemental Appendix (Appellee's Brief), Page one and at page three regarding the hearing(s) Appellee continue to contort the particulars. Page three, Mr. Gaylord did not appeal the RO's decision. Which is a continued "lie". Appellee goes on, in part, and the VA scheduled a hearing for September 30, 2019, 5 Appx 46. The record does not indicate that Mr. Gaylord attended that hearing. The VA then scheduled another hearing for May 6, 2020, and informed him of the hearing through a letter dated February 5, 2020. 5 Appx 47. After receiving the letter informing him of the new hearing, Mr. Gaylord filed a petition for a writ of mandamus on March 24, 2020. 5 Appx 48-66.

But see Informal Reply Brief of Petitioner/Appellant (Reply Brief). Starting with Hearing at page 7, petitioner states that he did not attend the September 30, 2019 hearing and directed the Court to the writ of mandamus pages 11, 12. Explaining clearly, again see

the writ of mandamus, including the Appendix especially at this time "Exhibit T" please take note the Sept. 30, 2019 hearing was scheduled in New Orleans, LA 70113, which was an error, petitioner believes and intentional error, all of these errors can't be just errors with this petitioner knowing the VA's propensity to be utterly adversarial against the Congressional intent. Petitioner wrote two (2) letters to the Board objecting and stating the error, hardship and doctor statement(s) if required. The appellees know the events of the scheduled hearings, the VA White House Hotline and the confirmation numbers as stated in said writ of mandamus, and reply including both "Declarations". Petitioner thought that "Declarations" were similar to "Affidavits", Petitioner can't quite believe that this Honorable Court nor the Veterans Court, went for that with both "Declarations" and "Exhibit T" along with White House VA Hotline confirmations, incredible, respectfully submitted. The dismissal is misleading and incorrect in numerous instances. So, petitioner stated in the "record" that he did not attend the scheduled hearing(s) and has shown "good cause" lets not forget the relevance of TRAC, supra, in this paragraph one.

Paragraph two of the dismissal, Petitioner filed his second (2nd) claim for entitlement to service connection for flat feet on July 29, 2002. The second claim for flat feet was granted on September 10, 2012. On October 5, 2012, the VA assigned a 10 percent disability rating with an effective date of July 29, 2002. On January 8, 2016, petitioner requested that the VA change the effective date to March 16, 1976, the date of his separation from service. Also see "record" petitioner also had as an "issue" in his NOD, an increase a higher initial; CUE; Constitutional issue. The higher initial rating of 10 percent was intentionally mischaracterized by the RO, the CUE issue at "Exhibit J" also evincing the Original/initial claim filed only six (6) days after separation from active service, well within the one (1) year period. The "Constitution issue" related to the, there is no evidence "lie" was never addressed.

Petitioner asserted that he had filed original claim for entitlement to service connection for flat feet on March 22, 1976, not just an earlier claim. Again, please see "Exhibit A" and "Exhibit B" at "Exhibit B" the original March 22, 1976 claim, date stamped by said RO. Did petitioner fraudulently stamp and sign the "Exhibit B".

Paragraph three at page two, continuing to analyze, mind you that petitioner had filed "eight Specifications/Clarifications" to his NOD with the RO and petitioner's then attorney contact with the VA, Evidence In Lake Center regarding the original claim and no notice at see "Exhibit H" the "DISALLOWANCE" of the original/initial claim on 5-24-76 with no "notice" see the "record". Again, petitioner was and is not in these court proceedings requesting an earlier effective date (EED). Petitioner is simply requesting that his original March 22, 1976 claim be recognized and conceded, its undisputable, again. But he continues to be misquoted, misinterpreted, mis this and mis that, misunderstood, intentionally. Continuing on August 22, 2016, the VA's Chicago Regional Office ("RO") denied petitioner's request to revise the effective date in the RO's Statement of the case ("SOC"). The RO stated that the VA had no evidence that a claim for service connection for flat feet was received by the VA prior to July 29, 2002. That's not true, "obviously" and "clearly" incorrect an intentional "lie". Again the VA has had numerous opportunities to correct the "lie" if it were error, the Congressman's office, both Senators offices, a meeting in the Director's office at Hines VA Hospital by Senator Durbin, where the original claim and supporting documents were again presented to the assistant Director of the RO, Certified mail to Hugh Turner the Director of the RO, Cheryl L. Mason, Chairperson Board of Veterans Affairs (Board). Including other attempts, to no avail. This is one reason why petitioner considered it a "failure to act" unreasonable delay and constitutional issue not at this time mentioning again the 1976 constitution issue which was attempted to sweep under the rug, so-to-speak.

When petitioner's Second claim for "flat feet" was granted on

September 10, 2012 and assigned an effective date (ED) of July 29, 2002. Under 38 C.F.R. 3.160(b), (c) Status of claims. The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation. (b) Original Claim. An initial formal application on a form prescribed by the Secretary. (c) Pending claim. An application, formal or informal, which has not been finally adjudicated.

Now that's where a true argument would start, after the original March 22, 1976 claim is conceded, at that time the VA could say things like the original claim was "subsumed", was finally adjudicated and so on but there is no truth in the "SOC" at Appellee's Brief S Appx 14-45. See at S Appx 45 The effective date of an evaluation and award of compensation based on an original claim for direct service connection will be the day following separation from service, or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

The RO sets the goal post and the after petitioner provides the evidence as RO stated the RO moved the goal post. That was really no SOC nor was petitioner provided a SSOC as he stated in the "record"

Please see Hudick, Hudick v. Wilke, 755 Fed. Appx. 999 (2018). The VA is bound by their own regulations and statutes. The Board violated Hudick's due process rights by ignoring specific procedural rules. The RO did violate my due process rights under Hudick also see Reply Brief in its entirety especially at pages 7, 8, 9, 10. Petitioner continued to cite Cushman but Cushman was not mentioned in any holding in this instant case. Petitioner's original claim is a property right (interest) under Cushman and is mandatory and non-discretionary at the VA, the RO, Board, Veterans Court also this Federal Circuit. See the "record" and please look liberally.

Petitioner did state a valid constitutional claim (issue), a separate constitutional issue which under 38 U.S.C. § 7292 can and must under Hudick and Cushman, "to the extent necessary". Petitioner's challenge was not "in name only" and just "labeling". Some call it a "prestanding" constitutional claim, petitioner is entitled to his rightful "process" and meet that requirement under the definition of a separate constitutional and reasoning of "to the extent presented and necessary to a decision the S. Ct. cases cited in Cushman allows this court that authority.

There was an abuse of discretion which is a syn. of error of law at the Veterans Court and including this dismissal. There has been a violation by the VA, Veterans Court and this Honorable Court, no "due process" mandatory in Hudick and Cushman.

WHEREFORE, petitioner prays that his "process" will not be violated and precluded, that justice prevails.

Respectfully Submitted,
Curtis Gaylord

Dated: March 19, 2021

Curtis Gaylord
103 S. May St.
Joliet, IL 60436
(773) 512-7909

CERTIFICATE OF SERVICE

I Curtis Gaylord hereby certify under penalty of perjury that on March 19, 2021, I caused the mailing of an entire copy of this Informal Petition for Panel Rehearing and Rehearing En Banc, to the following by Regular, First Class mail, Joliet, IL, 60432

29a

IN KCHO

Trial Attorney

Commercial Litigation Branch

Civil Division

Department of Justice

Artis Loyd

" APPENDIX H "

30a

General Docket

United States Court of Appeals for Veterans Claims

Case Number: 20-2184

Curtis R. Gaylord v. Denis McDonough

Appeal From: Department of Veteran Affairs

Fee Status: dfh

Docketed: 03/24/2020

Termed: 07/28/2021

Case Type Information:

1) Petition






2) -

3) -















Curtis R. Gaylord
PetitionerCurtis R. Gaylord
[NTC]
103 S. May St.
Joliet, IL 60436

v.

Denis McDonough, Secretary of Veterans Affairs
RespondentJennifer K. Hamel, Esq., Attorney
Direct: 202-632-6962
[COR LD NTC]
Firm: 202-632-6962
Department of Veterans Affairs, OGC (027)
810 Vermont Avenue, N.W.
Washington, DC 20420OGC-ICM4, Non-Attorney
Direct: 202-632-6951
[COR NTC]
Department of Veterans Affairs, OGC (027)
810 Vermont Avenue, N.W.
Washington, DC 20420

| | | |
|------------|---|---|
| 03/20/2020 |  | Declaration of Financial Hardship (KS) |
| 03/24/2020 |  | Petition for extraordinary relief (KS) |
| 03/27/2020 |  | Notice of Docketing for petition for extraordinary relief (KS) |
| 03/27/2020 | | Assigned case to Judge Meredith (PTD) |
| 04/07/2020 |  | Order that the petition for extraordinary relief is denied (MEREDITH) (ARW) |
| 04/28/2020 |  | Mot of Petitioner for reconsideration (KEM) |

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| | | |
|------------|---|---|
| 04/29/2020 |  | Judgment (REVOKED PER 5/6/20, COURT ORDER)--[Edited 06/09/2020 by ARW] (RW) |
| 05/06/2020 |  | ORDERED that the Court's April 29, 2020, judgment is revoked. (RW) |
| 05/08/2020 |  | ORDERED that the petitioner's motion for reconsideration is denied (MEREDITH) (KEM) |
| 05/08/2020 |  | Judgment (KEM) |
| 05/08/2020 |  | RECEIVED: Correspondence from petitioner received 5/8/20--[Edited 05/12/2020 by ARW] (ARW) |
| 05/15/2020 |  | Appearance of Amy M Roth-Pixton for Robert L. Wilkie, in case 20-2184 as lead counsel (AMR) |
| 06/04/2020 |  | Petitioner's Notice of Appeal to the U.S. Court of Appeals for the Federal Circuit (ARW) |
| 06/12/2020 |  | Petitioner's Notice of Appeal transmitted to U.S. Court of Appeals for the Federal Circuit (ARW) |
| 07/02/2020 |  | RECEIVED: Notice of Docketing from the U.S. Court of Appeals for the Federal Circuit dated 7/2/20; (20-1957) (ARW) |
| 11/12/2020 |  | Appearance of Jennifer K Hamel for Robert L. Wilkie, in case 20-2184 as lead counsel (JKH) |
| 02/02/2021 |  | RECEIVED: Judgment accompanied by opinion from the U.S. Court of Appeals for the Federal Circuit dated 2/2/2021 DISMISSED (RW) |
| 04/22/2021 |  | RECEIVED: Order from the U.S. Court of Appeals for the Federal Circuit dated 4/22/2021; Panel rehearing and rehearing for en banc are denied; Mandate will issue on 4/29/2021. (RW) |
| 04/29/2021 |  | RECEIVED: Mandate from the U.S. Court of Appeals for the Federal Circuit dated 4/29/2021 (RW) |
| 07/28/2021 |  | Mandate (RW) |
| 07/28/2021 | | Case Closed 20-2184 Mandate (RW) |

NOTE: This order is nonprecedential.

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

CURTIS R. GAYLORD,
Claimant-Appellant

v.

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

2020-1957

Appeal from the United States Court of Appeals for
Veterans Claims in No. 20-2184, Judge Amanda L. Meredith.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Curtis R. Gaylord filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 29, 2021.

FOR THE COURT

April 22, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court