

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 12-0979

THOMAS K. DAILEY, JR., PETITIONER,

v.

ERIC K. SHINSEKI,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before HAGEL, MOORMAN, and LANCE, *Judges*.

ORDER

On March 22, 2012, Thomas K. Dailey, Jr., filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus, requesting, in pertinent part, that this Court order the Secretary to issue a final decision in response to the Substantive Appeal he purportedly filed on September 25, 2007. On June 20, 2012, a panel was formed to consider Mr. Dailey's petition.

On August 31, 2012, the Secretary filed an amended response and informed the Court that the Montgomery, Alabama, regional office issued an August 28, 2012, Statement of the Case in response to Mr. Dailey's June 2011 letter requesting that VA issue a final decision in response to his September 2007 Substantive Appeal. The regional office determined that Mr. Dailey's June 2011 letter was a Substantive Appeal but it was not timely; however, the regional office accepted Mr. Dailey's June 2011 letter as a Notice of Disagreement with its decision that he had not filed a Substantive Appeal in September 2007.

On September 4, 2012, the Court ordered Mr. Dailey to file a response, not later than 11:59 p.m. on Thursday, September 6, 2012, explaining why the Court should not dismiss his petition as moot. On September 6, 2012, Mr. Dailey filed his response indicating that he "does **not** object to the Secretary's [a]mended [r]esponse and motion to dismiss." Appellant's September 6, 2012, Response at 1(emphasis in original).

This Court adheres to the case-or-controversy jurisdictional restraints provided for in Article III of the U.S. Constitution. *See Mokal v. Derwinski*, 1 Vet.App. 12, 13-15 (1990). When the relief requested in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. *See Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order). Because the response filed by the Secretary demonstrates that Mr. Dailey has obtained the requested relief and because Mr. Dailey does not oppose the Secretary's amended response seeking dismissal, the Court will dismiss Mr. Dailey's petition as moot. Accordingly, oral argument scheduled for September 13, 2012, at 1:30 p.m. will be canceled.

Upon consideration of the foregoing, it is

ORDERED that Mr. Dailey's March 22, 2012, petition regarding his September 25, 2007, Substantive Appeal, is DISMISSED. It is further

ORDERED that the September 13, 2012, oral argument scheduled in this case is canceled.

DATED: September 12, 2012

PER CURIAM.

Copies to:

John F. Cameron, Esq.

VA General Counsel (027)