

NOTE: This order is nonprecedential.

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

ARTHUR L. HAIRSTON, SR.,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2018-2053

Petition for review of the Merit Systems Protection Board in No. PH-0714-18-0186-I-1.

ON PETITION

Before PROST, *Chief Judge*, LINN and MOORE, *Circuit Judges*.

PER CURIAM.

ORDER

Before the court is Arthur L. Hairston, Sr.'s submission, ECF No. 51, requesting "mandamus to issue."

Mr. Hairston petitioned this court to review the final decision of the Merit Systems Protection Board affirming his removal from his position at the Veterans Affairs

Medical Center in Martinsburg, West Virginia. On March 8, 2019, this court affirmed the Board's decision. Mr. Hairston has filed for rehearing, but his petition for rehearing was noncompliant and this court instructed him to submit a corrected version on or before April 22, 2019.

From his new submission, it appears that, on March 13, 2019, Mr. Hairston filed a pleading at the Board requesting an indicative ruling as to whether the Board would have reached the same conclusion had it known of certain alleged information at the time of its decision. On March 19, 2019, the Board responded to Mr. Hairston's request, declining to enter the submission in the record because his appeal before the Board was closed and "[t]here is no further right to review before the Board."

Mr. Hairston now seeks from this court a writ of mandamus to compel the Board to rule on his indicative request. Mandamus is an extraordinary remedy, available only where the petitioner shows: (1) a clear and indisputable right to relief; (2) there are no adequate alternative legal channels through which he may obtain that relief; and (3) the grant of mandamus is appropriate under the circumstances. *See Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380–81 (2004). Having considered his submission, we cannot say that Mr. Hairston has met this standard for the relief that he requests.

Accordingly,

IT IS ORDERED THAT:

ECF No. 51 is denied.

FOR THE COURT

April 16, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court