

NOTE: This order is nonprecedential.

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

In re: ANDREW SEARCY, JR.,
Petitioner

2019-117

On Petition for Writ of Mandamus to the Merit Systems Protection Board in No. AT-4324-10-0356-B-1.

ON PETITION

PER CURIAM.

O R D E R

Andrew Searcy, Jr. petitions for a writ of mandamus.

Mr. Searcy has an extensive history of pursuing his claims under the Uniformed Services Employment and Reemployment Rights Act of 1994 at the Merit Systems Protection Board and this court. *See, e.g., In re Searcy*, No. 2018-156 (Fed. Cir. Sept. 24, 2018); *In re Searcy*, 572 F. App'x 986 (Fed. Cir. 2014); *Searcy v. Dep't of Agric.*, 557 F. App'x 975 (Fed. Cir. 2014) (affirming the Board's August 5, 2013 decision); *Searcy v. Merit Sys. Prot. Bd.*, 486 F. App'x 117 (Fed. Cir. 2012).

As pertinent here, in August 2013, the Board dismissed Mr. Searcy's USERRA appeal on res judicata grounds.

This court affirmed that decision in February 2014. Shortly thereafter, Mr. Searcy filed a petition for a writ of mandamus asking this court to order the Board to reopen his USERRA case. This court denied that petition based on the court's February 2014 prior judgment.

In July 2018, this court affirmed a Board decision to deny Mr. Searcy's attempts to again reopen the Board's final August 2013 decision. Mr. Searcy then again petitioned for a writ of mandamus. Because that petition "simply express[ed] disagreement with the prior decisions of the Board and this court dismissing his claims and finding no circumstances to warrant reopening his prior appeals," the court denied the petition, warning Mr. Searcy that:

This is now Mr. Searcy's second frivolous petition seeking to challenge a final decision on the merits by way of mandamus soon after this court already had rejected his arguments on direct appeal. Mr. Searcy is warned to cease this abuse of the judicial process or risk the court entering an injunction against him requiring him to seek leave of court before filing any new submission.

Searcy, No. 2018-156, slip op. at 2.

Mr. Searcy's current petition again seeks for this court to revisit the Board's already appealed and finally-closed decisions. As we previously explained to Mr. Searcy, such requests amount to an abuse of the judicial process. In light of this court's prior warning to Mr. Searcy, we direct him to show cause why he should not be enjoined from filing any application for relief other than a petition for review from a final Board decision unless such application is accompanied by a motion for leave to file such application which states supporting grounds for the filing.

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To the extent that Mr. Searcy is also seeking mandamus relief to compel the full Board to take action on one of his pending cases, such relief is not appropriate. A writ of mandamus is not a substitute for an appeal. *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). Moreover, if Mr. Searcy seeks to proceed before this court, he has an alternative means of obtaining that relief by filing a motion asking the Clerk of the Board to withdraw his petition for review at the full Board.*

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for a writ of mandamus is denied.
- (2) All pending motions are denied as moot.

(3) Within 14 days from the date of filing of this order, Mr. Searcy is directed to show cause why he should not be subject to a requirement that he seek leave before filing any new submission with the court.

FOR THE COURT

April 30, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

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* Pursuant to the May 2018 policy specified on the Board's website, the Clerk of the Board may grant requests to withdraw a petition for review when there is no apparent issue of untimeliness of the petition and no other party objects to the withdrawal. When the Clerk grants a request to withdraw, the order granting the request will be the final order of the Board for purposes of obtaining review.

