

NOTE: This disposition is nonprecedential.

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

RASHID EL MALIK,
Claimant-Appellant

v.

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

2023-1684

Appeal from the United States Court of Appeals for
Veterans Claims in No. 22-5317, Judge Coral Wong Pi-
etsch.

RASHID EL MALIK,
Claimant-Appellant

v.

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

2023-2279

Appeal from the United States Court of Appeals for Veterans Claims in No. 23-1297, Judge Joseph L. Falvey, Jr.

Decided: March 14, 2024

RASHID EL MALIK, Palos Verdes Estate, CA, pro se.

LAURA OFFENBACHER ARADI, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent-appellee. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY, LOREN MISHA PREHEIM; BRIAN D. GRIFFIN, JONATHAN KRISCH, Office of General Counsel, United States Department of Veterans Affairs, Washington, DC.

Before PROST, STOLL, and STARK, *Circuit Judges*.

PER CURIAM.

Rashid El Malik appeals from two decisions of the United States Court of Appeals for Veterans Claims (Veterans Court). In Appeal No. 23-1684, he appeals from the Veterans Court's order dismissing in part and denying in part Mr. El Malik's first petition for a writ of mandamus to order the Department of Veterans Affairs (VA) to comply with a Board of Veterans' Appeals decision. In Appeal No. 23-2279, Mr. El Malik appeals from the Veterans Court's order dismissing his second petition, which requested the same relief as his first petition. We hold that the Veterans Court did address Mr. El Malik's finality argument, but we lack jurisdiction to decide the remaining issues Mr. El Malik raises. Accordingly, we affirm in part and dismiss in part.

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BACKGROUND

Mr. El Malik, a disabled veteran, sought certain home modifications under a Veteran Readiness and Employment (VR&E) living plan. In an April 7, 2022 decision, the Board granted in part, denied in part, and remanded in part Mr. El Malik's claims for home modifications. SAppx.¹ 56–71. The Board specifically granted Mr. El Malik entitlement to: (1) purchase new hardwood floors, (2) install automatic door openers, (3) install a lift at the back of the home, and (4) complete a two-story add-on to the back of the home. SAppx. 57.

The Board also remanded part of the case to the VA to further develop whether Mr. El Malik was entitled to various other equipment purchases and home modifications. SAppx. 66–69. In particular, the Board ordered a medical opinion concerning the necessity of the following accommodations:

- (1) an overhead cover for a wheelchair lift at the front of the home; (2) a cover over the front walk; (3) widening of all doorways inside the home; (4) installation of a central air conditioning system; (5) an addition to the home to include installation of a new bathroom downstairs; (6) replacement of the existing wood decks; (7) extension of the rear of the main bedroom to create space for a walk-in closet and a work-out room on the floor below; (8) creating access to an existing outdoor kitchen located near the pool area; and (9) remodeling the kitchen to enable access while using a wheelchair.

SAppx. 66–69. Mr. El Malik did not appeal the Board's decision.

¹ Citations to "SAppx." refer to the Appendix submitted by the government in Appeal No. 23-1684.

The modification project for Mr. El Malik's home started in June 2018. SAppx. 44. By May 2022, the following modifications were completed: (1) installation of an elevator enabling access to all levels of the house; (2) installation of a second elevator providing access to the back patio and deck area from the main living room; (3) an exterior lift at the front of house enabling access from the main level to the garage level; (4) an exit door and wood deck off the master bedroom and bathroom in case of fire; (5) installation of a deck and sidewalk on the side of the home for access to electrical boxes; (6) automatic door openers on the front double doors, master bathroom exit door, and elevator doors; (7) enlargement of the master bathroom; (8) installation of hardwood floors in the master bedroom, tile floors and walls in master bathroom, and a lower clothing rod in the master bath closet; (9) a new roof; (10) an automatic start back-up generator; and (11) replacement of a wood deck adjacent to the exterior lift at the rear of house. SAppx. 88; SAppx. 111.

In August 2022, Mr. El Malik filed a petition for a writ of mandamus in the Veterans Court seeking an order directing the VA to implement the Board's April 2022 decision. SAppx. 22–25. Mr. El Malik alleged that the VA refused to comply with the Board's April 2022 decision, resulting in unreasonable delay, and that he was prejudiced by the Board's reliance on an allegedly false statement by a VR&E representative to deny his VR&E claim.²

A few months later, while the petition for writ of mandamus was still pending, the VA requested clarification

² The allegedly false statement recites: "None of the below [modifications] have actually been completed." Appellant's Br. 87; *see also* Appellant's Br. 12.

"Appellant's Br. __" refers to pages in Mr. El Malik's informal opening brief in Appeal No. 23-1684 as numbered by operation of an electronic file viewing system.

from the Board regarding (1) additional automatic door openers because the VA believed it had satisfied what was required by the Board, and (2) the two-story addition at the rear of Mr. El Malik's home because some of the requested modifications "related to the current remand instructions." Appellant's Br. 98–99. In response to the VA's request for clarification, Mr. El Malik asked the Veterans Court to intervene in this "violation of his due process." See Petitioner's Addendum, *El Malik v. McDonough*, U.S. Vet. App. No. 22-5317 (Nov. 15, 2022), ECF No. 18, at 2.

The Veterans Court denied in part and dismissed in part Mr. El Malik's petition for writ of mandamus. The Veterans Court dismissed the petition as it relates to the VA "refusing" to implement the Board's order as moot on the grounds that the lift systems, hardwood flooring, and automatic door openers were installed as contemplated by the order. The Veterans Court also found that the VA's request for clarification on the nature of the ordered two-story addition was appropriate given the denial and remand of other items sought by Mr. El Malik, and that seeking such clarification was not a refusal to follow an order. In addressing Mr. El Malik's allegation of unreasonable delay, the Veterans Court analyzed the *TRAC* factors and concluded that the circumstances did not reflect a delay "so egregious as to warrant mandamus" and denied this part of the petition. SAppx. 12 (quoting *Martin v. O'Rourke*, 891 F.3d 1338, 1343 n.5 (Fed. Cir. 2018)); see also *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 79–80 (D.C. Cir. 1984). It explained Congress did not provide a timetable in the applicable statutory scheme; that the VA had worked toward implementing the modifications ordered by the Board; and that a judicial mandate to force the VA to work faster would shift the VA's resources from other veterans. Finally, the Veterans Court interpreted Mr. El Malik's allegations that the Board relied on false statements as mere disagreement with the Board's denial

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