

NOTE: This order is nonprecedential.

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

In re: RICHARD RALPH MALCOLM,
Petitioner

2022-132

On Petition for Writ of Mandamus to the United States Court of Federal Claims in No. 1:20-cv-00505-SSS, Judge Stephen S. Schwartz.

ON PETITION AND MOTION

Before PROST, REYNA, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

O R D E R

Richard Ralph Malcolm petitions for a writ of mandamus seeking, inter alia, an order from this court directing the United States Court of Federal Claims to file his motion for summary judgment. Mr. Malcolm also moves for leave to proceed *in forma pauperis*.

Mr. Malcolm filed this suit with the Court of Federal Claims seeking retroactive medical disability retirement. In August 2021, the Court of Federal Claims remanded to the Board for Correction of Naval Records to consider Mr. Malcolm's evidence. Following the Board's decision on

remand, the Court of Federal Claims issued a scheduling order on March 7, 2022, that, inter alia, directed the government to supplement the administrative record with the record from the remand proceedings by March 14, 2022, and directed Mr. Malcolm to file any motion for judgment on the administrative record by April 13, 2022.

On March 8, 2022, Mr. Malcolm filed a motion for summary judgment. On the same day, the Court of Federal Claims issued an order rejecting the filing. The court explained that the filing did not comply with the court's rules because it lacked the case caption and the name of the presiding judge. The court further explained that any motion for summary judgment would be premature and unnecessary at that juncture given that the administrative record had not yet been filed. This petition followed.

Mandamus is an extraordinary remedy, available only where the petitioner shows: (1) there are no adequate alternative legal channels through which he may obtain that relief; (2) a clear and indisputable right to relief; and (3) the grant of mandamus is appropriate under the circumstances. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004). Mr. Malcolm has not shown any clear error in the March 8, 2022, rejection order. Mr. Malcolm also has readily available alternative means to raise the same arguments for judgment by filing a motion for judgment on the administrative record by April 13, 2022, or other motions that comply with the trial court's rules and orders.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition is denied.

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(2) The motion for leave to proceed *in forma pauperis* is denied as moot.

FOR THE COURT

April 15, 2022
Date

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