Presented by: PARALYZED VETERANS OF AMERICA, INC. AND HOWREY, LLP

A PRIMER ON VA LAW, PRACTICE AND PROCEDURE

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Thursday, January 29, 2009
A PRIMER ON VA LAW, PRACTICE AND PROCEDURE

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OVERVIEW OF VA'S ADJUDICATION SYSTEM
OVERVIEW OF VA'S ADJUDICATION SYSTEM

The adjudication system of the Department of Veterans Affairs (VA or agency) is designed to develop and decide claims for VA benefits, in an informal and non-adversarial manner. 38 C.F.R. §§ 3.102, 3.103 (2007). The VA claims development and adjudication process begins at a VA Regional Office with the submission of a claim for a VA benefit. 38 U.S.C.A. § 5101 (West 2002); 38 C.F.R. §§ 3.151, 3.152, 3.159 (2007). The VA supplies the claimant with any necessary claim forms.

The VA claims process is designed to be a simple one to navigate. The claimant must identify the benefit he or she wants the VA to award and the VA must identify the controlling law and apply the controlling law to the evidence before the agency when deciding the claimant's entitlement to the benefit claimed. In addition, "[a]ny communication or action, indicating an intent to apply for one or more [veterans'] benefits . . . may be considered an informal claim" and, "if a formal claim has not been filed, an application form will be forwarded to the claimant for execution." 38 C.F.R. § 3.155(a) (2007). In the event that a "claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application." 38 C.F.R. § 3.109(a) (2007).
The administrative proceedings before a VA Regional Office are supposed to "ex parte in nature," and no government official appears in opposition to the claim. The VA has the "obligation . . . to assist a claimant in developing the facts pertinent to [the] claim" and "[a]ny evidence whether documentary, testimonial, or in other form, offered by a claimant in support of a claim and any issue he may raise and contention and argument he may offer with respect thereto are to be included in the records." § 3.103(a), (b).

The VA is under the **statutory duty to assist** a veteran or other claimant to develop his or her claim for a VA benefit before deciding the claim on the merits. 38 U.S.C.A. §§ 5103(a), 5103A, 5107 (West 2002 & Supp. 2007). "When after consideration of all evidence and material of record in a case before the [VA] with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant." § 5107(b). The VA has the obligation "to render a decision which grants [the claimant] every benefit that can be supported in law while protecting the interests of the Government," and "[i]t is the defined and consistently applied policy of the [VA] to administer the law under a broad interpretation." § 3.103(a). Furthermore, "[w]hen, after careful consideration
of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant." § 3.102.

In the informal claims' adjudication system used by VA's Regional Offices, a claimant is "entitled to a hearing at any time on any issue involved in a claim[]." § 3.103(c). The purpose of the hearing is to permit the claimant to present any evidence or argument to VA that relate to the claim. § 3.103(c)(2). Further, "[i]t is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position." Id.

If the VA Regional Office denies a claimant's application for a VA benefit, the VA must send the claimant notice of the denial, notice of the right to appeal, and notice of the applicable time limits for filing and perfecting an administrative appeal to the Board of Veterans' Appeals (BVA or Board). 38 U.S.C.A. §§ 5104, 7101-7111 (West 2002 & Supp. 2007). All "[c]laimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or granting relief." § 3.103(b). All VA notifications "shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue
involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision." *Id.*

A claimant whose claim the VA has denied has one year after notification of the decision is mailed to file a **Notice of Disagreement (NOD)** with the VA Regional Office. § 7105(b)(1). A NOD is "[a] written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with . . . [the VA Regional Office's] determination." 38 C.F.R. § 20.201 (2007). A NOD need not be expressed in any special wording. *Id.* After the NOD is filed, the VA Regional Office "will take such development or review action as it deems proper under the provisions of regulations not inconsistent" with Title 38. § 7105(d)(1). At the time the claimant files his or her NOD, the claimant has the opportunity to request that the disallowed claim be reviewed by a **Decision Review Officer (DRO)**. 38 C.F.R. § 3.2600 (2007). The DRO's review of the disallowed claim is *de novo*. However, if the claimant declines review by the DRO, the claimant's appeal proceeds to the Board in accordance with VA's regular administrative procedures.

If after the NOD is filed, VA's additional development or review action "does not resolve the disagreement" the VA Regional Office prepares a document known as a **Statement of the Case (SOC)**. *Id.* If the VA Regional
Office does not reconsider its adverse decision, the claimant is "entitle[d] . . .
to a [SOC] for assistance in perfecting an appeal" to the Board. 38 C.F.R.
§ 3.103(f) (2007). The SOC must be complete enough to allow the appellant
to present written and/or oral arguments before the Board. 38 C.F.R. § 19.29
(2007).

Following receipt of the SOC, a claimant perfects his or her appeal to
the Board by completing and submitting a form that the VA provides the
claimant. 38 C.F.R. § 19.30 (2007). The claimant's response to the SOC is
the Substantive Appeal. The Substantive Appeal must "set out specific
errors of fact or law made by the [VA Regional Office] in reaching the
determination, or determinations, being appealed." 38 C.F.R. § 20.202
(2007). To the extent possible, the arguments set forth in the claimant's
Substantive Appeal "should be related to specific items in the Statement of
the Case or any prior Supplemental Statements of the Case." Id. The
claimant is given sixty days from the date the Statement of the Case is
mailed to file a Substantive Appeal or the remainder of the one year period
to file a NOD, whichever is longer. § 7105(d)(2).

Once a claimant perfects an appeal from a decision of the VA Regional
Office by filing a timely Substantive Appeal, the Board obtains jurisdiction
over the appeal. §§ 7101, 7104. Upon request, a claimant is entitled to a
hearing on appeal. 38 U.S.C.A. § 7107 (West 2002). The purpose of the hearing is to receive argument and testimony relevant and material to the appellate issue. 38 C.F.R. § 20.700(b) (2007). As are the hearings conducted in the VA Regional Offices, hearings before the BVA are "ex parte in nature and nonadversarial." 38 C.F.R. § 20.700(c) (2007).

The decision of the Board "shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation." § 7104(a). Based on its review of the record, the BVA is required to issue a decision that includes "separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit of benefits sought on appeal or dismissing the appeal." 38 C.F.R. § 19.7 (b) (2007).

If the veteran disagrees with the Board's decision, he or she may appeal to the United States Court of Appeals for Veterans Claims (Veterans Court). The VA, however, may not appeal a Board decision to the Veterans Court. The Veterans Court is an Article I court and the judges sit for terms of 15 years. In order for an appeal to be timely with the Veterans Court, the veteran must file his or her notice of appeal with the Veterans Court within 120 days after the Board issues its decision.
If the veteran or VA disagrees with the decision of the Veterans Court, either may appeal to the United States Court of Appeals for the Federal Circuit. In order to file a timely notice of appeal, the veteran or VA must file a notice of appeal with the Clerk of the Veterans Court within 60 days after the Veterans Court issues judgment.
WHAT LAWYERS CAN DO TO HELP CLAIMANTS IN THE VA REGIONAL OFFICES
WHAT LAWYERS CAN DO TO HELP CLAIMANTS IN THE VA REGIONAL OFFICES

Every claim VA receives is different. A lawyer's role in the VA claims adjudication process will depend on the particular facts and circumstances of each case. There are, however, many things that a lawyer can do to help a VA claimant develop and present claims to VA:

Gather necessary medical and other evidence to support a claim for service connection, an increased service-connected disability rating, or for non-service-connected pension;

Conduct an independent analysis of a claim under VA law, regulations, court opinions and VA General Counsel precedent opinions;

Advise a claimant that a claim has little or no chance of succeeding and should not be pursued;

Identify factual and legal issues that are relevant to a claim's success;

When necessary or appropriate, conduct legal research into a statute's legislative history;

When necessary or appropriate, conduct legal research into a VA regulation's history;

Contact a veteran's treating physicians to explain VA law, to obtain medical opinions or medical examination reports that are consistent with the requirements of VA law;

Refer a veteran or other claimant to additional doctors for medical opinions and reports to answer any questions raised by the particulars of the claim or VA law, regulations, or policies;

If necessary, present VA and the Board with legal challenges to VA statutes, regulations, policies, or procedures, thereby preparing a case for possible judicial review if VA denies the claim;
Send the claimant to a medical specialist for an expert report to support a veteran's claim;

Analyze judicial opinions to identify those opinions that are relevant to the claim for service connection;

Recommend to VA that it should examine a claimant to obtain a medical opinion addressing any relationship between military service and the claimed service-connected disability or death;

Review actions taken by VA on a claim, and when necessary, present legal challenges to those actions;

When necessary, prepare and file timely notices of disagreement and substantive appeals;

When appropriate, request waiver of applicable time limitations;

Know when to suggest to a veteran that he or she appear for a personal hearing;

Prepare the claimant and the claimant's witnesses for a VA personal hearing;

Protect a claimant's right to a fair hearing by objecting to improper evidence or procedures;

Present closing statements at the end of personal hearings arguing that VA should grant the claim for service connection under VA law;

Submit a written summary of the evidence and argument to the VA;

If the VA regional office grants the claim, ensure that VA correctly calculates the award of benefits and the right effective dates

If the VA regional office denies the claim prepare an appeal to the Board of Veterans' Appeals (Board); and
If necessary and the Board denies the claim represent the claimant before the United State Court of Appeals for Veterans Claims and the United States Court of Appeals for the Federal Circuit.
THE FUNCTIONS OF VA'S REGIONAL OFFICES
THE FUNCTIONS OF VA'S REGIONAL OFFICES

VA has 50 or more Regional Offices throughout the country. Each Regional Office performs six basic functions in processing original claims for service-connected disability compensation. The VA Regional Offices' six functions are:

1. Receive the veteran's claim—The veteran can submit the necessary claim form to the VA in person, through an attorney, through a veterans' service organization like the Paralyzed Veterans of America, through the mail, or on-line;

2. Establish the claim—The VA Regional Office enters basic information about the veteran and the veteran's claim into its computer system and establishes the veteran's claim file;

3. Develop the claim—The VA Regional Office reviews the claim file for military service and medical information, requests and obtains missing information and evidence, and reviews all relevant information to determine the veteran's basic entitlement;

4. Evaluate the claim—the VA Regional Office analyzes the veteran's service medical records and service and private medical records and determines whether the veteran's claimed disability is service-connected and if it is, determines its level of disability;
5. Determine the payment amount—the VA Regional Office reviews the claim file to ensure that the disability rating assigned meets statutory, regulatory, and policy guidelines and to determine the payment amount; and

6. Authorize payment on the claim—the VA Regional Office reviews the work done on the claim, approves the start of benefit payments, and provides notice of the decision to the veteran and his or her representative, along with information on how to appeal to the Board of Veterans’ Appeals if the veteran disagrees with the decision of the VA Regional Office.
ABBREVIATIONS AND ACRONYMS
### ABBREVIATIONS AND ACRONYMS

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<th>Description</th>
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<td>A&amp;A</td>
<td>Aid and attendance</td>
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<tr>
<td>AAO</td>
<td>Assistant Adjudication Officer</td>
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<td>ABA</td>
<td>American Bar Association</td>
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<td>AFB</td>
<td>Air Force Base</td>
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<td>AGG</td>
<td>Aggravated by service</td>
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<td>AIDS</td>
<td>Acquired Immune Deficiency Disorder</td>
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<td>AIRS</td>
<td>Appellate Index Retrieval System</td>
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<td>ALJ</td>
<td>Administrative Law Judge</td>
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<td>ALS</td>
<td>Amyotrophic Lateral Sclerosis</td>
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<td>AMC</td>
<td>Appeals Management Center</td>
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<td>AMIE</td>
<td>Automated Medical Information Exchange System</td>
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<tr>
<td>AO</td>
<td>Agent Orange</td>
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<td>AOJ</td>
<td>Agency of original jurisdiction</td>
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<td>APA</td>
<td>Administrative Procedure Act</td>
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<tr>
<td>AWOL</td>
<td>Absent without leave</td>
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<td>BDN</td>
<td>Benefits Delivery Network</td>
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<td>BCD</td>
<td>Bad conduct discharge</td>
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<tr>
<td>BCMR</td>
<td>Board for Correction of Military Records</td>
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<tr>
<td>BCNR</td>
<td>Board for Correction of Naval Records</td>
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BIRLS  Beneficiary Identification Records Locator Subsystem
BMAO  Board medical advisor opinion
Board  Board of Veterans' Appeals
BVA   Board of Veterans' Appeals
C&P   Compensation and Pension Service
CARES Capital Asset Realignment for Enhanced Services
CAVC United States Court of Appeals for Veterans Claims
CBD  Chief Benefits Director
C&C  Confirmed and continued rating
C&P  Compensation and pension
CD   Clemency discharge
C.F.R. Code of Federal Regulations
CHAMPUS Civilian Health and Medical Program of the Uniformed Services
CHAMPVA Civilian Health and Medical Program of the Department of Veterans Affairs
CFI   Claim for increase
COE   Certificate of Eligibility
COG   Convenience of the government
COLA Cost of living adjustment
Comp. Compensation for service-connected disability
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<th>Description</th>
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<tr>
<td>COVERS</td>
<td>Control of Veterans Records System</td>
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<td>C&amp;P Exam</td>
<td>Compensation and Pension Examination</td>
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<td>CPEP</td>
<td>Compensation and Pension Examination Program</td>
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<td>CRDP</td>
<td>Concurrent Retirement and Disability Payments</td>
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<td>CRSC</td>
<td>Combat-Related Special Compensation</td>
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<td>CSS#</td>
<td>Indicates a VA claim number using a Social Security Number</td>
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<td>CUE</td>
<td>Clear and unmistakable error</td>
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<td>CZTE</td>
<td>Combat Zone Tax Exclusion</td>
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<td>DC</td>
<td>Diagnostic code</td>
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<td>DD</td>
<td>Dishonorable discharge</td>
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<tr>
<td>DEA</td>
<td>Dependents' Educational Assistance</td>
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<td>DNA</td>
<td>Defense Nuclear Agency</td>
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<tr>
<td>DOB</td>
<td>Date of birth</td>
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<tr>
<td>DOD</td>
<td>Department of Defense</td>
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<tr>
<td>DRG</td>
<td>Diagnostic Related Groups</td>
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<tr>
<td>DRO</td>
<td>Decision Review Officer</td>
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<tr>
<td>DSM-IV</td>
<td>Diagnostic and Statistical Manual of Mental Disorders (4th edition)</td>
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<tr>
<td>DVA</td>
<td>Department of Veterans Affairs</td>
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<tr>
<td>EAD</td>
<td>Entry on active duty</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>EAJA</td>
<td>Equal Access to Justice Act</td>
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<td>E-Gov</td>
<td>Electronic Government</td>
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<td>EOD</td>
<td>Entry on Duty</td>
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<td>EPC</td>
<td>End product control</td>
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<td>ESG</td>
<td>Environmental Support Group</td>
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<td>ETS</td>
<td>Expiration of Term of Service</td>
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<td>EVR</td>
<td>Eligibility verification report</td>
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<td>EWL</td>
<td>Electronic Wait List</td>
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<td>F&amp;FE</td>
<td>Fiduciary and Field Examination</td>
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<td>FFP</td>
<td>Fugitive Felony Program</td>
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<td>FISMA</td>
<td>Federal Information Security Management Act</td>
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<td>FOIA</td>
<td>Freedom of Information Act</td>
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<td>FR</td>
<td>Federal Register</td>
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<tr>
<td>FSGLI</td>
<td>Family Servicemembers' Group Life Insurance</td>
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<td>FTCA</td>
<td>Federal Tort Claims Act</td>
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<tr>
<td>GAF</td>
<td>Global Assessment of Functioning</td>
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<td>GAO</td>
<td>Government Accountability Office</td>
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<tr>
<td>GC</td>
<td>General Counsel</td>
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<tr>
<td>GD</td>
<td>General Discharge</td>
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<td>GPO</td>
<td>Government Printing Office</td>
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<td>Acronym</td>
<td>Description</td>
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<tr>
<td>GSW</td>
<td>Gunshot wound</td>
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<td>GWOT</td>
<td>Global War on Terror</td>
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<td>HB</td>
<td>Housebound</td>
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<tr>
<td>HD</td>
<td>Honorable Discharge</td>
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<tr>
<td>HIV</td>
<td>Human immunodeficiency virus</td>
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<td>HIPPA</td>
<td>Health Information Portability and Accountability Act</td>
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<td>HMO</td>
<td>Health Maintenance Organization</td>
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<tr>
<td>HO</td>
<td>Hearing Officer</td>
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<td>IFP</td>
<td>In forma pauperis</td>
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<td>IG</td>
<td>Inspector General</td>
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<td>IME</td>
<td>Independent Medical Expert</td>
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<td>IPIA</td>
<td>Improper Payments Information Act of 2002</td>
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<tr>
<td>INC</td>
<td>Incurred in Service</td>
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<td>IRR</td>
<td>Individual Ready Reserve</td>
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<td>IU</td>
<td>Individual Unemployability</td>
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<td>IVAP</td>
<td>Income for VA purposes</td>
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<td>IVM</td>
<td>Income Verification Match</td>
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<td>JAG</td>
<td>Judge Advocate General</td>
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<td>KIABNR</td>
<td>Killed in action body not recovered</td>
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<td>LGY</td>
<td>Loan Guaranty</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>LOD</td>
<td>Line of duty</td>
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<td>LTC</td>
<td>Long-term care</td>
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<td>LZ</td>
<td>Landing zone</td>
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<tr>
<td>MAPD</td>
<td>Modern award processing development</td>
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<td>MAPR</td>
<td>Maximum annual pension rate</td>
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<td>MGIB</td>
<td>Montgomery GI Bill</td>
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<td>MIA</td>
<td>Missing in Action</td>
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<td>MPR</td>
<td>Military personnel records</td>
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<td>MS</td>
<td>Multiple Sclerosis</td>
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<td>MTF</td>
<td>Military treatment facility</td>
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<td>M21-1</td>
<td>VA Adjudication Procedure Manual</td>
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<td>NA</td>
<td>National Archives</td>
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<td>National Archives and Records Administration</td>
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<td>National Academy of Science</td>
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<td>NCA</td>
<td>National Cemetery Administration</td>
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<td>NOA</td>
<td>Notice of Appeal</td>
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<td>NOD</td>
<td>Notice of Death or Notice of Disagreement</td>
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<td>National Personnel Records Center</td>
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<td>NSC</td>
<td>Non-service-connected</td>
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<td>NSLI</td>
<td>National Service Life Insurance</td>
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NSO National Service Officer
NTPC Nuclear Test Personnel Review
OEF Operation Enduring Freedom
OGC Office of General Counsel
OIF Operation Iraqi Freedom
OMPF Official military personnel file
OPC Outpatient clinic
OPM Office of Personnel Management
OPT Outpatient treatment
PMC Pension Management Center
PCT Porphyria cutanea tarda
Pen. Non-service-connected pension
PIF Pending issues file
PL Public Law
P.L. Public Law
POA Power of Attorney
POW Prisoner of war
PRES Presumption
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>PT</td>
<td>Permanent total disability</td>
</tr>
<tr>
<td>PTSD</td>
<td>Post-Traumatic Stress Disorder</td>
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<td>Pub. L. No.</td>
<td>Public Law Number</td>
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<tr>
<td>RAD</td>
<td>Release from active duty</td>
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<tr>
<td>R.C.</td>
<td>Regional Counsel</td>
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<td>RE code</td>
<td>Reenlistment code</td>
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<tr>
<td>REPS</td>
<td>Restored Entitlement Program for Survivors</td>
</tr>
<tr>
<td>RH</td>
<td>Insurance policy designation for veterans having service-connected disabilities</td>
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<tr>
<td>RI</td>
<td>Rating increase</td>
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<tr>
<td>RIF</td>
<td>Reduction in Force</td>
</tr>
<tr>
<td>RPC</td>
<td>Records processing center, located in St. Louis</td>
</tr>
<tr>
<td>RO</td>
<td>Regional Office</td>
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<tr>
<td>ROA</td>
<td>Record on Appeal</td>
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<tr>
<td>RVSR</td>
<td>Rating Veterans Service Representative</td>
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<tr>
<td>SAH</td>
<td>Specially Adapted Housing</td>
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<tr>
<td>SBP</td>
<td>Survivor Benefit Plan</td>
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<tr>
<td>SC</td>
<td>Service connection or service-connected</td>
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<tr>
<td>SDN</td>
<td>Service Designator Number</td>
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<tr>
<td>SMR</td>
<td>Service medical record</td>
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<tr>
<td>SDRP</td>
<td>Special Discharge Review Program</td>
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SF  Standard Form
SFW  Shell fragment wound
SGLI  Servicemembers' Group Life Insurance
SIRS  Special Issue Rating System
SMC  Special Monthly Compensation
SMP  Special Monthly Pension
SOC  Statement of the Case
SPCM  Special court martial
SPD  Separation Program Designator
SRD  Schedule for Rating Disabilities
SSA  Social Security Administration
SSDI  Social Security Disability Income
SSB  Special Separation Benefits
SSI  Supplemental Security Income
SSOC  Supplemental Statement of the Case
STAR  Systematic Technical Accuracy Review
STS  Soft tissue sarcomas
TBI  Traumatic brain injury
TDIU  Total disability rating based on individual unemployability
TDRL  Temporary Disability Retired List
<table>
<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>TDY</td>
<td>Temporary duty</td>
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<tr>
<td>TSGLI</td>
<td>Traumatic Servicemembers' Group Life Insurance</td>
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<tr>
<td>UCMJ</td>
<td>Uniform Code of Military Justice</td>
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<tr>
<td>UD</td>
<td>Undesirable discharge</td>
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<tr>
<td>UOTHC</td>
<td>A military discharge under other than honorable conditions</td>
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<tr>
<td>USC</td>
<td>United States Code</td>
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<tr>
<td>USCA</td>
<td>United States Code Annotated</td>
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<td>USCS</td>
<td>United States Code Service</td>
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<td>VA</td>
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<td>VACO</td>
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<td>Veterans Appeals Control and Locator System</td>
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<td>VAMC</td>
<td>Veterans Affairs Medical Center</td>
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<td>VAOPC</td>
<td>VA outpatient clinic</td>
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<td>VAR</td>
<td>VA regulation</td>
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<td>VARO</td>
<td>VA Regional Office</td>
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<td>VBA</td>
<td>Veterans Benefits Administration</td>
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<td>VCAA</td>
<td>Veterans Claims Assistance Act</td>
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<td>Vet.App.</td>
<td>Citation for the United States Court of Appeals for Veterans Claims</td>
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<tr>
<td>Acronym</td>
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<tr>
<td>VETSNET</td>
<td>Veterans Services Network</td>
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<tr>
<td>VHA</td>
<td>Veterans Health Administration</td>
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<tr>
<td>VJRA</td>
<td>Veterans' Judicial Review Act</td>
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<tr>
<td>VLJ</td>
<td>Veterans Law Judge also known as member of the Board of Veterans' Appeals</td>
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<td>VSO</td>
<td>Veterans Service Organization</td>
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DEFINITIONS
DEFINITIONS

*Active duty.* Full-time duty in the Armed Forces, other than active duty for training, full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service, full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and service at any time as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy.

*Adjudication.* This is the process used by the Department of Veterans Affairs (VA) to reach a decision on a claim for benefits. The process includes filing a claim, developing evidence, deciding the claim, and sending notice of the decision to the claimant.

*Administrative agency.* An administrative agency is an institution created by government. It is given responsibility to administer and implement provisions of the law. The VA is an example of an administrative agency.

*Affirm.* To affirm a decision means that the reviewing authority agrees with the decision made below. The Board of Veterans' Appeals (Board) may affirm a regional office decision and the United States Court of Appeals for Veterans Claims may affirm a Board decision.

*Agency of original jurisdiction.* An agency of original jurisdiction (AOJ) is the VA regional office, medical center, medical clinic or other VA office which made the initial decision on a claim for VA benefits or the VA office where a claimant's records are permanently transferred.

*Agent Orange.* Agent Orange is a defoliant used during the Vietnam War.
Aid and attendance allowance. An additional benefit paid by VA to veterans, their spouses, surviving spouses and parents of veterans. This allowance is available to be paid in all compensation, dependency and indemnity compensation, and pension programs.

Analogous rating. A disability rating assigned by VA for a disability based on its similarity with another disability.

Appeal. An appeal is a legal procedure where a claim is brought from an inferior decision-maker to a superior decision-making authority in the hope that the higher authority will reverse the decision of the inferior decision-maker. If a veteran or other claimant does not agree with a decision made on a claim by a VA Regional Office, an appeal can be taken to the Board of Veterans' Appeals in Washington, DC. An appeal to the Board consists of a timely filed notice of disagreement and, after VA issues the claimant a statement of the case, a timely filed substantive appeal. 38 U.S.C.A. § 7105(b)(1) (West 2002).

To appeal a Board decision to the Veterans Court, the claimant must file a timely notice of appeal with the clerk of the Veterans Court. See 38 U.S.C.A. § 7252 (West 2002).

Appellant. An appellant is a person challenging an adverse decision by seeking review of the decision by a superior decision-making authority.

Appellee. An appellee is the party who won the case in the lower court and is made to defend the victory in a higher court when the appellant appeals to the higher court.

Appellate courts. Appellate courts are courts that do not make initial determinations on claims for benefits. Rather, they review determinations of administrative agencies or other courts for errors that are serious enough to warrant reversal. In the VA context, the two most prominent courts are the United States Court of Appeals for Veterans Claims and the United States Court of Appeals for the Federal Circuit.
Board of Veterans' Appeals. The Board of Veterans' Appeals (Board or BVA) is the highest decision-making authority within the Department of Veterans Affairs (VA). The statutes creating and governing the Board are found in Chapter 71 of Title 38 United States Code. The Board's regulations are contained in Chapters 19 and 20 of Title 38, Code of Federal Regulations.

The Board considers administrative appeals brought by claimants who have been denied benefits by the VA. The Board's jurisdiction extends to all questions of law and fact necessary to decision under a law the affects the provision of benefits by the VA to veterans or their dependents or survivors. The mailing address of the Board is:

Chairman (01)  
Board of Veterans' Appeals  
810 Vermont Ave., NW  
Washington, DC 20420

Brief. A brief is a written document filed with a court by a party to the litigation. A brief gives the court the facts of the case and the legal arguments that support the party's position before the court. The requirements for a brief and its format are governed by a court's rules of practice.

Board of Veterans' Appeals Decisions. A decision of the Board is based on the entire record and will dispose of each issue on appeal by an allowance, remand, dismissal, or denial. 38 U.S.C.A. § 7105(d)(5) (West 2002). The decision of the Board must be in writing and must set forth the issue or issues the Board decides, separately stated findings of fact and conclusions of law, and the reasons for the Board's decision. 38 U.S.C.A. § 7105(d) (West 2002).

Burden or standard of proof. Generally, a party to a lawsuit who asserts a claim or a defense against a claim has the burden of presenting evidence that establishes the claim or defense. This is known as the party's burden of proof. It is the duty to prove the facts that are in dispute.
There are three burdens of proof in court litigation. In civil suits, the
preponderance of the evidence standard is used. The preponderance of the
evidence standard allocates the risk of error almost evenly between the
parties in situations where society has only minimal concerns with the
outcome of the litigation.

At the other end of the spectrum is the reasonable doubt standard.
This standard is typically used in criminal cases. It provides the toughest
standard for rebutting the presumption that an individual is innocent until
proven guilty.

The clear and convincing evidence standard is an intermediate
standard of proof between the preponderance standard of proof and the
reasonable doubt standard. According to the Supreme Court, it is
appropriate to use the clear and convincing evidence standard where
"particularly important individual interests" are at stake, under
circumstances where the interests involved are substantially more important
than the "mere loss of money[.]

In deciding a claim, VA must give the claimant the benefit of the
doubt when there is an "approximate balance of positive and negative
evidence regarding any issue material to the determination of the matter[.]

**C-file.** VA claim file. The C-file contains the claims, evidence, and
information regarding each claimant for VA benefits.

**Canons of construction.** The "canons of construction" are the rules
and principles that a court uses when trying to determine the meaning of
language appearing in a statute, regulation, or other legal document.

**Case.** The term "case" means a claim or appeal that is, or has been,
before an administrative agency or court.

**Case law.** Case law is the "law" as expressed in judicial decisions
issued by the courts.
**Chronicity.** Chronicity means of long duration.

**Claim.** VA defines a claim as an application made by a claimant for VA benefits or for the continuation, increase, or defense of benefits already granted by the VA.

**Claimant.** A claimant is a person who files a claim for benefits with the VA.

**Claim file.** The claim file is the record compiled by VA on each veteran or other VA claimant who files an application with VA for a VA benefit.

**Claim number.** The number VA assigns to identify an individual who has filed a claim with the VA.

**Clear and unmistakable error.** The clear and unmistakable error doctrine permits a claimant to challenge a final VA or BVA decision denying benefits, and, if successful, to receive the benefits previously disallowed. See 38 U.S.C. §§ 5109A, 7111 (West 2002); 38 C.F.R. § 3.105(a) (2007).

**Clearly erroneous standard of review.** This is the standard of judicial review that courts may be required to use when reviewing an administrative agency's findings of fact. This is the standard that the United States Court of Appeals for Veterans Claims (Veterans Court) uses when reviewing a BVA finding of fact.

**Clothing allowance.** The clothing allowance is a benefit paid on a yearly basis to veterans who have service-connected disabilities that require the use of prosthetic appliances or medications and that tend to wear out clothing.
**Compensation.** Monthly payments made by VA to a veteran for a service-connected disability.

**Continuity of symptomatology.** A history of having a disability.

**DD-214.** Discharge certificate issued by a veteran's service department.

**Death compensation.** VA benefits that are paid to a deceased veteran's surviving spouse or dependent children based on the veteran's period of wartime service.

**Decision Review Officer.** The Decision Review Officer (DRO) is a VA official with authority to conduct *de novo* review of a denied claim. The DRO's jurisdiction and authority is set out in 38 C.F.R. § 3.2600 (2007). The DRO has authority to conduct personal hearings with claimants.

**Department of Veterans Affairs.** The Department of Veterans Affairs is an executive department of the United States. It is the administrative agency that Congress created to administer the laws providing benefits and other services to veterans and other claimants. The statutes creating and governing the VA are found in Title 38, United States Code. The VA's regulations are contained in Title 38, Code of Federal Regulations.

**Dependency and Indemnity Compensation.** VA benefits paid to a deceased veteran's surviving spouse, dependent children, and dependent parents, because the veteran died as a result of a service-connected disability or who had at the time of death a service-connected disability which had been rated as totally disabling for a period of ten or more years prior to the veteran's death. 38 U.S.C.A. §§ 1310, 1311, 1312 (West 2002).
Diabetes Mellitus (Type II). Diabetes Mellitus (Type II) is a disease that is subject to presumptive provisions of law that is available to in-country Vietnam veterans.


Dismissal. The term dismissal is usually used to mean that an appeal is not effective. The Veterans Court can dismiss an appeal because the Court finds it does not have jurisdiction over the appeal. The BVA can dismiss an appeal if it finds that the claimant did not file a timely substantive appeal.

Dissenting court opinion. A dissenting court opinion is an opinion by a judge that disagrees with the disposition of the appeal by the court. The dissenting judge's opinion has no legal effect on the appeal's outcome. The opinion by the majority of judges is the court's disposition of the appeal.

Effective date. An effective date is the date VA determines to assign for the grant, increase, reduction, suspension or termination of a VA benefit being paid to a claimant.

Evidence. Evidence is the material that is submitted to or obtained by the VA to support a claim or decision.

Finally adjudicated claim. A finally adjudicated claim is a claim filed with the VA that has been allowed or disallowed by the AOJ with the decision having become final because the claimant either did not file a timely appeal to the Board of Veterans' Appeals (BVA or Board) or did file a timely appeal, which the Board denied. A finally adjudicated claim may be "reopened" with "new and material evidence." 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2007).
VA Forms. The forms that VA has adopted are available on the VA's website.

General Counsel. The General Counsel is the chief legal officer of the VA and provides legal advice to the Secretary and VA offices and personnel. Attorneys assigned to the VA's Office of General Counsel appear on behalf of the VA before the Veterans Court. These attorneys defend the decisions of the BVA.

Gulf War. The Gulf War began on August 2, 1990. Since an end of the Gulf War has not been declared by Congress, every individual who has been on active duty since it began may qualify as a wartime veteran, regardless of duty assignments, when seeking VA benefits.

Housebound. An additional benefit paid to veterans, their surviving spouses and parents. This allowance is paid in all compensation, dependency and indemnity compensation, and pension programs. It is paid based on specific disabilities and conditions. It is a lesser benefit than Aid and Attendance.

In line of duty. In order for an injury or disease to be considered by VA to have been incurred in or aggravated during a veteran's period of military service, VA must find that the injury or disease was sustained by the veteran in the line of duty. If VA determines the veteran's injury or disease was sustained as the result of the veteran's own willful misconduct, the injury or disease will not be considered to have been sustained in the line of duty and benefits will not be awarded. 38 U.S.C.A. § 105 (West 2002).

Interpretation. Interpretation is the analytical process used to discover the meaning of a statute, regulation, or other legal document, including Board decisions and court opinions.
Joint motion for remand. In a joint motion for remand, the parties to an appeal before a court ask the court to remand the case to the lower tribunal for additional consideration.

Judge. A judge is a government official who has authority to decide legal disputes that are filed with the courts for resolution. A judge of the Veterans Court has authority to decide legal disputes between a VA claimant and the VA.

Judicial review. Judicial review is a formal process and involves a court examining an administrative agency decision or lower court opinion to determine whether they contain such factual or legal error that the reviewing court must reverse.

Jurisdiction. The term "jurisdiction" means that the decision-making body has the legal authority to make its decision.

Legislative history. Legislative history is the record of the written reports, proposed bills, conference reports, and floor debates relating to the enactment of a statute by Congress. A statute's legislative history is examined to discover why Congress passed the statute.

Litigation. Litigation is the process of deciding legal disputes in a court.

Majority court opinion. A majority court opinion is an opinion of a court that is joined in by a majority of the judges who decided the appeal. A majority court opinion is the court's decision in the appeal.

Mandate. When a court issues a mandate in a case, its decision in the case becomes final and, in most instances, is not subject to further review.
**Member of the Board of Veterans' Affairs.** A member of the Board of Veterans' Appeals (Board or BVA) is an official employed by the VA who considers and decides administrative appeals. A member of the Board may also be known as a Veterans Law Judge (VLJ).

**Military Retired Pay's Effect on VA Compensation.** By law, the payment of VA compensation benefits is affected by the receipt of military retired pay. If a veteran receives military retired pay, the veteran may initiate a waiver of his or her retired pay to receive the full amount of VA compensation. Under the waiver, the veteran's VA compensation will be adjusted or withheld depending on the amount of military retired pay the veteran is entitled to. The advantage of waiving military retired pay for VA compensation is that while VA benefits are reportable for Federal tax purposes, they are not taxable.

**Motion for Reconsideration by the Board of Veterans' Appeals.** After the Board issues a decision, the appellant can file a motion with the Board requesting the Board to reconsider its decision. The Chairman of the Board decides whether to grant or deny the motion for reconsideration. The Courts will not review a decision of the Chairman to deny a motion for reconsideration.

**New and material evidence.** When the VA or the Board issue a final decision denying a claim, the claimant can have the VA re-adjudicate the denied claim by filing a claim to reopen supported with new and material evidence. 38 U.S.C.A. § 5108 (West 2002). VA defines "new" evidence as "existing evidence not previously submitted to agency decisionmakers." 38 C.F.R. § 3.156(a) (2007). "Material evidence means existing evidence that, by itself or when considered with previous evidence of record relates to an unestablished fact necessary to substantiate the claim." *Id.* "New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim." *Id.*
Non-service-connected. With respect to disability or death, the term means that the veteran's disability was not incurred or aggravated, or that the veteran's death did not result from a disability incurred or aggravated in line of duty in the active military, naval or air service.

Notice of Appeal. A Notice of Appeal is a written document that is filed with a court that initiates the process seeking judicial review of a decision. In order to obtain judicial review of a BVA decision, a notice of appeal must be filed with the Veterans Court. The notice of appeal must be filed with Veterans Court within 120-days after the date the BVA mailed its decision to the claimant. If a notice of appeal is not filed within the 120-day appeal period, the Veterans Court will not have authority to consider the appeal.

Notice of Appearance. A notice of appearance is a document that an attorney, or other authorized person, files with a court informing the court that the attorney is the legal representative for a party before the court.

Notice of Disagreement. A Notice of Disagreement (NOD) is a written communication from a VA claimant – or his or her authorized representative – to the VA that expresses dissatisfaction or disagreement with an adjudicative determination of the agency of original jurisdiction. 38 U.S.C.A. § 7105 (West 2002); 38 C.F.R. § 19.116 (2007). A NOD must be filed within one year from the date of the mailing of the notification of the initial review and determination. If a timely NOD is not filed, the adjudicative determination of the agency of original jurisdiction will become final. The date of the letter of notification is considered the date of mailing for purposes of determining whether a timely appeal to the Board has been filed.

Generally, a NOD must be filed with the agency of original jurisdiction within one-year from the date the agency of original jurisdiction mailed notice to the claimant of its initial decision denying the claim. The VA will consider a NOD that is postmarked before the end of the one-year filing period as timely filed.
Original claim. An original claim is a VA claimant's original, formal application for a VA benefit on the form prescribed by the Secretary of the Department of Veterans Affairs. 38 C.F.R. § 3.160 (2007).

Pending claim. A pending claim is an application filed with the VA that has not been finally adjudicated. 38 C.F.R. § 3.160 (2007).

Pension. Monthly VA payments made to a veteran meeting wartime, income, and net worth limitations who is permanently and totally disabled.

Precedent opinions. In veterans' law there are two kinds of precedent opinions. The first category consists of the precedent opinions that are issued by the VA's General Counsel. These opinions are binding on all VA personnel. However, they are not binding on the courts.

The second category of precedent opinions are the opinions issued by the courts. Precedent opinions of the courts are legally binding on the VA and claimants for VA benefits.

Post Traumatic Stress Disorder (PTSD). PTSD is an acquired psychiatric disorder caused by an individual's exposure to an intensely traumatic event involving fear, horror, and feelings of helplessness.

Presumption. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to the existence of the presumed fact, until the presumption is rebutted. Black's Law Dictionary 1067 (5th ed. 1979).

Presumptive service connection. Under VA law, there are legal presumptions that chronic, tropical, prisoner-of-war, and diseases related to ionizing radiation, Agent Orange exposure, or Gulf War service have been incurred in service even though there is no evidence of their existence during a veteran's period of service.
Remand order. A remand order is an instruction from a superior review authority to an inferior decision-making authority, directing the inferior decision-making authority to take further action in the case. The Veterans Court can remand a case to the Board and the Board can remand a case to a VA regional office. However, the BVA may not remand a case to the Veterans Court or order the Veterans Court to take further action in a case.

Reopened claim. A reopened claim is generally any application filed with VA for a benefit that is received by VA after a final disallowance of an earlier claim. In order to have a disallowed claim reopened the claimant must file new and material evidence with the VA. If the claimant does not submit new and material evidence the VA cannot consider the claim again. See 38 U.S.C.A. § 5108 (West 2002); 38 C.F.R. § 3.156 (2007).

Secondary service connection. Recognition by VA that a veteran’s disability or death is proximately due to or the result of a service-connected injury or disease. 38 C.F.R. § 3.310 (2007).

Secretary of Veterans Affairs. The Secretary of Veterans Affairs is the head of the VA and is responsible for the proper execution and administration of all laws administered by VA.

Service-connected. With respect to a veteran's disability or death, recognition by VA that the disability or death was incurred in or aggravated, in the line of duty during the veteran's period of active duty.

Service connection. Service connection for a disability is established several different ways. The four most common are:

(1) The disability or death was incurred in military service;

(2) Aggravation of a before military service disability during service;
(3) The presumption that the disease or disability was incurred during military service; and

(4) Because of a service-connected disability, a secondary condition has occurred.

_Specially Adapted Housing or Special Home Adaptations_. A veteran may be entitled to Specially Adapted Housing or Special Home Adaptations because of a service-connected disability.

_Special Monthly Compensation_. Special monthly compensation (SMC) is an additional rate of compensation that is paid to a veteran in addition to, or in place of 0% to 100% combined service-connected disability compensation. To qualify, a veteran must be disabled beyond a combined degree percentage of disability or have a special level of service-connected disability. Some of the disabilities that VA will consider for the award of SMC include:

* Loss, or loss of use, of a hand or foot;
* Loss, or loss of use, of a creative organ;
* Loss of a percentage of tissue from a single breast, or both breasts, from mastectomy or radiation treatment;
* Loss, or loss of use of both buttocks;
* Loss of use or blindness of one eye, having only light perception;
* Deafness in both ears, having absence of air and bone conduction;
* Disability of the organs of speech which constantly precludes communication by speech resulting in complete organic aphonia.
See 38 U.S.C.A. § 1114 (West 2002 & Supp. 2007); 38 C.F.R. § 3.350 (2007). VA pays higher amounts of SMC when the veteran has a combination of these disabilities. Additional payment of SMC is available to veterans with service connected paraplegia of both legs with the complete loss of bowel and bladder sphincter control.

*Special Monthly Pension.* Special monthly pension is either the aid and attendance or housebound allowance.

*Spouse.* The veteran or veteran's parent may receive benefits for a dependent spouse. The surviving spouse of a veteran may be entitled to receive benefits.

*Statement of the Case.* A document issued to a claimant in response to the claimant's filing a Notice of Disagreement to an adjudicative decision. A Statement of the Case (SOC) contains a summary of the evidence relating to the issues with which the claimant expressed disagreement, a summary of the applicable law and regulations with appropriate citations, and the determination of the agency of original jurisdiction on each issue with the reasons for the determination. See 38 U.S.C.A. § 7105(d)(1) (West 2002); 38 C.F.R. § 19.120(b) (2007).

*Substantive Appeal.* A substantive appeal is a VA claimant's formal appeal to the Board from an AOJ's denial of benefits. It must be filed after the VA issues a Statement of the Case to the claimant. Failure to file a timely substantive appeal may result in dismissal of the claimant's appeal by the Board.

*Supplemental Statement of the Case.* VA issues a Supplemental Statement of the Case (SSOC) to a claimant when VA receives pertinent, additional evidence, when a material defect is discovered, or when for any other reason the statement of the case is inadequate under the regulations, or pursuant to remand by the Board or the Veterans Court. See 38 C.F.R. § 19.122 (2007).
Title 38, Code of Federal Regulations. Title 38, Code of Federal Regulations, contains the regulations that the VA has adopted to implement the statutes contained in Title 38, United States Code. VA regulations receive the same respect from reviewing courts that the courts give to the statutes Congress enacts.

Title 38, United States Code. Title 38, United States Code, contains the statutes that govern the VA and the administration of its benefit programs.

Traumatic Servicemembers' Group Life Insurance (TSGLI). TSGLI is a traumatic injury protection injury rider under Servicemembers' Group Life Insurance that provides for payment to any member of the uniformed services covered by SGLI who sustains a traumatic injury that results in certain severe losses.

United States Court of Appeals for the Federal Circuit. The Federal Circuit has limited jurisdiction over appeals from the Veterans Court. The Federal Circuit has jurisdiction to review the Veterans Court's interpretations of statutes and regulations. Here is the Federal Circuit's address:

Office of the Clerk
United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW
Washington, D.C. 20439

United States Court of Appeals for Veterans Claims. The Veterans Court is a specialized, Article I, appellate court. Congress created the Veterans Court in 1988 when it passed the Veterans' Judicial Review Act. The Veterans Court's primary responsibilities are to review BVA decisions to ensure that they are rational and comply with the requirements of the law. The Veterans Court has statutory authority to affirm, reverse, modify, or remand a BVA decision. Here is contact information for the Veterans Court:
United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Suite 900
Washington, DC 20004-2950
Telephone: (202) 501-5870
Facsimile: (202) 501-5848

Veterans' Judicial Review Act (VJRA). Congress enacted the VJRA in 1988. The VJRA gave VA claimants the right to obtain judicial review of BVA decisions. The Veterans' Judicial Review Act created the Veterans Court. The VJRA also gave the Federal Circuit limited authority to review the decisions of the Veterans Court. The statutory provisions governing the Veterans Court are in Chapter 72 of title 38.

Veterans Consortium Pro Bono Program. The Veterans Consortium Pro Bono Program (Program) was established to help claimants who file appeals to the Veterans Court obtain free legal help from attorneys.

A claimant without legal representation at the Court can write to the Program after filing an appeal with the Veterans Court. If the claimant does not have legal representation and also meets the Program's financial guidelines, the Program will evaluate the merits of claimant's case. If the Program finds that a viable issue exists in the case, the Program will seek to provide the claimant with a free attorney.

Here is information on how to contact the Veterans Consortium Pro Bono Program:

The Veterans Consortium Pro Bono Program
Case Evaluation and Placement Component
701 Pennsylvania Ave., NW
Suite 131
Washington, DC 20004
(202) 628-8164
(202) 628-8169 (fax)
(888) 838-7727 (toll free)
www.vetsprobono.org
E-mail: vetsprobono@rcn.com
Veterans Law Judge. A Veterans Law Judge is an official employed by the VA who considers and decides administrative appeals at the Board of Veterans Appeals. A Veterans Law Judge is also known as a member of the Board.

Willful misconduct. Willful misconduct is defined by VA as an act involving conscious wrongdoing or known prohibited action. Willful misconduct involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences. VA benefits are not payable where the veteran's injury, disease, or death is the result of the veteran's willful misconduct. 38 C.F.R. §§ 3.1(n), 3.301(b), (c) (2007).
FREQUENTLY ASKED QUESTIONS
FREQUENTLY ASKED QUESTIONS

1. I received an undesirable discharge from the Army. Am I eligible for benefits from VA?

   No. In order to be eligible to receive VA benefits a veteran must have been discharged or released from military service under conditions other than dishonorable. 38 U.S.C.A. § 101(2) (West 2002); 38 C.F.R. § 3.12 (2007).

2. What is a service-connected disability?

   A service-connected disability is a disability where the evidence shows that the disability was incurred in, or aggravated during military service. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.303 (2007).

3. What is the difference between service-connected compensation and non-service-connected pension?

   Compensation is paid for service-connected disabilities. Pension is paid to veterans who are disabled because of non-service-connected causes and service-connected causes if they exist. Compensation is meant to compensate veterans for the loss of their earning capacity due to service-connected disability. Pension is designed to provide more income to low income, disabled, veterans who served during a period of war.

4. How can I get my service-connected disability reevaluated by the VA?

   You can request that VA reevaluate your service-connected disability by simply asking VA to reevaluate the disability. You should submit your request for a reevaluation to the VA Regional Office by mailing the Regional Office a letter asking for a reevaluation.

5. In order to establish service connection for my right knee condition, what sort of evidence do I need to submit to VA?
Establishing service connection for your knee disability will require: (1) Medical evidence that confirms the current existence of the knee disability being claimed as service connected; (2) Medical, or in limited circumstances lay evidence establishing that during military service, you incurred or aggravated a knee disease or injury; and (3) Medical opinion evidence establishing a link between the claimed in-service disease or injury to your knee and the currently diagnosed disability claimed as being service-connected.

6. **What is service-connected disability compensation?**

"Compensation" is defined as a "monthly payment made by the Secretary to a veteran because of [a] service-connected disability." 38 U.S.C.A. § 101(13) (West 2002). The basic premise of paying compensation to disabled veterans for service-connected disabilities is that the government assumes responsibility for disabilities contracted by military service members "in the line of duty." In defining what constitutes the "line of duty," Congress has generally required only a temporal relationship between duty status and the onset of a condition. See 38 U.S.C.A. § 105 (West 2002).

7. **How does VA assess the severity of service-connected disabilities?**

Congress has given the VA statutory authority to assess the levels of disabilities resulting from service-connected disabilities. VA has done so in its Rating Schedule. The Rating Schedule is found in Part 4 of Title 38, Code of Federal Regulations. The Rating Schedule provides degrees of impairments for disabilities ranging from 0% disabling to 100% disabling. The disability ratings set out in the Rating Schedule, "as far as practicable," are based on the average impairment of earning capacities resulting from such diseases and injuries in civilian occupations. 38 U.S.C.A. § 1155 (2002); 38 C.F.R. § 4.1 (2007). The amount of compensation payable for each disability rating is set by Congress in 38 U.S.C.A. § 1114 (West 2002 & Supp. 2007).

8. **What is the presumption of soundness?**
For the purposes of disability compensation, every veteran is considered to have been in sound condition when examined and enrolled for military service, except for defects, infirmities, or disorders that are noted at the time of his or her entrance examination, or where clear and unmistakable evidence demonstrates that the injury or disease existed before the veteran's enrollment into service and was not aggravated by such service. 38 U.S.C.A. § 1111 (West 2002).

9. What is the presumption of service connection for certain diseases, disabilities, and conditions?

For the purposes of awarding disability compensation, in the case of any veteran who served for 90 days or more during a period of war, the diseases listed in 38 U.S.C.A. § 1112 (West 2002), are considered to a have been incurred in or aggravated by such service notwithstanding the fact that there is no record or evidence of the disease during the veteran's period of military service if the disease becomes manifest to a degree of 10 percent or more within one year of the date of separation from such service.

10. What is considered to be a "clear and unmistakable error" by VA?

The VA will find that a clear and unmistakable error (CUE) exists in an earlier VA adjudication when the claimant proves the following:

1. Either the correct facts contained in, or constructively contained in the record, were not before the VA adjudicator at the time VA made the challenged decision or the statutory or regulatory provisions that existed at the time were incorrectly applied;

2. The error is clear and un-debatable and not merely be a disagreement as to how the VA weighed or evaluated the facts; and

3. The error must have manifestly changed the outcome of the prior decision.

11. What is a Notice of Disagreement?

A Notice of Disagreement is a written communication from you to VA that expresses dissatisfaction or disagreement with a decision that VA made on your claim and a desire to contest the result of the VA decision. 38 U.S.C.A. § 7105 (West 2002); 38 C.F.R. §§ 3.103(f), 19.26(a), 19.26(b), 19.27, 20.200, 20.201, 20.300, 20.302 (2007).

12. I just received written notice that the VA regional office denied my claim for service connection for Post-Traumatic Stress Disorder. Can I appeal this decision, and if I can appeal it, how do I appeal it?

Yes you can appeal the decision. You can appeal the decision to the Board of Veterans' Appeals, which is located in Washington, DC. In order to begin the VA's appeal process, you must file a notice of disagreement (NOD) to the decision with the VA regional office within one-year of the date of written notice to you of the decision. A NOD is a written communication from you to VA that expresses dissatisfaction or disagreement with the VA decision made on your claim and a desire to contest the result of the VA decision. 38 U.S.C.A. § 7105 (West 2002); 38 C.F.R. §§ 3.103(f), 19.26(a), 19.26(b), 19.27, 20.200, 20.201, 20.300, 20.302 (2007).

13. After a notice of disagreement is filed, what is the next step in the process?

14. When can I appear for a personal hearing to explain to VA why I should be service-connected for my low back disability?

According to VA's regulations, you can have a personal hearing at any time. Section 3.103(c)(1) provides: "Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim." 38 C.F.R. § 3.103(c)(1) (2007).

15. I want to file a claim with VA for service connection for a right shoulder disability. If I file this claim, what kind of help can I expect to receive from VA?

The VA has the statutory obligation to assist you develop your claim. When you file your claim, VA will have the statutory obligation to provide you with notice of "any information, and any medical or lay evidence, not previously provided to [VA] that is necessary to substantiate [your] claim." 38 U.S.C.A. § 5103(a) (West 2002). VA's notice must inform you, "which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the [VA] . . . will attempt to obtain on behalf of the claimant." § 5103(a). Additionally, VA has the statutory duty to "make reasonable efforts to assist [you] in obtaining evidence necessary to substantiate the claimant's claim for a benefit." 38 U.S.C.A. § 5103A(a) (West 2002). Because your claim is one for service connection, the VA has the duty to assist you to obtain the following records, if they are deemed relevant to your claim by VA:

1. The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a government entity.

2. Records of relevant medical treatment or examination of the claimant at [VA] health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

3. Any other relevant records held by any Federal department or agency that the claimant adequately identifies.
and authorizes the [VA] to obtain.

§ 5103A(a). VA will also have the duty to provide you with a medical examination or medical opinion to help you establish your entitlement to service connection if VA decides that "such an examination or opinion is necessary to make a decision on [your] claim." Under the statute, VA "shall treat an examination or opinion as being necessary to make a decision on a claim . . . (1) if the evidence of record before the [VA], taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the [VA] to make a decision on the claim.


16. How can I locate my military records?

To obtain copies of your military records, you must submit a "Request Pertaining to Military Records" (SF 180) to the records custodian of your branch of the military service. You can find the addresses for each of the services' records custodians on page 2 of the SF 180. The SF 180 requires a signature. It must be submitted either by mail or fax. You can mail the SF 180 to:

National Personnel Records Center,
Military Personnel Records
9700 Page Avenue,
St. Louis, MO 63132-5100.
17. **Is the VA adjudication process an adversarial one?**

No. By regulation, the proceedings before VA are to be ex parte and non-adversarial. 38 C.F.R. § 3.103(a) (2007). "Proceedings before VA are ex parte in nature, and it the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government." § 3.103(a).

18. **What is a VA Regional Office?**

There are VA regional offices throughout the country. Generally, the regional office is where a veteran's claims are filed, developed, and decided.

19. **What is the Veterans Claims Assistance Act?**

Congress enacted the Veterans Claims Assistance Act (VCAA) in November of 2000 to ensure that VA provides claimants with adequate notice and assistance in developing their claims for service-connected disability benefits.

20. **What is the Veterans' Judicial Review Act?**

The Veterans' Judicial Review Act (VJRA) is the statute that gives veterans and other claimants their right to obtain judicial review of unfavorable VA decisions. Congress passed the VJRA in November 1988. The VJRA is the statute that created the United States Court of Appeals for Veterans Claims (Veterans Court). The statutes governing the Veterans Court are in Chapter 72 of Title 38, United States Code.

21. **What is a rating decision?**
A rating decision is the document prepared by the VA to decide a claimant's application for a VA benefit like service connection or an increased disability rating.

22. **How does VA evaluate a service-connected disability?**

VA evaluates a service-connected disability by assessing the disability's severity under the criteria contained in VA's Rating Schedule. VA's rating schedule is found in Part 4 of Title 38, Code of Federal Regulations.

23. **How can I receive medical care from VA?**

Veterans can apply to receive medical care from VA by completing and filing VA Form 10-10EZ, "Application for Health Benefits." The 10-10EZ Form can be obtained by visiting, calling, or writing to any VA health care facility or Veterans' benefits office. You can also obtain the form by calling the VA Health Benefits Center, toll-free, at 1-877-222-VETS (1-877-222-8387). The form can also be accessed by visiting VA's Health Administration Eligibility Reform website: [www.va.gov/elig](http://www.va.gov/elig).

24. **What must I prove to VA to establish that my right shoulder disability is service-connected?**

Establishing service connection requires: (1) Medical evidence that confirms the current existence of the disability being claimed as service-connected; (2) Medical, or in limited circumstances lay evidence establishing that during military service, you incurred or aggravated a disease or injury; and (3) Medical opinion evidence establishing a link between your claimed in-service disease or injury and the currently diagnosed disability claimed as being service-connected.

25. **How do I go about receiving benefits from the VA?**

Generally, a specific claim, in the form prescribed by the Secretary of the VA, must be filed with VA in order for benefits to be paid or furnished to any individual under the laws administered by the VA.
26. What does VA consider to be an informal claim?

Under VA regulations, any communication or action by a claimant that indicates an intent to apply for one or more VA benefits may be considered by VA to be an informal claim. An informal claim must identify the benefit or benefits being sought. When VA receives an informal claim and no formal claim has been filed, the VA will forward the claimant an application form for completion. If VA receives the formal application within one year of the date VA sent the form to the claimant, VA will consider the date of claim to be the date it received the informal claim from the claimant. A power of attorney must be in effect at the time a communication is written for such a communication from an attorney, veterans' service organization, or agent to be accepted by VA as an informal claim.

27. Who is eligible to receive a non-service-connected pension from VA?

Veterans with low income and who are permanently and totally disabled, or are age 65 or older, may be eligible to receive monetary support from the VA if they have 90 days or more of active military service, at least one day of which was during a period of war. The veteran's discharge must have been under conditions other than dishonorable and the disability must be for reasons other than the veteran's own willful misconduct. Payments are made by VA to bring the veteran's total annual income, including other retirement or Social Security income, to a level set by Congress. Certain unreimbursed medical expenses may help to reduce a veteran's countable income for VA purposes.

28. I am the spouse of a deceased veteran. Am I eligible to receive any benefits from the VA?

There are a number of VA benefits that you may be eligible to receive. VA provides pensions to low-income surviving spouses and unmarried children of deceased veterans with wartime service. To receive this death pension from VA, you must not have remarried. The veteran must have been discharged or released from active service under conditions other than dishonorable and must have had 90 days or more of active military
service, at least one day of which was during a period of war, or a service-connected disability justifying discharge.

Another benefit is Dependency and Indemnity Compensation (DIC). In order to be eligible for DIC, as the veteran's surviving spouse, the veteran's death must have resulted from one of the following causes: (1) A disease or injury incurred or aggravated in the line of duty while on active duty or active duty for training; (2) An injury incurred or aggravated in the line of duty while on inactive duty training; or (3) a service-connected disability or a condition directly related to a service-connected disability.

DIC may also be paid to a surviving spouse of a veteran who was totally disabled from service-connected conditions at the time of death, even though the veteran's service-connected disabilities did not cause the veteran's death. The surviving spouse can qualify for DIC if the veteran was: (1) Continuously rated totally disabled for a period of 10 years or more immediately preceding death; (2) Continuously rated totally disabled from the date of military discharge and for at least 5 years immediately preceding death; or (3) A former prisoner of war who died after September 30, 1999, and who was continuously rated totally disabled for a period of at least one year immediately preceding death.

29. I filed a claim for service connection for a right knee disability. Will I be able to successfully support this claim with information taken from medical texts and treatises?

You can support your claim with information that you take from medical texts and treatises. However, it is doubtful that your claim will succeed based on this information alone. Your claim is more likely to be granted if you are able to file a medical opinion from a medical professional that states that you have a right knee disability and that it is related to your military service.

30. Generally, what does it take to present a successful claim for service connection for Post Traumatic Stress Disorder to the VA?

If a veteran is to receive the award of service connection for Post Traumatic Stress Disorder from VA, the veteran will need to present:
(1) Medical evidence establishing the existence of a diagnosis of Post Traumatic Stress Disorder;

(2) Credible supporting evidence that the veteran's claimed in-service stressors actually occurred; and

(3) The existence of a causal link – established by medical evidence – between the veteran's current Post Traumatic Stress Disorder symptoms and the veteran's claimed in-service stressors.

With regard to the second criterion – credible supporting evidence that the veteran's claimed in-service stressors actually occurred – the evidence necessary to establish that the claimed stressors actually occurred varies depending on whether it can be determined that the veteran "engaged in combat with the enemy." 38 U.S.C.A. § 1154(b) (West 2002); 38 C.F.R. § 3.304(d) (2007).

If VA determines through the receipt of military citations or other supportive evidence that the veteran engaged in combat with the enemy, and the veteran's claimed stressors are related to that combat, the veteran's lay testimony regarding the reported stressors must be accepted by VA as conclusive evidence as to their actual occurrence and no further development or corroborating evidence will be necessary. Service department evidence showing that the veteran engaged in combat or that the veteran was awarded the Purple Heart Medal, Combat Infantryman Badge, or similar citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed in-service stressor. 38 C.F.R. § 3.304(f) (2007).

31. While I was in the military service, I was sexually assaulted, but I did not report the assault to the military authorities. Last month, I was diagnosed with Post Traumatic Stress Disorder and the psychiatrist says it was caused by my in-service sexual assault. Is there anyway I can establish service connection for the Post Traumatic Stress Disorder when my in-service sexual assault is not recorded in my service records.
The answer is yes. The VA has adopted a regulation that may help you identify, obtain and submit evidence to VA to prove that your Post Traumatic Stress Disorder is service-connected. VA's regulation, 38 C.F.R. § 3.304(f) (2007), provides that if a Post Traumatic Stress Disorder claim is based on an in-service personal assault, that evidence from sources other than your service records may help to corroborate your account of the in-service incident. Examples of such evidence include: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians, and statements from family members, roommates, fellow service members, or clergy.

32. The BVA denied my claim for service connection for a back disability in 1989. Other than filing new and material evidence to reopen the claim, are there other ways I can use to get the VA to take another look at my claim?

There are several possible ways you may be able to use to get the VA to look at you claim again.

First, you can file a motion with the Chairman of the BVA asking the Chairman to direct the Board to reconsider its 1989 decision. Reconsideration of a BVA decision may be accorded by the Board at anytime on motion by an appellant or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned;

or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

38 C.F.R. § 20.1000 (2007). You should note, however, that if the BVA does not grant your motion for reconsideration, you will not be able to appeal the denial to the United States Court of Appeals for Veterans Claims. You should also know that the BVA infrequently grants motions for reconsideration.
Second, you can consider filing a motion with the Board asserting that the Board's decision of 1989 is the product of "clear and unmistakable error" (CUE). The Board has regulations that govern its consideration of a claim that Board decision contains CUE. These regulations are 38 C.F.R. §§ 20.1401-1411 (2007). It is not easy to persuade the BVA that it committed CUE in one of its decisions. However, if the Board rules against you, an appeal to the Veterans Court would be available to you.

Third, depending on the nature of your disability claim, you may be able to be able to ask VA to reconsider your claim because the law has changed since the Board denied your claim in 1989. Under 38 U.S.C.A. § 5110(g) (West 2002) and 38 C.F.R. § 3.114 (2007), VA can take another look at a disallowed claim when there has been a change in law or interpretation in law giving rise to a new substantive basis for the award of the claim. Here is in example. Assume that in 1989, the law clearly precluded the award of service connection to veterans having disability A. Because of this law, the VA denied a veteran service connection for disability A. In December 2008, Congress enacts a new statute. The new statute expressly provides that VA may now award service connection to veterans having disability A. If the veteran in our example files a new claim under the new statute, VA would have the authority to award the veteran service connection for disability A.

33. In December 2008, I received notice from the VA Regional Office that I had received an overpayment in my pension benefits and that I owed VA $666.00. I cannot afford to repay this money. Is there anything that I can do?

You can ask the VA to waive your indebtedness to VA. However, you must file a timely request for waiver. Under 38 U.S.C.A. § 5302 (West 2002) and 38 C.F.R. § 1.963(b) (2002) a request for waiver of indebtedness shall only be considered by VA if the request is filed with VA within 180 days following the date of the notice of indebtedness issued on or after April 1, 1983, by the VA to the debtor. The 180 day period may be extended if the person requesting the waiver demonstrates to the Chairman of the Committee on Waivers and Compromises that, as a result of an error by either the VA or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in the individual's receipt of the
notification of indebtedness customarily required for mailing. You should file you request for waiver before the 180 period expires.

34. If I file a claim for social security, can that claim also be considered a claim for VA benefits?

Yes. Under 38 C.F.R. § 3.153 (2007), a claim for social security benefits can also be considered a claim for VA benefits.

35. When will the VA reopen a disallowed claim?

VA must reopen a finally disallowed claim when "new and material evidence is presented or secured." 38 U.S.C.A. §§ 5108, 7104(b), 7105(c) (West 2008); 38 C.F.R. § 3.156(a) (2007). "New evidence" is evidence "not previously submitted to VA decisionmakers . . . [that] is neither cumulative nor redundant." § 3.156(a). New evidence is considered "material" if it "bears directly and substantially upon the specific matter under consideration" and "by itself or in connection with evidence previously assembled is so significant that it must be considered in order to decide the merits of the claim." § 3.156(a).

36. The VA denied my claim for service connection for hearing loss in 2001. If I file a new claim, will VA have the duty to assist me in developing my claim by obtaining an expert medical opinion?

No. Under 38 U.S.C.A. § 5103A (West 2002), Congress directs VA to make reasonable efforts to assist a claimant in obtaining evidence that is necessary to substantiate a claim for a VA benefit. This duty to assist includes obtaining records and providing medical examinations or opinions. However, under § 5103(f), "nothing . . . shall be construed to require the Secretary to reopen a claim that has been disallowed except when new and material evidence is presented or secured."

VA adopted 38 C.F.R. § 3.159(c)(4) (2007), to implement § 5103(f). It provides that where a prior denial of a claim exists, VA will not assist the claimant by obtaining a medical examination or medical opinion. Therefore, under the regulation, VA will not provide you with an examination or
medical opinion until you successfully reopen your disallowed claim with new and material evidence.

37. I was recently hospitalized in a VA hospital. After undergoing surgery on my spine at L4-L5, I was rendered a paraplegic. Is there any sort of benefit available that I can receive from the VA for my paraplegia disability?

You may be able to file a claim for disability benefits under 38 U.S.C.A. § 1151 (West 2002). The statute provides, in relevant part:

Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability or a qualifying death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, a disability or death is a qualifying additional disability or qualifying death if the disability or death was not the result of the veteran's willful misconduct and—

(1) the disability or death was caused by hospital care, medical or surgical treatment or examination furnished the veteran under any law administered by VA, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, and the proximate cause was—

(A) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment or examination; or

(B) an event not reasonably foreseeable.

Under 1151, if you are to establish entitlement to disability compensation benefits under the statute, you will have to show the following:

1. That you have an additional disability;
2. That VA's surgical treatment was the cause of your paralysis;

3. That there was an element of fault on the part of VA in providing you with surgical care and that this resulted in additional disability.

4. Or, you will have to establish that your paralysis resulted from an event that was not reasonably foreseeable.

VA's implementing regulation is 38 C.F.R. § 3.358 (2007). Section 3.358 provides, in relevant part that disability compensation is not payable to a veteran for the necessary consequences of medical or surgical treatment or examination properly administered by VA with the express or implied consent of the veteran.

"Necessary consequences" are those that are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered to a veteran by VA.

38. I understand that the Veterans Court remands many cases back to the VA for additional development. What are the most frequent reasons for the court ordered remands?

You raise a very important question. Identification of the reasons why the Court remands cases, provides valuable information. With this information, we are able to formulate a claims checklist that may help the veteran's advocate ensure that a claim is fully developed.

Has adequate VCAA notice been provided? The Veterans Court has remanded many appeals to the VA because VA did not provide notice to the claimant.

Has VA provided incorrect notice? The Veterans Court has remanded many cases because VA gave the veteran incorrect information.
Have all of the veteran's service records been obtained? A surprising number of veterans' appeals are remanded by the Veterans Court because the agency did not obtain all of the service medical and personnel records. A veteran's advocate should review each veteran's claims file to ensure that all service records are associated in the claims file. If not, then, the advocate should notify the VA and request VA to obtain the missing records. In the alternative, the advocate can seek to obtain the missing records.

Have all of the veteran's private medical records been obtained? Many cases are remanded because the records before the Court indicated that the veteran had been receiving private medical care but the records of that care had not been obtained. Veterans' advocates should request that the veteran obtain a copy of these records and provide them to the advocate for review before they are submitted to VA. When the records are obtained the advocate should review them to decide whether they are relevant to resolution of the veteran's claim. If they are relevant and are not harmful to the veteran's claim, the advocate should submit them to the VA.

Have all of the veteran's VA treatment records been obtained? Many court ordered remands are issued because all of a veteran's VA treatment records were not obtained or reviewed by VA adjudicators. Veterans' advocates should ensure that all VA treatment records have been obtained. If the records are missing, the VA should be asked to obtain them for incorporation into the veteran's claims folder, or the advocate can seek to obtain them.

Is the VA examination or VA medical opinion adequate? Many cases are remanded by the Court because of inadequate VA examinations or opinions. Veterans' advocates should closely examine VA examination reports and medical opinions to ensure that they are adequate and respond to the medical issues involved in each claim. If found inadequate, the advocate should inform the VA and request that the agency obtain a more accurate examination report or medical opinion. If it appears to the veteran's advocate that VA's examination report or medical opinion does not support the veteran's claim, the advocate should notify the veteran of this conclusion and should advise the veteran to obtain and submit a medical opinion that supports his or her claim to benefits.
Many claims for VA benefits require detailed and well-reasoned medical opinions or examination reports. When reviewing the quality of medical opinions or examination reports the veteran's advocate should try and ensure that they are complete and unambiguous. If they are incomplete, confusing, or ambiguous, request that VA obtain a more complete medical opinion or examination report. See 38 C.F.R. § 4.2 (2004) (requiring that, if examination report "does not contain sufficient detail, it is incumbent upon the [RO] rating board to return the report as inadequate for evaluation purposes"); see also Bowling v. Principi, 15 Vet.App. 1, 12 (2001) (emphasizing the BVA's duty, under 8 C.F.R. § 19.9 (2000), to return inadequate examination report); Hicks v. Brown, 8 Vet.App. 417, 422 (1995) (1995) (concluding that inadequate medical examination frustrates judicial review).

Did VA inform the veteran to obtain and submit an expert medical opinion? The Veterans Court frequently finds it necessary to remand an appeal because VA did not inform the veteran that he or she should file an expert medical opinion to support a claim. The veteran's advocate should review a veteran's records to determine whether to advise the veteran to obtain and submit an expert medical opinion that supports the veteran's claim.

Did the VA provide the veteran with an adequate personal hearing? Did the VA official conducting the veteran's personal hearing inform the veteran of all of the issues involved in the case? Did the VA hearing official also suggest to the veteran that the veteran should obtain and submit necessary information and evidence to help support his or her claim to VA benefits? During the hearing the veteran's advocate should ask the VA hearing official to state, on the record, what he or she believes the issues to be in the case. The veteran's advocate should also ask the VA hearing official to state, on the record, whether the veteran needs to obtain and file additional evidence to support his or her claim.

Did VA comply with a remand ordered by the Court or BVA? When reviewing a veteran's claims folder, the veteran's advocate may find that the case had been remanded to the agency by the Veterans Court. If so, the veteran's advocate will want to review the Court's remand order to determine
exactly what the Court wanted VA to do on remand. It sometimes happens that the agency does not always fully comply with the Court's remand instructions. If it does not, this is called a Stegall error. In Stegall v. West, 11 Vet.App. 268, 271 (1998), the Veterans Court ruled that a "remand by this Court or the Board confers on the veteran or other claimant, as a matter of law, the right to compliance with the remand orders[.]" The Court also ruled that a BVA or Court ordered remand imposes upon VA a "duty to ensure compliance with the terms of the remand."
CLAIM PROCESSING THROUGH VA ADJUDICATION SYSTEM
CLAIM PROCESSING THROUGH
VA ADJUDICATION SYSTEM

FILING OF CLAIM IN VA REGIONAL OFFICE
(most claims can be filed at anytime)

NOTICE OF DECISION ON CLAIM
(VA must send written notice of decision)

FILING OF NOTICE OF DISAGREEMENT (NOD)
(NOD must be filed within one year or decision becomes final)

VETERAN CAN ELECT PERSONAL HEARING
and
VETERAN MAY ELECT REVIEW BY A DECISION
REVIEW OFFICER (DRO)

STATEMENT OF THE CASE (SOC)
(SOC summarizes evidence, controlling law, and decision)

VETERAN MUST FILE SUBSTANTIVE APPEAL TO PERFECT
APPEAL TO THE BOARD OF VETERANS' APPEALS (BOARD)
(generally, substantive appeal must be filed within 60 days of SOC)

SUPPLEMENTAL STATEMENT OF THE CASE (SSOC)
(VA regional office issues SSOC when new evidence is submitted)

PERSONAL HEARING BEFORE THE BOARD
(veteran can have personal hearing before the Board)

BOARD DECISION
(must state findings of fact and conclusions of law)

APPEAL TO THE UNITED STATES COURT OF
APPEALS FOR VETERANS CLAIMS
(appeal must be filed within 120 days of adverse Board decision)
APPEAL TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT
(appeal must be filed within 60 days of issuance of judgment)
DESCRIPTION OF VA BENEFITS
DESCRIPTION OF VA BENEFITS

A. SERVICE-CONNECTED COMPENSATION

Service-connected compensation is a monthly disability payment made by VA to a veteran because of the loss of earning power caused by a disability resulting from a disease or injury that the veteran incurred or aggravated during active military service. The disability must be incurred in the line of duty and cannot have been the result of the veteran's own willful misconduct. The veteran must also have been discharged or released from military service with an other than dishonorable discharge.

VA evaluates disabilities according to a Schedule of Rating Disabilities (Rating Schedule). Disability ratings are assigned based upon the average impairment in civilian earning capacity. All disabilities are evaluated from 0% disabling (less than 10% disabling) to 100% disabling. The Rating Schedule is found in Part 4 of Title 38, Code of Federal Regulations.

Congress establishes the monthly rate of compensation payable for each percentage of disability. 38 U.S.C.A. § 1114 (West 2002 & Supp. 2007). Additional compensation for dependents is payable for veterans with service-connected disabilities that are 30% or more disabling.

Special monthly compensation (SMC) may be payable in addition to the basic rate of compensation if the veteran has certain, severe disabilities. Most SMC awards may be added to the basic 100% rate.

So long as a veteran meets the physical requirements for a specific disability rating, the veteran is entitled to the corresponding amount of compensation regardless of the veteran's ability to overcome the normal economic limitations of that disability and regardless of any other financial resources.

The payment of military retirement pay, disability severance pay and separation incentive payments affect the amount of VA compensation paid to disabled veterans for their service-connected disabilities. 38 U.S.C.A. §§ 101, 1101-1163 (West 2002 and Supp. 2007).
Certain veterans are eligible to receive service-connected disability compensation based on the presumption that their disabilities are service-connected.

1. **Prisoners of War.** For former prisoners of war (POW) who were imprisoned for any period of time, the following disabilities will be presumed to be service-connected if they are found to be at least 10% disabling anytime after military service: psychosis, any of the anxiety states, dysthyemic disorder, organic residuals of frostbite, post-traumatic osteoarthritis, heart disease or hypertensive vascular disease and their complications, stroke and residuals of stroke.

For POWs who were imprisoned for at least 30 days, the following conditions are also presumed to be service-connected: avitaminosis, beriberi, chronic dysentery, helminthiasis, malnutrition (including optic atrophy), pellagra, other nutritional disorders, irritable bowel syndrome, peptic ulcer disease, peripheral neuropathy and cirrhosis of the liver.

2. **Veterans Exposed to Radiation.** For veterans who participated in "radiation risk activities" as defined by VA in its regulations while on active duty, the following conditions are presumed to be service-connected: all forms of leukemia (except for chronic lymphocytic leukemia), cancer of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary tract (renal pelvis, ureter, urinary bladder and urethra), brain, bone, lung, colon, and ovary, bronchiolo-alveolar carcinoma, multiple myeloma, lymphomas (other than Hodgkin's disease), and primary liver cancer (except if cirrhosis or hepatitis B is indicated).

3. **Gulf War Veterans.** Veterans of the Gulf War with chronic disabilities may receive service-connected compensation for chronic disabilities resulting from undiagnosed illnesses. VA will consider a disability as chronic if it has existed for at least six months. The undiagnosed illnesses must have appeared either during active service in the Southwest Asia Theater of Operations during the Gulf War or to a degree of at least 10% disabling at any time since then through December 31, 2011.

4. **Veterans Exposed to Agent Orange or Other Herbicides.** A veteran who served in the Republic of Vietnam between January 9, 1962 and
May 7, 1975, is presumed to have been exposed to Agent Orange and other herbicides.

VA presumes that eleven illnesses are service-connected. The illnesses are: chloracne or other acneform diseases, porphyria cutanea tarda, soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi’s sarcoma or mesothelioma), Hodgkin’s disease, multiple myeloma, respiratory cancers, non-Hodgkin’s lymphoma, prostate cancer, acute and subacute peripheral neuropathy, diabetes mellitus (Type 2) and chronic lymphocytic leukemia.

B. DEPENDENCY AND INDEMNITY COMPENSATION

Dependency and Indemnity Compensation (DIC) contributes partial compensation for the economic loss suffered by the survivors, upon the service-connected death of the veteran. DIC is paid to surviving spouses and dependent children without regard to income or financial resources. Parents may be entitled to DIC if they meet certain income limitations.

DIC is payable when the veteran's death occurs in the line of duty on active duty, while on active duty for training, or during inactive duty training. DIC is also payable when the veteran's death occurs after service and the death is the result of a service-connected disability.

DIC also may be paid to the survivors of a veteran who was totally disabled due to service-connected causes at the time of death but whose death was not the result of a service-connected disability. In this situation, the veteran must have been rated totally disabled for a continuous period of 10 or more years, or, if rated totally disabled for less than 10 years, was so rated continuously for not less than five years from the date of discharge from military service.

A surviving spouse entitled to DIC may receive additional payment for each unmarried child under the age of 18. On the child's 18th birthday these payments stop. The child may then claim DIC benefits in his or her own right if attending a VA approved school – until the age of 23 – or if he or she became permanently incapable of self-support before age 18 due to mental or physical disability.
A child under the age of 18 may receive DIC benefits in his or her own right only if there is no surviving spouse eligible for DIC.

DIC may also be paid to a veteran's surviving parent. However, the rate is based on marital status and income. Payments may not be made if a parent's income exceeds a statutory limit. A parent who establishes the need for aid and attendance is eligible to receive a special allowance in addition to the basic monthly rate. 38 U.S.C.A. §§ 1301-1323 (West 2002 & Supp. 2007).

C. NON-SERVICE-CONNECTED PENSION

Non-service-connected pension is a program that is designed to provide assistance to disabled veterans with wartime, military service. It is not intended as a reward for military service or as a retirement benefit. Rather, non-service-connected pension is an income maintenance program for veterans whose incomes are below a national standard of need.

To qualify to receive a non-service-connected pension, a veteran must have had 90 days or more of active military service, at least one day of which was during a period of war; have been released or discharged from military service under conditions other than dishonorable; and be permanently and totally disabled.

The veteran must also meet statutory income limits and corpus of estate requirements. Veterans with dependents are eligible for higher income limits, as are veterans who are so severely disabled that they are housebound or need the regular aid and attendance of another person. Veterans of World War I and the Mexican border period are entitled to an increased income limit under the Improved Pension Program, which is the current pension program.

Congress establishes the maximum annual improved disability pension rates. Payments are reduced by the amount of countable income of the veteran, spouse or dependent children.

When a veteran without a spouse or a child is furnished nursing home care or domiciliary care by VA, the veteran's pension is reduced to an

D. NON-SERVICE-CONNECTED DEATH PENSION

Death pension provides assistance to surviving spouses and children who are in financial need following the non-service-connected death of a veteran. The veteran must have had qualifying military service as for a non-service-connected disability pension.

A surviving spouse must have been married to the veteran for at least one year prior to the veteran's death, unless a child was born of the marriage. Remarriage following the veteran's death makes the surviving spouse ineligible to receive death pension. The surviving spouse does not have to be disabled to qualify for death pension.

The surviving spouse must meet statutory income limits and corpus of estate requirements. Those surviving spouses with dependent children are eligible for higher income limits, as are those surviving spouses who are so severely disabled that they are housebound or require the regular aid and attendance of another person.

Children are entitled to receive death pension only if no surviving spouse is eligible, or if they are not in the legal custody of the surviving spouse. 38 U.S.C.A. §§ 1532-1534 (West 2002 & Supp. 2007).

E. SPECIALLY ADAPTED HOUSING.

To ensure that severely disabled veterans can live in homes which have been specially adapted for their needs, VA may award the veteran a grant toward the cost of building, buying or remodeling a home. The veteran can use this grant one time.

To qualify for the specially adapted housing grant, the veteran must have a permanent and total (100%) service-connected disability involving the loss or loss of use of one or both lower extremities. Veterans who qualify for this benefit cannot ambulate or move without the aid of leg braces, crutches or a wheelchair. Before VA will award the specially
adapted housing grant a VA medical facility must certify that it is medically feasible for the veteran to live in the home.

 Seriously disabled veterans who are not eligible for the specially adapted housing grant may qualify for a smaller special home adaptation grant. If the veteran has a 100% service-connected disability due to blindness in both eyes or due to the loss or loss of use of both hands, the VA may approve the grant so that the veteran can adapt the veteran's home. 38 U.S.C.A. §§ 2101-2106 (West 2002 & Supp. 2007).

F. AUTOMOBILES AND ADAPTIVE EQUIPMENT. VA will pay an allowance to a veteran toward the purchase of an automobile or other conveyance if the veteran is service-connected for severe, permanent impairment of vision in both eyes or for the anatomical loss or permanent loss of use of one or both hands or one or both feet.

 In order to ensure that a veteran is able to operate an automobile safely, VA will pay for all necessary adaptive equipment and for the equipment's installation, repair and replacement. The adaptive equipment may be provided not only for the vehicle purchased with the automobile grant but also for any vehicle purchased previously or subsequently. Adaptive equipment may not be provided for more than two vehicles during any four year period. 38 U.S.C.A. §§ 3901-3904 (West 2002 & Supp. 2007).

G. CLOTHING ALLOWANCE. VA will pay an annual clothing allowance to any veteran who is entitled to receive compensation for a service-connected disability that requires the use of a prosthetic or orthopedic appliance that tends to wear out clothing. 38 U.S.C.A. § 1162 (West 2002 & Supp. 2007).
LAWS AND REGULATIONS GOVERNING
THE AWARD OF SERVICE CONNECTION
LAWS AND REGULATIONS GOVERNING
THE AWARD OF SERVICE CONNECTION

Purpose

- Learn the four types (direct, aggravation, secondary and presumptive) of service connection, special circumstances requiring particular actions by VA, and protection of benefits under the law.

I. Service Connection


1. General. 38 C.F.R. § 3.303(a).

2. Chronicity and continuity. 38 C.F.R. § 3.303(b) (2007).

3. Pre-service disabilities noted in service. 38 C.F.R. § 3.303(c) (2007).


2. Wartime service. 38 C.F.R. § 3.306(b) (2007).


D. Proximate Results; Secondary Conditions. 38 C.F.R. § 3.310 (2007).


2. Cardiovascular Disease. 38 C.F.R. § 3.310(b) (2007).


F. Diseases Subject to Presumptive SC. 38 U.S.C.A. § 1112 (West 2002); 38 C.F.R. § 3.309 (2007).


3. POW related diseases. 38 C.F.R. § 3.309(c) (2007).


G. Compensation for Disability or Death Due to Treatment at a VA Facility or Vocational Rehabilitation. 38 U.S.C.A. § 1151 (West 2002).


2. Principal cause of death. 38 C.F.R. § 3.312(b) (2007).


I. Mental Unsoundness in Suicide. 38 C.F.R. § 3.302 (2007).


2. Evidence of mental condition. 38 C.F.R. § 3.302(b) (2007).


M. Section 306 and Old Law Pension Cases. 38 C.F.R. § 3.960 (2007).


2. Termination. 38 C.F.R. § 3.960(b) (2007).


EXAMPLES OF DIFFERENT SERVICE CONNECTION AWARDS
EXAMPLES OF DIFFERENT SERVICE CONNECTION AWARDS

VA can award a veteran service connection for a disability under four legal theories of entitlement. The four legal theories are:

(1) Direct service connection;
(2) Service connection by way of aggravation;
(3) Presumptive service connection; and
(4) Secondary service connection.

**Direct service connection.** VA will award a veteran direct service connection when the evidence shows that the veteran's claimed disability manifested itself during the veteran's period of military service. *Example:* The veteran's service medical records show that the veteran lost her right leg during combat operations in Iraq. The veteran will receive the award of direct service connection for the loss of her leg. 38 U.S.C.A. §§ 1110, 1111 (West 2002); 38 C.F.R. §§ 3.303, 3.304 (2007).

**Service connection by way of aggravation.** VA awards service connection by way of aggravation when the evidence shows that the veteran had a preexisting disability upon his or her entrance into military service and during service the veteran's preexisting disability increases in severity. In other words, the evidence shows that the preexisting disability was aggravated beyond its normal progression during the veteran's period of military service. *Example:* Upon entrance into the Marine Corps, the Marine Corps finds that the veteran has a preexisting low back disability. The veteran's service medical records show that the veteran's low back disability increased in severity during the veteran's period of military service. VA can award the veteran service connection for the low back disability by way of aggravation because the evidence shows that the low back disability increased in severity during military service.
**Presumptive service connection.** VA can award presumptive service connection when the evidence shows that after discharge from military service, the veteran manifested signs and symptoms of a disease subject to presumptive provisions of law to the required degree of disability. *Example:* The veteran's service medical records contain no evidence of any complaint or treatment for hypertension. Within one year of the veteran's discharge from military service, the veteran is diagnosed with hypertension. Hypertension is a disease that is subject to a one year presumptive period under the law if it manifests to a 10 percent or more degree within one year of a veteran's discharge from military service. The veteran in our example is entitled to the award of presumptive service connection for her hypertension if it manifested to a 10 percent or more degree within the one year presumptive period provided by statute.

**Secondary service connection.** VA can award a veteran secondary service connection for a disability when the veteran has a service-connected disability and the medical and lay evidence demonstrates that the veteran's service-connected disability caused another disease or injury or aggravated a non-service-connected disability. *Example:* The veteran is service-connected for a left leg disability. The evidence shows that the veteran has a significantly altered gait as a result of the service-connected left leg disability. The evidence also contains an expert medical opinion that concludes that the altered gait has placed strain on his left hip and the strain resulted in the veteran developing arthritis in his left hip. Given this evidence the VA can award the veteran secondary service connection for the left hip arthritis.
THE RATING SCHEDULE
THE RATING SCHEDULE

Purpose

- *The purpose of this Section is to familiarize you with the Rating Schedule used by VA to assess disabilities.*

Materials

1. Part 4 of Title 38, Code of Federal Regulations
2. VA Adjudication Procedure Manual, M21-1, Part VI
3. [www.yba.va.gov/bln/21/Benefits/exams/index.htm](http://www.yba.va.gov/bln/21/Benefits/exams/index.htm) (Index to Disability Examination Worksheets)
4. Dorland's Medical Dictionary
5. Merck Manual

The Rating Schedule

A. General Policy in Rating


B. The Musculoskeletal System


8. Muscles


   b. 23 muscle groups. 38 C.F.R. § 4.55(b) (2007).


C. Organs of Special Sense

1. Eyes/Vision
2. Ears/hearing

   a. Loss of sense of smell
   b. Loss of sense of taste

D. Systemic Conditions

1. 4.88 (Reserved)


5. Rating for inactive nonpulmonary tuberculosis in effect on 8/19/68. 38 C.F.R. § 4.89 (2007).

E. The Respiratory System


F. The Cardiovascular System


G. The Digestive System


H. The Genitourinary System


I. Gynecological System


M. Neurological Conditions/Convulsive Disorders


N. Mental Disorders


RATING CONSIDERATIONS AND PROCEDURES
RATING CONSIDERATIONS AND PROCEDURES

Purpose

- To familiarize you with the considerations and procedures involved in VA’s disability rating determinations.

Materials

1. VA Adjudication Procedure Manual, M21-1 (M21-1)
2. Part 4, Title 38, Code of Federal Regulations
3. Title 38, United States Code

A. The Rating Board

1. Organization and functions. M21-1, Part VI, Chapter 2


B. Examinations and Social Surveys. M21-1, Part VI, Chapter 1.


C. Basic Entitlement Considerations

   a. Line of duty. 38 C.F.R. § 3.301(a) (2007).
   b. Willful misconduct. 38 C.F.R. § 3.301(b) (2007).
   c. Specific applications. 38 C.F.R. § 3.301(c) (2007).
      ii. Alcohol. 38 C.F.R. § 3.301(c)(2) (2007).

D. Pension Ratings


E. Miscellaneous Rating Issues


b. Loans. 38 C.F.R. § 3.315(b) (2007).

c. Veterans education assistance. 38 C.F.R. § 3.315(c) (2007).


b. Exceptional cases. 38 C.F.R. § 3.321(b) (2007).


iii. Pension. 38 C.F.R. § 3.323(b) (2007).


a. Exam indicates improvement. 38 C.F.R. § 3.344(a) (2007).

b. Doubtful cases. 38 C.F.R. § 3.344(b) (2007).

c. Disabilities likely to improve. 38 C.F.R. § 3.344(c) (2007).


b. Authority. 38 C.F.R. § 3.353(b) (2007).

c. Medical opinion. 38 C.F.R. § 3.353(c) (2007).

e. Due process. 38 C.F.R. § 3.353(e) (2007).

   b. Insanity causing discharge. 38 C.F.R. § 3.354(b) (2007).


   c. Cause. 38 C.F.R. § 3.358(c) (2007).

F. Rating Specific Disabilities

1. Tuberculosis
      i. Active disease. 38 C.F.R. § 3.370(a).
      ii. Inactive disease. 38 C.F.R. § 3.370(b).
iii. Primary lesions. 38 C.F.R. § 3.370(c).

b. Presumptive SC (38 C.F.R. § 3.371 (2007)).
   i. Pulmonary tuberculosis. 38 C.F.R. § 3.371(a).
   ii. Pleurisy with effusion. 38 C.F.R. § 3.371(b).
   iii. Tuberculosis pleurisy and endobronchial tuberculosis. 38 C.F.R. § 3.371(c).
   iv. Miliary tuberculosis. 38 C.F.R. § 3.371(d).

c. Initial grant following inactivity. 38 C.F.R. § 3.372 (2007).

   i. Service diagnosis. 38 C.F.R. § 3.374(a).
   ii. VA diagnosis. 38 C.F.R. § 3.374(b).
   iii. Private physician’s diagnosis. 38 C.F.R. § 3.374(c) (2007).

   i. Pulmonary tuberculosis. 38 C.F.R. § 3.375(a).
   ii. Nonpulmonary tuberculosis. 38 C.F.R. § 3.375(b).
   iii. Arrest following surgery. 38 C.F.R. § 3.375(c).


i. Blindness. 38 C.F.R. § 3.383(a)(1).


iii. Deafness. 38 C.F.R. § 3.383(a)(3).


v. Lung. 38 C.F.R. § 3.383(a)(5).

b. Effect of judgment or settlement. 38 C.F.R. § 3.383(b) (2007).

c. Social Security and Workmen’s Compensation. 38 C.F.R. § 3.383(c).

REFERENCES AND RESOURCES
REFERENCES AND RESOURCES

Phone Numbers

Education 1-888-442-4551
Headstones 1-800-697-6947
Health Care Revenue Center 1-877-222-8387
Life Insurance 1-800-669-8477
National Suicide Prevention Hotline 1-800-273-8255
Special Health Issues 1-800-749-8387
Telecommunication Device
For the Deaf (TDD) 1-800-829-4833
VA Benefits 1-800-827-1000

Other Resources

Department of Veterans Affairs Home Page http://www.va.gov/
Statutes – Title 38, United States Code
Regulations – Title 38, Code of Federal Regulations
Precedent Opinions of the VA General Counsel http://www.va.gov.
Adjudication and Procedure Manual, M21-1 (Manual). VA uses this Manual to interpret and apply VA's governing statutes and regulations
http://www.warms.vba.va.gov/M21_1.html
Burial and Memorial Benefits www.cem.va.gov/
Decisions of the Board can be found on the internet at
http://www.va.gov/vbs/bva/
Department of Defense www.defenselink.mil/

Education Benefits www.gibill.va.gov/

Federal Jobs www.usajobs.opm.gov/

GI Bill Web Site http://www.gibill.va.gov/

Health Care Eligibility www.va.gov/healtheligibility/

Home Loan Guaranty www.homeloans.va.gov/

Index to Disability Examination Worksheets C&P examinations
http://www/vba.va.gov/bln/21/benefits/exams

Life Insurance www.insurance.va.gov/

Mental Health www.mentalhealth.va.gov/

National Archives and Records Administration (NARO)

Online VA Form 10-10EZ https://www.1010ez.med.va.gov/sec/vha/1010ez/

Peacetime Disability Compensation
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+38USC1131

Pension for Non-Service-Connected Disability or Death
http://www.access.gpo.gov/uscode/title38/partii_chapter15_subchapteri_.htm
and,
http://www.access.gpo.gov/uscode/title38/partii_chapter15_subchapterii_.htm
and,
http://www.access.gpo.gov/uscode/title38/partii_chapter15_subchapteriii_.htm

Persian Gulf Registry
http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1003
Persian Gulf Registry Referral Centers
http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1006

Persian Gulf Veterans' Illnesses Research 2002, Annual Report to Congress

Prosthetics Eligibility
http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=337

Public Health and Environmental Hazards Home Page
http://www.vethealth.cio.med.va.gov/

Public Health/SARS http://www.publichealth.va.gov/SARS/

Publications Manuals
http://www1.va.gov/vhapublications/publications.cfm?Pub=4

Publications and Reports
http://www1.va.gov/vhapublications/publications.cfm?Pub=4
or
http://www1.va.gov/resdev/prt/pubs_individual.cfm?webpage=gulf_war.htm

Records www.archives.gov/st-louis/military-personnel/

Records Center and Vault Homepage
http://www.aac.va.gov/vault/default.html

REQUEST FOR AND CONSENT TO RELEASE OF INFORMATION FROM CLAIMANT'S RECORDS
http://www.forms.va.gov/va/Internet/VARF/getformharness.asp?formName=3288-form.xft

Research Advisory Committee on Gulf War Veterans Illnesses April 11, 2002 http://www1.va.gov/rac-gwvi/docs/Minutes_April112002.doc

Research Advisory Committee on Gulf War Veterans Illnesses
Research and Development
http://www.appcl.va.gov/resdev/programs/all_programs.cfm

Returning Veterans www.seamlesstransition.va.gov/

Survivor's and Dependents' Educational Assistance
http://www.access.gpo.gov/uscode/title38/partiii CHAPTER35 .html

United States Court of Appeals for Veterans Claims
http://www.vetapp.uscourts.gov/

United States Court of Appeals for the Federal Circuit
http://www.cafc.uscourts.gov/

United States House Committee on Veterans Affairs
http://veterans.house.gov/vetlink/

United States House Committee on Veterans Affairs
http://veterans.senate.gov

VA Benefit Payment Rates www.vba.va.gov/bln/21/Rates/

VA Forms www.va.gov/vaforms/

VA Best Practice Manual for Posttraumatic Stress Disorder (PTSD)

VA INSTITUTING GLOBAL ASSESSMENT OF FUNCTION (GAF)
http://www.avapl.org/gaf/gaf.html

VA Loan Lending Limits and Jumbo Loans
http://valoans.com/va_facts_limits.cfm

VA MS Research http://www.va.gov/ms/about.asp

VA National Hepatitis C Program http://www.hepatitis.va.gov/

VA Office of Research and Development http://www1.va.gov/resdev/
VA Trainee Pocket Card on Gulf War
http://www.va.gov/OAA/pocketcard/gulfwar.asp

VA WMD EMSHG http://www1.va.gov/emshg/

Veterans Benefits Administration Main Web Page http://www.vba.va.gov/

Veterans Employment and Training www.do.gov/vets/

Veterans Legal and Benefits Information http://valaw.org/


VHA Forms, Publications, Manuals http://www1.va.gov/vhapublications/

VHA Programs - Clinical Programs & Initiatives
http://www1.va.gov/health_benefits/page.cfm?pg=13

VHA Public Health Strategic Health Care Group Home Page
http://www.publichealth.va.gov/

Vocational Rehabilitation http://www.vba.va.gov/bln/vre/

VONAPP online http://vabenefits.vba.va.gov/vonapp/main.asp


Wartime Disability Compensation http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+38USC1110

War-Related Illness and Injury Study Center http://www.wri.med.va.gov/
DISABILITY EXAMINATION WORKSHEETS
C&P EXAMINATIONS
For the index of and information about Disability Examination Worksheets, go to:
http://www.vba.va.gov/bln/21/Benefits/exams/index.htm

These 57 Disability Examination Worksheets are in use both by the doctors of VHA (Veterans Health Administration) who do the disability examinations and by the rating specialists, hearing officers, and Decision Review Officers of VBA (Veterans Benefits Administration) who do the disability evaluations.
Gulf War Guidelines Examination

Gulf War Guidelines

Name:  SSN:  
Date of Exam:  C-number:  
Place of Exam:  

Introduction

Disability examinations of Gulf War veterans have unique requirements because this group of veterans is eligible for compensation not only for disability due to diagnosed illnesses, but also for disability due to undiagnosed illnesses. An undiagnosed illness is established when findings are present that cannot be attributed to a known, clearly defined diagnosis, after all likely diagnostic possibilities for such abnormalities have been ruled out. Examiners should follow the guidelines in the "Handout of Instructions for Compensation and Pension Examinations" but will also need to request more laboratory tests and specialists' examinations than average in these cases.

Guidelines

1. Thoroughly review the claims file.

2. Address all conditions and symptoms specified on the examination request and also address all additional conditions and symptoms that you can elicit from the veteran during the examination, even if not specified on the request form.

3. Conduct a comprehensive general medical examination, following the AMIE General Medical Examination worksheet. For all conditions and symptoms which the General Medical Examination worksheet does not address in detail, follow the appropriate additional AMIE worksheets, and request specialists' examinations as indicated. Provide details about the onset, frequency, duration, and severity of all complaints and state what precipitates and what relieves them.

4. List all diagnosed conditions and state which symptoms, abnormal physical findings, and abnormal laboratory test results are associated with each. If all symptoms, abnormal physical findings, and abnormal laboratory test results are associated with a diagnosed condition, additional specialist examinations for diagnostic purposes are not needed. Diagnosed conditions will be handled as standard claims for service connection. Symptom-based "diagnoses" such as (but not limited to) myalgia, arthralgia, headache, and diarrhea, are not considered as diagnosed conditions for compensation purposes.

5. However, if there are symptoms, abnormal physical findings, or abnormal laboratory test results that have not been determined to be part of a known clinical diagnosis, further specialist examinations will be required to address these findings.

6. Provide the specialist with all examination reports and test results. Specify the symptoms, abnormal physical findings, and abnormal laboratory test results that have not been attributed to a known clinical diagnosis. Request that the specialist determine which of these, if any, can be attributed in this veteran to
a known clinical diagnosis and which, if any, cannot be attributed in this veteran to a known clinical diagnosis.

7. After the specialists' examinations have been completed, and all laboratory test results received, make a final report providing a list of diagnosed conditions. Separately list all symptoms, abnormal physical findings, and abnormal laboratory test results that cannot be attributed to a known clinical diagnosis. Reconcile all differences among the examiners, by consultation or workgroup as necessary, before the examination is returned to the regional office.

Signature: Not signed Date: Not dated

Compensation and Pen Regional Office Homep Surivors' Benefits | If GovBenefits.gov | USA

Reviewed/Updated Date: May 1, 2007
General Medical Examination

General Medical

Name:          SSN:          
Date of Exam:  C-number:     
Place of Exam:  

**Narrative:** This is a comprehensive base-line or screening examination for all body systems, not just specific conditions claimed by the veteran. It is often the initial post-discharge examination of a veteran requested by the Compensation and Pension Service for disability compensation purposes. As a screening examination, it is not meant to elicit the detailed information about specific conditions that is necessary for rating purposes. **Therefore, all claimed conditions, and any found or suspected conditions that were not claimed, should be addressed by referring to and following all appropriate worksheets, in addition to this one, to assure that the examination for each condition provides information adequate for rating purposes.** This does not require that a medical specialist conduct examinations based on other worksheets, except in the case of vision and hearing problems, mental disorders, or especially complex or unusual problems. **Vision, hearing, and mental disorder examinations must be conducted by a specialist.**

The examiner may request any additional studies or examinations needed for proper diagnosis and evaluation (see other worksheets for guidance). All important negatives should be reported. The regional office may also request a general medical examination as evidence for nonservice-connected disability pension claims or for claimed entitlement to individual unemployability benefits in service-connected disability compensation claims. Barring unusual problems, examinations for pension should generally be adequate if only this general worksheet is followed.

**A. Review of Medical Records:** Indicate whether the C-file was reviewed.

**B. Medical History (Subjective Complaints):**

1. Discuss: Whether an injury or disease that is found occurred during active service, before active service, or after active service. To the extent possible, describe the circumstances, dates, specific injury or disease that occurred, treatment, follow-up, and residuals. If the injury or disease occurred before active service, describe any worsening of residuals due to being in military service. Describe current symptoms and treatment.

2. Occupational history (for pension and individual unemployability claims): Obtain the name and address of employers (list most current first), type of occupation, employment dates, and wages for last 12 months. If any time was lost from work in the past 12-month period, please describe the reason and extent of time lost.

3. Describe details of current treatment, conditions being treated, and side effects of treatment.

4. Describe all surgery and hospitalizations in and after service with approximate dates.

5. If a malignant neoplasm is or was present, provide:

   a. Date of confirmed diagnosis.
   b. Date of the last surgical, X-ray, antineoplastic chemotherapy, radiation, or other therapeutic procedure.
c. State expected date treatment regimen is to be completed.
d. If treatment is already completed, provide date of last treatment.
e. If treatment is already completed, fully describe residuals.

C. Physical Examination (Objective Findings):

Address each of the following and fully describe current findings: The examiner should incorporate results of all ancillary studies into the final diagnoses.

1. **VS**: Heart rate, blood pressure (see #13 below), respirations, height, weight, maximum weight in past year, weight change in past year, body build, and state of nutrition.
2. **Dominant hand**: Indicate the dominant hand and how this was determined, e.g., writes, eats, combs hair with that hand.
3. **Posture and gait**: Describe abnormality and reason for it. Describe any ambulatory aids.
4. **Skin, including appendages**: If abnormal, describe appearance, location, extent of lesions. If there are laceration or burn scars, describe the location, exact measurements (cm. x cm.), shape, depression, type of tissue loss, adherence, and tenderness. For each burn scar, state if due to a 2nd or 3rd degree burn. Describe any limitation of activity or limitation of motion due to scarring or other skin lesions. **NOTE**: If there are disfiguring scars (of face, head, or neck), obtain color photographs of the affected area(s) to submit with the examination report.
5. **Hemic and Lymphatic**: Describe adenopathy, tenderness, suppuration, edema, pallor, etc.
6. **Head and face**: Describe scars, skin lesions, deformities, etc., as discussed under item #4.
7. **Eyes**: Describe external eye, pupil reaction, eye movements.
8. **Ears**: Describe canals, drums, perforations, discharge.
9. **Nose, sinuses, mouth and throat**: Include gross dental findings. For sinusitis, describe headaches, pain, episodes of incapacitation, frequency and duration of antibiotic treatment.
10. **Neck**: Describe lymph nodes, thyroid, etc.
11. **Chest**: Inspection, palpation, percussion, auscultation. Describe respiratory symptoms and effect on daily activities, e.g., how far the veteran can walk, how many flights of stairs veterans can climb. If a respiratory condition is claimed or suspected, refer to appropriate worksheet(s). Most respiratory conditions will require PFT’s, including post-bronchodilation studies. Describe in detail any treatment for pulmonary disease.
12. **Breast**: Describe masses, scars, nipple discharge, skin abnormalities. Give date of last mammogram, if any. Describe any breast surgery (with approximate date) and residuals.
13. **Cardiovascular**: **NOTE**: If there is evidence of a cardiovascular disease, or one is claimed, refer to appropriate worksheet(s).

   a. Record pulse, quality of heart sounds, abnormal heart sounds, arrhythmias. Describe symptoms and treatment for any cardiovascular condition, including peripheral arterial and venous disease. Give NYHA classification of heart disease. A determination of METs by exercise testing may be required for certain cardiovascular conditions, and an estimation of METs may be required if exercise testing cannot be conducted for medical reasons. (See the cardiovascular worksheets for further guidance.)

   b. Describe the status of peripheral vessels and pulses. Describe edema, stasis pigmentation or eczema, ulcers, or other skin or nail abnormalities. Describe varicose veins, including extent to which any resulting edema is relieved by elevation of extremity. Examine for evidence of residuals of cold injury when indicated. See and follow special cold injury examination worksheet if there is a history of cold exposure in service and the special cold injury examination has not been previously done.

   c. **Blood Pressure**: (Per the rating schedule, hypertension means that the diastolic blood pressure is predominantly 90mm. or greater, and isolated systolic hypertension means that the systolic blood pressure is predominantly 160mm. or greater with a diastolic blood pressure of less than 90mm.)

      i. If the diagnosis of hypertension has not been previously established, and
it is a claimed issue, B.P. readings must be taken two or more times on each of at least three different days.

ii. If hypertension has been previously diagnosed and is claimed, but the claimant is not on treatment, B.P. readings must be taken two or more times on at least three different days.

iii. If hypertension has been previously diagnosed, and the claimant is on treatment, take three blood pressure readings on the day of the examination.

iv. If hypertension has not been claimed, take three blood pressure readings on the day of the examination. If they are suggestive of hypertension or are borderline, readings must be taken two or more times on at least two additional days to rule hypertension in or out.

v. In the diagnostic summary, state whether hypertension is ruled in or out after completing these B.P. measurements. Describe treatment for hypertension and side effects. If hypertensive heart disease is suspected or found, follow worksheet for Heart.

14. Abdomen: Inspection, auscultation, palpation, percussion. Describe any organ enlargement, ventral hernia, mass, tenderness, etc.

15. Genital/rectal (male): Inspection and palpation of penis, testicles, epididymis, and spermatic cord. If there is a hernia, describe type, location, size, whether complete, reducible, recurrent, supported by truss or belt, and whether or not operable. Describe anal fissures, hemorrhoids, ulcerations, etc. Include digital exam of rectal walls and prostate.

16. Genital/rectal (female): Pelvic exam, including inspection of introitus, vagina, and cervix, palpation of labia, vagina, cervix, uterus, adnexa, and ovaries, rectal exam. Do Pap smear if none within past year. If unable to conduct an examination and Pap smear, or if there is a severe or complex problem, refer to a specialist.

17. Musculoskeletal:

   a. For all joint or muscle disorders, state each muscle and joint affected.

   b. Separately examine and describe in detail each affected joint. Measure active and passive range of motion in degrees using a goniometer. In addition, provide an assessment of the effect on range of motion and joint function of pain, weakness, fatigue, or incoordination following repetitive use or during flare-ups. (See the appropriate musculoskeletal worksheet for more detail.) NOTE: The diagnosis of degenerative or traumatic arthritis of any joint requires X-ray confirmation, but once confirmed by X-ray, either in service or after service, no further X-rays of that joint are required for disability evaluation purposes.

   c. Describe swelling, effusion, tenderness, muscle spasm, joint laxity, muscle atrophy, fibrous or bony residual of fracture. If joint is ankylosed, describe the position and angle of fixation.

   d. Describe any mechanical aids used by veteran.

   e. If foot problems exist, also describe objective evidence of pain at rest and on manipulation, rigidity, spasm, circulatory disturbance, swelling, callus, loss of strength, and whether condition is acquired or congenital.

   f. If there is amputation of a part, see the appropriate worksheet.

   f. With disc disease, also describe any neurological findings.

18. Endocrine: Describe signs and symptoms of any endocrine disease, effects on other body systems, and current and past treatment. See endocrine worksheets for further guidance.

19. Neurological: Assess orientation and memory, gait, stance, and coordination, cranial nerve functions. Assess deep tendon reflexes, pain, touch, temperature, vibration, and position, motor and sensory status of peripheral nerves. If neurological abnormalities are found on examination, or there is a history of seizures, refer to appropriate worksheet.

20. Psychiatric: Describe behavior, comprehension, coherence of response, emotional reaction, signs of tension and effects on social and occupational functioning. (This is meant to be a brief screening
examination. If a mental disorder is claimed, or suspected based on the screening, an examination for diagnosis and assessment should be conducted by a psychiatrist or psychologist.) State whether the veteran is capable of managing his or her benefit payments in his or her own best interests without restriction. (A physical disability which prevents the veteran from attending to financial matters in person is not a proper basis for a finding of incompetency unless the veteran is, by reason of that disability, incapable of directing someone else in handling the individual's financial affairs.)

D. Diagnostic and Clinical Tests:

1. Include results of all diagnostic and clinical tests conducted in the examination report.
2. Review all test results before providing the summary and diagnosis.
3. Follow additional worksheets, as appropriate.

E. Diagnosis:

Provide a summary list of all disabilities diagnosed. Include an interpretation of the results of all diagnostic and other tests conducted in the final summary and diagnosis. For each condition diagnosed, describe its effect on the veteran's usual occupation and daily activities.

Signature: Not signed  Date: Not dated

Compensation and Pen
Regional Office Home
Survivors' Benefits | If
GovBenefits.gov | USA
Review Examination for Post-Traumatic Stress Disorder

Review Examination for Post-Traumatic Stress Disorder

Name: [Blank]
Date of Exam: [Blank]
Place of Exam: [Blank]

SSN: [Blank]
C-number: [Blank]

The following health care providers can perform review examinations for PTSD:

a board-certified psychiatrist or board "eligible" psychiatrist;
a licensed doctorate-level psychologist;
a doctorate-level mental health provider under close supervision of a board-certified or board eligible psychiatrist or licensed doctorate-level psychologist;
a psychiatry resident under close supervision of a board-certified or board eligible psychiatrist or licensed doctorate-level psychologist;
a clinical or counseling psychologist completing a one year internship or residency (for purposes of a doctorate-level degree) under close supervision of a board-certified or board eligible psychiatrist or licensed doctorate-level psychologist;
a licensed clinical social worker (LCSW), a nurse practitioner, a clinical nurse specialist, or a physician assistant, if they are clinically privileged to perform activities required for C&P mental disorder examinations, under close supervision of a board-certified or board eligible psychiatrist or doctorate-level psychologist.

A. Review of Medical Records.

B. Medical History since last exam:

Comment on:

1. Hospitalizations and outpatient care from the time between last rating examination to the present, UNLESS the purpose of this examination is to ESTABLISH service connection, then the complete medical history since discharge from military service is required.
2. significant medical disorders (resulting pain or disability; current medications)
3. frequency, severity and duration of psychiatric symptoms.
4. length of remissions from psychiatric symptoms, to include capacity for adjustment during periods of remissions.
5. treatments including statement on effectiveness and side effects experienced.
6. subjective Complaints: describe fully.

C. Psychosocial Adjustment since the last exam

- legal history (DWIs, arrests, time spent in jail)
- educational accomplishments
- extent of time lost from work over the past 12 month period and social impairment. If employed, identify current occupation and length of time at this job. If unemployed, note in complaints whether veteran contends it is due to the effects of a mental disorder. Further indicate following

**D. Mental Status Examination**

Conduct a brief mental status examination aimed at screening for DSM-IV mental disorders. Describe and fully explain the existence, frequency and extent of the following signs and symptoms, or any others present, and relate how they interfere with employment and social functioning:

- Impairment of thought process or communication.
- Delusions, hallucinations and their persistence.
- Eye contact, interaction in session, and inappropriate behavior cited with examples.
- Suicidal or homicidal thoughts, ideations or plans or intent.
- Ability to maintain minimal personal hygiene and other basic activities of daily living.
- Orientation to person, place and time.
- Memory loss, or impairment (both short and long-term).
- Obsessive or ritualistic behavior which interferes with routine activities and describe any found.
- Rate and flow of speech (note any irrelevant, illogical, or obscure speech patterns and whether constant or intermittent.)
- Panic attacks noting the severity, duration, frequency and effect on independent functioning and whether clinically observed or good evidence of prior clinical or equivalent observation is shown.
- Depression, depressed mood or anxiety.
- Impaired impulse control and its effect on motivation or mood.
- Sleep impairment and describe extent it interferes with daytime activities.
- Other disorders or symptoms and the extent they interfere with activities

**E. Assessment of PTSD**

- Identify behavioral, cognitive, social, affective, or somatic symptoms veteran attributes to PTSD
- Describe specific PTSD symptoms present (symptoms of trauma re-experiencing, avoidance/numbing, heightened physiological arousal, and associated features [e.g., disillusionment and demoralization])
- Specify typical frequency and severity of symptoms

**F. Psychometric Testing Results**

- Provide psychological testing if deemed necessary
- Provide specific evaluation information required by the rating board or on a BVA Remand.
- Comment on validity of psychological test results
- Provide scores for PTSD psychometric assessments administered
- State whether PTSD psychometric measures are consistent or inconsistent with a diagnosis of PTSD, based on normative data and established "cutting scores" (cutting scores that are consistent with or supportive of a PTSD diagnosis are as follows: PCL - not less than 50; Mississippi Scale not less than 107; MMPI PTSD subscale a score >
G. Diagnosis:

1. The Diagnosis must conform to DSM-IV and be supported by the findings on the examination report.
2. If there are multiple mental disorders discuss the relationship with PTSD.
3. The evaluation is based on the effects of the signs and symptoms on occupational and social functioning.

NOTE: VA is prohibited by statute, 38 U.S.C. 1110, from paying compensation for a disability that is a result of the veteran's own ALCOHOL OR DRUG ABUSE. However, when a veteran's alcohol or drug abuse disability is secondary to or is caused or aggravated by a primary service-connected disorder, the veteran may be entitled to compensation. See Allen v. Principi, 237 F.3d 1368, 1381 (Fed. Cir. 2001). (If you do not have Microsoft Word software installed, you may download free viewer and reader software to view the case.) Therefore, it is important to determine the relationship, if any, between a service-connected disorder and a disability resulting from the veteran's alcohol or drug abuse. Unless alcohol or drug abuse is secondary to or is caused or aggravated by another mental disorder, you should separate, to the extent possible, the effects of the alcohol or drug abuse from the effects of the other mental disorder(s). If it is not possible to separate the effects in such cases, please explain why.

H. Diagnostic Status

- Axis I disorders
- Axis II disorders
- Axis III disorders
- Axis IV (psychosocial and environmental problems)
- Axis V (GAF score: current)

I. Global Assessment of Functioning (GAF):

NOTE: The complete multi-axial format as specified by DSM-IV may be required by BVA REMAND or specifically requested by the rating specialist. If so, include the GAF score and note whether it refers to current functioning. A BVA REMAND may also request, in addition to an overall GAF score, that a separate GAF score be provided for each mental disorder present when there are multiple Axis I or Axis II diagnoses and not all are service-connected. If separate GAF scores can be given, an explanation and discussion of the rationale is needed. If it is not possible, an explanation as to why not is needed. (See the above note pertaining to alcohol or drug abuse.)

J. Capacity to Manage Financial Affairs: Mental competency, for VA benefits purposes, refers only to the ability of the veteran to manage VA benefit payments in his or her own best interest, and not to any other subject. Mental incompetency, for VA benefits purposes, means that the veteran, because of injury or disease, is not capable of managing benefit payments in his or her best interest. In order to assist raters in making a legal determination as to competency, please address the following:

What is the impact of injury or disease on the veteran's ability to manage his or her financial affairs, including consideration of such things as knowing the amount of his or her VA benefit payment, knowing the amounts and types of bills owed monthly, and handling the payment prudently? Does the veteran handle the money and pay the bills himself or herself?
Based on your examination, do you believe that the veteran is capable of managing his or her financial affairs? Please provide examples to support your conclusion.

If you believe a Social Work Service assessment is needed before you can give your opinion on the veteran's ability to manage his or her financial affairs, please explain why.

K. Other Opinion: Furnish any other specific opinion requested by the rating board or BVA remand (i.e., furnish the complete rationale and citation of medical texts or treatise supporting opinion, if medical literature review was undertaken). If the requested opinion is medically not ascertainable on exam or testing, please state why. If the requested opinion cannot be expressed without resorting to speculation or making improbable assumptions, say so, and explain why. If the opinion asks "... is it at least as likely as not ...", fully explain the clinical findings and rationale for the opinion.

L. Integrated Summary and Conclusions

1. Describe changes in psychosocial functional status and quality of life since the last exam (performance in employment or schooling, routine responsibilities of self care, family role functioning, physical health, social/interpersonal relationships, recreation/leisure pursuits).

2. Describe the linkage between PTSD symptoms and aforementioned changes in impairment in functional status and quality of life. *Particularly in cases where a veteran is unemployed, specific details about the effects of PTSD and its symptoms on employment are especially important.*

3. If possible, describe extent to which disorders other than PTSD (e.g., substance use disorders) are independently responsible for impairment in psychosocial adjustment and quality of life. If this is not possible, explain why (e.g., substance use had onset after PTSD and clearly is a means of coping with PTSD symptoms).

4. If possible, state prognosis for improvement of psychiatric condition and impairments in functional status.

5. Comment on whether veteran is capable of managing his or her financial affairs.

M. Effects of PTSD on Occupational and Social Functioning

Evaluation of PTSD is based on its effects on occupational and social functioning. Select the appropriate assessment of the veteran from the choices below:

- Total occupational and social impairment due to PTSD signs and symptoms.

  Provide examples and pertinent symptoms, including those already reported.

  OR

- PTSD signs and symptoms result in deficiencies in most of the following areas: work, school, family relations, judgment, thinking, and mood.

  Provide examples and pertinent symptoms, including those already reported for each affected area.

  OR

- There is reduced reliability and productivity due to PTSD signs and symptoms.
Provide examples and pertinent symptoms, including those already reported.

OR

- There is occasional decrease in work efficiency or there are intermittent periods of inability to perform occupational tasks due to signs and symptoms, but generally satisfactory functioning (routine behavior, self-care, and conversation normal).

Provide examples and pertinent symptoms, including those already reported.

OR

- There are PTSD signs and symptoms that are transient or mild and decrease work efficiency and ability to perform occupational tasks only during periods of significant stress.

Provide examples and pertinent symptoms, including those already reported.

OR

- PTSD symptoms require continuous medication

OR

- Select all that apply:
  - PTSD symptoms are not severe enough to require continuous medication.
  - PTSD symptoms are not severe enough to interfere with occupational and social functioning.

Include your name; your credentials, i.e., a board certified psychiatrist, a licensed psychologist, a psychiatry resident or a psychology intern, LCSW, or NP and circumstances under which you performed the examination, if applicable, i.e., under the close supervision of an attending psychiatrist or psychologist; include name of supervising psychiatrist or psychologist.

Signature: Not signed

Date: Not dated
Traumatic Brain Injury

Name: 
SSN: 
Date of Exam: 
C-number: 
Place of Exam: 

**Narrative:** The potential residuals of traumatic brain injury necessitate a comprehensive examination to document all disabiling effects. Specialist examinations, such as eye and audio examinations, mental disorder examinations, and others, may also be needed in some cases, as indicated below. If possible, conduct a thorough review of the service and post-service medical records prior to the examination.

**A. Review of Medical Records:**

**B. Medical History (Subjective Complaints):**

1. Report date(s) and nature of injury.
2. State severity rating of traumatic brain injury (TBI) at time of injury.
3. State whether condition has stabilized. If not, provide estimate of when stability may be expected (typically within 18-24 months of initial injury).

Inquire specifically about each symptom or area of symptoms below, since individuals with TBI may have difficulty organizing and communicating their symptoms without prompting. It is important to document all problems, whether subtle or pronounced, so that the veteran can be appropriately evaluated for all disabilities due to TBI.

**For each of the following symptoms that is present, answer specific questions asked.**

a. headaches - frequency, severity, duration, and if they most resemble migraine, tension-type, or cluster headaches
b. dizziness or vertigo - frequency
c. weakness or paralysis - location
d. sleep disturbance - type and frequency
e. fatigue - severity
f. malaise
g. mobility - state symptoms
h. balance - state any problems
i. if ambulatory, what device, if any, is needed to assist walking?
j. memory impairment - mild, moderate, severe
k. Other cognitive problems Y/N? If yes:
   i. Slowness of thought
   ii. Confusion

http://www.vba.va.gov/bln/21/Benefits/exams/disexm58.htm
iii. Decreased attention
iv. Difficulty concentrating
v. Difficulty understanding directions
vi. Difficulty using written language or comprehending written words
vii. Delayed reaction time
viii. Other - box to describe

l. speech or swallowing difficulties - severity and specific type of problem - expressive aphasia?, difficulty with articulation because of injuries to mouth?, aspiration due to difficulty swallowing?, etc.
m. pain - frequency, severity, duration, location, and likely cause
n. bowel problems - extent and frequency of any fecal leakage and frequency of need for pads, if used; need for assistance in evacuating bowel (manual evaluation, suppositories, rectal stimulation, etc.) - report type and frequency of need for assistance.
o. bladder problems - report the type of impairment (incontinence, urgency, urinary retention, etc.) and the measures needed: catheterization - constant or intermittent?, pads (must be changed how often per day?), other - describe.
p. psychiatric symptoms
  mood swings
  anxiety
  depression
  other
q. sexual dysfunction - type, and, if erectile dysfunction, state most likely cause and whether vaginal penetration is possible
r. sensory changes, such as numbness or paresthesias - location and type
s. visual problems, such as blurred or double vision - describe
t. hearing problems, tinnitus - describe
u. decreased sense of taste or smell - if present, follow examination protocol for Sense of Smell and Taste
v. seizures - type and frequency
w. hypersensitivity to sound or light - describe
x. behavioral changes
  irritability
  restlessness
  other - describe
y. Oral and dental problems, such as difficulty with jaw movement, tooth loss or damage, etc. - describe
z. other symptoms - describe

4. Report course of symptoms - are they improving, worsening in severity or frequency, or stable?
5. List current treatments, condition for which each treatment is being given, response to treatment, and side effects.

C. Physical Examination (Objective Findings):

Address each of the following and fully describe current findings:

1. Motor function. Report the motor strength of the affected muscles of all areas of weakness or paralysis using the standard muscle grading scale, for example, weakness of flexion of left elbow (3/5 strength for flexors), complete paralysis of left lower extremity (0/5 for all muscle groups). To the extent possible, identify the peripheral nerves that innervate the weakened or paralyzed muscles.

Standard muscle grading scale:
0 = Absent  No muscle movement felt.
1 = Trace  Muscle can be felt to tighten, but no movement produced.
2 = Poor  Muscle movement produced only with gravity eliminated.
3 = Fair  Muscle movement produced against gravity, but cannot overcome any resistance.
4 = Good  Muscle movement produced against some resistance, but not against "normal" resistance.
5 = Normal  Muscle movement can overcome "normal" resistance.

2. **Muscle tone, reflexes.** Describe any muscle atrophy or loss of muscle tone. Examine and report deep tendon reflexes and any pathological reflexes.

3. **Sensory function.** Describe exact location of any area of abnormal sensory function. State which modalities of sensation were tested.

4. **Gait, cerebellar signs.** Describe any gait abnormality, imbalance, tremor or fasciculations, incoordination, or spasticity. If there is spasticity or rigidity, assess any limitation of motion of joint (including joint contracture) by following the Joints examination protocol. (A tandem gait assessment (walking in a straight line with one foot directly in front of the other) is recommended.)

5. **Autonomic nervous system.** Describe any other impairment of the autonomic nervous system, such as orthostatic hypotension, hyperhidrosis.

6. **Cranial nerves.** Conduct a screening exam for cranial nerve impairment. If positive, follow Cranial Nerves examination protocol.

7. **Cognitive impairment.** Conduct a screening examination (such as Mini-mental State Examination) to assess cognitive impairment and report results and their significance. Does the screening show problems with memory, concentration, attention, information processing, aggressiveness, decreased spontaneity, etc.? If yes, have these been confirmed by prior special examinations, such as neuropsychological testing? If not, are these indicated? If cognitive abnormalities are found, claimed, or suspected, request a Mental Disorder examination protocol by a mental disease specialist.

8. **Psychiatric manifestations.** Conduct a screening examination for psychiatric manifestations, including emotional behavior. If a mental disorder is suggested, request a mental disorder exam or PTSD exam, as appropriate, by a mental disease specialist.

9. **Vision and hearing** screening examinations (If abnormalities are found, or there are symptoms or a claim of eye or ear impairment, request an eye or audio exam by a specialist.)

10. **Skin.** Describe any areas of skin breakdown due to neurologic problems.

11. **Endocrine dysfunction.** Describe any evidence of endocrine dysfunction due to TBI.

12. **Oral and dental screening examination.** Describe jaw malalignment, cracked or missing teeth, etc., and refer for special Dental and Oral examination when indicated.

13. **Other** abnormal physical findings.

**D. Diagnostic and Clinical Tests:**

1. Skull X-rays to measure bony defect, if any, due to surgery or injury.
2. Include results of all diagnostic and clinical tests conducted in the examination report.

**E. Diagnosis:**

1. List each diagnosis:
2. Capacity to manage financial affairs
   - Mental competency, for VA benefits purposes, refers only to the ability of the veteran to manage VA benefit payments in his or her own best interest, and not to any other subject. Mental incompetency, for VA benefits purposes, means that the veteran, because of injury or disease, is not capable of managing benefit payments in his or her best interest. In order to assist raters in making a legal determination as to competency, please address the following:

   a. What is the impact of injury or disease on the veteran's ability to manage his or her
financial affairs, including consideration of such things as knowing the amount of his or her VA benefit payment, knowing the amounts and types of bills owed monthly, and handling the payment prudently? Does the veteran handle the money and pay the bills himself or herself?

b. Based on your examination, do you believe that the veteran is capable of managing his or her financial affairs? Please provide examples to support your conclusion.

c. If you believe a Social Work Service assessment is needed before you can give your opinion on the veteran's ability to manage his or her financial affairs, please explain why.

Signature: Not signed  Date: Not dated
Aid and Attendance or Housebound Examination Worksheet

Aid and Attendance or Housebound Examination

Name: ___________________________ SSN: ___________________________
Date of Exam: ___________________________ C-number: ___________________________
Place of Exam: ___________________________

**Narrative:** Once the existence of at least one permanent disability rated at 100% has been established, additional benefits may be payable if the veteran requires:

1. The regular assistance of another person in attending to the ordinary activities of daily living,
2. Assistance of another in protecting himself or herself from the ordinary hazards of his or her daily environment, and/or
3. If the veteran is restricted to his or her home or the immediate vicinity thereof, including the ward or immediate clinical area, if hospitalized.

**A. Review of Medical Records:**

**B. Medical History (Subjective Complaints):**

1. Indicate whether or not the veteran requires an attendant in reporting for this exam, and if so, identify the nurse or attendant and the mode of travel employed.
2. Indicate whether or not the veteran is hospitalized, and if so, state where and the date of admission.
3. Indicate whether or not the veteran is permanently bedridden.
4. Indicate whether or not the veteran's best corrected vision is 5/200 or worse in both eyes.
5. State whether the veteran is capable of managing benefit payments in his or her own best interests without restriction. (A physical disability which prevents the veteran from attending to financial matters in person is not a proper basis for a finding of incompetency unless he or she is, by reason of that disability, incapable of directing someone else in handling financial affairs.)
6. Capacity to protect oneself from the hazards/dangers of daily environment:
   a. Describe briefly any pathological processes involving other body parts and systems, including the effects of advancing age, such as dizziness, loss of memory, poor balance affecting ability to ambulate, performing self-care, or travel beyond the premises of the home (or the ward or clinical area if hospitalized).
   b. Describe where the veteran goes and what he or she does during a typical day.

**C. Physical Examination (Objective Findings):**

Comment on:

1. General appearance.
2. Height and weight (including maximum and minimum weight for past year).
3. Build and posture.
5. Gait.
6. Temperature, pulse, respiration.
8. Upper extremities (reporting each upper extremity separately):
   a. Describe functional restrictions with reference to strength and coordination and ability for self-feeding, fastening clothing, bathing, shaving, and toileting.
   b. If amputated, indicate level of amputation (or length of stump and state whether or not use of a prosthesis is feasible).
9. Lower extremities (reporting each lower extremity separately):
   a. Describe functional restrictions with reference to extent of limitation of motion, muscle atrophy, contractures, weakness, lack of coordination, or other interference.
   b. Indicate any deficits of weight bearing, balance and propulsion.
   c. If amputated, indicate level of amputation (or length of stump and state whether use of a prosthesis is feasible).
10. Spine, trunk and neck:
   a. Describe any limitation of motion or deformity of lumbar, thoracic, and cervical spine.
11. Note if deformity of thoracic spine interferes with breathing.
12. Ambulation:
   a. Indicate whether the veteran is able to walk without the assistance of another person and give the maximum distance.
   b. Indicate any mechanical aid used or recommended by the examiner for ambulation.
   c. Indicate the frequency, and under what circumstances, the veteran is able to leave the home or immediate premises.
13. Except as to amputations and other anatomical losses, indicate if any restrictions noted in the examination are permanent.

D. Diagnostic and Clinical Tests:

1. No specific diagnostic testing required unless required to evaluate the veteran as required above.
2. Include results of all diagnostic and clinical tests conducted in the examination report.

E. Diagnosis:

Signature: [Not signed] Date: [Not dated]
Prisoner of War (POW) Protocol Examination

Prisoner of War (POW) Protocol

Name:  
SSN:  
Date of Exam:  
C-number:  
Place of Exam:  

Narrative: This is the protocol for conducting initial examinations on former POWs. Approach these veterans with the greatest sensitivity because the POW experience likely resulted in a great deal of psychological and physical trauma. Details about beatings, torture, forced marches, forced labor, diet, disease, brainwashing, extremes of hot and cold, and anxiety may be significant parts of the veteran's history; eliciting these details requires that one establish a trusting relationship with the veteran. Examine veteran for each disability / disease / condition veteran is claiming as a consequence of the POW experience. A former POW may be entitled to service connection for presumptive POW diseases; the worksheet contains a list of these presumptive diseases. Based on veteran's claim(s) and your findings, please refer to and follow additional worksheets to assure the examination provides information adequate for rating purposes.

Presumptive POW disabilities:

- Any of the anxiety states.
- Atherosclerotic heart disease, ischemic heart disease, coronary artery disease and beriberi heart disease to include complications e.g., myocardial infarction, congestive heart failure, arrhythmia.
- Avitaminosis.
- Beriberi including beriberi heart disease.
- Chronic dysentery.
- Cirrhosis of the liver.
- Dysthymic disorder or depressive neurosis.
- Helminthiasis.
- Hypertension and hypertensive vascular disease to include complications.
- Irritable bowel syndrome.
- Ischemic heart disease Beriberi heart disease includes ischemic heart disease in a former prisoner of war who had experienced localized edema during captivity.
- Malnutrition including optic atrophy associated with malnutrition.
- Any other nutritional deficiency.
- Organic residuals of frostbite.
- Pellagra.
- Peptic ulcer disease.
- Peripheral neuropathy.
- Post-traumatic arthritis.
- Psychosis.
- Stroke ischemic stroke, hemorrhagic stroke and embolic stroke to include complications.

A. Review of Medical Records:

1. Include a review of VA Form 10-0048, Former POW Medical History, (If you do not have Adobe Acrobat software installed, you may download free viewer and reader software to view the form.) which the veteran should have completed, prior to conducting the examination.
2. Review the Social Survey.

http://www.vba.va.gov/bln/21/Benefits/exams/disexam44.htm  
9/18/2008
B. Medical History (Subjective Complaints): NOTE: If the veteran has had a previous protocol examination, only an interval history is required.

Comment on:

1. Past medical history, including childhood and adult illnesses and surgery.
2. Family history.
3. Social history - state civilian and military occupations, including dates and locations. Describe use of alcohol, tobacco, and drugs.
4. Complete system review, commenting on all positive symptoms.
   a. Describe initial symptoms, time of onset, and current symptoms of all presumptive POW disabilities found.
   b. Comment on amount of weight lost as a prisoner. Record initial and release weights.
5. Describe current treatment (specify type, frequency, duration, response, side effects).

C. Physical Examination (Objective Findings):

Address each of the following and fully describe current findings: The examiner should incorporate all ancillary study results into the final diagnoses.

1. **VS:** Heart rate, blood pressure (sitting, standing, a total of at least three BP’s if in abnormal or if hypertension claimed), respirations, height, weight, maximum weight in past year, weight change in past year, body build, and state of nutrition.
2. **Dominant hand:** Indicate the dominant hand and how determined (i.e., writes, eats, combs hair, etc.).
3. **Posture and gait:** (If abnormal, describe.)
4. **Skin, including appendages:** (If abnormal, describe appearance, location, extent of lesions, and limitations to daily activity.) If there are laceration or burn scars, describe the location, measurements (cm. x cm.), shape, depression, type of tissue loss, adherence, disfigurement, and tenderness. For each burn scar, state if due to a 2nd or 3rd degree burn. (NOTE: If the skin condition or scars are disfiguring, obtain color photographs of the affected area(s).
5. **Hemic and Lymphatic:** (Describe local or generalized adenopathy, tenderness, suppuration, etc.).
6. **Head and face:** Describe scars, deformities, etc.
7. **Eyes:** Describe external eye, pupil reaction, movements, field of vision, any uncorrectable refractive error or any retinopathy.
8. **Ears:** Describe canals, drums, perforations, discharge.
9. **Nose, sinuses, mouth and throat:** Include gross dental findings.
10. **Neck:** Describe lymph nodes, thyroid, etc.
11. **Chest:** Inspection, palpation, percussion, auscultation. If abnormal, describe limitations of daily living (i.e., How far can the veteran walk, how many flights of stairs can he or she climb, etc.).
12. **Breast:** Comment on any masses palpated in breast parenchyma including axillary tail. Comment on any skin abnormalities. Comment on any discharge from nipples.
13. **Cardiovascular:** Record pulse, heart sounds, abnormalities (i.e., arrhythmias, murmurs, etc.), and status of peripheral vessels. Note edema. Describe varicose veins including location, size, extent, ulcers, scars, and competency of deep circulation. Examine for evidence of residuals of frostbite when indicated. See cold injuries examination worksheet. (NOTE: Cardiovascular signs and symptoms should be graded using NYHA scale.)
14. **Abdomen:** Inspection, auscultation, palpation, percussion. If abnormal, describe (i.e., abdominal enlargement, masses, tenderness, etc.).
15. **Genital/rectal (male):** Inspection and palpation of penis, testicles, epididymis, and spermatic cord. (If herna, describe type, location, size, whether complete, reducible, recurrent, supported by truss or belt, and whether or not operable). Inspection of anus for fissures, hemorrhoids, ulcerations, etc. and digital exam of rectal walls, and prostate.
16. **Genital/rectal (female):** Pelvic exam should include inspection of introitus, vagina, and cervix, palpation year. Any severe abnormalities may be referred to a specialist.

17. **Musculoskeletal:** For joint or muscle defects, describe location, swelling, atrophy, tenderness, active and residual, and mechanical aids used by veteran. Provide an assessment of the effect on range of motion and during flare-ups. (See the appropriate worksheet for more detail.) If foot problems exist, perform above examination and circulation, swelling, callus, loss of strength, mobility of ankles and feet, and whether a

18. **Endocrine:** Describe disease of thyroid, pituitary, adrenals, gonads, other body systems affected, etc.

19. **Neurological:** Cerebrum - orientation and memory. Cerebellum - gait, stance, and coordination. Spinal Cc - I-XII. If abnormalities are found, describe region of CNS affected.

20. **Psychiatric:** Describe behavior, comprehension, coherence of response, emotional reaction, signs of tension of managing his or her benefit payments in his or her own best interests without restriction. (A physical dis proper basis for a finding of incompetency unless the veteran is, by reason of that disability, incapable of d

**D. Diagnostic and Clinical Tests:**

1. As indicated - e.g., parasite studies, X-rays of joints, etc.
2. Include results of all diagnostic and clinical tests conducted in the examination report.

**E. Diagnosis:**

1. All laboratory and diagnostic tests should be completed and reviewed prior to completing the summary of f
2. The POW Physician Coordinator should complete summary of findings, diagnoses, and recommendations. That relationship between the veteran's experiences as a POW and each current medical condition. If osteoarthr so, whether it is related to the period of confinement.

Signature: **Not signed**

Date: **Not dated**

Compensation and Pension
Regional Office Homepage
Survivors' Benefits
GovBenefits.gov | USA
Social and Industrial Survey

Social and Industrial Survey

Name: 
SSN: 
Date of Exam: 
C-number: 
Place of Exam: 

A. Demographic & Information and Sources

1. Note the location of the interview/exam.
2. List demographic data, including age, gender, marital status, and other relevant data.
3. List service connected disabilities.
4. Discuss capacity to manage financial affairs (if an issue).
5. Verify accuracy of veteran's name, address, phone number.
6. List informants or sources of information, such as claims folder, medical record, veteran, family members, employers, neighbors, friends, physician, or other persons.
7. If S&I Survey is done in the community, list the collaterals residing in the home, their ages and relationship to the veteran, a brief description at the household appearance and overall home environment.

B. Appearance & Response to Interview

1. Appearance - Describe the veteran's size, build, general physical appearance and dress, noting any distinguishing features or characteristics.
2. Indicate if s/he was alone or interviewed with others.
3. Make personal observations as to attitude, openness to interview, reality testing, physical or mental difficulties in communicating. Does s/he find the interview stressful or threatening? Is s/he cooperative and friendly or guarded and withdrawn? Observe eye contact, facial expressions, and attention span during interview.

C. Disabilities

1. Include disabilities listed on Form 2507 for which the exam is requested and any other complaints or conditions expressed by the veteran.
2. List of current medications.

D. Brief Pre-Military Social History

Include where the veteran was born, his/her family configuration, education, etc.

E. Military History

1. Date the veteran entered military service and branch of service.
2. Where s/he completed basic training.
3. Military occupation(s).
4. Primary assignments and where stationed.
5. Any special training received in military.
7. Sexual trauma while in military.
8. Injuries or illness incurred while in military.
9. If claim is for PTSD, include a detailed account of the traumatic experience(s).
10. Relationships with peers, superiors, subordinates, etc.

F. Prisoner of War (POW) Data (if applicable)

1. Capture Data
   a. Injuries/wounds incurred when captured and any treatment received.
   b. Captors - Date and place captured.
   c. Internment - List names of camps where interred and dates of internment, psychological conditions, physical conditions, methods used to control prisoners.
   d. Work - Physical & psychological conditions of work.
   e. Diet - Daily meals, including types of food, quantities, regularity of meals.
   f. Illnesses or Injuries incurred when captured or while imprisoned and any treatment received.

2. Information from Veteran's Significant Other(s)
   a. The significant other's relationship to the veteran.
   b. Whether s/he knew veteran before or after capture.
   c. Any changes observed.
   d. General comments on impact of POW experience.

G. Chronological History of Adjustment Prior to Service or Stressor (if applicable)

1. Evidence of disorder in infancy, childhood, or adolescence, especially antisocial behavior (reference DSM-IV).
2. Activity patterns: friendships and social relationships.
3. Family: describe relationships.
4. Significant issues in school, community, or work area.
5. Pre-military traumatic events. Provide details, if possible.

H. Chronological History of Adjustment After Service or Stressor

1. Changes in personality or interpersonal relationships.
2. Work performance.
3. Emotional difficulties: Describe onset and details, including time, nature, and severity.
4. Onset of any other type of symptoms, such as physical.
5. Legal issues, such as involvement with authorities or courts.
6. Substance abuse history Describe use of drugs, alcohol, prescription medications, and tobacco.
7. Psychiatric treatment history.

I. Post-Military Social Adjustment

1. Describe all marriages and divorces, loss of spouse or significant other through death, and birth (and death if applicable) of all children.
2. Describe nature of friendships and social relationships, including group memberships.
3. Describe the veteran's living situation.
4. Note any significant post-military adjustment problems, including illness or injury.

**J. Industrial Adjustment**

1. Veteran’s occupation(s).
2. All education and training.
3. List all employers and positions, including:
   a. Earnings
   b. Dates of change(s) in employment
   c. Length of time with specific employers
   d. Periods of unemployment
   e. Relationship with co-workers, supervisors, and subordinates
4. Highest paid position.
5. Attitude toward employment.
6. Is the veteran working at an occupation or position that is below his/her education and training level?
7. Is there evidence that the veteran’s pre-traumatic level of performance was above his/her post-traumatic level of performance? What is the documentation of this?
8. Is there evidence service connected disability(ies) impacted the veteran’s decision to retire? Discuss. (For example, did the veteran choose to take an early retirement with financial loss in order to reduce the stress experienced in the work environment because the stress was aggravating the service connected disability(ies)?)
9. Has an employer made official or unofficial accommodations to handle veterans disabilities? Document any evidence of internal transfers, re-assignments, etc.

**K. Present Social Functioning**

1. Identify Stressors in any of the following categories:
   a. Primary support system or group
   b. Social environment
   c. Educational problems
   d. Occupational problems
   e. Housing problems
   f. Economic problems
   g. Problems accessing health care
   h. Legal system or criminal problems
   i. Other
2. Appearance: Describe dress, speech, mannerisms, scars, facial expressions, and body movements (assessment based on observation listed above).
3. Relationships: Describe all relationships, including with whom and duration of relationship. Describe physical intimacy, including frequency, level of satisfaction, problems with intimacy, and any impact of medical or psychiatric conditions on performance.
4. Lifestyle: Describe how the veteran spends his/her time, including interests, hobbies, employment, typical day and week, and eating and sleeping patterns.
5. Mental Status: Describe, including evidence of confusion, memory problems, thought processes or disorders, and mood/affect. Describe the veteran's functioning in the areas of cognitive, emotional (mood) and judgment.
6. GAF Score (if available)

**L. Capacity to manage financial affairs (if an issue)**

**NOTE:** Mental competency, for VA benefits purposes, refers only to the ability of the veteran to manage VA benefit

http://www.vba.va.gov/bln/21/Benefits/exams/disexm57.htm

9/18/2008
payments in his or her own best interest, and not to any other subject. Mental incompetency, for VA benefits purposes, means that the veteran, because of injury or disease, is not capable of managing benefit payments in his or her best interest. In order to assist raters in making a legal determination as to competency, please address the following:

1. What is the impact of injury or disease on the veteran's ability to manage his or her financial affairs, including consideration of such things as knowing the amount of his or her VA benefit payment, knowing the amounts and types of bills owed monthly, and handling the payment prudently?
2. Does the veteran handle the money and pay the bills himself or herself?
3. Based on your examination, do you believe that the veteran is capable of managing his or her financial affairs? Please provide examples to support your conclusion.

M. Summary & Conclusions

1. Summarize the specific effect of disabilities and the impact on employment.
2. Summarize the specific effect of disabilities and the impact on social functioning.

NOTE: Refer to medical, psychiatric and/or neuro-psychiatric report(s), as appropriate.

Signature: Not signed    Date: Not dated
HOW DO I APPEAL
(to the Board of Veterans' Appeals?)
How Do I Appeal?

“to care for him who shall have borne the battle, and for his widow, and his orphan”

-Abraham Lincoln

Board of Veterans’ Appeals
GETTING STARTED
Frequently Asked Questions About Appeals

What is an appeal?
An appeal is a request for the Board of Veterans’ Appeals to review a local VA office decision on your claim.

Why would I appeal?
You appeal because you are not satisfied with the decision by the local VA office.

The two most common reasons people appeal are:

• The VA denied you benefits for a disability you believe began in service; or
• You believe that your disability is more severe than the VA rated it.

You can appeal for any reason.

What is the Board of Veterans’ Appeals?
The Board of Veterans’ Appeals (also known as the Board or BVA) is a part of the Department of Veterans Affairs. It is located in Washington, D.C. Members of the Board review appeals for VA benefits and make decisions on those appeals.
How do I appeal?

The Appeals Process

Claim Filed

Claim Decided

You are not satisfied

Notice of Disagreement

Statement of the Case

You ask for a hearing

Substantive Appeal (VA Form 9)

Hearing with Board Member

Decision by Board of Veterans' Appeals
To apply for benefits, you file a claim at your local VA office or VA medical facility. This is when you ask for the benefit you want.

There is at least one VA office in each state, Puerto Rico, and Manila. You can also file your claim on the internet at www.vba.va.gov.

You can ask for help with your claim. Help is available from Veterans Service Organizations (VSO), such as The American Legion or Disabled American Veterans, as well as from attorneys, or agents recognized by VA.

VSOs have staff at most local VA offices.

The local VA office makes a decision on your claim and sends it to you.

The local VA office’s decision will allow or deny your claim. If you are not satisfied with the decision, you can appeal.
What is a Notice of Disagreement?

If you disagree with the rating decision, you can write a statement to your local VA office saying that you disagree and that you want to appeal the decision.

This statement is called a Notice of Disagreement (NOD).

Where do I send my NOD?

You send your NOD to your local VA office.

When do I send my NOD?

You must send your NOD within one year of the date your local VA office mailed you its original decision denying your claim.

After you send your NOD you may request that your file be reviewed by a Decision Review Officer (DRO) from your local VA office. DROs offer a second review of your entire file and can also hold a personal hearing on your claim.
After the local VA office gets your NOD it will create a “Statement of the Case” (SOC).

What is a Statement of the Case?

The SOC is a detailed explanation of the evidence, laws, and regulations used by the local VA office in deciding your claim.

Who sends the SOC?

The SOC will be mailed to you along with a VA Form 9, Substantive Appeal Form by your local VA office.
Substantive Appeal
(VA Form 9)

When you get the SOC from your local VA office, a VA Form 9 will be included with the SOC. The VA Form 9 is also available through the internet at www.vba.va.gov.

What is a Form 9?

A VA Form 9 is the last step in the appeal process. To finish the appeal process you must fill out the VA Form 9 (Substantive Appeal) and send it back to your local VA office.

When you fill out your VA Form 9 you should state the benefit you want, any mistakes you find in the SOC, and if you want a personal hearing.

When do I send my VA Form 9?

Your local VA office must get your VA Form 9 within 60 days of the date that they mailed you your SOC or within one year of the date that they mailed you the original decision denying your claim, whichever is later.

REMEMBER TIME LIMIT FOR FILING FORM 9!
You can request a personal hearing in connection with your appeal.

What is a personal hearing?

A personal hearing is a meeting between you, your representative if you have one, and the person from the VA who will decide your case.

There are two types of personal hearings:

- A hearing with someone from your local VA office, or
- A hearing with a member of the Board of Veterans’ Appeals.

How do I get a hearing?

You can request a personal hearing with a local VA official at any time by sending a written request to your local VA office.

You can request a hearing with a member of the Board of Veterans’ Appeals when you fill out your VA Form 9.
Personal Hearings with a Board Member

Are all personal hearings with Board Members the same?

No, if you want a personal hearing with a member of the Board, you can choose from several different types.

- A hearing in Washington, D.C., where the Board of Veterans’ Appeals is located.

- A videoconference hearing with you at your local VA office and the Board Member in Washington, D.C.

- A hearing at your local VA office with the Board Member present.

Because of scheduling delays, a videoconference hearing is the quickest way to get a hearing with a Board Member.
What happens at a Board hearing?

- Personal hearings with a Board Member are informal. They are not like the courtroom hearings you see on TV or in trials.

- The Board Member will identify himself or herself, and will make sure you agree about what the claims are on appeal.

- The Board Member will tell you about what happens during the hearing.

- You will be asked to take an oath to tell the truth.

- You will be given a chance to make sure any information you think is important is heard by the Board Member.
Personal Hearings with a Board Member

➢ If you have a representative, the representative will ask you questions to help you explain your claim. If not, the Board Member will ask you to tell him or her about your claim.

➢ The Board Member may or may not ask questions during the hearing.

➢ You can add evidence to your claim at the hearing. This evidence will be added to your file and reviewed by the Board Member when a decision is made on your claim.

➢ The Board Member does not make a decision on your claim at the hearing. A transcript of the hearing will be made and sent to the Board of Veterans' Appeals with your file. When the Board Member gets all this information, he or she will review it and make a decision.

Did you know?
When you have your hearing, the Board Member will be holding as many as nine other hearings that day!
When do I get my decision from the Board?

After reviewing the evidence in your file, the Board Member will make a decision on your appeal. The Board will send you a copy of the decision.

The decision will allow, deny or remand your claim. If your claim is allowed or denied, the Board’s decision is final. However, a remand is not a final decision.

What is a remand?

Sometimes the Board finds that it does not have enough information about your claim to make a decision.

When this happens the Board will either try to get more information itself or send your claim back to the local VA office so they can try and get that information.

When your claim is sent back to the local VA office, it is called a Remand.
What if the Board denies my claim?

If your claim is denied by the Board, this is what you can do:

- go back to your local VA and try to reopen your claim;
- file a motion asking the Board to reconsider your claim or review your case again because there was a clear and unmistakable error (CUE) in the Board decision;
- file an appeal with the U.S. Court of Appeals for Veterans Claims; or
- do nothing.
Helpful Hints

✓ Have a representative help you with your claim and appeal.
  • A representative can answer questions and can help make the process move faster.
  • Representatives from Veterans Service Organizations have offices in most local VA offices.

✓ Give as much detail as possible about evidence that you want the VA to get before they make a decision on your claim.
  • For example, full names, addresses, and dates are very important.

✓ Make sure you let your local VA office know if you move to a new address while your claim is being decided.

✓ Put your claim number on all letters or other evidence you send to the VA.

✓ Make sure you keep a copy of any evidence you give to the VA for your records.

✓ Try to identify as early as possible all the evidence you want the VA to look at when they make a decision on your claim.
  • This will speed up the time it takes for the VA to make a decision on your claim.
Additional Information & Internet Resources

The Department of Veterans Affairs

www.va.gov
Information about VA, pamphlets and forms online, BVA decisions

The Veterans Benefits Administration

www.vba.va.gov
Benefits information, links to VA forms, regulations

United States Court of Appeals for Veterans Claims

www.vetapp.uscourts.gov
Court cases, information on how to appeal a BVA decision, information on filing an appeal with the Court

Department of Veterans Affairs - Electronic FOIA reading room

www.va.gov/foia/
Links, answers to a number of VA issues
National Archives and Records Administration
Code of Federal Regulations
www.access.gpo.gov/nara/cfr
Published federal regulations, including 38 C.F.R., used by VA

The Office of the Law Revision Counsel
U.S. House of Representatives
uscode.house.gov/usc.htm
Search and print the United States Code, including 38 U.S.C., used by VA

Information about Veterans' Benefits
1-800-827-1000

Information about your appeal at the Board
1-202-565-5436

VA Salutes America's Veterans
Thank you for your service to our country
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MOST COMMONLY USED VA FORMS

21-526 (Application for Compensation and pension)
21-4142 (Authorization to Release Information)
21-22 (Appointment of Individual as Claimant's Representative)
21-8940 (Veteran's Application for Increased Compensation based on Unemployability)
21-4138 (Statement in Support of Claim)
21-534 (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse)
21-0781 (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)
21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault)
21-4142 (Authorization and Consent to Release Information to the Department of Veterans Affairs (VA))
21-4138 (Statement in Support of Claim)
GENERAL INSTRUCTIONS
FOR VETERAN'S APPLICATION FOR COMPENSATION AND/OR PENSION,
VA FORM 21-526, PARTS A, B, C, & D

What's in these instructions?
Use these instructions to help you complete VA Form 21-526 Parts A, B, C, and D to apply for compensation and/or pension. The "General Instructions" consist of the following four sections:

Section 1: Preparing your application. This section gives you information you should consider before you file your claim. It tells you why you should use VA Form 21-526 and then helps you decide what you are applying for, which parts to use, and which items you will need to fill out.

Section 2: Completing your VA Form 21-526. This section helps you complete your VA Form 21-526. It has specific advice for difficult parts and tells you where to send your forms after you've filled them out.

Section 3: Finding answers to other questions. This section tells you more about other issues that you may have questions about.

Section 4: Explanation of the Privacy Act and Respondent Burden: This section tells you what the Privacy Act is and explains how VA uses the requested information. It also explains the respondent burden which is an estimate of how long it will take you to fill out this form.

INSIDE THESE INSTRUCTIONS
Pg. 2 Section 1: Preparing your application
Pg. 2 Checklist: Which parts of VA Form 21-526 should you use?
Pg. 3 Checklist: Things you'll need to prepare for filling out your application
Pg. 4 Section 2: Completing your application
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Pg. 6 Section 3: Finding answers to other questions
Pg. 7 Section 4: Explanation of the Privacy Act and Respondent Burden

Before you start . . .
Where can I get help filling out my application?

- You can contact a County or National Veterans' Service Organization to help you complete the form, or
- You can ask VA to help you fill out the form by calling or visiting a regional office. Someone in the regional office will help you complete the form. If you go to a regional office, you should have all the materials that are listed on page 3 under "Checklist: Things you need to prepare for filing out your application." Before you call or go to the regional office, make sure you gather the necessary materials and complete as much of the form as you can.

How can I contact VA if I have questions?
If you have questions about this form, how to fill it out, or about benefits, you can contact VA in the following ways.

- By mail:
  You can locate the address of the closest regional office in your telephone book blue pages under "United States Government, Veterans"

- By telephone:
  Please call one of the following telephone numbers:
  1-800-827-1000
  1-800-829-4833 (Hearing Impaired TDD line)

- By Internet:
  http://www1.va.gov/directory/guide/home.asp

Social Security Benefits
The Social Security and Supplemental Security Income disability programs are the largest of several Federal programs that provide assistance to people with disabilities. While these two programs are different in many ways, both are administered by the Social Security Administration (SSA) and only individuals who have a disability and meet medical criteria may qualify for benefits under either program.

How can I contact SSA if I have questions?
If you have a question, call the SSA toll-free phone number at 1-800-772-1213, Monday through Friday, from 7AM to 7PM. If you have a touch-tone phone, recorded information and services are available 24 hours a day, including weekends and holidays. People who are deaf or hard of hearing may call the toll-free TTY number, 1-800-325-0778, between 7 a.m. and 7 p.m. on Monday through Friday. Please have your Social Security number handy when you call.

- By mail:
  You can locate the address of the closest SSA office in your telephone book blue pages under "United States Government, Social Security Administration"

- By Internet:
  http://www.ssa.gov/
Section 1: Preparing your application

What do I use VA Form 21-526 for?
Use VA Form 21-526 to apply for compensation and/or pension benefits.

You should apply for compensation benefits if any of the following are true:

- You were injured while you were in the service.
- You were seriously ill while you were in the service, and you believe you have continuing problems.
- You developed a mental or physical condition that may be related to your military service.
- You are permanently and totally disabled and you believe it is because of your military service.

You should apply for pension benefits if all of the following are true:

- You are permanently and totally disabled (but not as a result of your military service).
- You served on active duty during a wartime period.
- Your income is limited.

VA Form 21-526 has four parts. Everyone has to fill out Part A of the form. You fill out some or all of the other parts depending on the benefits you are applying for. Once you have decided what you are applying for, find out which parts you need to use by reading through the check list below called "Which Parts of VA Form 21-526 Should You Use?"

What can I do to help get my application processed faster?

VA will make reasonable efforts to help you get this evidence. You can help us by telling us about all the evidence that supports your claim. Evidence is information that confirms that what you are telling us is correct. For instance, if you are claiming service connection for a certain disability, we will help you by requesting medical records from your doctor or from VA that show you have this disability. We will also help you by requesting records from other Federal or non-Federal agencies or companies. We will request your service medical records in claims for compensation.

CHECK LIST: WHICH PARTS OF VA FORM 21-526 SHOULD YOU USE?

Look at the table below to find out which parts of VA Form 21-526 you should use to apply for different benefits.

<table>
<thead>
<tr>
<th>If you are applying for:</th>
<th>You must fill out:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>VA Form 21-526, Part A: General Information</td>
</tr>
<tr>
<td>Compensation only</td>
<td>✓</td>
</tr>
<tr>
<td>Pension Only</td>
<td>✓</td>
</tr>
<tr>
<td>Compensation and Pension</td>
<td>✓</td>
</tr>
</tbody>
</table>
# CHECKLIST: THINGS YOU'LL NEED TO PREPARE FOR FILLING OUT YOUR APPLICATION

<table>
<thead>
<tr>
<th>When you fill out this VA Form . . .</th>
<th>You'll need this information ready to answer questions . . .</th>
<th>You should attach these pieces of information . . .</th>
</tr>
</thead>
</table>
| 21-526 Part A: General Information | □ Active Duty Information
  ● dates and places you entered and left
  ● mailing addresses of units you served in
  □ Reserve Duty and National Guard Duty information
  ● dates and places you entered and left
  ● mailing addresses of units you served in
  □ List of military benefits you receive and amounts | □ An original or certified copy of DD214 or other separation papers for all periods of service |
| 21-526 Part B: Compensation | □ List of disabilities you are claiming, including
  ● treatment dates in service
  ● name and address of the medical facilities where you have been treated after service
  □ Information about any environmental exposures or events that caused the disabilities you are claiming, including dates they happened | □ An original or copies of all service medical records you have
  □ Medical records you have showing you currently have this disability
  □ Medical records you have indicating that the disability was caused by or happened during your active service |
| 21-526 Part C: Dependency | □ Information about your current spouse, including his/her Social Security number (and VA file number if he/she is a veteran)
  □ Information about you and your spouse's previous marriages including dates and places of those marriages and the dates and places those marriages ended
  □ Information about the children who live with you, including their names, Social Security numbers, dates and places of birth
  □ Information about children not living with you, including their names, dates and places of birth, Social Security numbers, and amounts that you contribute in child support for them | □ Copies of your marriage certificate and all divorce decrees (May be required in some cases)
  □ Copies of the public birth records for each child you claim as a dependent (May be required in some cases)
  □ Copies of the court records for adoption for each adopted child |
| 21-526 Part D: Pension | □ Information about your training and employment history for the past year, including
  ● name and address of employers
  ● beginning and ending dates of employment
  □ Information about your nursing home, if you live in one
  □ Information about your net worth and your dependents' net worth
  □ Information about your recurring income and your dependents' recurring income
  □ Information about income you and your dependents expect to receive in the next 12 months | □ Current medical evidence telling us about your disabilities
  □ If you are in a nursing home, attach a statement signed by an official of the nursing home that includes
    ● the date you were admitted to a nursing home
    ● your level of care in the nursing home
  □ Your nursing home payment status, which is Medicaid coverage or private pay |

---

Note: If you are a veteran who is age 65 or older you DO NOT have to submit medical evidence with your application.
Section 2: Completing your application

You will find instructions on each part of VA Form 21-526 to help you fill them out. However, there still might be some areas of the forms that are difficult. In this section, we've included the answers to some common problems that claimants have with the forms. They should help you fill out your forms more quickly and easily.

VA Form 21-526, Part A: General Information

Section III
What is the Gulf War registry? VA has a registry of veterans who served in the Gulf War theater of operations. The information in this registry will be shared only with the Department of Defense and others as permitted by law (such as the National Academy of Sciences). We will keep you informed of significant developments in research on health consequences found to be related to military service in the Gulf War. You may request a VA health examination that will include consultation and counseling covering the results of the examination. You should contact your nearest VA medical facility to request an examination.

Section VII
Should I waive military retired pay for VA compensation? If you currently receive military retired pay, you should be aware that we will reduce your retired pay by the amount of any compensation that you are awarded. However, this is to your advantage because VA compensation is not taxable and most retired pay is taxable. Based on your application, if you are awarded compensation, we will tell the Military Retired Pay Center to reduce your retired pay by the amount of compensation you have been awarded. If you do not want this to happen, you must sign Item 21e of VA Form 21-526, Part A to let us know.

VA Form 21-526, Part B: Compensation

Section I
What kind of disabilities should I list? When possible, try to list the actual disease and medical condition that a doctor has diagnosed. Be as specific as you can.

Do I have to include any records with this claim form?
If you have records that support your claim you should attach them to this claim form. If you know of other records that will support your claim, VA will help you by requesting them from the person, company, or agency that has them. On this form you must tell us the name and address of the person, company or agency that has these records, the approximate time frame covered by these records, and the condition for which you were treated in the case of medical records. If you received treatment from a military health care facility after your discharge from service, private physician, or any other health care provider, complete the attached VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA). We will use this form to request these records.

VA Form 21-526, Part C: Dependency

Section III
Who can I count as a dependent child? VA recognizes your biological children, adopted children, and stepchildren as dependents. But these children must be unmarried and:
- be under the age of 18, or
- be at least 18 but under 23 and pursuing an approved course of education, or
- have become permanently unable to support themselves before reaching the age of 18.

VA Form 21-526, Part D: Pension

Section IV
What do you mean by "net worth"? Your net worth is the market value of all the interest and rights you have in any kind of property. However net worth does not include your single family dwelling unit and a reasonable lot area. Net worth also does not include the personal things you use everyday like your vehicle, clothing, and furniture.

NOTE: If you are a veteran who is age 65 or older, you DO NOT have to submit medical evidence with your application.

What do I do when I have finished my application?

1. Make sure you sign and date VA Form 21-526, Part A. You must provide your signature in Section IX, Item 25 of this form. If you don't sign the form, VA will return it for you to sign, and it will take longer for us to process it.

2. Attach any materials that support and explain your claim. Be sure to look at the checklist on page 3 of these instructions to make sure that you have attached all important pieces of information to your application.
Section 2: Completing your application (Continued)

3. You may complete the attached VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA) with your VA Form 21-526 if you want help getting additional records. By signing VA Form 21-4142, you authorize any doctors, hospitals, or caregivers that have treated you to release information about your treatment to the VA. Be sure to sign and date the form. Make as many copies of VA Form 21-4142 as you need to give authorization to all the doctors, medical facilities, or caregivers that treated you. You do not need to complete this form for any treatment you received at a VA facility.

4. Make a photocopy of your application and everything that you submit to VA. By having copies, you will be prepared if VA has a question about your application.

Where do I send my application?

Mail the original application and your supporting materials to the closest VA office. You can find the address in your local telephone book or at the VBA internet web site:

http://www1.va.gov/directory/guide/home.asp

What if I need to change or add information to my application after I give it to VA?

If you find that you need to change or add information to your application, contact VA where you submitted your application immediately. In a letter, make sure you specify:

- your name,
- claim number if you know it (or Social Security number if you don't know the claim number), and
- the item number you want to change or add to.

TIPS FOR FILLING OUT YOUR VA FORM 21-526

ATTACHING FORMS AND OTHER INFORMATION:
Throughout this form, you will be asked to attach certain pieces of information to the form itself. For example, you are asked to attach a DD214 to your Form 21-526, Part A. The DD214 needs to be an original or certified copy; other documents do not. To get a certified copy, you can take your original to the courthouse and have it copied and signed by an official of the court. A VA employee can also “certify” a copy for you.

ANSWERING QUESTIONS COMPLETELY:
Remember that the more questions you answer, the faster your claim can be processed. Try to answer every question that applies to your situation and fill out as much of the form as you can. The list below answers some questions that you might be wondering about:

- What if my answer to a question is “none” or “0”? Write that as your answer.
- What if I need to include an address that is not in the United States? Make sure that you include the name of the country in your answer.
- What if I need more space to answer a question? You can use Part A of the 21-526, page 5, Item 29 "Remarks" or attach a sheet of paper to your form. Write "Continuation of answers" at the top of the page, your name, and your VA claim number. If this is your first claim, you will not have a VA claim number, so write your Social Security number instead. For each question that you need more room for answers, write "Continuation of Item" and the item number. For example, if you need more room to answer Item 16 on VA Form 21-526, part A, write "Continuation of Item 16, VA Form 21-526, Part A."

KEEPING RECORDS: It is important that you keep a copy of all the forms you fill out and give to VA. This way you will have your own complete record to refer to.

SIGNING FORMS: Be sure to sign every form you fill out before you send it to us.
Section 3: Finding answers to other questions

What can you tell me about VA benefits and how VA decides what I will or will not receive?

VA pays veterans disability compensation for disability (ies) that are a result of their military service. If VA determines that your disability(ies) are 30% or more disabling, VA can pay additional compensation for your spouse, children, and dependent parents. VA will pay a higher amount of compensation for a spouse when the spouse is a patient in a nursing home or is disabled and requires the regular aid and attendance of another person.

VA pays disability pension to veterans who:

- are permanently and totally disabled but not as a result of military service or the veteran's own willful misconduct

- served during:
  - Mexican Border Period
  - World War I
  - World War II
  - Korean Conflict
  - Vietnam Era
  - Gulf War

VA pays disability pension based on the amount of income that the veteran and family received and the number of dependents in the family. This is based on law. VA must include as income all sources that federal law specifies. You can find out what the current income limitations and rates of benefits are by contacting your nearest VA office. See page 1, "How can I contact VA if I have a question?" for ways to contact us.

VA may pay a higher rate of disability pension to a veteran who is a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability.

I would like help in understanding the process of getting my benefits. What can I do?

You can ask someone to act as your representative. A representative can be:

- An accredited member of an accredited organization or other service organization that the Secretary of Veterans Affairs recognizes.

- An agent recognized by VA or a licensed lawyer. Agents and attorneys can charge you for services that you get from them only after the Board of Veterans Appeals (BVA) gives you their final decision about your application. That means you can use an attorney during any stage of your application for benefits. However, the agent or attorney cannot charge you for services unless you are trying to resolve a dispute with VA after BVA has made a decision about your claim.

If you want to use a representative to help you with your application, contact the closest VA office. Depending on the type of representative you want to designate, we will send you one of the following forms:

- VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative

- VA Form 21-22A, Appointment of Individual as Claimant's Representative

What if I believe that VA has made an error in processing or deciding on my benefits?

You can ask for a personal hearing at any time during the processing of your claim. That means you can ask for the hearing while VA is processing your claim or after VA has made a decision. You should contact the nearest VA office and tell them that you want a personal hearing on your case. Someone in the local VA office will arrange a time and a place for your hearing. At this hearing, you can bring witnesses. VA will record whatever you and your witnesses say during the hearing and include it in the official record. VA will furnish the hearing room and officials, and prepare a transcript of the hearing. VA cannot pay your expenses or the expenses of anyone you want to bring with you to the hearing. After your claim has been decided you will have one year from the date of notice to appeal that decision.
Section 4: Explanation of the Privacy Act and Respondent Burden

PRIVACY ACT INFORMATION: No allowance of compensation or pension may be granted unless this form is completed fully as required by law (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22 Compensation, Pension, Education, and Rehabilitation Records - VA. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information that you furnish may be utilized in computer matching programs with other Federal or state agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs.

Income and employment information: The income and employment information furnished by you will be compared with information obtained by VA from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103 (1)(7)(D) of the Internal Revenue Code of 1986.

Social Security information: You are required to provide the Social Security number(s), requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically, may disclose them for the purposes stated above.

Respondent Burden: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting for this collection of information is estimated to average 1 hour and 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.
# VETERAN'S APPLICATION FOR COMPENSATION AND/OR PENSION

**VA Form 21-526, Part A: General Information**

Please read the attached "General Instructions" before you fill out this form.

## SECTION I

**Tell us what you are applying for**

Check the box that says what you are applying for. Be sure to complete the other Parts you need.

1. What are you applying for? If you are unsure please refer to the "General Instructions" page 2
   - [ ] Compensation
   - [ ] Pension
   - [ ] Compensation and Pension

   Fill out Part A of VA Form 21-526 and Parts B and C
   Fill out Part A of VA Form 21-526 and Parts C and D

2a. Have you ever filed a claim with VA
   - [ ] No (If "No," skip Item 2b and go to Item 3)
   - [ ] Yes (If "Yes," provide file number below) (Go to 2b)

2b. I filed a claim for
   - [ ] Compensation
   - [ ] Pension
   - [ ] Other

## SECTION II

**Tell us about you**

We need information about you to process your claim faster.

3. What is your name?

<table>
<thead>
<tr>
<th>First</th>
<th>Middle</th>
<th>Last</th>
<th>Suffix (If applicable)</th>
</tr>
</thead>
</table>

4. What is your Social Security number?

   ____________________________

5. What is your sex?

   - [ ] Male  
   - [ ] Female

6a. Did you serve under another name?

   - [ ] Yes (If "Yes," go to Item 6b)
   - [ ] No (If "No," go to Item 7)

6b. Please list the other name(s) you served under

   ____________________________

7. What is your address?

   Street address, Rural Route, or P.O. Box

   ____________________________  Apt. number

   City

   State  ZIP Code  Country

8. What are your telephone numbers?

   **Daytime**
   ____________________________

   **Evening**
   ____________________________

9. What is your e-mail address?

   ____________________________

10. What is your date of birth?

   ____________________________

11. Where were you born? (City, State and Country)

   ____________________________

12a. Are you receiving disability benefits from the Office of Workers' Compensation (OWCP)?

   - [ ] Yes  
   - [ ] No

   (If "Yes," answer 12b and 12c also)

12b. When was the claim filed?

   ____________________________

12c. What disability are you receiving benefits for?

   ____________________________

13a. What is the name of your nearest relative or other person we could contact if necessary?

   **Daytime**
   ____________________________

   **Evening**
   ____________________________

13b. What is his/her telephone number?

   ____________________________

13c. What is this person's address?

   ____________________________

13d. How is this person related to you?

   ____________________________
### SECTION III
Tell us about your active duty

1. Enter complete information for all periods of service. If more space is needed use Item 29 Remarks.

2. Attach your original DD214 or a certified copy to this form. (We will return original documents to you.)

<table>
<thead>
<tr>
<th>14a.</th>
<th>I entered active service the first time...</th>
<th>14b.</th>
<th>Place:</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14d.</th>
<th>I left this active service...</th>
<th>14e.</th>
<th>Place:</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14h.</th>
<th>I entered my second period of active service...</th>
<th>14i.</th>
<th>Place:</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14k.</th>
<th>I left this active service...</th>
<th>14l.</th>
<th>Place:</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15a.</th>
<th>Did you serve in Vietnam?</th>
<th>15b.</th>
<th>When were you in Vietnam?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>from to</td>
<td></td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 15b also)</td>
<td>mo day yr</td>
<td>mo day yr</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15a.</th>
<th>Did you serve in Vietnam?</th>
<th>15b.</th>
<th>When were you in Vietnam?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>from to</td>
<td></td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 15b also)</td>
<td>mo day yr</td>
<td>mo day yr</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15a.</th>
<th>Did you serve in Vietnam?</th>
<th>15b.</th>
<th>When were you in Vietnam?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>from to</td>
<td></td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 15b also)</td>
<td>mo day yr</td>
<td>mo day yr</td>
<td></td>
</tr>
</tbody>
</table>

### SECTION IV
Tell us about your reserve duty

<table>
<thead>
<tr>
<th>16a.</th>
<th>Were you stationed in the Gulf after August 1, 1990?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 16b also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17a.</th>
<th>Have you ever been a prisoner of war?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Items 17b, 17c, and 17d also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17a.</th>
<th>Have you ever been a prisoner of war?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Items 17b, 17c, and 17d also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17a.</th>
<th>Have you ever been a prisoner of war?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Items 17b, 17c, and 17d also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18a.</th>
<th>Are you currently assigned to an active reserve unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 18b also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18a.</th>
<th>Are you currently assigned to an active reserve unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 18b also)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18a.</th>
<th>Are you currently assigned to an active reserve unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Item 18b also)</td>
<td></td>
</tr>
</tbody>
</table>

The VA has a registry of veterans who served in the Gulf War. This area has also been called the "Persian Gulf." If you served there, we will include your name in the registry. If you want your medical information included, you must check "Yes" in Item 16b. For more information about the registry, see page 4 of the General Instructions for VA Form 21-526.
### SECTION (Continued) IV
**Tell us about your reserve duty**

18e. Do you have an inactive reserve obligation? (You perform no active duty, but you could be activated if there was a national emergency)
- Yes
- No
- Don't Know

(If "Yes," answer Item 18f also)

18f. What is your reserve obligation termination date?

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

**Instructions 18g-18k**
If you are currently or have ever been a full-time reservist for operational or support duty,
1. Complete 18g-18k for that service only.
2. Attach proof of reserve service.

18g. I entered reserve service...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18h. My service number was...

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18i. I left reserve service...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18j. Branch of service

<table>
<thead>
<tr>
<th>18k. Grade, rank, or rating</th>
</tr>
</thead>
</table>

**Instructions 18l-18p**
If your disability occurred or was aggravated during any period of reserve duty,
1. Complete 18l-18p for the period when your disability occurred.
2. Attach proof that your disability occurred during reserve service.

18l. I entered reserve service...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18m. My service number was...

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18n. I left reserve service...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

18o. Branch of service

<table>
<thead>
<tr>
<th>18p. Grade, rank, or rating</th>
</tr>
</thead>
</table>

### SECTION V
**Tell us about your National Guard duty**

19a. Are you currently a member of the National Guard?
- Yes
- No
- Not Assigned

(If "Yes," answer Item 19b also)

19b. What is the name, mailing address, and telephone number of your current unit?

<table>
<thead>
<tr>
<th>19a. Are you currently a member of the National Guard?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

19c. Were you previously assigned to a guard unit within the last 2 years?
- Yes
- No

(If "Yes," answer Item 19d also)

19d. What is the name, mailing address, and telephone number of that unit?

<table>
<thead>
<tr>
<th>19d. What is the name, mailing address, and telephone number of that unit?</th>
</tr>
</thead>
</table>

**Instructions 19e-19i**
If you were activated to Federal Active Duty under the Authority of Title 10, United States Code,
1. Complete 19e-19i for that service only.
2. Attach proof of this Federal Active Duty.

19e. I entered Federal Active Duty...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19f. My service number was...

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19g. I left Federal Active Duty...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19h. Branch of service

<table>
<thead>
<tr>
<th>19i. Grade, rank, or rating</th>
</tr>
</thead>
</table>

**Instructions 19j-19n**
If your disability occurred or was aggravated during any period of guard duty,
1. Complete 19j-19n for the period when your disability occurred.
2. Attach proof that your disability occurred during National Guard Service.

19j. I entered National Guard...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19k. My service number was...

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19l. I left National Guard...

<table>
<thead>
<tr>
<th>Place:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>mo</th>
<th>day</th>
<th>yr</th>
</tr>
</thead>
</table>

19m. Branch of service

<table>
<thead>
<tr>
<th>19n. Grade, rank, or rating</th>
</tr>
</thead>
</table>
### SECTION VI
Tell us about your travel status
- [ ] Yes
- [ ] No

#### 20a. Were you injured while traveling to or from your military assignment?
(If "Yes," answer Items 20b thru 20e and Section I of Part B: Compensation)

#### 20b. When did your injury happen?
- [ ] No
- [ ] Day
- [ ] Year

#### 20c. Where did your injury happen?
(City, State, Country)

#### 20d. Where were you treated? (Provide name and address of doctor's office, hospital, etc.)

#### 20e. What agency did you file an accident report with?

### SECTION VII
Tell us about your military benefits

When you file this application, you are telling us that you want to get VA compensation instead of military retired pay. If you currently receive military retired pay, you should be aware that we will reduce your retired pay by the amount of any compensation that you are awarded. VA will notify the Military Retired Pay Center of all benefit changes.

You must sign 21e if you want to keep getting military retired pay instead of VA compensation.

Please see page 4 of the General Instructions for VA Form 21-526.

If you have gotten both military retired pay and VA compensation, some of the amount you get may be recouped by VA, or in the case of VSI, by the Department of Defense.

#### 21a. Are you receiving or will you receive retired or retainer pay that is based on your military service?
- [ ] Yes
- [ ] No

(If "Yes," answer Items 21b thru 21f. If "No," skip to Item 22)

#### 21b. What branch of service is paying or will pay your retired or retainer pay?

#### 21c. What is the monthly amount?

#### 21d. What is your retirement based on?
- [ ] Length of service
- [ ] Disability
- [ ] TDRL (Temporary Disability Retired List)

#### 21e. Sign here if you want to receive military retired pay instead of VA compensation

### SECTION VIII
Give us direct deposit information

If benefits are awarded we will need more information in order to process any payments to you. Please read the paragraph starting with, "All federal payments..." and then either:

1. Attach a voided check, or
2. Answer questions 22-24 to the right.

#### 22. Account number (Please check the appropriate box and provide that account number, if applicable)
- [ ] Checking
- [ ] Savings
- [ ] I certify that I do not have an account with a financial institution or certified payment agent

#### 23. Name of financial institution

#### 24. Routing or transit number
SECTION IX

Give us your signature

1. Read the box that starts, "I certify and authorize the release of information."

2. Sign the box that says, "Your signature."

3. If you sign with an "X", then you must have 2 people you know witness you as you sign. They must then sign the form and print their names and addresses also.

25. Your signature

26. Today's date

27a. Signature of witness (If claimant signed above using an "X")

27b. Printed name and address of witness

28a. Signature of witness (If claimant signed above using an "X")

28b. Printed name and address of witness

SECTION X

Remarks - Use this space for any additional statements that you would like to make concerning your application for Compensation and/or Pension

IMPORTANT
Penalty: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment which you are not entitled to.
In the table below, tell us more about your disability or disabilities. Be sure to:

- List all disabilities you believe are related to military service.
- List all the treatments you received for your disabilities, including
  - treatments you received in a military facility before and after discharge.
  - treatments you received from civilian and VA sources before, during, and after your service.

<table>
<thead>
<tr>
<th>1. What disability are you claiming?</th>
<th>2. When did your disability begin?</th>
<th>3. When were you treated?</th>
<th>4a. What medical facility or doctor treated you?</th>
<th>4b. What is the address of that medical facility or doctor?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td>from mo day yr to mo day yr</td>
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<td></td>
<td>from mo day yr to mo day yr</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Section II</td>
<td>Question</td>
<td>Sub QUESTION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>----------</td>
<td>--------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5a. Were you exposed to Agent Orange or other herbicides?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6a. Were you exposed to asbestos?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7a. Were you exposed to mustard gas?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8a. Were you exposed to ionizing radiation?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9a. Were you exposed to an environmental hazard in the Gulf War?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10a. Did you have a separation or retirement physical examination?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section III</th>
<th>Question</th>
<th>Sub QUESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Explanation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Your Name**

**Your Social Security Number**
### VA Form 21-526, Part C: Dependency

Use this form to tell us more about your dependents. Remember that you must also fill out a VA Form 21-526, Part A: General Information, Part B and/or Part D, for your application to be processed. Be sure to write your name and Social Security number in the space provided on page 3.

<table>
<thead>
<tr>
<th>SECTION</th>
<th>Tell us about your marriage</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>1. What is your marital status?</td>
</tr>
<tr>
<td></td>
<td>- Married</td>
</tr>
<tr>
<td></td>
<td>- Surviving Spouse</td>
</tr>
<tr>
<td></td>
<td>- Divorced</td>
</tr>
<tr>
<td></td>
<td>- Never Married</td>
</tr>
<tr>
<td></td>
<td><em>(If your spouse died, you are &quot;divorced,&quot; or &quot;never married&quot; skip to Section III beginning on page 2)</em></td>
</tr>
<tr>
<td></td>
<td>2. When were you married?</td>
</tr>
<tr>
<td></td>
<td>- month day year</td>
</tr>
<tr>
<td></td>
<td>3. Where did you get married?</td>
</tr>
<tr>
<td></td>
<td><em>(city/state or country)</em></td>
</tr>
<tr>
<td></td>
<td>4. What is your spouse's name?</td>
</tr>
<tr>
<td></td>
<td>- First</td>
</tr>
<tr>
<td></td>
<td>- Middle</td>
</tr>
<tr>
<td></td>
<td>- Last</td>
</tr>
<tr>
<td></td>
<td>5. What is your spouse's birthday?</td>
</tr>
<tr>
<td></td>
<td>- month day year</td>
</tr>
<tr>
<td></td>
<td>6. What is your spouse's Social Security number?</td>
</tr>
<tr>
<td></td>
<td>7a. Is your spouse also a veteran?</td>
</tr>
<tr>
<td></td>
<td>- Yes</td>
</tr>
<tr>
<td></td>
<td>- No <em>(If &quot;Yes,&quot; answer Item 7b also)</em></td>
</tr>
<tr>
<td></td>
<td>7b. What is your spouse's VA file number (If any)?</td>
</tr>
<tr>
<td></td>
<td>8. Do you live with your spouse?</td>
</tr>
<tr>
<td></td>
<td>- Yes <em>(If &quot;Yes,&quot; go to Item i2)</em></td>
</tr>
<tr>
<td></td>
<td>- No <em>(If &quot;No,&quot; go to Item 9)</em></td>
</tr>
<tr>
<td></td>
<td>9. What is your spouse's address?</td>
</tr>
<tr>
<td></td>
<td>- Street address, Rural Route, or P.O. Box</td>
</tr>
<tr>
<td></td>
<td>- Apt. number</td>
</tr>
<tr>
<td></td>
<td>- City</td>
</tr>
<tr>
<td></td>
<td>- State</td>
</tr>
<tr>
<td></td>
<td>- Zip code</td>
</tr>
<tr>
<td></td>
<td>- Country</td>
</tr>
<tr>
<td></td>
<td>10. Tell us why you are not living with your spouse</td>
</tr>
<tr>
<td></td>
<td>11. How much do you contribute monthly to your spouse's support?</td>
</tr>
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<td></td>
<td>- $</td>
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<td></td>
<td>12. How were you married?</td>
</tr>
<tr>
<td></td>
<td>- a. Ceremony by a clergyman or other authorized public official</td>
</tr>
<tr>
<td></td>
<td>- b. Common-law</td>
</tr>
<tr>
<td></td>
<td>- e. Tribal</td>
</tr>
<tr>
<td></td>
<td>- d. Proxy</td>
</tr>
<tr>
<td></td>
<td>- e. Other <em>(please describe in the space below)</em></td>
</tr>
</tbody>
</table>
### SECTION II  Tell us about any previous marriages

**NOTE:** You should provide copies of divorce decrees or death certificates.

In the table below, tell us about:
- Your previous marriages, and
- Your spouse's previous marriages

#### Your previous marriages

13a. How many times have you been married before? ____________

<table>
<thead>
<tr>
<th>13b. When were you married?</th>
<th>13c. Where were you married? (city/state or country)</th>
<th>13d. Who were you married to? (first, middle initial, last)</th>
<th>13e. When did your marriage end?</th>
<th>13f. Why did your marriage end? (death, divorce)</th>
<th>13g. Where did your marriage end? (city/state or country)</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
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<td>mo day yr</td>
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<td>mo day yr</td>
<td>mo day yr</td>
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</tr>
</tbody>
</table>

#### Your spouse's previous marriages

14a. How many times has your current spouse been married before? ____________

<table>
<thead>
<tr>
<th>14b. When was your spouse married?</th>
<th>14c. Where was your spouse married? (city/state or country)</th>
<th>14d. Who was your spouse married to? (first, middle initial, last)</th>
<th>14e. When did your spouse's marriage end?</th>
<th>14f. Why did your spouse's marriage end? (death, divorce)</th>
<th>14g. Where did your spouse's marriage end? (city/state or country)</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
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<tr>
<td>mo day yr</td>
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</tr>
</tbody>
</table>

### SECTION III  Tell us about your other dependents

In this section we want to know whether your parents are financially dependent on you (Question 15) and more about your dependent children. VA may recognize a veteran's biological children, adopted children, and stepchildren as dependent. These children must be unmarried and:
- be under the age of 18, or
- be at least 18 but under 23 and pursuing an approved course of education, or
- have become permanently unable to support themselves before reaching the age of 18.

15. Are your parents financially dependent on you?  

   □ Yes  □ No  *(If "Yes," we will request additional information from you later)*

16. Do you have dependent children?  

   □ Yes  *(If "No," Skip Items 17-21f). Go to the bottom of page 3 and write your name and Social Security number)*

   □ No

17. How many dependent children do you have?  

   ____________________________________________

   Give us more information about these children in the tables on the next page (Items 18 through 21f)

---

*21-526, Part C*
### SECTION III
Tell us about your dependents (continued)

<table>
<thead>
<tr>
<th>18a. What is the name of your unmarried child(ren)? (first, middle initial, last)</th>
<th>18b. Date and place of birth (city/state or country)</th>
<th>18c. Social Security Number</th>
<th>19a. Biological</th>
<th>19b. Adopted</th>
<th>19c. Stepchild</th>
<th>20a. 18-23 yrs. old and in school</th>
<th>20b. Seriously disabled before age 18</th>
<th>20c. Child previously married</th>
</tr>
</thead>
<tbody>
<tr>
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<td>mo day yr Place:</td>
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<td>mo day yr Place:</td>
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<td>mo day yr Place:</td>
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<td></td>
</tr>
</tbody>
</table>

Tell us about your dependents listed above who don't live with you

21a. Do all the children listed above live with you?
- [ ] Yes
- [ ] No

(If "Yes," skip Items 21b thru 21f and write your name and Social Security number below)

(If "No," complete Item 21b and the table below (Items 21c - 21f) and write your name and Social Security number below)

21b. How many of the children do not live with you?

21c. What is the name of your child? (first, middle initial, last)

21d. What is your child's complete address?

21e. What is the name of the person your child lives with (If applicable)? (first, middle initial, last)

21f. How much do you contribute each month to the support of your child?

<table>
<thead>
<tr>
<th>Your name</th>
<th>Your Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

21-526, Part C  
page 3
**VA Form 21-526, Part D: Pension**

Use this form to apply for pension. Remember that you must also fill out a VA Form 21-526, Part A: General Information, for your application to be processed. Be sure to write your name and Social Security number in the space provided on page 4.

<table>
<thead>
<tr>
<th>SECTION I</th>
<th>Tell us about your disability and background</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a.</td>
<td>What disability(ies) prevent you from working?</td>
</tr>
<tr>
<td>1b.</td>
<td>When did the disability(ies) begin?</td>
</tr>
<tr>
<td></td>
<td>month day year</td>
</tr>
<tr>
<td>2.</td>
<td>Are you claiming a special monthly pension because you need the regular assistance of another person, are blind, nearly blind, or having severe visual problems, or are housebound?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>3a.</td>
<td>Are you now, or have you recently been hospitalized or given outpatient or home-based care?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer Items 3b and 3c also)</td>
</tr>
<tr>
<td>3b.</td>
<td>Tell us the dates of the recent hospitalization or care.</td>
</tr>
<tr>
<td></td>
<td>Began month day year</td>
</tr>
<tr>
<td></td>
<td>Ended month day year</td>
</tr>
<tr>
<td>3c.</td>
<td>What is the name and complete mailing address of the facility or doctor?</td>
</tr>
<tr>
<td>4a.</td>
<td>Are you now employed?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td></td>
<td>(If &quot;No,&quot; answer Item 4b also)</td>
</tr>
<tr>
<td>4b.</td>
<td>When did you last work?</td>
</tr>
<tr>
<td></td>
<td>month day year</td>
</tr>
<tr>
<td>4c.</td>
<td>Were you self-employed before becoming totally disabled?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer Item 4d and 4e also)</td>
</tr>
<tr>
<td>4d.</td>
<td>What kind of work did you do?</td>
</tr>
<tr>
<td>4e.</td>
<td>Are you still self-employed?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer Item 4f also)</td>
</tr>
<tr>
<td>4f.</td>
<td>What kind of work do you do now?</td>
</tr>
<tr>
<td>4g.</td>
<td>Have you claimed or are you receiving disability benefits from the Social Security Administration (SSA)?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>4h.</td>
<td>Circle the highest year of education you completed:</td>
</tr>
<tr>
<td></td>
<td>Grade school: □ 1 □ 2 □ 3 □ 4 □ 5 □ 6 □ 7 □ 8 □ 9 □ 10 □ 11 □ 12</td>
</tr>
<tr>
<td></td>
<td>College: □ 1 □ 2 □ 3 □ 4 □ over 4</td>
</tr>
<tr>
<td>4i.</td>
<td>List the other training or experience you have and any certificates that you hold.</td>
</tr>
</tbody>
</table>

---

**VA Form 21-526 JAN 2004**

21-526, Part D Page 1
**SECTION II** Tell us your work history

In the table below, tell us about all of your employment, including self-employment, for one year before you became disabled to the present.

<table>
<thead>
<tr>
<th>5a. What was the name and address of your employer?</th>
<th>5b. What was your job title?</th>
<th>5c. When did your work begin?</th>
<th>5d. When did your work end?</th>
<th>5e. How many days were lost due to disability?</th>
<th>5f. What were your total annual earnings?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>mo day yr</td>
<td>mo day yr</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>mo day yr</td>
<td>mo day yr</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>mo day yr</td>
<td>mo day yr</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

**SECTION III** Tell us if you are in a nursing home

In this section, tell us if you are in a nursing home. If you are in a nursing home, give us more information about the nursing home.

To get your claim processed faster, provide a statement by an official of the nursing home that tells us that you are a patient in the nursing home because of a physical or mental disability and tells us the daily charge for your care.

<table>
<thead>
<tr>
<th>6a. Are you now in a nursing home?</th>
<th>6b. What is the name and complete mailing address of the facility or doctor?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>

(If "Yes," answer item 6b also)

<table>
<thead>
<tr>
<th>6c. Does Medicaid cover all or part of your nursing home costs?</th>
<th>6d. Have you applied for Medicaid?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

(If "No," answer item 6d also)

**SECTION IV** Tell us the net worth of you and your dependents

In this section, we ask you to give us specific information about your net worth and the net worth of your dependents. You will need to enter this information in the tables on page 3.

You must include all assets in your net worth except those items you use everyday (See definition of net worth below.)
You should subtract from the market value of your real estate any amounts that you owe on it (such as mortgages, liens, etc.)
You can subtract mortgages on any property, and the value of the house or part of a building that you live in as your primary residence.
You can report farms or buildings that you or a dependent own by reporting its value as "real property."

Definitions:
Net worth is the market value of all interest and rights in any kind of property less any mortgages or other claims against the property. However, net worth does not include the house you live in or a reasonable area of land it sits on. Net worth also does not include the value of personal things you use everyday like your vehicle, clothing, and furniture.

Go to Page 3 and fill out the table.
**SECTION IV (Continued)**

Tell us about your net worth and your dependents' net worth.

For items 7a-h: provide the amounts. If none, write "0" or "None".

<table>
<thead>
<tr>
<th>Source</th>
<th>Veteran</th>
<th>Spouse</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a. Cash, non-interest bearing bank accounts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7b. Interest bearing bank accounts, certificates of deposit (CDs)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7c. IRAs, Keogh Plans, etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7d. Stocks and bonds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7e. Mutual funds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7f. Value of business assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7g. Real property (not your home)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7h. All other property</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**SECTION V**

Tell us about the income you have received and you expect to receive.

In this section, we ask you to give us specific information about the income you have received and the income you expect to receive from all sources. You will need to enter this information in the tables on Page 4. In these tables,

- Report the total amounts before you take out deductions for taxes, insurance, etc.
- Do not report the same information in both tables.
- If you expect to receive a payment, but you don't know how much it will be, write "Unknown" in the space.
- If you do not receive any payments from one of the sources that we list, write "0" or "None" in the space.
- If you are receiving monthly benefits, give us a copy of your most recent award letter. This will help us determine the amount of benefits you should be paid.

**Payments from any source will be counted, unless the law says that they don't need to be counted. VA will determine any amount that does not count.**

<table>
<thead>
<tr>
<th>Question</th>
<th>8. Will you receive any income from rental property or from operation of a business within 12 months of the day you sign this form?</th>
<th>9. Will you receive any income from the operation of a farm within 12 months of the day you sign this form?</th>
<th>10. Do you expect to receive money from a civilian agency, corporation, or individual, because of personal injury or death within 12 months of the day you sign this form?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Yes □ No</td>
<td>□ Yes □ No</td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>
## SECTION V (Continued) Monthly Income - Tell us the income you and your dependents receive every month.

For Items 11a-12f if none write "0" or "None"

<table>
<thead>
<tr>
<th>Sources of recurring monthly income</th>
<th>Veteran</th>
<th>Spouse</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I. Name:</td>
<td>II. Name:</td>
<td>III. Name:</td>
</tr>
<tr>
<td></td>
<td>(first, middle initial, last)</td>
<td>(first, middle initial, last)</td>
<td>(first, middle initial, last)</td>
</tr>
<tr>
<td>11a. Social Security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11b. U.S. Civil Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11c. U.S. Railroad Retirement Pay</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>11d. Military Retired Pay</td>
<td></td>
<td></td>
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<tr>
<td>11e. Black Lung Benefits</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>11f. Supplemental Security (SSI)/ Public Assistance</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>11g. Other income received monthly (Please write in the source below:)</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

### Next 12 months - Tell us about other income for you and your dependents

<table>
<thead>
<tr>
<th>Sources of income for the next 12 months</th>
<th>Veteran</th>
<th>Spouse</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I. Name:</td>
<td>II. Name:</td>
<td>III. Name:</td>
</tr>
<tr>
<td></td>
<td>(first, middle initial, last)</td>
<td>(first, middle initial, last)</td>
<td>(first, middle initial, last)</td>
</tr>
<tr>
<td>12a. Gross wages and salary</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12b. Total interest and dividends</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12c. Worker’s compensation for injury</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>12d. Unemployment compensation</td>
<td></td>
<td></td>
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<tr>
<td>12e. Other military benefit (Please write in the source below:)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12f. Other one-time benefit (Please write in the source below:)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECTION VI

**IMPORTANT - Items 13A through 13E should be completed only if you are applying for non-service-connected pension.**

<table>
<thead>
<tr>
<th>13A. AMOUNT PAID BY YOU</th>
<th>13B. DATE PAID</th>
<th>13C. PURPOSE (Doctor’s fees, hospital charges, Attorney fees, etc.)</th>
<th>13D. PAID TO (Name of doctor, hospital, pharmacy, Attorney, etc.)</th>
<th>13E. DISABILITY OR RELATIONSHIP OF PERSON FOR WHOM EXPENSES PAID</th>
</tr>
</thead>
</table>

Tell us any information concerning Medical, Legal or Other Expenses - Family medical expenses actually paid by you may be deductible from your income. Show the amount of unreimbursed medical expenses you paid for yourself or relatives you are under an obligation to support. Also, show medical, legal or other expenses you paid because of a disability for which civilian disability benefits have been awarded. When determining your income, we may be able to deduct them from the disability benefits for the year in which the expenses are paid. Do not include any expenses for which you were reimbursed. Show the Medicare deduction in line 1. If more space is needed attach a separate sheet.

<table>
<thead>
<tr>
<th>Your Name</th>
<th>Your Social Security Number</th>
</tr>
</thead>
</table>
**Department of Veterans Affairs**

**AUTHORIZATION AND CONSENT TO RELEASE INFORMATION TO THE DEPARTMENT OF VETERANS AFFAIRS (VA)**

Important Notice About Information Collection: We need this information to obtain your treatment records. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/library/omb/OMBINVC.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

**IF YOU HAVE ANY QUESTIONS ABOUT THIS FORM, CALL VA TOLL-FREE AT 1-800-827-1000 (TDD 1-800-829-4833 FOR HEARING IMPAIRED).**

**SECTION I - VETERAN/CLAIMANT IDENTIFICATION**

1. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)

2. VETERAN'S VA FILE NUMBER

3. CLAIMANT'S NAME (If other than Veteran) LAST NAME, FIRST, MIDDLE

4. VETERAN'S SOCIAL SECURITY NUMBER

5. RELATIONSHIP OF CLAIMANT TO VETERAN

6. CLAIMANT'S SOCIAL SECURITY NUMBER

**SECTION II - SOURCE OF INFORMATION**

7A. LIST THE NAME AND ADDRESS OF THE SOURCE SUCH AS A PHYSICIAN, HOSPITAL, ETC. (Include ZIP Codes, and also a telephone number, if available)

7B. DATE(S) OF TREATMENT, HOSPITALIZATIONS, OFFICE VISITS, DISCHARGE FROM TREATMENT OR CARE, ETC. (Include month and year)

7C. CONDITION(S) (Illness, injury, etc.)

8. COMMENTS:

---

**YOU MUST SIGN AND DATE THIS FORM ON PAGE 2 AND CHECK THE APPROPRIATE BLOCK IN ITEM 9C.**
## SECTION III - CONSENT TO RELEASE INFORMATION

**READ ALL PARAGRAPHS CAREFULLY BEFORE SIGNING. YOU MUST CHECK THE APPROPRIATE STATEMENT UNDERLINED IN PARENTHESES IN PARAGRAPH 9C.**

### 9A. Privacy Act Notice: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28 Compensation, Pension, Education, and Rehabilitation Records - VA, and published in the Federal Register. Your obligation to respond is voluntary. However, if the information including your Social Security Number (SSN) is not furnished completely or accurately, the health care provider to which this authorization is addressed may not be able to identify and locate your records, and provided a copy to VA. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect.

### 9B. I, the undersigned, hereby authorize the hospital, physician or other health care provider or health plan shown in Item 7A to release any information that may have been obtained in connection with a physical, psychological or psychiatric examination or treatment, with the understanding that VA will use this information in determining my eligibility for veterans benefits I have claimed. I understand that the health care provider or health plan identified in Item 7A who is being asked to provide the Veterans Benefits Administration with records under this authorization may not require me to execute this authorization before it will, or will continue to, provide me with treatment, payment for health care, enrollment in a health plan, or eligibility for benefits provided by it. I understand that once my health care provider sends this information to VA under this authorization, the information will no longer be protected by the HIPAA Privacy Rule, but will be protected by the Federal Privacy Act, 5 USC 552a, and VA may disclose this information as authorized by law. I also understand that I may revoke this authorization, at anytime (except to the extent that the health care provider has already released information to VA under this authorization) by notifying the health care provider shown in Item 7A. Please contact the VA Regional Office handling your claim or the Board of Veterans' Appeals, if an appeal is pending, regarding such action. If you do not revoke this authorization, it will automatically end 180 days from the date you sign and date the form (Item 10C).

### 9C. □ (AUTHORIZED) □ (DO NOT AUTHORIZE) the source shown in Item 7A to release or disclose any information or records relating to the diagnosis, treatment or other therapy for the condition(s) of drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), sickle cell anemia or psychotherapy notes. IF MY CONSENT TO THIS INFORMATION IS LIMITED, THE LIMITATION IS WRITTEN HERE:

---

### 10A. SIGNATURE OF VETERAN/CLAIMANT OR LEGAL REPRESENTATIVE

### 10B. RELATIONSHIP TO VETERAN/CLAIMANT

(If other than self, please provide full name, title, organization, city, State and ZIP Code. All court appointments must include docket number, county and State)

### 10C. DATE

### 10D. MAILING ADDRESS (Number and Street or rural route, city, or P.O. State and ZIP Code)

### 10E. TELEPHONE NUMBER (Include Area Code)

The signature and address of a person who either knows the person signing this form or is satisfied as to that person's identity is requested below. This is not required by VA but may be required by the source of the information.

### 11A. SIGNATURE OF WITNESS

### 11B. DATE

### 11C. MAILING ADDRESS OF WITNESS
APPOINTMENT OF INDIVIDUAL AS CLAIMANT'S REPRESENTATIVE

Note: If you would prefer to have a service organization assist you with your claim, you may use VA Form 21-22, "Appointment of Veterans Service Organization As Claimant's Representative."

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Costs of Federal Regulations 1.526 for custody users (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA221/22, Compensation, Pension, Education, and Rehabilitation Records-VA, published in the Federal Register. Your obligation to respond is voluntary. However, failure to respond can result in the loss of benefits or in the denial of a claim. For information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to recognize the individuals appointed by claimants to act on their behalf in the preparation, presentation, and prosecution of claims for VA benefits (38 U.S.C. 5902, 5903, and 5904) and for those individuals to accept appointment. We will also use the information to verify consent for the disclosure of VA records to the appointed representative (38 U.S.C. 5701(c) and 7332). Title 38, United States Code, allows us to ask for this information. We estimate that claimants and individuals appointed for purposes of representation will each need an average of 5 minutes to review the instructions, read the information, and complete this form. The agency cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/privacy. If desired, you may call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

2. NAME OF CLAIMANT (Veteran, guardian, beneficiary, dependent, or next of kin)

3. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)

4. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN

5. SERVICE NO(S)

6. BRANCH OF SERVICE
   - [ ] ARMY
   - [ ] NAVY
   - [ ] AIR FORCE
   - [ ] MARINE CORPS
   - [ ] COAST GUARD
   - [ ] OTHER (specify)

7. NAME OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE

8. ADDRESS OF INDIVIDUAL APPPOINTED AS CLAIMANT'S REPRESENTATIVE
   (No. and street or rural route, city or P.O., State, and ZIP code)

9. INDIVIDUAL IS (check appropriate box)
   - [ ] ATTORNEY
   - [ ] AGENT
   - [ ] INDIVIDUAL PROVIDING REPRESENTATION UNDER SECTION 14.620
   - [ ] SERVICE ORGANIZATION REPRESENTATIVE
   (specify organization below)

10. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C.
    Unless I check the box below, I do not authorize VA to disclose to the individual named in Item 7A any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

    [ ] I authorize the VA facility having custody of my VA claimant records to disclose to the individual named in Item 7A all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 7A, either by explicit revocation or the appointment of another representative.

11. LIMITATION OF CONSENT. My consent in Item 9 for the disclosure of records relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia is limited as follows:

12. CONDITIONS OF APPOINTMENT: I, the claimant named in Item 1, hereby appoint the individual named in Item 7A as my representative to preserve, present, and prosecute my claims for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 4. If the individual named in Item 7A is an attorney or agent, the scope of representation provided before VA may be limited by the agent or attorney as indicated below in Item 14. If the individual indicated in Item 7A is providing representation under section 14.620, such representation is limited to a particular claim only. I authorize VA to release any and all of my records (other than as provided in Items 9 and 10) to that individual appointed as my representative. Signed and accepted subject to the foregoing conditions.

13. SIGNATURE OF CLAIMANT

14. DATE OF SIGNATURE

15. LIMITATION ON REPRESENTATION - AGENTS OR ATTORNEYS ONLY. (Unless limited by an agent or attorney, this power of attorney revokes all previously existing powers of attorney)

16. SIGNATURE OF REPRESENTATIVE

17. DATE OF SIGNATURE

FEES: Section 2004, Title 38, United States Code, contains provisions regarding fees that may be charged, allowed, or paid for services of agents or attorneys in connection with a proceeding before the Department of Veterans Affairs with respect to benefits under laws administered by the Department.

VA FORM 21-22a
MAY 2007
SUPERSEDES VA FORM 21-22a, NOV 2005
WHICH WILL NOT BE USED.
NOTE: This is a claim for compensation benefits based on unemployability. When you complete this form you are claiming total disability because of a service-connected disability(ies) which has/have prevented you from securing or following any substantially gainful occupation. Answer all questions fully and accurately.

Social Security Benefits: Individuals who have a disability and meet medical criteria may qualify for Social Security or Supplemental Security Income disability benefits. If you would like more information about Social Security benefits, contact your nearest Social Security Administration (SSA) office. You can locate the address of the nearest SSA office in your telephone book blue pages under "United States Government, Social Security Administration" or call 1-800-772-1213 (Hearing Impaired TDD line 1-800-325-0778.). You may also contact SSA by Internet at http://www.ssa.gov/.

1. VA FILE NUMBER
2. VETERAN'S SOCIAL SECURITY NUMBER
3. DATE OF BIRTH
4. NAME OF VETERAN (First, Middle, Last) (Type or Print)
5. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)

SECTION I - DISABILITY AND MEDICAL TREATMENT

6. WHAT SERVICE-CONNECTED DISABILITY PREVENTS YOU FROM SECURING OR FOLLOWING ANY SUBSTANTIALLY GAINFUL OCCUPATION?
7. HAVE YOU BEEN UNDER A DOCTOR'S CARE AND/OR HOSPITALIZED WITHIN THE PAST 12 MONTHS?
8. DATE(S) OF TREATMENT BY DOCTOR(S)
9. NAME AND ADDRESS OF DOCTOR(S)
10. NAME AND ADDRESS OF HOSPITAL
11. DATE(S) OF HOSPITALIZATION

SECTION II - EMPLOYMENT STATEMENT

12. DATE YOUR DISABILITY AFFECTED FULL-TIME EMPLOYMENT
13. DATE YOU LAST WORKED FULL-TIME
14. DATE YOU BECAME TOO DISABLED TO WORK
15A. WHAT IS THE MOST YOU EVER EARNED IN ONE YEAR? $
15B. WHAT YEAR?
15C. OCCUPATION DURING THAT YEAR

16. LIST ALL YOUR EMPLOYMENT INCLUDING SELF-EMPLOYMENT FOR THE LAST FIVE YEARS YOU WORKED

<table>
<thead>
<tr>
<th>A. NAME AND ADDRESS OF EMPLOYER</th>
<th>B. TYPE OF WORK</th>
<th>C. HOURS PER WEEK</th>
<th>D. DATES OF EMPLOYMENT FROM</th>
<th>D. DATES OF EMPLOYMENT TO</th>
<th>E. TIME LOST FROM ILLNESS</th>
<th>F. HIGHEST GROSS EARNING PER MONTH</th>
</tr>
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<tbody>
<tr>
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</tr>
</tbody>
</table>

G. INDICATE YOUR TOTAL EARNED INCOME FOR THE PAST 12 MONTHS $
H. IF PRESENTLY EMPLOYED, INDICATE YOUR CURRENT MONTHLY EARNED INCOME $

17. DID YOU LEAVE YOUR LAST JOB/SELF-EMPLOYMENT BECAUSE OF YOUR DISABILITY? YES NO (If "Yes," give the facts in Item 21)
18. DO YOU RECEIVE/EXPECT TO RECEIVE DISABILITY RETIREMENT BENEFITS? YES NO
19. DO YOU RECEIVE/EXPECT TO RECEIVE WORKERS' COMPENSATION BENEFITS? YES NO
20. HAVE YOU TRIED TO OBTAIN EMPLOYMENT SINCE YOU BECAME TOO DISABLED TO WORK? YES NO (If "Yes," complete Items A, B, and C)

<table>
<thead>
<tr>
<th>A. NAME AND ADDRESS OF EMPLOYER</th>
<th>B. TYPE OF WORK</th>
<th>C. DATE APPLIED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
### SECTION III - SCHOOLING AND OTHER TRAINING

21. EDUCATION (Check highest year completed)

GRADE SCHOOL [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] 6 [ ] 7 [ ] 8  HIGH SCHOOL [ ] 1 [ ] 2 [ ] 3 [ ] 4  COLLEGE [ ] 1 [ ] 2 [ ] 3 [ ] 4

22A. DID YOU HAVE ANY OTHER EDUCATION AND TRAINING BEFORE YOU WERE TOO DISABLED TO WORK?

[ ] YES  [ ] NO  (If "Yes," complete items 22B and 22C)

<table>
<thead>
<tr>
<th>22B. TYPE OF EDUCATION OR TRAINING</th>
<th>22C. DATES OF TRAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEGINNING</td>
<td>COMPLETION</td>
</tr>
</tbody>
</table>

23A. HAVE YOU HAD ANY EDUCATION AND TRAINING SINCE YOU BECAME TOO DISABLED TO WORK?

[ ] YES  [ ] NO  (If "Yes," complete items 23B and 23C)

<table>
<thead>
<tr>
<th>23B. TYPE OF EDUCATION OR TRAINING</th>
<th>23C. DATES OF TRAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEGINNING</td>
<td>COMPLETION</td>
</tr>
</tbody>
</table>

24. REMARKS

### SECTION IV - AUTHORIZATION, CERTIFICATION, AND SIGNATURE

AUTHORIZATION FOR RELEASE OF INFORMATION: I authorize the person or entity, including but not limited to any organization, service provider, employer, or Government agency, to give the Department of Veterans Affairs any information about me except protected health information, and I waive any privilege which makes the information confidential.

CERTIFICATION OF STATEMENTS: I CERTIFY THAT as a result of my service-connected disabilities, I am unable to secure or follow any substantially gainful occupation and that the statements in this application are true and complete to the best of my knowledge and belief. I understand that these statements will be considered in determining my eligibility for VA benefits based on unemployability because of service-connected disability.

I UNDERSTAND THAT IF I AM GRANTED SERVICE-CONNECTED TOTAL DISABILITY BENEFITS BASED ON MY UNEMPLOYABILITY, I MUST IMMEDIATELY INFORM VA IF I RETURN TO WORK. I ALSO UNDERSTAND THAT TOTAL DISABILITY BENEFITS PAID TO ME AFTER I BEGIN WORK MAY BE CONSIDERED AN OVERPAYMENT REQUIRING REPAYMENT TO VA.

26. SIGNATURE OF CLAIMANT

26. DATE SIGNED

27. TELEPHONE NUMBER(S) (Include Area Code)

A. DAYTIME

B. NIGHTTIME

WITNESS TO SIGNATURE OF CLAIMANT IF MADE BY "X" MARK. NOTE: Signature made by mark must be witnessed by two persons to whom the person making the statement is personally known and the signature and address of such witnesses must be shown below.

28A. SIGNATURE OF WITNESS

28B. ADDRESS OF WITNESS

29A. SIGNATURE OF WITNESS

29B. ADDRESS OF WITNESS

Penalty: The law provides severe penalties which include fine or imprisonment or both for the willful submission of any statement or evidence of a material fact, knowing it to be false or for the fraudulent acceptance of any payment to which you are not entitled.

Privacy Act Notice: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 5BVA2/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. Giving us your SSN account information is mandatory. Applicants are required to provide their SSN under Title 38, U.S.C. 5101(c)(1). VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits provided under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

Respondent Burden: We need this information to determine eligibility for individual unemployment (38 U.S.C. 1163). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 45 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/ombinvt.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
**STATEMENT IN SUPPORT OF CLAIM**

**PRIVACY ACT INFORMATION:** The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.376 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. You obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

**RESPONDENT BURDEN:** We need this information to obtain evidence in support of your claim for benefits (28 U.S.C. 501(a) and (b)). Title 38, United States Code, allows VA to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/laws/OMBNSV.html. If desired, you can call 1-800-877-1009 to get information on where to send comments or suggestions about this form.

**FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)**

<table>
<thead>
<tr>
<th>SOCIAL SECURITY NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>VA FILE NO.</td>
</tr>
<tr>
<td>C/CSS -</td>
</tr>
</tbody>
</table>

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

**I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.**

<table>
<thead>
<tr>
<th>SIGNATURE</th>
<th>DATE SIGNED</th>
</tr>
</thead>
</table>

**ADDRESS**

<table>
<thead>
<tr>
<th>TELEPHONE NUMBERS (Include Area Code)</th>
<th>DAYTIME</th>
<th>EVENING</th>
</tr>
</thead>
</table>

**PENALTY:** The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.
The following statement is made in connection with a claim for benefits in the case of the above-named veteran:
GENERAL INSTRUCTIONS
FOR APPLICATION FOR DEPENDENCY AND INDEMNITY COMPENSATION, DEATH PENSION AND ACCRUED BENEFITS BY A SURVIVING SPOUSE OR CHILD (INCLUDING DEATH COMPENSATION IF APPLICABLE)
VA FORM 21-534

Note: Read very carefully, detach, and keep these instructions for your reference.

A. How can I contact VA if I have questions?
If you have any questions about this form, how to fill it out, or about VA benefits, contact your nearest VA regional office. You can locate the address of the nearest regional office in your telephone book blue pages under "United States Government, Veterans" or call 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833). You may also contact VA by Internet at https://iris.va.gov.

B. What is the purpose of VA Form 21-534?
Use VA Form 21-534 to apply for:

- VA benefits you may be entitled to receive as a surviving spouse or child of a deceased veteran, and
- any money VA owes the veteran but did not pay prior to his/her death (accrued benefits).

If you apply for any one of these benefits, the law requires that we also consider you for the others.

C. What is the purpose of the attached SSA-24 form?
You can apply for Social Security (SS) benefits by using the SSA-24 form attached to this VA Form (see pages 9 and 10). You don't have to apply if you don't want to or have already done so. If you do want to apply, fill it out and leave it attached. We will send it to the Social Security Administration for you. They will then contact you.

D. What are dependency and indemnity compensation (DIC) and death pension benefits, and how does VA decide what I will or will not receive?
1. Dependency and indemnity compensation may be payable when:
   - a veteran's death occurred in service, or
   - a veteran dies of a service-connected disability, or
   - in certain circumstances if a veteran rated totally disabled from service-connected disability dies from non-service-connected conditions.

2. Death pension may be payable when:
   - the death of a veteran with wartime service is not due to service, and
   - income is within applicable limits.

VA pays pension based on the amount of family income and the number of dependent children. This is based on law. VA must include as income all sources that Federal law specifies. If there is no surviving spouse, pension may be payable on behalf of a child or children.

Unless a claim for dependency and indemnity compensation or death pension is filed within one year from the date of the veteran's death, that benefit is not payable from a date earlier than the date the claim is received in the VA.

If it is determined that you are entitled to DIC and death pension, we will pay you whichever benefit entitles you to the most money. Benefit rates and income limits are frequently changed, so it is not possible to keep this information current in these instructions. You can find out what the current income limitations and rates of benefits are by contacting your nearest VA regional office.

E. How do I apply for aid and attendance allowance and/or housebound benefits?
VA may pay a higher rate of DIC or pension to a surviving spouse who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. If you wish to apply for this benefit, check "Yes" for Item 31.

F. How do I complete my application?
Print all answers clearly. If an answer is "none" or "0," write that. Your answer to every question is important to help us complete your claim. If you do not know the answer, write "unknown." For additional space, use Item 48, "Remarks," or attach a separate sheet, indicating the item number to which the answers apply. Make sure you sign and date this application (Items 44 and 45).

Note: If the claim is being made on behalf of a minor or incompetent person, the application form should be completed and filed by the legal guardian. If no legal guardian has been appointed, it may be completed and filed by some person acting on behalf of the minor or incompetent person.
G. What do I do when I have completed my application?

When you have completed this application mail it or take it to a VA regional office. Be sure to attach any materials that support and explain your claim. Also, make a photocopy of your application and everything that you submit to VA before mailing it.

H. How can I assign someone to act as my representative?

A representative can be an accredited member of an accredited organization or other service organization that the Secretary of Veterans Affairs recognizes, an agent recognized by VA, or a licensed lawyer. Agents and attorneys can charge you for services that you get from them only after the Board of Veterans' Appeals (BVA) gives you their final decision about your application. That means you can use an attorney during any stage of your application for benefits. However, the agent or attorney cannot charge you for services unless you are trying to resolve a dispute with VA after BVA has made a decision about your claim.

If you want to use a representative to help you with your application, contact the nearest VA office. Depending on the type of representative you want to designate, we will send you one of the following forms:

I. What if I believe that VA has made an error in processing or deciding my benefits?

You can ask for a personal hearing at any time during the processing of your claim. That means you can ask for the hearing while VA is processing your claim or after VA has made a decision. You should contact the nearest VA office and tell them that you want a personal hearing on your case. Someone in the local VA office will arrange a time and a place for your hearing. At this hearing, you can bring witnesses. VA will record whatever you and your witnesses say during the hearing and include it in the official record. VA will furnish the hearing room and officials, and prepare a transcript of the hearing. VA cannot pay your expenses or the expenses of anyone you want to bring with you to the hearing.

Privacy Act Notice: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22 Compensation, Pension, Education, and Rehabilitation Records - VA, and published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. Giving us your SSN account information is mandatory. Applicants are required to provide their SSN under Title 38 USC 5101 (c) (1). The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701).

Information that you furnish may be utilized in computer matching programs with other Federal or state agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs.

Respondent Burden: We need this information to determine eligibility for death benefits and accrued benefits under 38 U.S.C. 1310 through 1314, 1532 through 1543, and 5121. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 75 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valic OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/library/omb/OMBINVC.html?VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
Please read the attached "General Instructions" before you fill out this form.

**SECTION I**

**Tell us what you are applying for and what you and the deceased veteran have applied for**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Did the veteran ever file a claim with VA?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>2. What is the VA file number?</td>
<td></td>
</tr>
<tr>
<td>3. Has the surviving spouse or child ever filed a claim with VA?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>4. What is the VA file number?</td>
<td></td>
</tr>
<tr>
<td>5. What is the name of the person on whose service the claim was filed?</td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>Middle</td>
</tr>
<tr>
<td>6. What is your relationship to that person?</td>
<td></td>
</tr>
<tr>
<td>7. Are you claiming service connection for cause of death?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>8. What is the veteran's name?</td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>Middle</td>
</tr>
<tr>
<td>9. What is the veteran's Social Security number?</td>
<td></td>
</tr>
<tr>
<td>10a. Did the veteran serve under another name?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>(If &quot;Yes,&quot; answer Items 10b)</td>
<td></td>
</tr>
<tr>
<td>10b. Please list the other name(s) the veteran served under:</td>
<td></td>
</tr>
<tr>
<td>11. What is the veteran's date of birth?</td>
<td>mo day yr</td>
</tr>
<tr>
<td>12. What is the veteran's date of death?</td>
<td>mo day yr</td>
</tr>
<tr>
<td>13. Was the veteran a former prisoner of war?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>14. What is your name? (First, Middle, Last Name)</td>
<td></td>
</tr>
<tr>
<td>15. What is your relationship to the veteran? (check one)</td>
<td>Surviving Spouse / Child</td>
</tr>
<tr>
<td>16. What is your address?</td>
<td></td>
</tr>
<tr>
<td>Street address, Rural Route, or P.O. Box</td>
<td>Apt. number</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
<tr>
<td>17. What are your telephone numbers? (Include Area Code)</td>
<td></td>
</tr>
<tr>
<td>Daytime</td>
<td></td>
</tr>
<tr>
<td>Evening</td>
<td></td>
</tr>
<tr>
<td>18. What is your e-mail address?</td>
<td></td>
</tr>
<tr>
<td>19. What is your Social Security number?</td>
<td></td>
</tr>
<tr>
<td>20. What is your date of birth?</td>
<td>mo day yr</td>
</tr>
</tbody>
</table>

**SECTION II**

**Tell us about you and the deceased veteran**

Attach a copy of the death certificate unless the veteran died in active service of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or in a U.S. government institution.
**SECTION III**  
Tell us about the veteran’s active duty service

1. Enter complete information for all periods of service. If more space is needed use Item 48 “Remarks.”

2. If the veteran never filed a claim with VA, attach the original DD214 or a certified copy for each period of service listed. We will return original documents to you.

<table>
<thead>
<tr>
<th>21a. Entered Active Service (first period)</th>
<th>21b. Place</th>
<th>21c. Service Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>mo day yr</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>21d. Left This Active Service</th>
<th>21e. Place</th>
<th>21f. Branch of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>mo day yr</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>21h. Entered Active Service (second period)</th>
<th>21i. Place</th>
<th>21j. Service Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>mo day yr</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>21k. Left This Active Service</th>
<th>21l. Place</th>
<th>21m. Branch of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>mo day yr</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 21g. Grade, Rank, or Rating               |            |                      |
|                                           |            |                      |

**SECTION IV**  
Tell us about your and the veteran’s marital history

Attach a copy of your marriage certificate showing your marriage to the veteran.

Note: Skip to Section V if the veteran was receiving additional VA benefits for you at the time of his/her death unless you remarried after the veteran’s death.

You must furnish complete information about all marriages of the surviving spouse and the veteran. If you need additional space, please attach a separate sheet of paper providing the requested information about the marriages.

**The veteran’s marriages**

22a. How many times was the veteran married?

22b. Date of Marriage  
(city/state or country)  

22c. Place  
(city/state or country)  

22d. To whom married  
(first, middle initial, last name)  

22e. Date marriage ended  

22f. Place  
(city/state or country)  

22g. How marriage ended  
(death, divorce)  

<table>
<thead>
<tr>
<th>mo day yr</th>
<th>mo day yr</th>
<th>mo day yr</th>
<th>mo day yr</th>
</tr>
</thead>
</table>

**The surviving spouse’s marriages. Note: Items 23a through 27 should be completed by the veteran’s surviving spouse. If the claimant is not the surviving spouse, skip to Section V.**

23a. How many times were you married?

23b. Have you remarried since the death of the veteran?  
☐ Yes  ☐ No

23c. Date of Marriage  
(city/state or country)  

23d. Place  
(city/state or country)  

23e. To whom married  
(first, middle initial, last name)  

23f. Date marriage ended  

23g. Place  
(city/state or country)  

23h. How marriage ended  
(death, divorce)  

<table>
<thead>
<tr>
<th>mo day yr</th>
<th>mo day yr</th>
<th>mo day yr</th>
</tr>
</thead>
</table>

21-534  page 2
SECTION IV  Tell us about your and the veteran's marital history (continued)

Answer Item 24 only if you were married to the veteran for less than one year.

24. Was a child born to you and the veteran during your marriage or prior to your marriage?
   □ Yes  □ No

   25. Are you expecting the birth of a child of the veteran?
       □ Yes  □ No

   26. Did you live continuously with the veteran from the date of marriage to the date of his/her death?
       □ Yes  □ No
       (If "No", answer Item 27)

   27. What was the cause of the separation? Give the reason, date(s), and duration of the separation. If the separation was by court order, attach a copy of the order.

SECTION V  Tell us about the unmarried children of the veteran

Note: Skip to Section VI if you are not claiming benefits for any children that meet the following criteria.

VA recognizes the veteran's biological children, adopted children, and stepchildren as dependents. These children must be unmarried and:

- under age 18, or
- at least 18 but under 23 and pursuing an approved course of education, or
- of any age if they became permanently unable to support themselves before reaching age 18.

"Seriously disabled" (Item 29e) means that the child became permanently unable to support himself/herself before reaching age 18. Furnish a statement from an attending physician or other medical evidence which shows the nature and extent of the physical or mental impairment.

Note to surviving spouse: If entitlement to DIC is established, a "seriously disabled" child over age 18 is entitled to receive DIC benefits in his or her own right. A veteran's child who is seriously disabled and over age 18 must submit a separate VA Form 21-534 to apply for benefits.

<table>
<thead>
<tr>
<th>28a. Name of child (First, middle initial, Last)</th>
<th>28b. Date and place of birth (City/State or Country)</th>
<th>28c. Social Security Number</th>
<th>29a. Biological</th>
<th>29b. Adopted</th>
<th>29c. Stepchild</th>
<th>29d. 18 - 23 yrs old and in school</th>
<th>29e. Seriously disabled</th>
<th>29f. Child previously married</th>
</tr>
</thead>
<tbody>
<tr>
<td>mo day yr</td>
<td></td>
<td></td>
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<td>mo day yr</td>
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</tbody>
</table>

21-534  page 3
### SECTION V  Tell us about the unmarried children of the veteran (continued)

**Tell us about the children listed above that don’t live with you.**

<table>
<thead>
<tr>
<th>30a. Name of child</th>
<th>30b. Child’s Complete Address</th>
<th>30c. Name of person the child lives with (if applicable)</th>
<th>30d. Monthly amount you contribute to child’s support</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
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<td>$</td>
</tr>
</tbody>
</table>

### SECTION VI  Tell us if you are housebound, in a nursing home or require aid and attendance

If you answered "yes" to Item 31 and are not in a nursing home, submit a statement from your doctor showing the extent of your disabilities. If you are in a nursing home, attach a statement signed by an official of the nursing home showing the date you were admitted to the nursing home, the level of care you receive, the amount you pay out-of-pocket for your care, and whether Medicaid covers all or part of your nursing home costs.

<table>
<thead>
<tr>
<th>31. Are you claiming aid and attendance allowance and/or housebound benefits because you need the regular assistance of another person, are having severe visual problems, or are housebound?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
<tr>
<td><em>(If &quot;No,&quot; skip to section VII)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32a. Are you now in a nursing home?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
<tr>
<td><em>(If &quot;Yes,&quot; answer Items 32b and 32c also)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32b. What is the name and complete mailing address of the facility?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32c. Does Medicaid cover all or part of your nursing home costs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
<tr>
<td><em>(If &quot;No,&quot; answer Item 32d also)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32d. Have you applied for Medicaid?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>
### SECTION VII  Tell us the net worth of you and your dependents

**Note:** If you are filing this application on behalf of a minor or incompetent child of the veteran and you are the child's custodian, you must report your net worth as well as the net worth of the child for whom benefits are claimed.

VA cannot pay you pension if your net worth is sizeable. Net worth is the market value of all interest and rights you have in any kind of property less any mortgages or other claims against the property. However, net worth does not include the house you live in or a reasonable area of land it sits on. Net worth also does not include the value of personal things you use everyday like your vehicle, clothing, and furniture. You must report net worth for yourself and all persons for whom you are claiming benefits.

For items 33a through 33f, provide the amounts. If none, write "0" or "None."

<table>
<thead>
<tr>
<th>Source</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33a. Cash, bank accounts, certificates of deposit (CDs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33b. IRAs, Keogh Plans, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33c. Stocks, bonds, mutual funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33d. Value of business assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33e. Real property (not your home)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33f. All other property</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECTION VIII  Tell us about the income of you and your dependents

Payments from any source will be counted, unless the law says that they don't need to be counted. Report all income, and VA will determine any amount that does not count.

**Note:** If you are filing this application on behalf of a minor of whom you are the custodian, you must report your income as well as the income of each child for whom benefits are claimed.

Report the total amounts before you take out deductions for taxes, insurance, etc. Do not report the same information in both tables.

If you expect to receive a payment, but you don't know how much it will be, write "Unknown" in the space.

If you do not receive any payments from one of the sources that we list, write "0" or "None" in the space.

If you are receiving monthly benefits, give us a copy of your most recent award letter. This will help us determine the amount of benefits you should be paid.

<table>
<thead>
<tr>
<th>34a. Have you claimed or are you receiving benefits from the Social Security Administration on your own behalf or on behalf of child(ren) in your custody?</th>
<th>34b. Is Social Security based on your own employment?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No (If &quot;Yes,&quot; answer item 34b)</td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>35. Has a surviving spouse or child filed a claim for compensation from the Office of Worker's Compensation Programs based on the death of the veteran?</th>
<th>36. Has a court awarded damages based on the death of the veteran or is a claim or legal action for damages pending?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>37. Have you claimed or are you receiving Survivor Benefit Plan (SBP) annuity from a service department based on the death of the veteran?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>
### SECTION VIII Tell us about the income of you and your dependents (continued)

#### Monthly Income - Tell us the income you and your dependents receive every month

<table>
<thead>
<tr>
<th>Sources of recurring monthly income</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
</tbody>
</table>

| 38a. Social Security                |                                        |            |
| 38b. U.S. Civil Service            |                                        |            |
| 38c. U.S. Railroad Retirement      |                                        |            |
| 38d. Military Retirement           |                                        |            |
| 38e. Black Lung Benefits           |                                        |            |
| 38f. Supplemental Security Income (SSI)/ Public Assistance | | |
| 38g. Other income received monthly (Please write source below:) | | |

#### Expected income next 12 months - Tell us about other income for you and your dependents

Report expected income for the 12 month period following the veteran's death. If the claim is filed more than one year after the veteran died, report the expected income for the 12 month period from the date you sign this application.

<table>
<thead>
<tr>
<th>Sources of income for the next 12 months</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name: (first, middle initial, last)</td>
</tr>
</tbody>
</table>

| 39a. Gross wages and salary             |                                        |            |
| 39b. Total dividends and interest       |                                        |            |
| 39c. Other income expected (Please write source below:) | | |
| 39d. Other income expected (Please write source below:) | | |
**SECTION IX**

**Tell us about medical, last illness, burial or other unreimbursed expenses**

Family medical expenses and certain other expenses actually paid by you may be deductible from your income. Show the amount of any continuing family medical expenses such as the monthly Medicare deduction or nursing home costs you pay. Also, show unreimbursed last illness and burial expenses and educational or vocational rehabilitation expenses you paid. Last illness and burial expenses are unreimbursed amounts paid by you for the veteran's or his/her child's last illness and burial and the veteran's just debts. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials. **Do not** include any expenses for which you were reimbursed. If you receive reimbursement after you have filed this claim, promptly advise the VA office handling your claim. If more space is needed attach a separate sheet.

<table>
<thead>
<tr>
<th>40a. Amount paid by you</th>
<th>40b. Date Paid</th>
<th>40c. Purpose (Medicare deduction, nursing home costs, burial expenses, etc.)</th>
<th>40d. Paid to (Name of nursing home, hospital, funeral home, etc.)</th>
<th>40e. Relationship of person for whom expenses paid</th>
</tr>
</thead>
<tbody>
<tr>
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<td>mo day yr</td>
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</tr>
</tbody>
</table>

**SECTION X**

**Give us direct deposit information**

If benefits are awarded we will need more information in order to process any payments to you. Please read the paragraph starting with, "All Federal payments..." and then either:

1. Attach a voided check, or
2. Answer questions 41-43 to the right.

All Federal payments beginning January 2, 1999, must be made by electronic funds transfer (EFT) also called Direct Deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 41, 42, and 43 to enroll in Direct Deposit. If you do not have a bank account we will give you a waiver from Direct Deposit, just check the box below in Item 41. The Treasury Department is working on making bank accounts available to you. Once these accounts are available, you will be able to decide whether you wish to sign-up for one of the accounts or continue to receive a paper check. You can also request a waiver if you have other circumstances that you feel would cause you a hardship to be enrolled in Direct Deposit. You can write to: Department of Veterans Affairs, 125 S. Main Street Suite B, Muskogee OK 74401-7004, and give us a brief description of why you do not wish to participate in Direct Deposit.

41. Account number (Please check the appropriate box and provide that account number, if applicable)
   - Checking
   - Savings

   I certify that I **do not** have an account with a financial institution or certified payment agent

   Account number

42. Name of financial institution

43. Routing or transit number
SECTION XI  
Give us your signature

1. Read the box that starts, "I certify and authorize the release of information:"

2. Sign the box that says, "Your signature."

3. If you sign with an "X," then you must have 2 people you know witness you as you sign. They must then sign the form and print their names and addresses also.

I certify and authorize the release of information:
I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me except protected health information, and I waive any privilege which makes the information confidential.

<table>
<thead>
<tr>
<th>44. Your signature</th>
<th>45. Today's date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>mo day yr</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>46a. Signature of witness (If claimant signed above using an &quot;X&quot;)</th>
<th>46b. Printed name and address of witness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>47a. Signature of witness (If claimant signed above using an &quot;X&quot;)</th>
<th>47b. Printed name and address of witness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SECTION XII  
Remarks - Use this space for any additional statements that you would like to make concerning your application.

48. Remarks (If you need more space to answer a question or have a comment about a specific item number on this form please identify your answer or statement by the part and item number)

IMPORTANT

Penalty: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment which you are not entitled to.
**SOCIAL SECURITY ADMINISTRATION**

**APPLICATION FOR SURVIVORS BENEFITS**
(PAYABLE UNDER TITLE II OF THE SOCIAL SECURITY ACT)

**IMPORTANT-- Read instructions before completing form. Detach and retain ONLY the instruction sheet**

1. **FIRST NAME** - **MIDDLE NAME** - **LAST NAME OF VETERAN** (Type or print)
2. **DATE OF DEATH**

**NOTE:** If the veteran's Social Security No. is unknown, complete Items 4, 5, 8 and 7 about veteran.

3. **SOCIAL SECURITY NO. OF VETERAN**
4. **DATE OF BIRTH**
5. **PLACE OF BIRTH**

6. **NAME OF FATHER**
7. **MAIDEN NAME OF MOTHER**
8. **DID THE VETERAN WORK IN THE RAILROAD INDUSTRY AT ANY TIME AFTER 1936?**
   - [ ] YES
   - [ ] NO

**NOTE:** The following information should be furnished for each period of the veteran's active service (regular or reserves) after September 7, 1938, in the military service of the United States or service as a commissioned officer in the Public Health Service or the National Oceanic and Atmospheric Administration or during WWII, Philippine or Filipino or Allied country military service. If additional space is needed, attach a separate sheet.

9A. **DATE ENTERED ACTIVE SERVICE**
9B. **SERVICE NO.**
9C. **DATE SEPARATED FROM ACTIVE SERVICE**
9D. **RANGE, RANK, OR RATING, ORGANIZATION AND BRANCH OF SERVICE**

10. **RELATIONSHIP OF APPLICANT TO VETERAN**
   - [ ] SURVIVING SPOUSE
   - [ ] CHILD
   - [ ] PARENT

11. **DATE OF BIRTH OF APPLICANT**
12. **VA FILE NO.**

**CHILDREN:** Show names of surviving children (including natural children, adopted children and stepchildren) or dependent grandchildren (including steagrandchildren) who at any time since the veteran died, were unmarried and (a) under age 18; (b) age 18 to 19 and attending secondary school; (c) disabled or handicapped (18 or over and disability began before age 22).

13A.
13B.
13C.

I know that anyone who makes or causes to be made a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment, or both. I affirm that all information I have given in this document is true.

14. **DATE (Month, day, year)**
15. **SIGNATURE OF APPLICANT** (First name, middle initial, last name) (Sign in ink)
   - **SIGN HERE**

16. **MAILING ADDRESS OF APPLICANT** (No. and street or rural route, city or P.O., State and Zip Code)
17. **TELEPHONE NO.** (Include Area Code)

**WITNESSES REQUIRED ONLY IF SIGNATURE OF APPLICANT IS MADE BY "X" MARK ABOVE**

18A. **SIGNATURE OF WITNESS**
18B. **ADDRESS OF WITNESS** (No. and street, city, State and Zip Code)

19A. **SIGNATURE OF WITNESS**
19B. **ADDRESS OF WITNESS** (No. and street, city, State and Zip Code)

**ITEMS BELOW TO BE COMPLETED BY THE DEPARTMENT OF VETERANS AFFAIRS Use reverse for "Remarks"**

20. **PROOFS RECEIVED**
   - [ ] DEATH
   - [ ] MARRIAGE
   - [ ] AGE
   - [ ] OTHER (Specify)
   - (NAME)

21. **PROOFS REQUESTED FROM CLAIMANT OR OTHER (Specify)**
   - [ ] DEATH
   - [ ] MARRIAGE
   - [ ] AGE
   - [ ] OTHER (Specify)
   - (NAME)

22. **DATE**
23. **NAME AND ADDRESS OF TRANSMITTING VA OFFICE**
INSTRUCTIONS FOR COMPLETING FORM SSA-24, APPLICATION FOR SURVIVORS BENEFITS
(Payable Under Title II of the Social Security Act)

This application form, SSA-24, is an Application for Survivors Benefits Payable under Title II of the Social Security Act, as amended. Under authority of section 202(o) of the Social Security Act, the application requests information in order to determine eligibility to social security benefits.

You do not have to complete this application; there are no penalties under the law if you do not complete part or all of the SSA-24. However, it is usually to your advantage to provide the information because not providing it could prevent an accurate and timely decision on your claim or could result in the loss of some benefits or insurance coverage.

If you do wish to supply the information requested on the SSA-24, this information will be forwarded to the Social Security Administration and used by them to determine whether social security benefits may be payable to surviving dependent(s) of the veteran. Social Security will then contact you regarding any social security benefits payable based on information given on this form.

Please understand that Social Security may, in certain instances, disclose the information on this form to another Federal, State or local agency or individual without your written consent. This would be done in order to:

- enable a third party or an agency to assist Social Security in establishing an individual's right to benefits or coverage;
- comply with Federal laws which require or authorize the release of information from social security records; and
- facilitate statistical research and audit activities necessary to assure the integrity and improvement of the social security programs.

If you should have any question about entitlement to social security benefits or the information you have provided on this form, please contact your local social security office.

Complete each item of the attached application, Form SSA-24, (except Items 20 through 23). When signed and dated the form SHOULD BE LEFT ATTACHED to your completed

- VA FORM 21-534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable) or
- VA FORM 21-535, Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable).

PAPERWORK REDUCTION ACT: This information collection meets the clearance requirements of 44 U.S.C. §3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You are not required to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take you about 15 minutes to read the instructions, gather the necessary facts, and answer the questions.
# Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)

**Instructions:** List the stressful incident or incidents that occurred in service that you feel contributed to your current condition. For each incident, provide a description of what happened, the date, the geographic location, your unit assignment and dates of assignment, and the full names and unit assignments of servicepersons you know of who were killed or injured during the incident. Please provide dates within at least a 60-day range and do not use nicknames. It is important that you complete the form in detail and be as specific as possible so that research of military records can be thoroughly conducted. If more space is needed, attach a separate sheet, indicating the item number to which the answers apply.

1. **Name of Veteran (First, Middle, Last)**
2. **VA File No.**

## Stressful Incident No. 1

3A. **Date Incident Occurred (Mo., day, yr.)**
3B. **Location of Incident (City, State, Country, Province, landmark or military installation)**

3C. **Unit Assignment During Incident (Such as, Division, Wing, Battalion, Calvary, Ship)**
3D. **Dates of Unit Assignment (Mo., day, yr.)**

FROM  
TO  

3E. **Description of the Incident**

3F. **Medals or Citations You Received Because of the Incident**

## Information About Servicepersons Who Were Killed or Injured During Incident No. 1

(Attach a separate sheet if more space is needed)

4A. **Name of Serviceperson (First, Middle, Last)**
4B. **Rank**
4C. **Date of Injury/Death (Mo., day, yr.)**

4D. **Please Check One**
- [ ] KILLED IN ACTION  
- [ ] WOUNDED IN ACTION
- [ ] KILLED NON-BATTLE  
- [ ] INJURED NON-BATTLE

4E. **Unit Assignment During Incident (Such as, Division, Wing, Battalion, Calvary, Ship)**

5A. **Name of Serviceperson (First, Middle, Last)**
5B. **Rank**
5C. **Date of Injury/Death (Mo., day, yr.)**

5D. **Please Check One**
- [ ] KILLED IN ACTION  
- [ ] WOUNDED IN ACTION
- [ ] KILLED NON-BATTLE  
- [ ] INJURED NON-BATTLE

5E. **Unit Assignment During Incident (Such as, Division, Wing, Battalion, Calvary, Ship)**
**STRESSFUL INCIDENT NO. 2**

<table>
<thead>
<tr>
<th>6A. DATE INCIDENT OCCURRED (Mo., day, yr.)</th>
<th>6B. LOCATION OF INCIDENT (City, State, Country, Province, landmark or military installation)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>6C. UNIT ASSIGNMENT DURING INCIDENT (Such as, DIVISION, WING, BATTALION, CALVARY, SHIP)</th>
<th>6D. DATES OF UNIT ASSIGNMENT (Mo., day, yr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FROM</td>
</tr>
<tr>
<td></td>
<td>TO</td>
</tr>
</tbody>
</table>

| 6E. DESCRIPTION OF THE INCIDENT |

| 6F. MEDALS OR CITATIONS YOU RECEIVED BECAUSE OF THE INCIDENT |

**INFORMATION ABOUT SERVICEPERSONS WHO WERE KILLED OR INJURED DURING INCIDENT NO. 2**

(ATTACH A SEPARATE SHEET IF MORE SPACE IS NEEDED)

<table>
<thead>
<tr>
<th>7A. NAME OF SERVICEPERSON (First, Middle, Last)</th>
<th>7B. RANK</th>
<th>7C. DATE OF INJURY/DEATH (Mo., day, yr.)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>7D. PI FASF CHECK ONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>KILLED IN ACTION</td>
</tr>
<tr>
<td>WOUNDED IN ACTION</td>
</tr>
<tr>
<td>KILLED NON-BATTLE</td>
</tr>
<tr>
<td>INJURED NON-BATTLE</td>
</tr>
</tbody>
</table>

| 7E. UNIT ASSIGNMENT DURING INCIDENT (Such as, DIVISION, WING, BATTALION, CALVARY, SHIP) |

<table>
<thead>
<tr>
<th>8A. NAME OF SERVICEPERSON (First, Middle, Last)</th>
<th>8B. RANK</th>
<th>8C. DATE OF INJURY/DEATH (Mo., day, yr.)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>8D. PLEASE CHECK ONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>KILLED IN ACTION</td>
</tr>
<tr>
<td>WOUNDED IN ACTION</td>
</tr>
<tr>
<td>KILLED NON-BATTLE</td>
</tr>
<tr>
<td>INJURED NON-BATTLE</td>
</tr>
</tbody>
</table>

| 8E. UNIT ASSIGNMENT DURING INCIDENT (Such as, DIVISION, WING, BATTALION, CALVARY, SHIP) |

| 9. REMARKS |

I certify that the foregoing statement(s) are true and correct to the best of my knowledge and belief.

<table>
<thead>
<tr>
<th>10. SIGNATURE</th>
<th>11. DATE</th>
<th>12. TELEPHONE NUMBERS (Include Area Code)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>DAYTIME               EVENING</td>
</tr>
</tbody>
</table>

**PENALTY** - The law provides severe penalties which include fine or imprisonment or both, for the willful submission of any statement or evidence of a material fact, knowing it is false, or fraudulent acceptance of any payment to which you are not entitled.

**PRIVACY ACT NOTICE**: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is voluntary. However, the requested information is necessary to obtain supporting evidence of stressful incidents in service. If the information is not furnished completely or accurately, VA will not be able to thoroughly research your military records for supporting evidence. The responses you submit are considered confidential (38 U.S.C. 5701).

**RESPONDENT BURDEN**: We need this information in order to assist you in supporting your claim for post-traumatic stress disorder (38 U.S.C. C. 5107 (a)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 1 hour 10 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at [www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html](http://www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html)VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
**INSTRUCTIONS:** List the stressful incident or incidents that occurred in service that you feel contributed to your current condition. For each incident, provide a description of what happened, the date, the geographic location, your unit assignment and dates of assignment. Please complete the form in detail and be as specific as possible so that research of military records and other sources you identify can be thoroughly conducted. If more space is needed, attach a separate sheet, indicating the item number to which the answers apply.

<table>
<thead>
<tr>
<th>1. NAME OF VETERAN (First, Middle, Last)</th>
<th>2. VA FILE NO.</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

<table>
<thead>
<tr>
<th>STRESSFUL INCIDENT NO. 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>3A. DATE INCIDENT OCCURRED (Mo., day, yr.)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3C. UNIT ASSIGNMENT DURING INCIDENT (Such as, DIVISION, WING, BATTALION, CALVARY, SHIP)</th>
<th>3D. DATES OF UNIT ASSIGNMENT (Mo., day, yr.) FROM</th>
<th>TO</th>
</tr>
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<tbody>
<tr>
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<table>
<thead>
<tr>
<th>3E. DESCRIPTION OF THE INCIDENT</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

4. OTHER SOURCES OF INFORMATION: Identify any other sources (military or non-military) that may provide information concerning the incident. If you reported the incident to military or civilian authorities or sought help from a rape crisis center, counseling facility, or health clinic, etc., please provide the names and addresses and we will assist you in getting the information. If the source provided treatment and you would like us to obtain the treatment records, complete VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA), for each provider. If you confided in roommates, family members, chaplains, clergy, or fellow service persons, you may want to ask them for a statement concerning their knowledge of the incident. These statements will help us in deciding your claim. Other sources of information also include personal diaries or journals.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
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<tbody>
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<table>
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<tr>
<th>NAME</th>
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<table>
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<tr>
<th>NAME</th>
<th>ADDRESS</th>
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</table>

VA FORM 21-0781a EXISTING STOCK OF VA FORM 21-0781A, JUL 2004, WILL BE USED.
6. OTHER SOURCES OF INFORMATION: Identify any other sources (military or non-military) that may provide information concerning the incident. If you reported the incident to military or civilian authorities or sought help from a rape crisis center, counseling facility, or health clinic, etc., please provide the names and addresses and we will assist you in getting the information. If the source provided treatment and you would like us to obtain the treatment records, complete VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA), for each provider. If you confided in roommates, family members, chaplains, clergy, or fellow service persons, you may want to ask them for a statement concerning their knowledge of the incident. These statements will help us in deciding your claim. Other sources of information also include personal diaries or journals.

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<tr>
<td>NAME</td>
<td>ADDRESS</td>
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</tr>
</tbody>
</table>
7. Please provide in the space below any other information that you feel is important for us to know that may help your claim. Let us know if you experienced any of the following or other behavior changes following the incident(s):

- visits to a medical or counseling clinic or dispensary without a specific diagnosis or specific ailment
- sudden requests for a change in occupational series or duty assignment
- increased use of leave without an apparent reason
- changes in performance and performance evaluations
- episodes of depression, panic attacks, or anxiety without an identifiable cause
- increased or decreased use of prescription medications
- increased use of over-the-counter medications
- substance abuse such as alcohol or drugs
- increased disregard for military or civilian authority
- obsessive behavior such as overeating or undereating
- pregnancy tests around the time of the incident
- tests for HIV or sexually transmitted diseases
- unexplained economic or social behavior changes
- breakup of a primary relationship

I CERTIFY THAT the foregoing statement(s) are true and correct to the best of my knowledge and belief.

8. SIGNATURE

9. DATE

10. TELEPHONE NUMBERS (Include Area Code)

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PENALTY - The law provides severe penalties which include fine or imprisonment or both, for the willful submission of any statement or evidence of a material fact, knowing it is false, or fraudulent acceptance of any payment to which you are not entitled.

PRIVACY ACT NOTICE: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is voluntary. However, the requested information is necessary to obtain supporting evidence of stressful incidents in service. If the information is not furnished completely or accurately, VA will not be able to thoroughly research your military records and other sources for supporting evidence. The responses you submit are considered confidential (38 U.S.C. 5701).

RESPONDENT BURDEN: We need this information in order to assist you in supporting your claim for post-traumatic stress disorder (38 U.S.C. 5107 (a)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 1 hour and 10 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
**Department of Veterans Affairs**

**AUTHORIZATION AND CONSENT TO RELEASE INFORMATION TO THE DEPARTMENT OF VETERANS AFFAIRS (VA)**

Important Notice About Information Collection: We need this information to obtain your treatment records. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/OMBINVC.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

**IF YOU HAVE ANY QUESTIONS ABOUT THIS FORM, CALL VA TOLL-FREE AT 1-800-827-1000 (TDD 1-800-829-4833 FOR HEARING IMPAIRED).**

**SECTION I - VETERAN/CLAIMANT IDENTIFICATION**

1. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)
2. VETERAN'S VA FILE NUMBER
3. CLAIMANT'S NAME (If other than Veteran) LAST NAME, FIRST, MIDDLE
4. VETERAN'S SOCIAL SECURITY NUMBER
5. RELATIONSHIP OF CLAIMANT TO VETERAN
6. CLAIMANT'S SOCIAL SECURITY NUMBER

**SECTION II - SOURCE OF INFORMATION**

7A. LIST THE NAME AND ADDRESS OF THE SOURCE SUCH AS A PHYSICIAN, HOSPITAL, ETC. (Include ZIP Codes, and also a telephone number, if available)
7B. DATE(S) OF TREATMENT, HOSPITALIZATIONS, OFFICE VISITS, DISCHARGE FROM TREATMENT OR CARE, ETC. (Include month and year)
7C. CONDITION(S) (Illness, injury, etc.)

8. COMMENTS:

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**YOU MUST SIGN AND DATE THIS FORM ON PAGE 2 AND CHECK THE APPROPRIATE BLOCK IN ITEM 9C.**
SECTION III - CONSENT TO RELEASE INFORMATION

READ ALL PARAGRAPHS CAREFULLY BEFORE SIGNING. YOU MUST CHECK THE APPROPRIATE STATEMENT UNDERLINED IN PARENTHESES IN PARAGRAPH 9C.

9A. Privacy Act Notice: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58 VA21/22/28 Compensation, Pension, Education, and Rehabilitation Records - VA, and published in the Federal Register. Your obligation to respond is voluntary. However, if the information including your Social Security Number (SSN) is not furnished completely or accurately, the health care provider to which this authorization is addressed may not be able to identify and locate your records, and provided a copy to VA. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect.

9B. I, the undersigned, hereby authorize the hospital, physician or other health care provider or health plan shown in Item 7A to release any information that may have been obtained in connection with a physical, psychological or psychiatric examination or treatment, with the understanding that VA will use this information in determining my eligibility to veterans benefits I have claimed. I understand that the health care provider or health plan identified in Item 7A who is being asked to provide the Veterans Benefits Administration with records under this authorization may not require me to execute this authorization before it will, or will continue to, provide me with treatment, payment for health care, enrollment in a health plan, or eligibility for benefits provided by it. I understand that once my health care provider sends this information to VA under this authorization, the information will no longer be protected by the HIPAA Privacy Rule, but will be protected by the Federal Privacy Act, 5 USC 552a, and VA may disclose this information as authorized by law. I also understand that I may revoke this authorization, at anytime (except to the extent that the health care provider has already released information to VA under this authorization) by notifying the health care provider shown in Item 7A. Please contact the VA Regional Office handling your claim or the Board of Veterans' Appeals, if an appeal is pending, regarding such action. If you do not revoke this authorization, it will automatically end 180 days from the date you sign and date the form (Item 10C).

9C. ☐ (AUTHORIZE) ☐ (DO NOT AUTHORIZE) the source shown in Item 7A to release or disclose any information or records relating to the diagnosis, treatment or other therapy for the condition(s) of drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), sickle cell anemia or psychotherapy notes. IF MY CONSENT TO THIS INFORMATION IS LIMITED, THE LIMITATION IS WRITTEN HERE:

________________________________________________________________________

________________________________________________________________________

10A. SIGNATURE OF VETERAN/CLAIMANT OR LEGAL REPRESENTATIVE 10B. RELATIONSHIP TO VETERAN/CLAIMANT 10C. DATE

(If other than self, please provide full name, title, organization, city, State and ZIP Code. All court appointments must include docket number, county and State)

10D. MAILING ADDRESS (Number and Street or rural route, city, or P.O. State and ZIP Code) 10E. TELEPHONE NUMBER (Include Area Code)

The signature and address of a person who either knows the person signing this form or is satisfied as to that person's identity is requested below. This is not required by VA but may be required by the source of the information.

11A. SIGNATURE OF WITNESS 11B. DATE

11C. MAILING ADDRESS OF WITNESS
STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 38VA21/22. Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 591(c) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, fill the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/lio/OMBINSV.htm. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

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<th>FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)</th>
<th>SOCIAL SECURITY NO.</th>
<th>VA FILE NO.</th>
<th>C/CSS -</th>
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The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

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<th>SIGNATURE</th>
<th>DATE SIGNED</th>
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<th>ADDRESS</th>
<th>TELEPHONE NUMBERS (Include Area Code)</th>
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PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.
The following statement is made in connection with a claim for benefits in the case of the above-named veteran:
VA'S NEW, FINAL, REGULATIONS GOVERNING ACCREDITATION OF AGENTS AND ATTORNEYS; AGENT AND ATTORNEY FEES; FINAL RULE (73 FED. REG. 29,852 (MAY 22, 2008))
Thursday,
May 22, 2008

Part II

Department of Veterans Affairs

38 CFR Parts 1, 14, 19 and 20
Accreditation of Agents and Attorneys; Agent and Attorney Fees; Final Rule
DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 14, 19 and 20

RIN 2900–AM62

Accreditation of Agents and Attorneys; Agent and Attorney Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing the representation of claimants for veterans benefits in order to implement provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and to reorganize and clarify existing regulations. As amended, the regulations establish the procedures and rules necessary for VA to facilitate the paid representation of claimants by accredited agents and attorneys after a Notice of Disagreement has been filed with respect to a decision by an agency of original jurisdiction while ensuring that VA's proposed attorney accreditation requirements and the centralization of attorney accreditation and disciplinary proceedings in the Office of the General Counsel (OGC). The comments are discussed below. Based on the rationale described in this document and in the notice of the proposed rulemaking, VA adopts the proposed rule as revised in this document.

Section 14.627—Definitions

Noting some confusion in the comments concerning accreditation of individuals and when those individuals would be considered to be providing representation in a proceeding before the Department for purposes of charging fees, we modified the definitions in 38 CFR 14.627(a) and (n) to clarify that “accreditation” means authority to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits, and that “representation” means the acts associated with representing a claimant in a proceeding before the Department pursuant to a properly executed and filed VA Form 21–22 (appointment of service organization) or VA Form 21–22a (appointment of individual).

In § 14.627(d), we amend the definition of “attorney” to mean a member in good standing of a State bar who has met the requirements prescribed in 38 CFR 14.629(b) for practice before VA. One commenter opined that changing the definition of “attorney” as proposed in § 14.627(d) was unnecessary. Another commenter, without taking a position on the appropriateness of the proposed definition, suggested VA address the question of whether the Agency Practice Act, 5 U.S.C. 500(b), prohibits VA from regulating attorney practice before the Department. We discuss VA’s authority to regulate attorney practice before VA below under § 14.629.

We disagree that a change in the definition of “attorney” is unnecessary. Prior to the enactment of Public Law 109–461, VA accredited attorneys for practice before the Department based solely upon being a member in good standing of a State bar. However, Public Law 109–461 amended 38 U.S.C. 5904(a) and directed VA to prescribe, in regulations, qualifications and standards of conduct for practice before the Department. As discussed in greater detail below, the final rule does not require attorneys to submit to a character and fitness evaluation or pass a written exam to be accredited. Nonetheless, attorneys must apply for accreditation, certify their standing annually, and complete continuing legal education (CLE) requirements established by VA. Because these are requirements beyond bar membership we retain the definition of “attorney” as proposed.

Four commenters suggested that VA amend the definition of “claim” in § 14.627(g). One commenter suggested that we place the definition in 38 CFR part 3.

We agree that clarification is necessary concerning when a fee is payable for representation, especially in circumstances where more than one representative, agent, or attorney is involved. A number of commenters requested that we reconcile the definition of “claim” in § 14.627(g) with case law, including Carpenter v. Nicholson, 452 F.3d 1379 (Fed. Cir. 2006). Because the definition of “claim” in § 14.627(g) is identical to the prior definition we will retain it as proposed but will address commenters’ concerns and reconcile the case law in § 14.636(c), the section pertaining to the circumstances under which fees may be charged.

One commenter recommended that the definition of “service” under § 14.627(o) include a proof of receipt component. We disagree. The commenter makes this suggestion based upon the alleged failure of VA to properly deliver correspondence related to benefit claims. However, requiring proof of service under part 14 does not address the commenter’s concerns about benefit claims. Under part 14, claimants and attorneys are required to “serve” documents related to claimants’ or the General Counsel’s motions for review of fee agreements. Such service is not related to the manner in which VA mails or proves mailing of documents related to claims. Furthermore, we modeled our proposed service rules after the rules of practice and procedure generally followed by litigants, practitioners and courts, such as Rule 5(b) of the Federal Rules of Civil Procedure and Rule 25(c) of the Federal Rules of Appellate Procedure, both of which provide that service by mail is complete on mailing.

Section 14.629—Requirements for Accreditation of Representatives, Agents, and Attorneys

In 38 CFR 14.629, we proposed to continue administering VA’s accreditation program in OGC and to clarify that the Assistant General Counsel has primary responsibility for the program. We received numerous comments regarding the requirements for accreditation. Several commenters suggested that it was a conflict of interest and a violation of due process.
for OGC to administer the accreditation program because the General Counsel is the Secretary’s legal advisor and represents the Secretary in benefits matters that are appealed to the U.S. Court of Appeals for Veterans Claims. These commenters asserted that OGC might use the accreditation program to screen out opposing counsel or to retaliate against parties in benefits litigation.

We agree that individuals seeking accreditation have the right to a timely decision based solely on the merits of their application by an impartial and unbiased decision maker. However, the argument that VA’s accreditation program, as clarified by the amendments in 38 CFR 14.629, creates a conflict of interest and violates due process is not supported in law or in fact.

The VA General Counsel or his designee may lawfully determine whether an applicant satisfies the requirements for accreditation. In 38 U.S.C. 5904(a), Congress granted the Secretary of Veterans Affairs the authority to accredit agents and attorneys for practice before VA. See also 38 U.S.C. 5901 (“[N]o individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.”).

Congress has also authorized the Secretary to delegate authority to act and to render decisions under the laws administered by VA as he deems necessary. See 38 U.S.C. 512. The Secretary, then the Administrator of Veterans Affairs, first delegated the authority for the accreditation program to the General Counsel in 1954 in a new 38 CFR part 14.19 FR 5556, Aug. 31, 1954. The United States Supreme Court has held that such delegations, involving the combination of functions in a single decision maker, do not violate due process. See Withrow v. Larkin, 421 U.S. 35 (1975). Further, general allegations of conflict are not sufficient to rebut the strong presumption “that public officers perform their duties correctly, fairly, in good faith, and in accordance with law and governing regulations.” Haley v. Department of the Treasury, 977 F.2d 553, 558 (Fed. Cir. 1992) (quoting Parsons v. United States, 670 F.2d 164, 166 (Cl. Ct. 1982)), cert. denied, 508 U.S. 950 (1993). See also Assoc. of Nat’l Advertisers v. FTC, 627 F.2d 1151, 1170 (D.C. Cir. 1979) (agency decision-maker “should be disqualified for a conflict of interest) only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding”.

In a case in which a corporation regulated by a Federal agency asserted that an agency decision maker participating in an investigation of a regulatory violation had prejudged its claim resulting in a violation of procedural due process, the U.S. Court of Appeals for the Federal Circuit held that the corporation could prevail on its claim “only if it can establish that the decision maker is not ‘capable of judging a particular controversy fairly on the basis of its own circumstances.’” NEC Corp. v. United States, 151 F.3d 1361, 1373 (1998) (quoting United States v. Morgan, 313 U.S. 409, 421 (1941)). See also Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass’n, 426 U.S. 482, 493 (1976). “This standard is met when the challenger demonstrates, for example, that the decision maker’s mind is ‘irrevocably closed’ on a disputed issue.” NEC Corp., 151 F.3d at 1373 (other citations omitted).

The commenters have not alleged any facts indicating an actual conflict of interest in OGC’s administration of the accreditation program. The comments also suggest a misunderstanding of VA’s organizational structure and the scope of VA’s authority under 38 U.S.C. Chapter 59. Claims for VA benefits are adjudicated by agencies of original jurisdiction within one of the Department’s administrations (Veterans Benefits Administration, Veterans Health Administration, National Cemetery Administration) and those decisions are generally subject to review by the Board of Veterans’ Appeals (Board), which makes the final agency decision on benefit claims. Although the Board is obligated by law to follow precedent opinions of the General Counsel, the Chairman of the Board is appointed by the President and is directly responsible to the Secretary, not the General Counsel. 38 U.S.C. 7101(a), 7104(c). Staff attorneys assist Board members in rendering decisions on benefit claims, but these attorneys are employees of the Board, not OGC. Also, VA’s authority is to regulate agents’ and attorneys’ practice before the agencies of original jurisdiction and the Board, not practice before Federal appellate courts. See 38 U.S.C. 5904 (authorizing suspension or exclusion from “practice before the Department”). Although OGC attorneys represent the Department before the Court of Appeals for Veterans Claims, they are not involved in the adjudication of claims before VA’s agencies of original jurisdiction or the Board, the two forums in the Department where the accreditation provisions in 38 CFR part 14 are applicable. Under its limited accreditation authority, OGC cannot control or otherwise limit attorney admission to practice before the courts. In our view, continuing administration of the accreditation program in OGC is necessary to avoid conflicts that might arise from involvement of VA officers with claim adjudication responsibility and to ensure that only individuals with the appropriate legal expertise are involved in accreditation determinations.

We received four comments regarding the process for appealing an adverse initial accreditation decision of the Assistant General Counsel to the General Counsel. One commenter stated that although a final decision of the General Counsel may not be appealable within VA, “it is clearly appealable under the Administrative Procedure Act (APA) and the Department should revise proposed § 14.629 to so state.” We agree. A decision to deny accreditation under 38 U.S.C. 5904(a) is based solely upon a determination of whether an applicant has satisfied the requirements prescribed in regulations for accreditation. VA did not propose to deny judicial review of these decisions, only to clarify that review is in the U.S. District Court under the Administrative Procedure Act (5 U.S.C. 701–706) rather than in the administrative review system that Congress designed for adjudicating veterans benefit claims.

Although the Court of Appeals for the Federal Circuit held in Nicholson, 398 F.3d 1355 (Fed. Cir. 2005), that section 5904 is a law that affects the provision of veterans benefits for purposes of the Board’s jurisdiction, the court did not address the distinction between decisions denying accreditation under section 5904(a) and decisions cancelling accreditation under section 5904(b). Whereas a decision to cancel or suspend accreditation may indirectly affect the provision of benefits because it may result in withdrawal of representation and delay in adjudication, a decision to deny accreditation has no affect on pending adjudications. An unsuccessful accreditation applicant has had no lawful contact with VA’s benefits system as a representative, agent, or attorney. Moreover, we do not interpret section 5904(a) as expressing congressional intent to extend VA’s informal and nonadversarial adjudication process to individuals seeking admission to practice before VA. As such, an initial decision to deny accreditation to practice before VA under 38 CFR 14.629 is separate and
distinct from a decision to suspend or cancel accreditation under 38 CFR 14.633, which may be appealed to the Board under Bates. We will amend the introduction to § 14.629 to clarify that the General Counsel’s decision denying accreditation is a final agency action for purposes of 5 U.S.C. 702.

Another commenter recommended that VA adopt a procedure for appeal of initial accreditation decisions similar to that provided in 38 CFR 14.633 for suspension or cancellation of accreditation because a denial of accreditation would impact a VSO representative’s ability to remain employed. We disagree and will not make any changes based on this comment.

A service organization representative may not represent claimants before VA without VA accreditation under § 14.629(a); therefore, any employment by a VSO of an individual for purposes of providing representation before VA must be conditional. Procedural due process requires that an individual receive notice and an opportunity to respond before being deprived of a protected property or liberty interest. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985). However, an applicant does not have a protected liberty or property interest sufficient to warrant notice and opportunity for a hearing prior to VA making a decision on an accreditation application. See White v. Office of Pers. Mgmt., 787 F.2d 660, 663–64 (D.C. Cir. 1986) (“before the right to a hearing attaches, a deprivation greater than the denial of a particular job application must be involved”).

To the extent the commenter suggests that a decision of the General Counsel to deny accreditation warrants some procedural due process, the process provided in the introduction to § 14.629 provides both notice and an opportunity to respond adequate to the nature of the interest involved. In the event the Assistant General Counsel denies an application for accreditation, the Assistant General Counsel will notify the unsuccessful applicant of the reasons for disapproval and provide the applicant with an opportunity to submit additional information. If the Assistant General Counsel continues to deny the application, the applicant may appeal the decision to the General Counsel, the record forwarded to the General Counsel for review will include the additional information submitted by the applicant in response to the initial denial. Timely decisions on accreditation are important to both applicants and the Department; consequently, this provision is designed to encourage applicants to provide information in a timely manner to facilitate final resolution of the matter by the General Counsel.

We received many comments regarding the proposed requirement in § 14.629(b) that attorneys achieve a score of 75 percent or higher on a written examination as a condition of accreditation. We received eight comments in favor of testing, and 27 comments opposed to testing.

Among those commenters generally favoring testing, four stated that testing alone was insufficient to ensure continued competency to represent veterans before VA and recommended that VA require some form of CLE to ensure continued competency. Three commenters, while acknowledging the value of testing as a means to ensure competency, expressed concern that such a requirement would discourage pro bono representation of indigent veterans. Similarly, the two most prevalent reasons provided for opposition to testing was that CLE was necessary to maintain competency and that testing would discourage pro bono representation of claimants. The majority of the remaining comments expressing opposition to testing as a requirement for attorney accreditation fell into one of four general categories: (1) The proposed rule failed to consider other alternatives to testing; (2) testing is contrary to Congressional intent; (3) testing is contrary to 5 U.S.C. 500, the Agency Practice Act; and (4) a testing requirement is redundant because attorneys have already demonstrated competency by passing a bar examination.

In drafting the accreditation provisions in the proposed rule, VA was required to reconcile the competing interests reflected in section 101 of Public Law 109–461. In section 5904(c), Congress directed that veterans were to be provided the option of retaining paid representation earlier in the administrative appeals process, after a Notice of Disagreement was filed with respect to a case. However, in section 5904(a), Congress directed that VA establish in regulations qualifications for practice before VA to ensure that agents and attorneys have specialized training or experience where VA had previously only required membership in good standing with a State bar as a requirement for attorney accreditation. Sections 5904(a) and (c) require VA to develop a program of agent and attorney accreditation that ensures competent representation while facilitating choice of representation.

In section 5904(a)(2), Congress gave VA the choice of prescribing in regulations a requirement that, as a condition of accreditation as an agent or attorney, an individual must have either a specific level of experience or specialized training. In drafting the proposed rule, we considered alternative means including practical experience through which applicants for accreditation could demonstrate either experience or training and concluded that testing provided balance between ensuring competency and providing choice of representation. After weighing all the options and considering the comments, we decided, with respect to attorneys, that a law degree, bar membership in good standing, and CLE in veterans benefits law and procedure is the best method to fulfill congressional intent as expressed in section 101 of Public Law 109–461. Although VA has authority under section 5904(a)(2) to ensure attorney competence through testing, we considered the formal education and testing already required of licensed attorneys, the potential chilling effect of further testing on pro bono representation of indigent veterans, and the absence of complaints concerning
attorney competence in representation before the Department under former law, and concluded that completion of CLE requirements is a better choice for veterans, their attorneys, and VA. Accordingly, we will take a measured approach in regulating the practice of attorneys before the Department and will amend the rule to remove the testing requirement and instead require the completion of State-bar-approved CLE credits to maintain accreditation. We will evaluate this method of ensuring competent attorney representation and may revisit the issue of testing at a later date.

After drafting the proposed rule, we learned that several State bar associations have offered, currently offer, or will offer CLE courses in veterans benefits law and procedure, some of which are available in formats capable of supporting distance learning for persons outside the jurisdiction. Other organizations offer veterans benefits law and procedure training that has been approved for CLE credit by some States. Accordingly, we will amend §14.629(b) to provide that an initial 3 hours of State-bar-approved CLE in veterans benefits law and procedure is required for agents and attorneys. Additionally, to maintain accreditation, agents and attorneys would be required to periodically complete 3 hours of State-bar-approved CLE in veterans benefits law and procedure. VA will review available training as necessary to ensure sufficiency. Agents and attorneys applying for accreditation must satisfy the initial CLE requirement during the first year of accreditation and must satisfy the follow-on CLE requirement every 2 years thereafter. Upon completion of the initial and follow-on CLE requirements, agents and attorneys must certify in writing to OGC that they will maintain in good standing and a written declaration of representation. However, in amended section 5904(a), Congress expressly directed VA to prescribe in regulations additional requirements for practice before the Department. In amending section 5904(a), Congress is presumed to have been aware of the Agency Practice Act, and, as a result, section 5904(a) as implemented by VA in §14.629(b) should not be read as being in conflict with that act or the intent of Congress. See 2A Norman J. Singer, Statutes & Statutory Construction § 45.12 (6th ed. 2000) (In construing legislation, we must presume that Congress was aware of existing law and the rules of statutory construction.).

One commenter noted that, in amending 38 U.S.C. chapter 59, Congress did not remove provisions regarding the Agency Practice Act from 38 U.S.C. 5901. Section 5901 provides, “[e]xcept as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.” The commenter went on to suggest that because Congress did not amend section 5901, it did not authorize VA to exceed the requirements in 5 U.S.C. 500, specifically bar membership in good standing and a written declaration of representation.

Congress did not remove the reference to 5 U.S.C. 500 in section 5901; however, to give effect to the commenter’s suggestion would be to ignore Congress’ amendment to section 5904(a) requiring VA to establish as a condition of accreditation a specific level of experience or specialized training, either of which goes beyond section 500’s requirements for attorney practice before Federal agencies. The commenter incorrectly reads section 5901 in isolation from section 5904 and does not account for an applicable rule of construction. The provisions of chapter 59 must be read as a whole to give effect to amended section 5904. See Spline v. West, 216 F.3d 1058, 1068 (Fed. Cir. 2000) (“We must construe a statute, if at all possible, to give effect and meaning to all its terms.”) (citing Lowe v. Securities & Exch. Comm’n, 472 U.S. 181, 207–08 n.53 (1985)); see also Gonzales v. Oregon, 546 U.S. 243, 273 (2006) (statutes “should not be read as a series of unrelated and isolated provisions”) (citation omitted); Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”).

As discussed above, 5 U.S.C. 500 is a statute of general applicability, enacted in 1965 and binding on nearly all Federal agencies. In 1969, Congress amended former 38 U.S.C. 3401, now section 5901, to incorporate a reference to section 500. Public Law 91–21, §12(a), 83 Stat. 34 (1969). Section 5904 is applicable only to VA and was amended in 2006. See Food and Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000). (“The meaning of one statute may be affected by other acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.”); see also Pioneer Hi-Bred Int’l, Inc. v. J.E.M. AG Supply, Inc., 200 F.3d 1374, 1376–77 (Fed. Cir. 2000) (It is a basic principle of statutory construction that “a general statute must give way to a specific one.”). Because provisions incorporating section 500 were added to section 5901 over 37 years before the last amendment to section 5904(a), and because Congress expressly directed VA in section 5904(a) to establish attorney accreditation requirements that exceed those in section 500, a reasonable harmonization of sections 5901 and 5904 is that the reference to section 500 in section 5901 is for the purpose of establishing attorney practice requirements for VA to the extent Congress has not specifically provided otherwise in chapter 59.

One commenter stated that the proposed testing requirement for attorney accreditation was inconsistent with the requirement in section 5904(a) that VA prescribe in regulations qualifications and standards of conduct consistent with the American Bar Association’s Model Rules of Professional Conduct (Model Rules). The commenter noted that the comment to Model Rule 1.1 states, “a lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar.” Although we have decided to remove testing as a requirement for attorney accreditation, we do not agree that VA’s authority to prescribe qualifications and standards for agents and attorneys is limited by the comment to Model Rule 1.1.

The comment fails to distinguish between the general provision in section 5904(a)(2) and subsequent specific provisions modifying the general provision. In section 5904(a)(2), Congress directed VA to prescribe in regulations qualifications for accreditation consistent with the Model Rules. In section 5904(a)(3), Congress further directed VA to establish as a condition of accreditation, a
requirement that an individual must have “such level of experience or specialized training as the Secretary shall specify.” Section 5904(a)(2)(B), as a specific provision, must be given effect as against the general provision provided in section 5902(a)(2). Thus, to the extent testing, or CLE, or any or any other accreditation requirement related to level of experience or specialized training may be inconsistent with the comment to Model Rule 1.1, it is consistent with the specific provision in section 5904(a)(2)(B).

Several commenters stated that testing of attorneys would be unnecessary and redundant because attorneys, as a condition of licensing, have already established a minimum level of competency by completing formal legal training and passing a State bar examination. One commenter questioned why VA would require the same testing for attorneys as is required for agents who have not completed similar legal education or passed a State-bar administered examination. To the extent the comments are limited to the proposed testing requirement, VA agrees that it is appropriate at this time to limit the regulation of attorney practice before the Department to membership in good standing with a State bar and subsequent completion of CLE requirements.

Although Congress did not distinguish between agents and attorneys in amending chapter 59 and directing VA to establish standards of conduct and qualifications as conditions for accreditation, formal legal education and State bar membership requirements for attorneys clearly distinguish them from agents. As discussed above, Congress intended that the legislation would increase standards for all individuals who provide paid representation before VA. Consequently, to ensure that claimants receive the same level of competence regardless of whether they are represented by an agent or an attorney, VA will continue to test agents as a condition of initial accreditation to verify their competence to represent claimants and will require both agents and attorneys to complete veterans benefits law and procedure CLE as a condition of maintaining accreditation. We will amend the final rule to incorporate these changes.

One commenter remarked that VA should consider a system for accreditation similar to that used by the Social Security Administration in its pilot program. The commenter suggested that VA should accept bar membership in good standing as sufficient for attorney accreditation and should test non-attorney representatives and require that they possess liability insurance as a condition of accreditation. VA’s representation regulations, like those of Social Security, are limited by the authorizing statutes unique to each agency. As discussed earlier, the statute governing VA’s accreditation of agents and attorneys requires a specific level of experience or specialized training in addition to membership in good standing in a State bar, as qualification requirements for accreditation. The pilot program to which the commenter refers is authorized by a specific statutory directive to the Commissioner of Social Security enacted in section 303 of Public Law 108–203. Clearly, if Congress had wanted VA to adopt a pilot program similar to that used by the Social Security Administration, it could have enacted similar authorizing legislation. Because VA’s authority to regulate representation is limited to that provided in chapter 59, we will make no changes to the final rule based on the comment.

We received two comments stating that it is not necessary to evaluate the character of attorneys who are members in good standing of a State bar because they have already met the State’s character and fitness requirements. VA agrees that a State bar’s comprehensive character and fitness determination, which is a prerequisite to licensure, is generally sufficient for practice before VA. To fairly recognize the comprehensive nature of a State bar character and fitness evaluation, VA will generally accept an attorney’s certification of membership in good standing with a State bar under § 14.629(c)(1)(B) as satisfactory proof of fitness to practice. Absent information to the contrary, VA will presume an attorney’s continued fitness to practice upon the receipt of a completed VA Form 21a and self-certification of membership in good standing in those jurisdictions in which he or she is licensed under § 14.629(b). Accordingly, we will amend the final rule to reflect these changes.

Additionally, in regard to character and fitness, VA finds it necessary to differentiate between agents and attorneys. Because agents have not completed a background investigation comparable in scope to a State bar character and fitness evaluation, VA will conduct an expanded inquiry consisting of additional personal history questions on the VA Form 21a to provide a more complete basis for the Department’s determination of good character and conduct. VA’s experience with agent applications supports this decision, as several applications have omitted mention of circumstances that required further inquiry before we had enough information necessary to make a decision regarding accreditation. Agents, unlike representatives, work without the oversight and monitoring required of recognized organizations under § 14.628(d)(1). Additionally, without such an expanded inquiry, OGC simply cannot verify that an agent is who he or she claims to be.

One commenter requested that we clarify whether § 14.629(b)(4) permits self-certification of the State bars, courts, and agencies before which an attorney is authorized to practice. The commenter also asked us to clarify whether certification is an annual requirement. Pursuant to 38 U.S.C. 5904(a)(3), VA must prescribe regulations requiring that “each agent or attorney * * * provide annually * * * information about any court, bar, or Federal or State agency * * * to which such agent or attorney is admitted or otherwise authorized to appear * * * and a certification by such agent or attorney” that they are in good standing. We interpret the phrase “by such agent or attorney” to mean that self-certification is appropriate. Requiring certified statements from every bar, court, or agency to which an agent or attorney is admitted might be onerous, and some agencies and courts might not routinely provide such certification. We believe self-certification is sufficient, provided that the certification advises VA of any change in status. VA may verify such information as necessary, and false certification of good standing would be grounds for initiating disciplinary proceedings under 38 CFR 14.633. Concerning the requirements for periodic recertification, the plain language of section 5904(a)(3) is clear that Congress intended to require annual re-certification. We will amend § 14.629(b)(4) to clarify these certification requirements. Finally, we amended the regulation to clarify that an agent or attorney must notify VA within 30 days of any change in status in any jurisdiction in which he or she is admitted to practice. This is necessary because 38 U.S.C. 5904(a)(4) prohibits VA from recognizing an agent or attorney who has been suspended or disbarred and VA may not otherwise become aware of the suspension or disbarment until many months after the fact.

One commenter expressed concern that § 14.629(b)(5), which provides that VA will not accredit an agent or attorney “if the individual has been suspended by any court, bar, or Federal
or State agency in which the individual was previously admitted and not subsequently reinstated," is overbroad in that lack of reinstatement in one jurisdiction following suspension and reinstatement in another jurisdiction may simply reflect an attorney's decision not to practice in a given jurisdiction. The commenter recommended that VA should accredit individuals as long as they are licensed to practice in one state.

The plain language of section 5904(a)(4) prohibits VA from recognizing an individual as an agent or attorney if such individual has been suspended or disbarred by any court, bar, or Federal or State agency to which the individual was previously admitted to practice and has not been subsequently reinstated. The statute contemplates a situation in which an attorney has not been reinstated after suspension or disbarment because he or she has been deemed ineligible for reinstatement by the admitting authority. The situation described by the commenter presents a slightly different situation in that suspension in one jurisdiction may be purely derivative of the action taken by another jurisdiction. The suspended attorney has subsequently demonstrated fitness to practice in one jurisdiction and has been reinstated in that jurisdiction, and the attorney voluntarily chooses not to seek reinstatement in the other jurisdiction. We do not interpret section 5904(a)(4) as precluding accreditation in these derivative suspension or disbarment situations. Accordingly, we will amend the rule to distinguish between an independent suspension or disbarment proceeding and a derivative disbarment proceeding for purposes of VA accreditation. In a situation where an attorney is suspended or disbarred in jurisdiction B solely based upon suspension or disbarment in jurisdiction A and the attorney is reinstated in jurisdiction A, the General Counsel may accredit such individual based on an evaluation of the particular facts and circumstances of the situation. However, we have where an attorney is suspended or disbarred in jurisdictions A and B, and neither action is derivative of the other, reinstatement in both jurisdictions is a prerequisite to VA accreditation.

One commenter objected to VA asking an agent or attorney seeking accreditation for information relevant to whether the applicant has any physical limitation that would interfere with the completion of the written accreditation exam without further explanation of the purpose and relevancy of this information. This is not a new requirement as it applies to agents. Prior § 14.629(b)(viii) required individuals to submit relevant information concerning physical limitations as part of the application process for claims agents. VA uses this information to determine whether appropriate accommodations are necessary for administering the accreditation exam to individuals with disabilities who seek accreditation as a claims agent.

We proposed to revise § 14.629(c)(3) to clarify the nature of consent required by the claimant to permit a legal intern, law student, or paralegal to assist an attorney in representing the claimant. Several commenters expressed concern that requiring a claimant to provide written consent specifically identifying the names of the legal interns, law students, or paralegals assisting in the case would be overly burdensome. One commenter objected to the provision claiming it violated equal protection because the requirement does not apply to a VSO's support staff. A final commenter recommended that we exempt accredited legal interns, law students, and paralegals from this requirement.

We disagree that requiring a claimant to specifically identify any legal intern, law student, or paralegal assisting in the claim is overly burdensome. The purpose of this requirement is to ensure that a claimant affirmatively acknowledges that a specific individual will be working in a representative capacity on his or her claim and will have access to the claimant's private information. Section 14.629(c)(3) authorizes legal interns, law students, or paralegals to assist in the preparation, presentation, or prosecution of a claim under a duly appointed attorney. This authority allows legal interns, law students, and paralegals, under the direct supervision of an attorney, to directly engage claimants, review files, and appear on a claimant's behalf at any hearing. Current law, 38 U.S.C. 5701(a), makes files, records, reports, and other papers related to a claim confidential and privileged except when disclosure is authorized. Section 5701(b)(1) authorizes disclosure to a "duly authorized agent or representative of a claimant." Given that legal interns, law students, and paralegals are authorized to represent a claimant in a limited capacity when supervised by an accredited attorney, we believe it is appropriate to require the claimant to identify by name any legal intern, law student, or paralegal authorized to represent the claimant.

We note that Rule 606 of the Board's Rules of Practice, 38 CFR 20.606, requires written consent by a claimant specifically identifying, by name, any legal intern, law student, or paralegal assisting in their claim. Thus, § 14.629(c)(3) merely applies current rules for practice before the Board to practice before VA's agencies of original jurisdiction. For the foregoing reason, we also decline to exempt any legal intern, law student, or paralegal, who is separately accredited by VA, from this requirement.

We also disagree that requiring a claimant to specifically identify a legal intern, law student, or paralegal assisting an accredited attorney violates the Due Process Clause of the Fifth Amendment, and in particular its equal protection component. The comment is based upon the commenter's mistaken belief that VSO support personnel may assist in the representation of a claimant without the claimant's consent and are thus similarly situated but treated differently. Under § 14.629(c)(3), legal interns, law students, and certified paralegals may assist in the preparation, presentation, and prosecution of a claim under the direct supervision of an attorney of record, provided that the attorney obtains the claimant's consent on a VA Form 21–22a. These individuals are deemed qualified to represent claimants under an attorney's supervision as a result of their specialized legal training. VSO support personnel, unlike legal interns, law students, and paralegals assisting accredited attorneys, are not authorized to assist in preparing, presenting, and prosecuting claims. Accordingly, the commenter's equal protection concern, that we require claimants' consent for legal interns, law students, or paralegals assisting accredited attorneys in providing representation but do not require claimants' consent for VSO administrative personnel assisting accredited VSO representatives, is unfounded.

One commenter opposed to testing stated that the quality of the examination would be dependent on the competency of VA Regional Counsel administering the examination and would introduce inconsistency in accreditation. Another commenter expressed concern about the format of the examination, the manner in which it would be developed, and the manner in which it would be graded. Although we have amended the rule to remove the testing requirement for attorneys, we will address these comments to the extent that they can be construed as relating to the testing of agents.

The role of Regional Counsel is limited to administering the examination to prospective agents. To ensure nationwide access to the
examination, it will be offered at the Regional Counsel of jurisdiction upon receipt of a complete application at the VA Central Office. To ensure uniformity, the Regional Counsel will administer the examination according to OGC’s standard procedures. To ensure objectivity, the examination will be offered in a multiple-choice format and be graded by OGC personnel at VA’s Central Office.

The sole purpose of VA’s accreditation examination is to objectively determine whether an agent has the qualifications necessary to provide competent representation before the Department. To that end, VA’s accreditation examination has been developed to fairly assess the minimum level of competence required for practice before the Department. Examination questions have been centrally developed by OGC’s subject matter experts before incorporating them into the examination.

We received one comment regarding the term “original jurisdiction” as it is used in §14.629. The introduction to §14.629 provides that upon a determination that an individual meets the requirements for accreditation in paragraph (a) or (b) of this section, VA will provide notification of accreditation authorizing the preparation, presentation, and prosecution of claims before “an agency of original jurisdiction and the Board of Veterans’ Appeals.” One commenter, a VSO, expressed concern that language in the introduction to §14.629 was not sufficiently broad to authorize practice before the Veterans Benefits Administration’s Appeals Management Center and Resource Centers where claims may be forwarded for disposition. The commenter misunderstands VA’s intent.

In drafting the introduction to §14.629, VA’s intent was to clarify that representation of claimants, and the rules governing such representation, were not limited to claims before the Board. VA’s current policy is that authorization to provide representation on a claim decided by an agency of original jurisdiction includes the inherent authority to provide representation before other VA facilities to which the claim may be forwarded for disposition, including, but not limited to the Appeals Management Center and Resource Centers. We will amend the final rule for greater clarification.

Section 14.630—Authorization for a Particular Claim

A number of commenters recommended revising §14.630 to authorize any individual to represent an unlimited number of claimants. These commenters seemed to interpret §14.630 as a pro bono attorney representation provision. Two commenters recommended that we amend §14.630 to authorize any unaccredited individual to represent an unlimited number of individuals so long as a fee is not charged. We will not make any changes to the rule based on these comments.

VA has long interpreted 38 U.S.C. 5903, the statutory authority for §14.630, as a provision under which “any individual” may represent a claimant on a one-time-only basis on a “particular claim” for benefits. The individual must generally seek accreditation under 38 U.S.C. 5902 (service organization representatives) or 5904 (agents and attorneys) to provide representation for a claimant on any other claim. VA does not have authority under section 5903 to permit individuals to represent an unlimited number of claimants without VA accreditation. Commenters suggest. See 38 U.S.C. 5901 (“no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim * * * unless such individual has been recognized for such purposes by the Secretary”) and 5903 (authorizing VA to permit representation on a “particular claim” only). We addressed the issue of attorney representation of claimants on a pro bono basis above regarding §14.629.

Section 14.630(a) requires a person authorized to provide representation on one claim to file a VA Form 21–22a “with the agency of original jurisdiction where the claim is presented.” One commenter requested that we clarify the filing requirement because the case may be pending at a Resource Center, the Appeals Management Center, or the Board when the claimant seeks representation. The commenter recommended that the form be filed with the VA facility in possession of the claim.

We decline to change §14.630(a) to require a claimant to file a representation form with the VA facility in possession of the claim. When a claimant files a claim with their local VA regional office they presumably know where they filed the claim and may have established contacts with VA personnel. We recognize that there will be instances in which the claim has been temporarily moved to another VA facility. However, it will be easier for the claimant if he or she files the representation form with the agency of original jurisdiction where the claim was presented. We understand that slight delay may result because of processing and forwarding. This section in no way prohibits a claimant from also forwarding a copy of the form to the VA facility that is handling the claim. A final situation may arise where a claimant moves from the jurisdiction of one regional office to the jurisdiction of another regional office. In that instance, the claim and case file will be transferred to the new regional office of jurisdiction, and the claimant should treat the new regional office as the “agency of original jurisdiction where the claim is presented.”

Section 14.631—Powers of Attorney; Disclosure of Claimant Information

We received five comments regarding proposed §14.631. One commenter expressed concern that under §14.629(b), claimants currently represented by attorneys would have their representation revoked on the effective date of the new regulations unless and until a VA Form 21–22a is completed by the claimant. The commenter, while recognizing VA had good reasons to have a standardized consent form, stated that requiring the form to allow representation is a different matter because the claimants have a contract, on file with VA, indicating appointment of an attorney as their representative. The commenter recommended that we amend the rule to eliminate the requirement that a VA Form 21–22a be submitted as a requirement for representation, particularly for claimants represented by attorneys as of the effective date of the rule. We will not make any changes to the rule based on this comment.

Section 14.631(a) requires that claimants use a standard form, VA Form 21–22a, to appoint individuals providing representation on a particular claim under §14.630, representatives, agents, and attorneys, and to authorize the disclosure of claimant information. We have authority under the amendments to 38 U.S.C. Chapter 59 in Public Law 109–461 to regulate agent and attorney practice before the Department, and we interpret this authority as permitting us to exceed the limitations in 5 U.S.C. 500 by, among other things, requiring the use of a standard form to indicate appointment. See 38 U.S.C. 5904(a)(2) (“[t]he Secretary shall prescribe in regulations * * * qualifications and standards of conduct for individuals recognized under this section”). We also interpret current law as requiring a claimant’s written authorization before VA can release information protected by the Privacy Act, and 38 U.S.C. 5701 and
7332, and we have determined that VA Form 21–22a is legally sufficient to authorize release of such information. This is reflected in VA's current policy of releasing claimant information to attorneys only upon receipt of a VA Form 21–22a signed by the represented claimant.

We understand the need to ensure continuity of representation, and it is not our intent to revoke representation on the effective date of this rule if we do not have a VA Form 21–22a signed by the agent or attorney on file. Rather, the requirement pertains to claimants' designation of agents and attorneys occurring on or after the effective date of this rule. Accordingly, for all representation before the Department initiated on or after the effective date of this regulation, June 23, 2008, VA will not recognize the designation of an agent or attorney for purposes of representation or disclose claimant information to the agent or attorney without a properly executed VA Form 21–22a on file. As to representation initiated before the effective date of the regulation, because Federal law prohibits release of claimant information without claimants' written authorization, VA will not disclose such information to a claimant's attorney unless the claimant has authorized the disclosure on a Form 21–22a.

We also disagree with the suggestion that VA should accept non-standard authorizations for the release of claimant information and will not make any changes based upon the comment. VA has accepted non-standard authorizations for the release of claimant information from attorneys, but found many of these to be legally insufficient requiring additional review and communication with attorneys delaying both the processing of the claim and the release of information to attorneys.

One commenter approved of the requirement in § 14.631(a) that a person providing representation under § 14.630, or an accredited representative, agent, or attorney must sign the VA Form 21–22a to indicate acceptance of appointment for purposes of representation. The commenter stated that this provision would help to ensure that claimants contact VSOs in a timely manner if they need assistance.

We received a comment concerning the circumstances under which an attorney may terminate representation. The commenter requested that we add language similar to that provided in Model Rule 1.6 requiring an attorney to withdraw from representation when "representation will result in a 'violation of the rules of professional conduct or other law.'" We note that under State bar rules attorneys will generally have duties in addition to those prescribed by VA and that these rules typically contain the Model Rule 1.6 provision. Section 14.632(d) prohibits attorneys, in representing claimants before VA, from violating the rules of professional conduct of the jurisdictions in which they are licensed to practice law. Accordingly, we do not agree that it is necessary to add the model language and will not make any changes to the rule based on the comment.

One commenter disagreed with the requirements in § 14.632(c) to notify the agency of original jurisdiction of withdrawal from representation and to surrender of documents provided by VA in the course of the representation. Concerning the requirement to notify the agency of original jurisdiction in the event of withdrawal from representation, the commenter stated, among other things, that the provision does not account for the fact that the claim or appeal could be at a facility other than the agency of original jurisdiction. The commenter's experience also indicates that the agency of original jurisdiction "does not notify other VA facilities or update the necessary databases in a timely manner." The commenter suggested that VA amend the final rule to require the individual or organization desiring to withdraw from representation to notify the VA facility in possession of the claim or appeal in addition to the agency of original jurisdiction and the claimant. VA agrees that additional notification upon withdrawal from representation would be helpful. Accordingly, we will amend the final rule to incorporate the suggestion.

Concerning the requirement for surrender of documents provided by VA upon withdrawal of representation, the commenter expressed support for the requirement in the proposed rule and suggested that it be extended to all documentation belonging to the claimant or attorney. The commenter also suggested that VA provide guidelines for situations in which an individual providing representation under § 14.630, representative, agent, or attorney loses contact with a claimant, and how long the documentation should be maintained for the protection of the claimant and the representative. Another commenter suggested it might not be appropriate to require that individuals withdrawing from representation return all documents to the claimant because several provisions in 38 CFR part 1 proscribe disclosing information to claimants if it would affect their physical or mental health. We agree that VA's withdrawal provisions should not conflict with other provisions intended to protect claimants from harmful information. Accordingly, we will amend § 14.630 to provide that upon withdrawal from representation, all documents provided by VA must be returned to the agency of original jurisdiction or pursuant to the claimant's request, provided to the organization or individual taking over the representation. See Model Rules of Prof'l Conduct R. 1.16(d) (steps to take upon termination of representation).

However, we do not agree with the commenter's suggestion that we expand the rule to require individuals to provide all documents, including those obtained from the claimant and other sources, to the agency of original jurisdiction. We intend that individuals providing representation will maintain or dispose of these documents according to State law.

Two commenters stated that § 14.631(c) and (d) fails to "address VA's role once a power of attorney has been withdrawn or revoked." The commenters suggested that the final rule should address whether VA intends to provide timely notice to all concerned parties in such situations and, if so, describe how VA would provide such notice. Commenters further stated that without timely notice by VA, claimants may be confused as to who represents them on a particular claim and seek advice from a party who is no longer their representative.

When a power of attorney is withdrawn or revoked, VA's role is to ensure that communications regarding an affected claim or claims are provided only to the appropriate representative of record. It is the responsibility of the claimant and the organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney to ensure that the claimant fully understands the scope of representation, particularly when an agent or attorney is providing limited representation on a particular claim under § 14.631(f)(2). Moreover, a claimant and his or her organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney are in a better position than VA to understand who represents whom on a given claim. Therefore, VA will not provide additional notification of withdrawal or revocation to claimants or representatives. Additionally, the rule is not intended to preclude withdrawal from representation until a claimant obtains alternative representation. After
an organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney complies with § 14.631(c), in part by providing time for the claimant to obtain alternative representation or proceed pro se, the organization or individual may withdraw from representation.

The commenters also expressed concern about § 14.631(f)(1) and (f)(2), under which agents and attorneys may limit the scope of their representation to a particular claim. They suggested that the final rule address VA’s provision of timely notice to all individuals that a new power of attorney is limited to a particular claim and that the new power of attorney does not pertain to the veteran’s other claims. VA disagrees with the premise that the responsibility for notifying claimants and other interested parties of arrangements to provide limited representation rests with VA and will not make any changes based on the comments. In enacting the amendments to 38 U.S.C. chapter 59, Congress provided claimants for VA benefits choice in representation. It is the claimant who designates the source and scope of representation on VA Form 21–22a. Under § 14.631(f)(1), receipt of a new power of attorney by VA, without limitation, revokes existing powers of attorney. Generally, there can be only one power of attorney. As a result, the organization or individual is appointed for representation on any and all claims the claimant has before the Department. Under § 14.631(f)(2), however, an agent or attorney may limit the scope of his or her representation to a particular claim by describing the limitation on VA Form 21–22a. Under this section, organizations or individuals with an unlimited power of attorney retain representation for all claims before VA with the exception of the particular claim indicated on the VA Form 21–22a.

Agents and attorneys advising claimants concerning limited representation are obligated to exercise care in ensuring that claimants understand the precise scope of the representation to be provided by the agent or attorney, and that which will be provided by other individuals or organizations, if any. In such cases, the agent or attorney should inquire whether the claimant has an existing power of attorney appointing a VSO as his or her representative, and, when necessary, communicate with the other individuals or organizations representing the claimant before the Department. In the event that an agent or attorney withdraws from representation on a particular claim and the claimant has an existing power of attorney in favor of a VSO, representation on the particular claim defaults to the VSO, and, as a result, VA would send future information on the particular claim to the VSO. It is the shared obligation of the claimant and the organization, representative, agent, or attorney to fully communicate concerning any modification to the scope of representation.

Commenters also expressed concern that VA lacked the capacity to distinguish between a claimant represented by an agent or attorney for all purposes and one represented by an agent or attorney only on one particular claim. Because such inability could result in miscommunication between VA, the claimant, and the representative, the commenters suggested that VA develop such capability. VA’s current benefits delivery database does not have the capability described by the commenter, but VA has procedures in place to communicate with organizations and individuals providing a claimant with representation on different claims. VA is currently developing a replacement database, but it is unknown at this time whether the capability described will be included in the final version.

Section 14.632—Standards of Conduct for Persons Providing Representation Before the Department

We received a number of comments opposing the requirement in § 14.632(a)(2) that individuals representing claimants “conduct themselves in accordance with the non-adversarial nature of the practice before the agency of original jurisdiction and the Board.” One commenter suggested that attorneys are by nature adversarial and that VA incorrectly assumed Congress intended them to act in a non-adversarial way before VA. The same commenter also suggested that an attorney’s ethical obligation to represent a client with “zeal” and the proposed regulation’s mandate that attorneys adhere to the non-adversarial procedure cannot co-exist. Two commenters recommended that agents be permitted to represent claimants with “zeal,” presumably, in an adversarial manner.

We agree that Congress did not intend to prohibit “adversarial” conduct to the extent that such conduct meets the standard established by VA in 38 CFR 14.632 and is consistent with ethical advocacy on behalf of a claimant contesting an initial VA decision on a claim. However, we do not interpret the amendments to chapter 59 as expressing Congress’s intent to create a new adversarial system of adjudication. In amending section 5904, Congress specified that claimants may pay for the “services” of agents and attorneys with respect to proceedings before the Department after the date on which a Notice of Disagreement is filed in the case. Congress did not define the scope of the services provided by agents and attorneys, except to specify that they involve, among other things, assisting claimants who challenge a VA decision. We interpret these provisions to mean that VA’s adjudication system shall be flexible enough to permit agents and attorneys to act as advocates for their client in contested matters. Accordingly, we will modify § 14.632(a)(2) to remove the requirement that individuals providing representation shall conduct themselves in accordance with the non-adversarial nature of practice before VA. The remaining provisions in § 14.632, which are comprehensive in prohibiting disruptive conduct, are sufficient to protect the VA system.

One commenter suggested that we amend § 14.632(c) to proscribe “knowing” violations. The commenter speculated that VSO representatives are not familiar with the Model Rules and could unknowingly violate them. First, the Model Rules have not been adopted, nor do they govern practice before VA. Section 5904(b) requires VA to prescribe regulations establishing standards of conduct for practice before VA that are consistent with the Model Rules. In other words, Congress directed VA to take them into account when establishing standards of conduct and qualifications for practice before VA. While 38 U.S.C. 5902 and 5903 subject representatives and individuals to suspension or exclusion from practice before VA as prescribed by 38 U.S.C. 5904(b), neither section adopts the Model Rules. Rather, in implementing the statute, VA is establishing standards of conduct for all persons representing claimants before VA in § 14.632. These standards are based upon the Model Rules and we intend to look to the commentary to the Model Rules and relevant administrative and judicial opinions on the Model Rules when interpreting them. Section 14.632(d) is clear that attorneys must additionally comply with the rules of professional conduct of any jurisdiction in which they are admitted to practice to the extent that those rules do not conflict with VA’s regulations. Because the Model Rules have not been adopted, the
The commenter’s concern that a non-attorney representative may unknowingly violate them is unfounded.

The commenter also expressed concern that the General Counsel would discipline a representative based upon an unknown violation of the Model Rules and recommended that we amend §14.633(c) to clarify that disciplinary action is appropriate only for knowing violations. An individual representing a claimant before VA should be capable of comprehending what is required of them under the standards of conduct in §14.632 and act accordingly. However, upon further review, we believe that the General Counsel should consider the circumstances surrounding a violation of those standards and have sufficient discretion to impose the proper remedy. While we opt not to add a knowledge element §14.632(c), we will address the General Counsel’s discretion in suspension and cancellation of accreditation proceedings in §14.633(c).

One commenter expressed concern that §14.632(b)(2), which requires individuals representing claimants before VA to “act with reasonable diligence and promptness in representing claimants,” fails to clearly define what constitutes a “prompt” response. The commenter also sought clarification of “good cause” under §14.632(c)(7) and as it relates to §14.632(b)(2). The meaning of “prompt” and “good cause” for purposes of this provision cannot be defined according to a set of criteria, such as a certain number of days, given the variety of circumstances that may arise in claim adjudication. Rather, we intend only that individuals interacting with VA in a representational capacity be ready and quick to act as the occasion demands. We expect individuals representing claimants before VA will make reasonable efforts to expedite the administrative process and not use dilatory tactics. When VA requests information from a claimant or his or her representative, reasonable efforts should be made to respond to VA’s request as soon as practical as this is in the best interest of the claimant. This section is intended to put all representatives on notice that unreasonable delay will not be tolerated.

One commenter stated that §14.632(c)(5), which prohibits agents and attorneys from entering into fee agreements that are “clearly unreasonable or excessive,” is ambiguous. We agree in part and disagree in part. First, the term “excessive” is redundant because any excessive fee will be “unreasonable.” Therefore, we will remove “excessive” from the regulation text.

We disagree, however, that there is ambiguity in our use of the term “unreasonable” and will not change the rule based upon the comment. As an initial matter, 38 CFR 14.636(e) lists eight factors that VA considers when reviewing a fee agreement for reasonableness. They are the same factors that the Board considered under former law, and we did not intend any substantive change when we moved those criteria to 38 CFR Part 14. Second, §14.636(f) implements the statutory presumption that fees of 20 percent or less are presumed reasonable. The presumption of reasonableness, combined with the criteria for reviewing fee agreements, provides agents and attorneys sufficient notice concerning the reasonableness of fees.

A number of commenters also expressed concern about §14.632(c)(9) and requested clarification of the “acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.” While §14.632(c)(7) concerns an individual’s obligation to provide prompt representation to a claimant, §14.632(c)(9) concerns an individual’s use of dilatory or obstructive tactics during representation. Such tactics might include advising a claimant to withhold cooperation, filing duplicative pleadings, unnecessarily disrupting hearings, intentionally misleading adjudicators, or other tactics that cause unnecessary delay. In our view, this provision is not clear to put individuals on notice that they cannot employ such tactics when providing representation in a proceeding before the Department. Accordingly, we will not make any changes based upon the comments.

One commenter recommended that we amend §14.632(c)(10) to clarify that disclosure of a claimant’s information to paralegals and other support staff is not prohibited and not a violation of VA’s standards of conduct. We disagree and will not make any changes based on the comment. As discussed above regarding §14.629(c)(3), a claimant must specifically authorize a legal intern, law student, or paralegal to assist an attorney in providing representation. The change recommended by the commenter would conflict with §14.629(c)(3) and interfere with our obligation to protect the confidentiality of claimants’ information.

One commenter opposed §14.632(c)(11), which prohibits, among other things, a claimant’s representative from engaging in “unprofessional” conduct. The commenter suggested that there is no universal definition of “professional” and that determining what is “unprofessional” for purposes of enforcing VA’s standards of conduct would be difficult absent precise guidance. We agree and will remove engaging in “unprofessional” conduct as violation of VA’s standards of conduct.

Section 14.633—Termination of Accreditation or Authority To Provide Representation Under §14.630

We received numerous comments regarding the proposed regulations governing suspension and cancellation of accreditation under 38 CFR 14.633. In general, commenters expressed concern about the role of OGC in suspension and cancellation proceedings, suspension and cancellation procedures, the types of sanctions that could be imposed, and the grounds for suspension and cancellation of accreditation.

We received ten comments expressing concern about OGC’s role in accreditation matters. Under proposed §14.633, the Assistant General Counsel managing VA’s accreditation program investigates and presents disciplinary matters to a hearing officer and forwards the hearing officer’s findings to the General Counsel with a recommendation for a final decision. A commenter questioned whether the Assistant General Counsel should have responsibility for both the prosecutorial function and the adjudicative function, recommending a final decision, in disciplinary proceedings. According to the commenter, the procedure in §14.633 “raises the perception of unfairness or conflict of interest in cancellation proceedings.” The commenter recommended that we amend the rule to provide a more independent disciplinary counsel to investigate and present VA’s case in suspension and cancellation proceedings. The commenter also recommended that the rule explicitly provide that the presiding hearing officer “not directly or indirectly report to, or be employed under, the General Counsel or others designated to decide disciplinary matters” and “that the hearing officer not be a VA employee.”

Other commenters also expressed concern about the General Counsel’s broad authority in accreditation matters. One commenter stated that there was an inherent conflict with the same entity making accreditation and disbarment decisions. Another commenter suggested that OGC, as his “adversary,” would use the authority under §14.633 to prevent him from representing claimants before the Department. One individual generally
suggested that concentration of accreditation authority in OGC invited abuse. To remedy the potential for and/or perception of conflict, one commenter suggested that VA appoint an independent body, not under the supervision of the General Counsel, to conduct initial investigations, hold hearings, and make accreditation decisions. Another commenter stated that the General Counsel, as the Secretary’s counsel of record before the U.S. Court of Appeals for Veterans Claims, would be biased, or at least conflicted, in making disciplinary determinations as to whether an attorney’s conduct was unprofessional or that an attorney’s representation lacked competence; therefore, such decisions should be decided by an independent third party, not the commenter’s opposing counsel.

It is well-settled that a Federal agency may police the behavior of attorneys and other professionals practicing before it. See Polydoroff v. Interstate Commerce Comm’n, 773 F.2d 372, 374 (D.C. Cir. 1985). Moreover, the combination of investigative and adjudicative functions in a single entity to regulate the conduct of professionals, as proposed in § 14.633, without more, does not violate due process. In Withrow v. Larkin, 421 U.S. 35, 56 (1975), the Supreme Court held, “[i]t is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.” The Secretary of Veterans Affairs may lawfully delegate authority for accreditation matters to OGC. 38 U.S.C. 5904 (Secretary’s authority to recognize individuals for practice before the Department); 38 U.S.C. 512 (Secretary’s delegation authority concerning decisions under laws administered by VA). The General Counsel has made the final decision on matters of accreditation concerning representatives, agents, and attorneys since 1954 without being challenged based upon evidence of actual conflict of interest or bias. See 38 CFR 14.629 (1954) (“[a]ny cause considered sufficient to reject the application of an attorney or agent or to cancel recognition previously granted will be reported through the Chief Attorney to the General Counsel for final determination”); 38 CFR 14.637 (1954) (“[i]f the charge or charges be sustained, the General Counsel if he concurs in the recommendation, will suspend or revoke the recognition of such attorney or agent”).

Management of VA’s accreditation program is a proper function of OGC. The office is staffed by attorneys who have the necessary expertise to administer the program and these attorneys are not involved in the adjudication of claims before VA’s agencies of original jurisdiction or the Board where accredited individuals provide representation. Further, VA does not have authority to regulate the practice of individuals before the Court of Appeals for Veterans Claims and the OGC attorneys that represent VA before that court are under the supervision of a separate Assistant General Counsel who is not involved in administration of the accreditation program. The commenters did not raise any issue of actual conflict or bias sufficient to disturb VA’s long-standing practice of managing the accreditation program in OGC. Nonetheless, we agree that the process for suspending or cancelling accreditation can be improved to minimize the appearance of conflict and bias. To that end, we will amend the rule to clarify that the hearing officer will not directly or indirectly report to, or be employed under, the General Counsel or the head of any VA agency of original jurisdiction before which the individual provides representation.

To further insulate the General Counsel’s adjudication of suspension or cancellation decisions from investigation, prosecution, and fact finding, we will amend the rule to remove the procedural requirement in proposed § 14.633(f) that the Assistant General Counsel provide a recommendation on a final decision to the General Counsel after reviewing the record provided by the hearing officer. Instead, the rule provides that the hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Assistant General Counsel within 30 days after closing the record. Participation of the Assistant General Counsel following the investigation and prosecution of any disciplinary matters will be limited to providing administrative support to the hearing officer in compiling the record and forwarding it to the General Counsel with the hearing officer’s recommendation.

The amendments described above, which ensure a neutral hearing officer and insulate the General Counsel’s adjudicative decision from the investigative and prosecutorial functions of the Assistant General Counsel, are sufficient to minimize the appearance or perception of a conflict of interest. Accordingly, we will not make further changes to the proposed rule based on the comments.

We received three comments concerning the Assistant General Counsel’s notice in disciplinary proceedings under § 14.633. One commenter suggested that we amend the rule to provide notice and opportunity to respond to allegations of misconduct or incompetence prior to initiating an inquiry. Another commenter suggested that we additionally provide “remedial notice” under § 14.633. Such notice would advise the individual of the infraction and provide an opportunity for the individual to correct the offending behavior in lieu of formal disciplinary proceedings. Finally, a commenter stated that an individual who requests a disciplinary hearing should receive all information about the complaint, including its source.

We agree that the notice provided to individuals in disciplinary proceedings could be expanded to improve the process and, consistent with current practice, may reduce the number of formal inquiries resulting from inadvertent acts or technical violations. Accordingly, we will amend the rule to provide that the Assistant General Counsel, before deciding whether to conduct an inquiry under § 14.633, will inform the individual of the allegations, potential violations of law, and the source of the complaint, and will provide the subject with an opportunity to respond. Additionally, we will amend the rule to provide that, when appropriate, including but not limited to situations when the seriousness of the violation does not justify an inquiry because no harm results to the claimant or VA, the Assistant General Counsel will provide an opportunity for the subject to correct the offending behavior before deciding whether to conduct an inquiry. This clarification reflects current practice in that the Assistant General Counsel provided notice and opportunity for remedial actions prior to initiating formal inquiries in some cases under former law.

We received two comments regarding the absence of suspension as a sanction in proposed § 14.633. One commenter questioned the omission of suspension from proposed § 14.633 because section 5904(b) expressly provides that VA may suspend or exclude individuals from practice before the Department and stated that VA’s failure to include the lesser sanction of suspension is an unreasonable interpretation of the statute. Another commenter disagreed with VA’s use of terms “cancel” and “terminate” in § 14.633 when the statute

"voluntary"
provides that “the Secretary may suspend or exclude.” The commenter recommended that VA use the statutory terms and specify several kinds of discipline with the most severe sanction being exclusion from practice before VA. This commenter also recommended that the timing and methods of seeking reaccreditation be specified.

We agree that suspension may be appropriate in cases involving extenuating circumstances or where the misconduct is not so severe as to warrant the harsher penalty of canceling accreditation. On October 12, 2007, VA published in the Federal Register (72 FR 58009) a final rule amending § 14.633 to provide for suspension of accreditation as a lesser sanction for conduct prohibited by section 5904. The amendments provide that the General Counsel may suspend accreditation for a definite period or until the individual satisfies the conditions established by the General Counsel for reinstatement. The General Counsel will reinstate suspended accreditations at the end of the period of suspension or upon verification that the individual has satisfied the conditions for reinstatement. The General Counsel’s decision to suspend or cancel an individual’s accreditation will be based on the facts and circumstances of the particular case, with suspension being appropriate in cases involving extenuating circumstances or less egregious conduct not warranting permanent cancellation.

VA’s use of the terms “cancel” or “terminate,” instead of “exclude,” in § 14.633 is intentional. In section 5904(b), the terms “suspend” and “exclude” refer to the General Counsel’s decision to temporarily or permanently prohibit an individual from providing representation before the Department. Accreditation is analogous to a license to practice before VA, which the General Counsel suspends, cancels or terminates. The General Counsel does not “exclude” an accreditation.

Two commenters disagreed about the provisions in § 14.633 that subject VSO representatives to suspension or exclusion from practice before VA on the same grounds as apply to agents and attorneys. The commenters found it “inherently inequitable” that the proposed regulation did not distinguish between individuals who provide paid representation and those who do so without charge. We disagree and will not change the rule based on these comments.

All claimants for VA benefits are entitled to responsible, qualified representation, and VA did not propose any change to § 14.633 to the extent that it treated VSO representatives and agents and attorneys the same for purposes of discipline. In amending section 5904(b), Congress did not distinguish between paid and unpaid representation. Further, under the plain language of 38 U.S.C. § 5902(a)(2), VSO representatives “shall be subject to the [disciplinary] provisions of section 5904(b) of this title on the same basis as” an agent or attorney accredited under section 5904(a).

Several commenters expressed concern with § 14.633(c)(4), which adds the submission of a frivolous claim, issue, or argument as grounds for suspension or exclusion from practice before VA. Two commenters stated that all veterans are entitled to representation and that it is VSO policy to present all claims to VA for processing, even if the claimant does not have evidence supporting a grant of benefits. These commenters are concerned that VSO representatives might be held responsible for claims and arguments submitted by claimants directly to VA without the knowledge of the representative or VSO. They also expressed concern about the definition of “frivolous” in VA’s regulation. Two commenters complained that the rule does not clearly define “good faith argument” and mentioned whether an argument could shift from being non-frivolous to frivolous. The commenters noted the tension between the need to file a claim to gain the earliest possible effective date and the need to determine whether a claim, issue, or argument is frivolous.

A veteran’s right to representation under 38 U.S.C Chapter 59 does not include the right to representation for frivolous claims. The plain language of section 5904(b)(6), made applicable to representatives by section 5902(b)(2), provides that the Secretary may suspend or exclude agents and attorneys who present a frivolous claim, issue, or argument. In the Committee Report accompanying the predecessor bill to S. 3421, S. 297, the Senate Committee on Veterans’ Affairs specifically recognized the adverse impact that frivolous claims filed by service organizations have on VA’s system of adjudication. See S. Rep. No. 109–297, at 17 (2006) (“service organizations must ensure that * * * frivolous claims are removed so that valid claims are not needlessly delayed”). Noting the growth in the number of claims filed with VA, the Committee resolved that “requiring all veterans’ representatives to advocate responsible representation of ideas, arguments, or issues, could be of significant help in ensuring that ‘valid claims are not needlessly delayed.’” Id. at 19 (citations omitted).

VA’s definition of “frivolous” in § 14.633(b)(4) is based on Model Rule 3.1. In our view, the regulation is sufficiently clear to provide notice of prohibited conduct. Additionally, were VA to discipline a representative, agent, or attorney for filing a frivolous claim, and such action were appealed to the Board, precedent opinions of the Court of Appeals for Veterans Claims and Court of Appeals for the Federal Circuit would control. In the Senate Committee’s report, it quoted Abb’s v. Principi, 237 F.3d 1342, 1345 (Fed. Cir. 2001), in defining frivolous arguments or issues as those “that are beyond the reasonable contemplation of fair-minded people.” S. Rep. No. 109–297, at 19–20. In Abb’s, the court also noted that an action is frivolous when the individual providing representation “has significantly misrepresented the law or facts, or has abused the judicial process by repeatedly litigating the same issue in the same court.” Abb’s, 237 F.3d at 1345.

Comment 2 to Model Rule 3.1 is instructive concerning whether filing a claim when all the facts are not known or all the evidence is not fully developed can be regarded as frivolous: The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith arguments in support of their clients’ positions. Such action is not frivolous even though the lawyer believes that the client’s position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Model Rules of Prof’l Conduct R. 3.1 cmt. (2000) [emphasis added]. Like agents and attorneys, VSO representatives must inform themselves about the facts of each case and the applicable law, and before providing further representation, determine whether they can make a good faith argument in support of a claim. In this context, VA interprets “good faith” as “honesty of purpose” and “freedom of intention to defraud.” Black’s Law Dictionary 477 (6th ed. 1991). In the event that a good faith argument cannot be made, representatives, agents, and attorneys must withdraw from representation or assume the risk of
suspension or exclusion from further practice before VA.

The commenters also asserted that certain unspecified State and County veterans agencies are prohibited by State and local law from refusing to represent veterans seeking benefits. As a result, the commenters claim that VA’s regulation would be in conflict with State law. Without reviewing the specific State and local laws in question, it is difficult to respond to this comment. However, to the extent that the existence of a State or local law requiring an organization to provide representation conflicts with the prohibition on the filing of frivolous claims under section 5904(b)(6) and 38 CFR 14.633(c)(4), we do not agree that a change is necessary. Federal law generally preempts the application of State law by virtue of the preemption doctrine. See U.S. Const. art. VI, cl. 2. Despite the fact that Congress did not expressly command that State laws regarding representation would be superseded by those in 38 U.S.C. Chapter 59, Congress’ intent can be inferred “because [the] scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.” Fidelity Federal Savings & Loan Ass’n v. De la Cuesta, 458 U.S. 141, 153 (1982) (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). Unless otherwise specified in statute, Congress has left no room for the States to supplement the law related to the provision of Federal veterans benefits. Federal regulations have the same preemptive effect as Federal statutes. Id. at 154. Accordingly, we will make no changes to the rule in this area based on the comments.

Two commenters recommended that VA discipline an individual for presenting a frivolous claim, argument or issue only if it was a knowing violation of the law. One commenter stated that adding a knowledge requirement would bring the proposed rule in line with the standard expressed in §14.633(c)(2) that limits sanctions for presenting or prosecuting a fraudulent claim to those made “knowingly.” The other commenter suggested that we amend the rule to provide that a service officer must have acted intentionally or recklessly in providing representation before VA takes disciplinary action. We agree that a violation of §14.633(c)(4) should include a requirement that such violation was made knowingly and will amend the rule to add such language.

One commenter expressed concern that §14.633(c)(7), which states that “any other unlawful, unprofessional, or unethical practice” may be grounds for suspension or exclusion from practice before VA, is too broad and allows VA to disaccrredit representatives for any unlawful practice, such as speeding. Section 14.633(c)(7) is intended to provide the General Counsel with authority to cancel accreditation for any unlawful, unprofessional, and unethical practice adversely affecting an individual’s fitness for practice before VA. Despite the fact that current §14.633(c)(4) has contained similar language for many years, VA has never used this authority to disaccredit individuals for traffic violations or other conduct unrelated to fitness for practice before VA. However, for the reasons expressed above, we will strike the term “unprofessional” and amend the final rule to clarify that the General Counsel’s authority to cancel accreditation for unlawful and unethical practices is limited to conduct adversely affecting an individual’s fitness for practice before VA.

Three commenters were concerned that in proposed §14.633(d) providing that accreditation shall be cancelled when the General Counsel finds that the performance of an individual providing representation under §14.630, representative, agent, or attorney demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veterans benefits, was too vague and would lead to inconsistent disciplinary decisions. They suggested that VA establish specific and objective criteria in an effort to provide meaningful due process. VA agrees that further explanation would improve understanding of the concept.

Competent representation encompasses many factors, among others, the level of knowledge and skill required for a particular case, the degree of preparation required for a particular case, and the analysis of the facts and issues required in a particular case. See Model Rules of Prof’l Conduct R. 1.1 cnt. (2000). A representative, agent, or attorney demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute a claim for veterans benefits when his or her performance indicates a lack of the knowledge, skill, or preparation required for a particular case. At a minimum, individuals representing claimants before VA must be familiar with the facts of the particular case, applicable law, and the procedures for filing claims and appeals. Because the facts and circumstances of every case and the skills possessed by a representative, agent, or attorney are unique, a checklist of specific criteria demonstrating a lack of competence would necessarily be incomplete; however, we will amend the final rule to provide that a lack of the degree of competence required will be based on the factors discussed in the current commentary to Model Rule 1.1.

Concerning consistency in determining whether a representative demonstrates a lack of the degree of competence required to prepare, present, and prosecute a claim, the investigation of such allegations is centralized with the Assistant General Counsel managing VA’s accreditation program under §14.633. Centralization will result in uniform application of the disciplinary standards in §14.633.

One commenter expressed concern about the provision in §14.633(e) requiring VA to initiate an inquiry “upon receipt of information from any source.” According to the commenter, without specific guidelines as to what type of information VA would act upon, VA will be overwhelmed with allegations of incompetent representation, some of which could be unfounded. To better balance the interests of individuals providing representation before the Department with the interests of the Department in ensuring the competent representation of claimants, we will amend the rule to specify that VA will initiate an inquiry under §14.633 only upon receipt of credible, written information, including e-mail messages, indicating improper conduct or incompetence. As discussed earlier, when VA receives information concerning misconduct, competent representation of claimants before the Department, the Assistant General Counsel will provide notice to the individual concerned and an opportunity to respond before initiating a formal inquiry. Consistent with current practice, we believe that requiring written complaints and providing notice to the individual concerned will reduce the potential for unfounded complaints.

Two commenters stated that the 30-day period for an individual to respond to the Assistant General Counsel’s notice of intent to suspend or cancel accreditation is an unnecessarily short period of time to respond to such notice and request a hearing. One commenter stated that the 30-day period is “arbitrarily short” and “does not meet the standard for meaningful due process.” The other commenter suggested that the final rule address whether time periods are based on calendar or business days and whether a response is deemed timely based on the date of mailing or date of receipt. It was also suggested that a 45-day time...
period would avoid forcing individuals to choose between attending to client representation and responding to VA. We do not agree that the 30-day period for responding to the Assistant General Counsel’s notice is unreasonable and will not make any changes to the rule based on these comments.

As we discussed above, procedural due process under the U.S. Constitution is a flexible concept depending upon the demands of the particular situation. VA is obligated under its accreditation authority to ensure the responsible, qualified representation of claimants for benefits. In our view, it would be unreasonable and prejudicial to claimants to provide accredited individuals more time than is reasonably necessary to respond to these disciplinary matters. Accordingly, we will not provide more than 30 days for responding to the Assistant General Counsel’s notice of intent to suspend or cancel accreditation. The 30-day period is appropriate and fair because it strikes a balance between VA’s interests in protecting claimants and the interests of individuals responding to a notice of intent to cancel accreditation. We note that §14.633(e)(1)(i) requires the Assistant General Counsel to provide notice concerning the right to submit additional evidence during disciplinary proceedings and to request a hearing. Further, under §14.633(f), individuals may present evidence at a hearing and may supplement that evidence during the 10-day period following the hearing. In our view, these measures reasonably balance VA’s obligations to claimants and individuals who are the subject of disciplinary proceedings. Finally, should the 30-day period be insufficient to formulate an answer, §14.633(e)(2)(iii) provides that the Assistant General Counsel “may extend the time to file an answer or request a hearing for a reasonable period upon a showing of sufficient cause.”

We agree that we need to clarify the scope of the 30-day response period in §14.633(e)(2)(i). Accordingly, we will amend the rule to provide that an individual providing representation under §14.630, representative, agent, or attorney has 30 calendar days from the date on which the Assistant General Counsel mails notice of intent to suspend or cancel accreditation to file an answer and to request a hearing. In computing the time period for filing a response, the date on which the notice was mailed by the Assistant General Counsel shall be excluded from the 30-day period. A response postmarked prior to the expiration of the 30-day period shall be accepted as having been timely filed. If the 30th day falls on a weekend or legal holiday, then the first business day thereafter shall be included in the computation. We define “legal holiday” consistent with Rule 6 of the Federal Rules of Civil Procedure.

Two commenters disagreed with the General Counsel’s discretion under §14.633(f) to hold disciplinary hearings at a VA Regional Office or at the VA Central Office. One commenter suggested that the individual who is the subject of the disciplinary proceeding should be allowed to choose where the hearing is held. The other commenter suggested that the final rule prescribe criteria for deciding the location of a hearing. According to this commenter, requiring a representative, agent, or attorney to travel to Washington, DC for a hearing would be a hardship and potentially impair the individual’s ability to produce evidence or compel the appearance of witnesses. The commenter also noted that VA’s regulation providing subpoena authority to officials in designated positions prescribes a 100-mile radius from the place of a hearing for such authority and questioned whether VA would extend the 100-mile limit for purposes of this regulation. See 38 CFR 2.2(b).

We agree that in promulgating regulations designating the location of hearings under §14.633 we must consider the interests of individuals defending allegations of misconduct or incompetence. Individuals defending allegations of improper conduct or incompetence would indeed suffer costs in traveling to VA’s Central Office and may be unable to attend the hearing. To ensure equity and consistency in the hearing process, VA will amend the language of §14.633(f) to provide that if a hearing is requested, it will be held at the VA Regional Office nearest the individual’s principal place of business. If the individual’s principal place of business is in Washington, DC, the hearing will be held at the VA Central Office.

Another commenter recommended that VA add provisions to §14.633(f) prescribing the authority of the hearing officer. The commenter recommended that the regulation expressly provide the hearing officer with authority to change the time or place of a hearing and to deal with the conduct of the hearing. We believe that the hearing officer currently has the inherent authority necessary to conduct an efficient and orderly hearing. We will make no changes to the final rule based on this comment.

One commenter stated that it would be unfair for the Board to use or seek General Counsel opinions during its review of the General Counsel’s disciplinary decisions and suggested that we amend §14.633(g) to prohibit the Board from doing so. We disagree and will not change the rule based on this comment.

The General Counsel is the Department’s chief legal officer and is responsible for advising the Secretary concerning VA programs and policies. 38 U.S.C. 311; 38 CFR 14.500(b). A written legal opinion of the General Counsel involving laws administered by VA is binding as to all VA employees and officials, 38 CFR 14.507(a), to include the Board. 38 U.S.C. 7104(c) (“[t]he Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department”). The Board is responsible for providing one administrative review on appeal after considering all of the evidence of record and applicable provisions of law. 38 U.S.C. 7104(a). Accordingly, in reviewing the General Counsel’s disciplinary decisions, the Board applies the law to the facts of the case and is bound by any precedent opinion of the General Counsel that interprets that law. VA does not have authority to create an exception to section 7104(c) as the commenter appears to suggest. This does not mean that the Board is bound by any precedent General Counsel opinion in the matter on appeal. In fact, §14.633(g) provides “[n]othing in this section shall be construed to limit the Board’s authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential or a proper appellate decision or the General Counsel’s ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.” Additionally, we note that the Board is required to supplement its decision with a written statement of the reasons and bases as to its findings on the material issues of fact based on the entire record and without deference to any factual findings of the General Counsel. See 38 U.S.C. 7104(d). Moreover, any reviewing appellate court would not be bound by a General Counsel precedent opinion. Therefore, the suggestion that the Board could use a General Counsel opinion to unfairly influence its review of a General Counsel accreditation decision is unfounded.

Another commenter asked whether General Counsel’s disciplinary...
decisions may be appealed to the Board and the Veterans Court and whether normal appeal procedures would apply. Under § 14.633(g), the General Counsel’s decision to suspend or cancel accreditation “is a final adjudicative decision of an agency of original jurisdiction and may be appealed to the Board of Veterans’ Appeals.” Notwithstanding provisions for closing the record, “appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20.” Because the proposed rules address the commenter’s concerns, we will not change the rule based on the comment.

Section 14.636—Payment of Fees for Representation by Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans’ Appeals

One commenter urged us to clarify the effect delayed implementation of the regulations will have on fee agreements entered into on or after June 20, 2007. We agree that clarification is necessary. The new regulations apply to fee agreements entered on or after June 23, 2008. They do not apply to fee agreements entered into on or after June 20, 2007. We think that it is necessary to expand the scope of VA’s regulations to address the legal services that occur outside a proceeding before the Department on a claim for benefits. One commenter, citing the potential for abuse, recommended that we limit the circumstances in which hourly or flat fees can be charged by agents or attorneys. We do not propose limiting claimants’ options for contracting with agents and attorneys for representational services. In our view, it would be prudent to revisit the issue in a later rulemaking if we receive information concerning agents’ and attorneys’ abuse of hourly or flat-rate fees. Without such information, the current options (fixed fee, hourly rate, percentage of past-due benefits recovered, or a combination thereof) appear to provide claimants, agents, and attorneys flexibility in negotiating the appropriate compensation structure, and appear to promote choice in representation. Accordingly, we will not change the rule based on the commenter’s request.

Contingent fee agreements, however, present a more specific risk of exploitation. Attorneys who litigate before the VA have, on average, a better sense of the value of a particular veteran’s claim than the veteran does. Contingent fees also provide attorneys with an incentive to take cases that can be easily resolved at the administrative level. Finally, a veteran may lack sufficient bargaining power to negotiate a fair deal. Thus, contingent fees give rise to the potential that a significant portion of a veteran’s past-due benefits could be transferred to a lawyer for less work than was expected by the client at the time of the agreement. Indeed, experts such as the American Bar Association, while concluding that contingent fees are ethical, have noted such agreements must be individually evaluated to determine whether the final payment is appropriate and reasonable.

One commenter, citing Silverman v. Brown, 7 Vet. App. 487, 488 (1995) (fee of 50 percent of benefits awarded is patently unreasonable), recommended that we establish a regulatory presumption that a fee in excess of 33 1/3 percent of the past-due benefits awarded is unreasonable. The commenter went on to assert that “VA need only determine whether the fee called for is more or less than one-third of the past-due benefits” when reviewing a non-direct-pay fee agreement for reasonableness. Public Law 109–461 amended 38 U.S.C. 5904 to provide that a fee that does not exceed 20 percent of the past-due benefits awarded “shall be presumed reasonable.” Congress also authorized VA to “prescribe in regulations reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant” for representation before the Department. In practice, agents and attorneys appear to agree with the commenter that any fee in excess of 33 1/3 percent of the past-due benefits awarded by VA to a claimant would generally be unreasonable. No fee agreement filed with the Department since the June 20, 2007, effective date of amended section 5904 has called for a fee in excess of 30 percent of past-due benefits. Accordingly, we will clarify in § 14.636(f) that fees which exceed 33 1/3 percent of any past-due benefits awarded shall be presumed to be unreasonable. We will also clarify that the presumptions prescribed in § 14.636(f) for fees that do not exceed 20 percent of any past-due benefits and fees that exceed 33 1/3 percent of any past-due benefits may be rebutted by clear and convincing evidence relating to the factors in § 14.636(e). As evidenced by the presumption for fees that exceed 33 1/3 percent, and the absence of such fees in the current market, we are not currently of the mind that such fees are justified. Accordingly, only in the rare case where there is clear and convincing evidence relating to the factors in § 14.636(e) would such fees be justified.

For fees above 20 percent but below 33 1/3 percent, additional scrutiny may be necessary if VA or the claimant or appellant challenges the reasonableness of the fee under the procedures in § 14.636(f). Under those procedures, the
burden is on the agent or attorney to demonstrate that this fee is reasonable under the individual circumstances. Such fees may not always, in every circumstance, be reasonable. Rather, VA will apply the factors in § 14.636(e) in a review that considers all of the individual circumstances of the representation. Although we agree with the commenter’s suggestion that some administrative efficiency will result from prescribing a presumption for fees which exceed 33 1/3 percent of any past-due benefit, we do not agree that VA need only determine whether a fee exceeds the 33 1/3 percent threshold when reviewing non-direct-pay fees for reasonableness. The commenter appears to suggest that we would create an implied presumption of reasonableness for non-direct-pay fees between 20 percent and 33 1/3 percent. However, in section 5904(c)(3)(A), Congress authorized VA to review any fee agreement filed with the Department under section 5904(c)(2) and to order a reduction in the fee if it is excessive or unreasonable. Therefore, we have adopted a three-tier system. In accord with the statute, fees of 20 percent or less are presumed reasonable, absent specific evidence to the contrary. Fees above 33 1/3 percent are presumptively unreasonable, absent specific evidence to the contrary. We interpret section 5904(c)(3)(A) to mean that any fee agreement, regardless of any applicable presumption, may be reviewed for reasonableness upon VA’s own motion or upon the motion of the claimant or appellant. Accordingly, the presumptions in § 14.636(f) must be construed in the context provided by § 14.636(i) regarding motions for review of fee agreements.

We received two comments regarding § 14.636(g). One commenter objected to requiring the filing of fee agreements with OGC suggesting the provision is unnecessarily intrusive, unconstitutional, and that compliance would violate professional ethical standards. The second commenter suggested we could improve communication between the claimant and the attorney and ensure only reasonable fees are charged by requiring additional information in fee agreements; this commenter, however, made no recommendation as to what kinds of information VA should require, and we believe that we have prescribed sufficient information to permit us to determine whether a fee is reasonable. We disagree that requiring an agent or attorney to file fee agreements with OGC is intrusive, unconstitutional, or violates ethical standards of conduct. First, 38 U.S.C. 5904(c)(2) expressly provides that agents and attorneys must file a copy of any fee agreement with VA. Therefore, VA has no choice but to implement the statutory requirement. Second, with respect to the constitutionality of the statute, given the requirement to file fee agreements with VA is current law properly passed by Congress and signed by the President, we presume its constitutionality. Finally, the commenter merely states that requiring fee agreements to be filed with OGC is a violation of professional ethical standards without further explanation. We do not see how such a requirement violates ethical standards. Furthermore, thousands of fee agreements have already been filed with VA, and we are unaware of any attorney having been found to have violated his or her rules of professional conduct for having done so. Therefore, we will make no change to the rule based on the comments.

We did not receive any comments with respect to § 14.636(g)(2) but have determined that changes pertaining to the presumption of reasonableness under § 14.636(e) warrant changes in this section. We still require fee agreements to clearly specify whether the agent or attorney is to be paid by VA directly out of an award of past due benefits. However, the regulation will be clarified to provide that any fee agreement that fails to clearly specify whether it is a direct-pay fee agreement will be deemed an agreement for which the agent or attorney is responsible for collecting fees for representation. We received a number of comments on § 14.636(h). Two commenters expressed concern that § 14.636(h)(3) improperly permits paid representation in cases in which a Notice of Disagreement has not been filed. One commenter recommended that § 14.636(h)(3) be amended to clarify that ancillary benefits are not “past-due benefits.” Two commenters recommended amending § 14.636(h)(3)(ii) and adopting a consistent interpretation of the terms “case,” “claim,” and “issue.” We disagree that § 14.636(h)(3) improperly permits paid representation in cases in which a Notice of Disagreement has not been filed. Congress amended 38 U.S.C. 5904(c)(1) to permit paid representation after the claimant files a Notice of Disagreement. Congress further amended section 5904(c)(1) to remove the requirement that an agent or attorney be hired within a year of a final Board decision in a case. We interpret this to mean that Congress wanted claimants to have the option to hire an agent or attorney at any time so long as an agency or original jurisdiction has rendered a decision on a claim and a Notice of Disagreement has been filed with respect to that decision. Therefore, § 14.636(h) properly reflects congressional intent and we decline to amend it.

An agent or attorney may receive fees for representing a claimant before VA pursuant to a direct-pay fee agreement or an agreement specifying payment by the claimant. To the extent that an agent or attorney seeks payment from the claimant, there is no limitation on the parties’ ability to include fees for representation on ancillary benefit claims in the fee agreement. Clearly, Congress generally intended that claimants would have choice in representation with respect to all claims for benefits when it enacted Public Law 109–461. However, under 38 U.S.C. 5904(d), VA’s authority to honor direct-pay fee agreements is limited to payment out of “past-due” benefits. Section 14.636(h)(3), interprets VA’s authority in 38 U.S.C. 5904(d) to pay fees out of “past-due” benefit awards as being limited to payment out of “nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by an agency of original jurisdiction or the Board of Veterans’ Appeals or the lump sum payment that represents the total amount of recurring cash payments that accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans’ Appeals, or an appellate court.” Most ancillary benefits are not recurring cash payments and, therefore, fall outside the definition of “past-due” benefits for purposes of determining the amount to be paid directly to an agent or attorney under a direct-pay fee agreement.

As discussed with regard to § 14.627(g) above, we must reconcile our rules prescribing permissible fees with Federal Circuit case law. To accomplish this, we will amend § 14.636(c) to clarify when agents or attorneys may charge fees. However, we will not create new universal definitions for “case” and “claim” because the terms may have different meanings in contexts other than agent and attorney fees.

As an initial matter, we note that the Veterans Judicial Review Act of 1986 (VJRA) removed the long-standing limitation on fees but also, for the first time, restricted claimant’s access to paid representation to the point after which the first administrative appeal of a claim is complete. In limiting fees to services
ensuring that claimants Congress balanced claimants a benefits matter and the claimant has jurisdiction has rendered a decision on significant change as an expression of process, the process for developing an administrative appeal process, which includes the Decision Review Officer includes the Decision Review Officer representation is available in the representation to the filing of a Notice Congress shifted the entry point for paid representation is available, and to opportunity to decide a matter before an agency of original jurisdiction or the Board, he or she seeks to attack the prior decision based upon alleged error, not to obtain a new decision based upon new and material evidence or other change in circumstance. VA had an opportunity to initially decide the claim based on the same law and evidence, and under our interpretation of the amendments to chapter 59 there is no reason to preclude paid representation if the claimant filed a Notice of Disagreement with respect to the original, allegedly erroneous, decision on or after June 20, 2007. For the reasons stated above, we will modify § 14.636(c) to clearly state the general rule that VA must have an opportunity to decide a matter before paid representation is available, and to clarify application of the rule in claims to reopen, claims for increase, and requests for revision based upon clear and unmistakable error. We will also modify § 14.636(c) to clarify that it is generally the agency of original jurisdiction that issued the decision on a claim or claims identified in the Notice of Disagreement that will decide whether an agent or attorney is eligible for fees under the original, allegedly erroneous, decision on or after June 20, 2007. In cases where VA has rendered a decision on a claim or claims identified in the Notice of Disagreement, VA must have the opportunity to consider new or material evidence or other change in circumstance. VA had an opportunity to initially decide the claim based on the same law and evidence, and under our interpretation of the amendments to chapter 59 there is no reason to preclude paid representation if the claimant filed a Notice of Disagreement with respect to the original, allegedly erroneous, decision on or after June 20, 2007.

We received numerous comments regarding § 14.636(i), which prescribes the procedures for seeking review of fee agreements. Three commenters, citing a conflict of interest, objected to OGC’s authority to review fee agreements on its own motion. One commenter requested that we describe when VA could unilaterally review fee agreements. Two commenters asserted that the procedures for reviewing fee agreements are unfair because they do not provide for an increase in agents’ and attorneys’ fees. Two commenters also expressed concern that claimants will not know what it means to “serve” a motion for review and recommended that claimants merely ask for a fee review at the agency of original jurisdiction. These commenters also suggested that VA, not the claimant, should have the responsibility of notifying the agent or attorney of the claimant’s request for review.
For the reasons discussed at length above regarding § 14.629, we disagree that there is a conflict of interest in OGC’s review of fee agreements. With respect to the commenter’s request that we clarify under what circumstances OGC will review fee agreements on its own motion, we believe §§ 14.636(e) and (f) are sufficiently clear. Section 14.636(e) describes in detail the fees that are permitted under current law. Section 14.636(f) implements the statutory presumption that fees that do not exceed 20 percent of past-due benefits awarded are reasonable. We interpret these provisions to mean that VA is not required to initiate the review of a fee that is less than or equal to 20 percent of past-due benefits awarded, and that any fee in excess of 20 percent does not benefit from the presumption and is subject to review by OGC on its own motion.

We also disagree with the commenters who suggested that OGC should also review fees to determine whether an agent or attorney is entitled to an increase in fees notwithstanding fee agreement terms. First, we note that imposing fee limitations, Congress intended to protect veterans’ benefits from unscrupulous lawyers. S. Rep. No. 109–297, at 6 (2006). Second, section 5904(c)(3)(A) clearly expresses Congress’ intent that only VA or a claimant may seek review of a fee agreement and only for the purpose of reducing the fee called for in an agreement. Accordingly, VA does not have authority to review fees as the commenter suggests, and we will not make any changes based on the comment. We agree with the commenter’s recommendation that we limit the period during which a fee agreement may be reviewed by OGC and have amended §§ 14.636(i) to prescribe that VA or a claimant may seek review of the fee agreement within 120 days of the final VA decision on the claim.

We disagree with the commenter who suggested that claimants will not know what it means to “serve” an agent or attorney with a motion for review of a fee agreement because they lack access to regulations. The predecessor provision, 38 CFR 20.609(l), required a party contesting the fee agreement to file the motion for review with the Board and certify that a copy was mailed to the other party. While the procedure for filing a motion for review is changing, the substance of what is required of the claimant seeking review is not. We note that VA regulations are available to the public through a variety of sources, including electronic media. To the extent that a claimant is unaware of the fee-agreement-review provisions and seeks a review at an agency of original jurisdiction, the agency of original jurisdiction will forward the request to OGC for a decision. Therefore, we do not believe the provisions requiring claimants to complete service of documents are too onerous or confusing or in any way prejudice claimants. Further, we have defined “service” in § 14.627(g) to clarify the notice requirements applicable to individuals seeking review of fee agreements. We also decline to change the procedure for filing motions for review of fee agreements. Under prior law, claimants mailed a copy of the motion and supporting evidence to the agent or attorney; this rule merely retains that requirement. Furthermore, disagreements are often the result of a communication breakdown between the parties to an agreement. We believe the notice requirements will help parties resolve fee disputes without getting VA actively involved. Finally, it is appropriate to place some burden on a claimant challenging an agreement he or she entered into. Requiring a claimant to serve the agent or attorney concerning their contract, as opposed to having VA do the work, will force the claimant to assume some of the effort required to dispute a fee agreement and to determine whether it is worth their time and effort. In our view, this procedure is reasonable in light of Congress’ decision to expand choice of representation.

Section 14.637—Payment of the Expenses of Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans’ Appeals

One commenter objected to § 14.637(c), which establishes the types of reimbursable “expenses” that an agent or attorney may charge a claimant, and essentially disagreed with our determination that overhead costs are not reasonable expenses. Although we proposed to reorganize parts 14 and 20 of VA’s regulations governing accreditation and fee matters, we did not make any substantive change to former 38 CFR 20.610(c), which we redesignated as § 14.637. In any event, we continue to believe that it would be unreasonable for agents and attorneys to charge claimants for costs that are not directly incurred as a result of providing representation in the case. Accordingly, we will not make any changes based on this comment.

General Matters; Applicability of Accreditation Provisions

We received five comments expressing concern with the lack of a stated transition plan to implement the proposed changes in VA’s accreditation program. More specifically, the commenters expressed concern that VA’s implementation of new accreditation standards, without a transition plan for claimants currently represented by agents and attorneys before agencies of original jurisdiction and the Board, would potentially deny representation to such claimants.

We agree that implementation of its new accreditation rules should not impede or otherwise interfere with ongoing representation before agencies of original jurisdiction and the Board. To avoid that result, agents and attorneys providing representation in cases as of the effective date of the final rule need not meet the new accreditation requirements, unless the agent or attorney intends to provide representation in cases in which a Notice of Disagreement is filed after the effective date. An agent or attorney will be deemed to be providing representation on a claim before an agency of original jurisdiction or the Board if VA has evidence that the agent or attorney complied with the accreditation and power of attorney requirements in former 38 CFR 14.629 and 14.631 prior to the effective date of this final rule. Further, agents and attorneys providing representation as of the effective date may continue to do so through the final resolution of the claim. Agents and attorneys seeking to provide representation in a claim in which the Notice of Disagreement was filed after the effective date of the final rule, however, must file an application with OGC as provided in § 14.629(b) and receive notice of accreditation before providing representation. The delayed effective date, prospective application, and phased initial compliance dates for CLE will ensure that agent and attorney representation is uninterrupted during the transition period between the old and new accreditation programs. Accordingly, we will not make further changes based on these comments. Several commenters also suggested that VA limit its authority to review applications for accreditation after a specified period of time has expired. OGC cannot commit to reviewing accreditation applications in a specific time period and will not establish a deadline following which an application must be approved notwithstanding that it may be incomplete or that the individual does not meet the standards in § 14.629. VA could not meet its obligation to ensure responsible, competent representation without sufficient administrative flexibility. While some applications may
be reviewed and approved very quickly, others may be delayed due to legitimate administrative concerns. However, we recognize that representation cannot begin without accreditation and that attorney applications may generally be approved upon submission of the supporting documents identified in §14.629; therefore, we will attempt to review and respond to complete applications in less than 30 days.

We received one comment regarding section 101(c)(2) of Public Law 109–461, which requires VA to report to Congress on the effects of allowing agents and attorneys to charge fees for representation after a Notice of Disagreement has been filed. The commenter suggested that VA “begin gathering data now to provide Congress with a proper assessment” and “urged the Secretary to set forth specifically in regulation what data will be used to provide Congress with the assessment.”

VA agrees that data gathering must begin as soon as possible to provide an accurate evaluation of the effects of Public Law 109–461 and has already taken affirmative steps to measure the impact of the new law. However, the development and gathering of such information are internal agency procedural matters exempt from notice and comment. See 5 U.S.C. 553(b)(3)(A). Accordingly, we will make no changes based on this comment.

Paperwork Reduction Act

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) in 38 CFR 14.629 and 14.631. The collections are approved under Office of Management and Budget control number 2900–0605 and 2900–0321. We display the control numbers under the applicable regulation text in this final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. At a minimum, this rule would affect the 117 attorneys who filed fee agreements with the Board under the predecessor law and the 47 agents currently accredited by VA. However, it would not have a significant economic impact on these individuals because it would only impose accreditation and reasonable fee requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. VA has examined the economic, legal, and policy implications of this rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

There are no Federal Domestic Assistance programs associated with this final rule.

List of Subjects

38 CFR Part 1


38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: May 9, 2008.

Gordon H. Mansfield, Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR parts 1, 14, 19 and 20 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

1. The authority citation for part 14 continues to read as follows:


3. Revise §14.626 to read as follows:

§14.626 Purpose.

The purpose of the regulation of representatives, agents, attorneys, and other individuals is to ensure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans’ benefits.

4. Amend §14.627 by:

a. Revising the introductory text.

b. Revising paragraph (a).

c. Redesignating paragraphs (b) through (l) and (m) as paragraphs (c) through (m) and (p) and (q), respectively.

d. Adding new paragraphs (b), (n), and (o).

e. Revising newly redesignated paragraphs (d), (e), (g), (l), and (m).
The revisions and additions read as follows:

§14.627 Definitions.

As used in regulations on representation of VA claimants:

(a) **Accreditation** means the authority granted by VA to representatives, agents, and attorneys to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.

(b) **Agency of original jurisdiction** means the VA activity or administration that made the initial determination on a claim or matter or that handles any subsequent adjudication of a claim or matter in the first instance, and includes the Office of the General Counsel with respect to proceedings under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements.

(c) **Attorney** means a person who has made service certifying the motion, response, or reply to a person.

(d) **Benefit** means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by VA pertaining to veterans, dependents, and survivors.

(e) **Claim** means application made under title 38 U.S.C., and implementing directives, for entitlement to VA benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(f) **Claimant** means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by VA pertaining to veterans, dependents, and survivors.

(g) **Construction** means any interpretation or conclusion that makes sense.

(h) **Designation** means the delivery of a VA Form 21–526, “Claimant’s Designee,” or VA Form 21–526a, “Appointment of Individual as Claimant’s Representative.”

(i) **Recognition** means certification by VA of organizations to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.

(j) **Representative** means a person who has been recommended by a recognized organization and accredited by VA.

(k) **Service** means the delivery of a motion, response, or reply to a person or entity to which it is directed. Proof of service consists of a statement by the person who made service certifying the date and manner of service, the names of the persons served, and the addresses of the place of delivery. For service by mail, proof of service shall include the date and manner by which the document was mailed.

5. Amend §14.629 by:
   a. Revising the introductory text.
   b. In paragraph (a)(1), removing “the Department of Veterans Affairs,” and adding, in its place, “VA”.
   c. Revising the paragraph (b) heading.
   d. Redesignating paragraph (b)(2) as (b)(6), and paragraph (b)(1) as new paragraph (b)(2).
   e. Adding a new paragraph (b)(1).
   f. Revising newly redesignated paragraph (b)(2) introductory text and paragraph (b)(2)(i).
   g. Redesignating paragraphs (b)(2)(vii) and (viii) as paragraphs (b)(2)(viii) and (ix), respectively.
   h. Adding a new paragraph (b)(2)(vii).
   i. Revising newly redesignated paragraph (b)(2)(ix).
   j. Adding new paragraphs (b)(2)(x), (b)(3), (b)(4), and (b)(5).
   k. Revising newly redesignated paragraph (b)(6).
   l. Revising paragraph (c) heading.
   m. Revising paragraphs (c)(1) and (c)(3).
   n. Revising the note following paragraph (c)(4).

The additions and revisions read as follows:

§14.629 Requirements for accreditation of service organization representatives, agents, and attorneys.

The Assistant General Counsel of jurisdiction or his or her designee will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney. If the Assistant General Counsel or designee determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Assistant General Counsel. If the Assistant General Counsel determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation, notification will be issued by the Assistant General Counsel. If the Assistant General Counsel determines that the prospective service organization representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Assistant General Counsel. The determination of character and fitness by VA, and a written examination.

(ii) For attorneys, the initial accreditation process consists of application to the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, an affirmative determination of character and fitness by VA, and a written examination.

(iii) As a further condition of initial accreditation, both agents and attorneys are required to complete 3 hours of qualifying continuing legal education (CLE) during the first 12-month period following the date of initial accreditation by VA. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association and, at a minimum, must cover the following topics: representation before VA, claims procedures, basic eligibility for VA benefits, right to appeal disability compensation (38 U.S.C. Chapter 11), dependency and indemnity compensation (38 U.S.C. Chapter 13), and pension (38 U.S.C. Chapter 15).
Upon completion of the initial CLE requirement, agents and attorneys shall certify to the Office of the General Counsel in writing that they have completed qualifying CLE. Such certification shall include the title of the CLE, date and time of the CLE, and identification of the CLE provider, and shall be submitted to VA as part of the annual certification prescribed by §14.629(b)(4).

(iv) To maintain accreditation, agents and attorneys are required to complete an additional 3 hours of qualifying CLE on veterans benefits law and procedure not later than 3 years from the date of initial accreditation and every 2 years thereafter. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association. Agents and attorneys shall certify completion of the post-accreditation CLE requirement in the same manner as described in §14.629(b)(1)(iii).

(2) An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department. An individual desiring accreditation as an agent or attorney must file a completed application (VA Form 21a) with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, on which the applicant submits the following:

(i) His or her full name and home and business addresses;

(ii) Information concerning the applicant’s level of education and academic history;

(iv) Information relevant to whether the applicant for accreditation as an agent has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel (agents only); and

(x) Certification that the applicant has satisfied the qualifications and standards required for accreditation as prescribed by VA in §14.632 of this part.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under §14.631(a), if the claimant’s written consent is furnished to VA. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant’s records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (e.g., a veteran’s survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual’s behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant’s file. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans’ Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing.

* * * * *

Note to §14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under §14.631(a) as the claimant’s representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records as described in §1.600 through 1.603 in part 1 of this chapter.

* * * * *

6. Amend §14.630 by:

a. Revising paragraph (a).

b. Revising paragraph (b)(1) introductory text.

c. Adding paragraphs (c) and (d) immediately preceding the authority citation at the end of the section. The revisions and additions read as follows:

§14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21–22a, “Appointment of Attorney or Agent as Claimant’s Representative,” and a statement signed...
§ 14.631 Powers of attorney; disclosure of claimant information.

(a) A power of attorney, executed on either VA Form 21–22, “Appointment of Veterans Service Organization as Claimant’s Representative,” or VA Form 21–22a, “Appointment of Attorney or Agent as Claimant’s Representative,” is required to represent a claimant before VA and to authorize VA’s disclosure of information to any person or organization representing a claimant before the Department. Without the signature of a person providing representation for a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney, the appointment is invalid, and the person appointed to provide representation is under no obligation to do so. The power of attorney shall meet the following requirements:

(1) The number of accredited representatives, agents, and attorneys operating in the claimant’s geographic region;

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA, including the rules of conduct in § 14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in § 14.633 of this part.

§ 14.633 of this part or an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant’s representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word “only” with reference to the individual representative.

(c) An organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may withdraw from representation provided before a VA agency of original jurisdiction if such withdrawal would not adversely impact the claimant’s interests and the office of the claimant’s representative. This section is applicable to representation on a particular claim, and the withdrawal applies to all claims represented by the organization or individual.

§ 14.632 Standards of conduct for persons providing representation before the Department

(a)(1) All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under § 14.630, representatives, agents, or attorneys. The Department has approved the information collection requirements in this section under control number 2900–0321.

§ 14.632 to read as follows:

(b)(1) A power of attorney may be revoked at any time, and an agent or attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney executed by the claimant and the organization or individual providing representation shall constitute a revocation of an existing power of attorney.

(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21–22a, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(3) Any person providing representation shall take steps necessary to protect the claimant’s interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and returning any documents provided by VA to the organization or individual pursuant to the claimant’s instructions, to the organization or individual substituted as the representative, agent, or attorney of record. Upon withdrawing representation, all property of the claimant must be returned to the claimant. If the claimant is unavailable, all documents provided by VA for purposes of representation must be returned to the VA organization in possession of the claims file. Any other property of the claimant must be maintained by the organization or individual according to applicable law.

(4) The Department has approved the information collection requirements in this section under control number 2900–0321.

§ 14.632 to read as follows:

§ 14.632 Standards of conduct for persons providing representation before the Department

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(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21–22a, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(3) Any person providing representation shall take steps necessary to protect the claimant’s interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and returning any documents provided by VA to the organization or individual pursuant to the claimant’s instructions, to the organization or individual substituted as the representative, agent, or attorney of record. Upon withdrawing representation, all property of the claimant must be returned to the claimant. If the claimant is unavailable, all documents provided by VA for purposes of representation must be returned to the VA organization in possession of the claims file. Any other property of the claimant must be maintained by the organization or individual according to applicable law.

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(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21–22a, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(3) Any person providing representation shall take steps necessary to protect the claimant’s interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and returning any documents provided by VA to the organization or individual pursuant to the claimant’s instructions, to the organization or individual substituted as the representative, agent, or attorney of record. Upon withdrawing representation, all property of the claimant must be returned to the claimant. If the claimant is unavailable, all documents provided by VA for purposes of representation must be returned to the VA organization in possession of the claims file. Any other property of the claimant must be maintained by the organization or individual according to applicable law.

(4) The Department has approved the information collection requirements in this section under control number 2900–0321.
truthful in their dealings with claimants and VA.
(b) An individual providing representation on a particular claim under §14.630, representative, agent, or attorney shall:
(1) Provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations;
(2) Act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.
(c) An individual providing representation on a particular claim under §14.630, representative, agent, or attorney shall not:
(1) Violate the standards of conduct as described in this section;
(2) Circumvent a rule of conduct through the actions of another;
(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;
(4) Violate any of the provisions of title 38, United States Code, and title 38, Code of Federal Regulations;
(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation;
(6) Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision;
(7) Delay, without good cause, the processing of a claim at any stage of the administrative process;
(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;
(9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;
(10) Disclose, without the claimant’s authorization, any information provided by VA for purposes of representation; or
(11) Engage in any unlawful or unethical conduct.
(d) In addition to complying with standards of conduct for practice before VA in paragraphs (a) through (c) of this section, an attorney shall not, in providing representation to a claimant before VA, engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law.

Authority: 38 U.S.C. 501(a), 5902, 5904
9. Amend §14.633 by:
(a) Revising the section heading.
(b) Revising paragraphs (a), (b), (c) introductory text, and (c)(1).
(c) Redesignating paragraph (c)(4) as paragraph (c)(7).
(d) Revising newly redesignated paragraph (c)(7).
(e) Adding new paragraphs (c)(4), (c)(5), and (c)(6).
(f) Revising paragraphs (d) through (f).
(g) Revising paragraph (h).
(h) Adding new paragraph (i).

The revisions and additions read as follows:

§14.633 Termination of accreditation or authority to provide representation under §14.630.

(a) Accreditation or authority to provide representation on a particular claim under §14.630 may be suspended or canceled at the request of an organization, individual providing representation under §14.630, representative, agent, or attorney. When an organization requests suspension or cancellation of the accreditation of a representative due to misconduct or lack of competence on the part of the representative or because the representative resigned to avoid suspension or cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for suspension or cancellation and the facts and circumstances surrounding any incident that led to the request.

(b) Accreditation shall be canceled at such time as a determination is made by the General Counsel that any requirement of §14.629 is no longer met by a representative, agent, or attorney.

(c) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:
(1) Violation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in §14.632;
(2) Practicing without authority or under a false or misleading name or address;
(3) Engaging in the unauthorized practice of law;
(4) Knowingly presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under §14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position to support or raise without a good faith argument a claim, issue, or argument.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:
(1) Practicing without authority or under a false or misleading name or address;
(2) Engaging in the unauthorized practice of law;
(3) Knowingly presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under §14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law;
(5) Suspension or disbarment by any court, bar, or Federal or State agency to which such individual providing representation under §14.630, representative, agent, or attorney was previously admitted to practice, or disqualification from participating in or appearing before any court, bar, or Federal or State agency and lack of subsequent reinstatement;
(6) Charging excessive or unreasonable fees for representation as determined by VA, the Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit; or
(7) Any other unlawful or unethical practice adversely affecting an individual’s fitness for practice before VA.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds that the performance of an individual providing representation under §14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran’s benefits. A determination that the performance of an individual providing representation under §14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence required to represent claimants before VA will be based upon consideration of the following factors:
(1) The relative complexity and specialized nature of the matter;
(2) The individual’s general experience;
(3) The individual’s training and experience; and
(4) The preparation and study the individual is able to give veterans benefits matters and whether it is feasible to refer such matters to, or associate or consult with, an individual of established competence in the field of practice.

(e) As to cancellation of accreditation under paragraphs (c) or (d) of this section, upon receipt of credible written information from any source indicating improper conduct, or incompetence, the Assistant General Counsel of jurisdiction shall inform the subject of the allegations about the specific law, regulation, or policy alleged to have been violated or the nature of the alleged incompetence and the source of the complaint, and shall provide the subject with the opportunity to respond. If the matter involves an accredited
A representative of a recognized organization, the notice shall include contact with the representative’s organization. When appropriate, including situations where no harm results to the claimant or VA, the Assistant General Counsel will provide the subject with an opportunity to correct the offending behavior before deciding whether to proceed with a formal inquiry. If the subject refuses to comply and the matter remains unresolved, or the behavior subsequently results in harm to a claimant or VA, the Assistant General Counsel shall immediately initiate a formal inquiry into the matter.

(1) If the result of the inquiry does not justify further action, the Assistant General Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the Assistant General Counsel shall:

(i) Inform the General Counsel of the result of the inquiry and notify the individual providing representation under §14.630, representative, attorney or agent of an intent to cancel accreditation or authority to provide representation on a particular claim. The notice will be sent to individuals providing representation on a particular claim by certified or registered mail to the individual’s last known address of record as indicated on the VA Form 21–22a on file with the agency of original jurisdiction. The notice will be sent to accredited individuals by certified or registered mail to the individual’s last known address of record as indicated in VA’s accreditation records. The notice will state the reason(s) for the cancellation proceeding and advise the individual to file an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, within 30 days from the date the notice was mailed, responding to the stated reasons for cancellation and explaining why he or she should not be suspended or excluded from practice before VA. The notice will also advise the individual of the right to submit additional evidence and the right to request a hearing on the matter. Requests for hearings must be made in the answer. If the individual does not file an answer with the Office of the General Counsel within 30 days of the date that the Assistant General Counsel mailed the notice, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(ii) In the event that a hearing is not requested, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(iii) The Assistant General Counsel may extend the time to file an answer or request a hearing for a reasonable period upon a showing of sufficient cause. (iv) For purposes of computing time for responses to notices of intent to cancel accreditation, days means calendar days. In computing the time for filing this response, the date on which the notice was mailed by the Assistant General Counsel shall be excluded. A response postmarked prior to the expiration of the 30th day shall be accepted as timely filed. If the 30th day falls on a weekend or legal holiday, the first business day thereafter shall be included in the computation. As used in this section, legal holiday means New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the State in which the individual resides.

(5) If a hearing is requested, it will be held at the VA Regional Office nearest the individual’s principal place of business. If the individual’s principal place of business is Washington, DC, the hearing will be held at the VA Central Office or other VA facility in Washington, DC. For hearings conducted at either location, the Assistant General Counsel or his or her designee shall present the evidence. The hearing officer shall not report, directly or indirectly to, or be employed by the General Counsel or the head of the VA agency of original jurisdiction before which the individual provided representation. The hearing officer shall provide notice of the hearing to the individual providing representation under §14.630, representative, attorney, or agent by certified or registered mail at least 21 days before the date of the hearing. Hearings shall not be scheduled before the completion of the 30-day period for filing an answer to the notice of intent to cancel accreditation. The hearing officer will have authority to administer oaths. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the individual requesting the hearing, an appropriate VA official designated in §2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The evidentiary record shall be closed 10 days after the completion of the hearing. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Assistant General Counsel within 30 days of closing the record. The Assistant General Counsel shall immediately forward the record and the hearing officer’s recommendation to the General Counsel for a final decision.

(b) The decision of the General Counsel is a final adjudicative determination of an agency of original jurisdiction and may be appealed to the Board of Veterans’ Appeals. The effective date for cancellation of accreditation or authority to provide representation on a particular claim shall be the date upon which the General Counsel’s final decision is rendered. Notwithstanding provisions in this section for closing the record at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board’s authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel’s ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(i) In cases where the accreditation of an agent or attorney is cancelled, the Office of the Counsel may notify all agencies, courts, and bars to which the agent or attorney is admitted to practice.

10. Add §14.636 to read as follows:

§14.636. Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans’ Appeals.

(a) Applicability of rule. The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans’ Appeals regardless of whether an appeal has been initiated.

(b) Who may charge fees for representation. Only accredited agents and attorneys may receive fees from claimants or applicants for services provided in connection with representation. Recognized
organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney. 

c) Circumstances under which fees may be charged. Except as noted in paragraph (c)(2) and in paragraph (d) of this section, agents and attorneys may charge claimants or appellants for representation provided: after an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156 of original jurisdiction that issued the decision on or after June 20, 2007, and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(1) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans’ Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(2) In cases in which a Notice of Disagreement was filed on or before June 19, 2007, agents and attorneys may charge fees only for services provided after both of the following conditions have been met:

(i) A final decision was promulgated by the Board with respect to the issue, or issues, involved in the appeal; and

(ii) The agent or attorney was retained not later than 1 year following the date that the decision by the Board was promulgated. (This condition will be considered to have been met with respect to all successor agents or attorneys acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(3) Except as noted in paragraph (i) of this section and § 14.637(d), the agency of original jurisdiction that issued the decision identified in a Notice of Disagreement shall determine whether an agent or attorney is eligible for fees under this section. The agency of original jurisdiction’s eligibility determination is a final adjudicative action and may be appealed to the Board.

(d) Exceptions—(1) Chapter 37 loans. With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) Payment of fee by disinterested third party. (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant.

(e) Fees permitted. Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review at which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) Presumptions. Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (b)(3) of this section shall be presumed to be reasonable. Fees which exceed 33 1⁄3 percent of any past-due benefits awarded shall be presumed to be unreasonable. These presumptions may be rebutted through an examination of the factors in paragraph (e) of this section establishing that there is clear and convincing evidence that a fee which does not exceed 20 percent of any past-due benefits awarded is not reasonable or that a fee which exceeds 33 1⁄3 percent is reasonable in a specific circumstance.

(g) Fee agreements. All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

(i) The name of the veteran,

(ii) The name of the claimant or appellant if other than the veteran,

(iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,

(iv) The applicable VA file number, and

(v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or
appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. Only fee agreements and documents related to review of fees under paragraph (i) of this section and expenses under § 14.637 may be filed with the Office of the General Counsel. All documents relating to the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans’ Appeals, or other VA office as appropriate.

(h) Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits. (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed $100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and 38 CFR 3.750)

(2) For purposes of this paragraph (h), a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph (h), “past-due benefits” means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by a VA agency of original jurisdiction or the Board of Veterans’ Appeals or the lump sum payment that represents the total amount of recurring cash payments that accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans’ Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the “past-due benefits” will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action authorizing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent’s or attorney’s fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant’s or appellant’s dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Office of the General Counsel as required by paragraph (g) of this section, the agent or attorney must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) Motion for review of fee agreement. Before the expiration of 120 days from the date of the final VA action, the Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant. The Office of the General Counsel may order a reduction in the fee called for in the agreement if it finds, by a preponderance of the evidence, or by clear and convincing evidence in the case of a fee presumed reasonable under paragraph (f) of this section, that the fee is unreasonable. The Office of the General Counsel may approve a fee presumed unreasonable under paragraph (i) of this section if it finds by clear and convincing evidence that the fee is reasonable. The Office of the General Counsel’s review of the agreement under this paragraph will address the issues of eligibility under paragraphs (c) of this section and reasonableness under paragraph (e) of this section. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the agreement and made an eligibility determination under paragraph (c) of this section. Motions for review of fee agreements must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant’s or appellant’s motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. Any agent or attorney may file a response to the motion, with any relevant evidence,
with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney. (2) The Assistant General Counsel shall initiate the Office of the General Counsel’s review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. (3) The Office of the General Counsel shall close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Office of the General Counsel shall forward the record and a recommendation to the General Counsel for a final decision. Unless either party files a Notice of Disagreement with the Office of the General Counsel, the agent or attorney must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel’s decision may be appealed to the Board of Veterans’ Appeals.

In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the agent’s or attorney’s accreditation to practice before VA.

(k) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and proceeded in accordance with procedures in 38 CFR Parts 19 and 20. Nothing in this section shall be construed to limit the Board’s authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel’s ability to issue a Supplemental Statement of the Case under 38 CFR 19.31. (Authority: 38 U.S.C. 5902, 5904, 5905) (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0085.)

11. Add § 14.637 to read as follows:

§ 14.637. Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans’ Appeals.

(a) Applicability of rule. The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans’ Appeals regardless of whether an appeal has been initiated.

(b) General. Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran’s dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel under § 14.636 of this part. Expenses are not payable directly to the agent or attorney or by VA out of benefits determined to be due to a claimant or appellant.

(c) Nature of expenses subject to reimbursement. “Expenses” include nonrecurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion.

“Expenses” do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, and the cost of office supplies.

(d) Expense charges permitted; motion for review of expenses. Reimbursement for the expenses of an agent or attorney may be obtained only if the expenses are reasonable. The Office of the General Counsel may review the expenses charged by an agent or attorney upon its own motion or the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. The Office of the General Counsel’s review of expenses under this paragraph will address the issues of eligibility under § 14.636(c) and reasonableness. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the fee agreement between the claimant and the agent or attorney and determined that the agent or attorney is eligible for reimbursement of expenses. Motions for review of expenses must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable and must be accompanied by all evidence the claimant or appellant desires to submit. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, and whether travel expenses are in keeping with expenses normally incurred by other representatives.

(1) A claimant’s or appellant’s motion for review of expenses must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel’s review of expenses on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office
of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. 

(3) The Office of the General Counsel shall close the record in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. Unless either party files a Notice of Disagreement with the General Counsel’s decision, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel’s decision may be appealed to the Board of Veterans’ Appeals.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

§19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(c) The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.


PART 20—BOARD OF VETERANS’ APPEALS: RULES OF PRACTICE

20. The authority citation for part 20 continues to read as follows:  

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

21. Amend §20.608 by revising paragraph (a) to read as follows:  

§20.608 Rule 608. Withdrawal of services by a representative.  

(a) Withdrawal of services prior to certification of an appeal. A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans’ Appeals by the agency of original jurisdiction by complying with the requirements of §14.631 of this chapter.
§ 20.800  Rule 800. Submission of additional evidence after initiation of appeal.
    * * * The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.
[Authority: 38 U.S.C. 7105(d)(1); 38 U.S.C. 5902, 5903, 5904]

24. Amend § 20.1304 by adding a paragraph (e) and revising the authority citation at the end of the section to read as follows:

§ 20.1304  Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.
    * * * * *
    (e) Relationship to proceedings before the General Counsel to cancel accreditation or to review the reasonableness of fees and expenses. The provisions of paragraphs (a), (b), and (d) of this section allowing appellants to submit additional evidence do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.
MATERIALS CONTAINED IN A VA CLAIM FILE
<table>
<thead>
<tr>
<th>Formula of Record</th>
<th>SAFEGUARD IT</th>
</tr>
</thead>
<tbody>
<tr>
<td>LETTER</td>
<td>NA</td>
</tr>
<tr>
<td>4. DEPARTMENT COMPONENT AND BRANCH OR CLASS</td>
<td>ARMY-RA-SC</td>
</tr>
<tr>
<td>5. GRADE, RATE OR RANK</td>
<td>SP5 E-5</td>
</tr>
<tr>
<td>6. DATE OF RANK</td>
<td>1 JUL 1972</td>
</tr>
<tr>
<td>7. U.S. CITIZEN</td>
<td>X</td>
</tr>
<tr>
<td>8. PLACE OF BIRTH (City and State or Country)</td>
<td>HACKENSACK NJ</td>
</tr>
<tr>
<td>9. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE</td>
<td>NA</td>
</tr>
<tr>
<td>10. SELECTIVE SERVICE NUMBER</td>
<td>LB #NA</td>
</tr>
<tr>
<td>11. TYPE OF TRANSFER OR DISCHARGE</td>
<td>TRF TO USAR</td>
</tr>
<tr>
<td>12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND</td>
<td>586 MAINT CO USAREUR</td>
</tr>
<tr>
<td>13. CHARACTER OF SERVICE</td>
<td>HONORABLE</td>
</tr>
<tr>
<td>14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED</td>
<td>USAR CON GP (REINF) RCPAC ST LOUIS MO</td>
</tr>
<tr>
<td>15. ENLISTMENT CODE</td>
<td>RE-2</td>
</tr>
<tr>
<td>16. TERMINAL DATE OF RESERVE/UNITED OCCUPATION</td>
<td>19 AUG 1976</td>
</tr>
<tr>
<td>17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION</td>
<td>PV1</td>
</tr>
<tr>
<td>18. REGULAR ENLISTMENTS</td>
<td>NONE</td>
</tr>
<tr>
<td>19. GRADE, RANK OR GRADE OF ENTRY INTO CURRENT ACTIVE SERVICE</td>
<td>26B30 17SEP71 828 281</td>
</tr>
<tr>
<td>20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)</td>
<td>CORAL GABLES FL</td>
</tr>
<tr>
<td>21. STATEMENT OF SERVICE</td>
<td>EXPERT 116</td>
</tr>
<tr>
<td>22. CREDITABLE FOR BASIC PAY PURPOSES</td>
<td>2 9 2</td>
</tr>
<tr>
<td>23. RELIGIOUS OCCUPATION AND DUTY NUMBER</td>
<td>26830 17SEP71 828 281</td>
</tr>
<tr>
<td>24. TOTAL ACTIVE SERVICE</td>
<td>2 9 2</td>
</tr>
<tr>
<td>25. EDUCATION AND TRAINING COMPLETED</td>
<td>WPNS SUP RDR RPR 26B30 30WKS 71 GED HS 71 YR</td>
</tr>
<tr>
<td>26. MILITARY AND EMPLOYMENT DATA</td>
<td>NONE</td>
</tr>
<tr>
<td>27. INSURANCE IN FORCE (Life or Health)</td>
<td>$10,000</td>
</tr>
<tr>
<td>28. VA CLAIM NUMBER</td>
<td>NA</td>
</tr>
<tr>
<td>29. SERVICE MEMBER'S GROUP LIFE INSURANCE COVERAGE</td>
<td>$10,000</td>
</tr>
<tr>
<td>30. REMARKS</td>
<td>CIV ED: 10 YRS GEN BLOOD GP: A+ WPNS SUPPORT RDR RPR ES NONE 22C USAREUR</td>
</tr>
<tr>
<td>31. AUTHENTICATION</td>
<td>PHILIP MARL</td>
</tr>
<tr>
<td>32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED</td>
<td>LARRY L WILLIAMS 2LT AG CHIEF ENL BRAIACH</td>
</tr>
<tr>
<td>33. SIGNATURE OF OFFICER AUTHORIZED TO SIGN</td>
<td></td>
</tr>
</tbody>
</table>
ROBERT W. SCHLORFF, II
ATTORNEY AND COUNSELOR AT LAW

1995 E. Oakland Park Boulevard
Suite 300
Fort Lauderdale, Florida 33306-1138
Telephone (954) 565-2550
Telecopier (954) 565-2123

September 10, 2001

B. J. Harker
Veterans Service Center Manager
Department of Veterans Affairs
St. Petersburg Regional Office
P. O. Box 1437
St. Petersburg, FL 33731

Re: 317-team25/mad
C 29 147 926
M

Dear Mr. Harker:

Enclosed, please find the following items in furtherance of Philip M. s claim:

1. VA Form 21-526, parts A, B, C, and D "Veterans Application for Compensation and Pension";
2. DD214;
3. 07/28/76, letter from Army re discharge from Standby Reserve;
4. 08/19/76, Honorable Discharge;
5. 11/19/86, Final Judgment of Dissolution of Marriage from Michael.
6. 08/27/87, Final Judgment of Adoption of Michael.
7. Birth Certificate, State of California, for Michael
8. 01/09/92, Final Judgment of Dissolution of Marriage from Brian Steingo, M.D., medical records from 01/27/84 through 03/21/00;
9. Clyde T. Stoner, M.D., medical records from 03/21/86 through 04/06/01.

If you have any questions regarding the enclosed, please do not hesitate to contact me.

Please be advised that I have been Mr. attorney for many years and I am assisting him in filing this claim.

Very truly yours,

[Signature]

ROBERT W. SCHLORFF, II

RWS/ejh
Enclosures
c: Philip
VETERAN'S APPLICATION FOR COMPENSATION AND/OR PENSION
VA Form 21-526, Part A: General information

Please read the attached "General Instructions" before you fill out this form.

SECTION I
Tell us what you are applying for
Check the box that says what you are applying for. Be sure to complete the other parts you need.

1. What are you applying for? If you are unsure please refer to the "General Instructions" page 2
   □ Compensation □ Pension □ Compensation and Pension
   Fill out Part A of Form 21-526 and Parts B and C
   Fill out Part A of Form 21-526 and Parts C and D
   Fill out Part A of VA Form 21-526 and Parts B, C, and D
   □ Yes (If "No," skip Item 2b and go to Item 3)
   □ No (If "Yes," provide file number below)
   □ I filed a claim for compensation
   □ I filed a claim for pension
   □ I filed a claim for compensation and pension
   (Go to 2b) □ Other

SECTION II
Tell us about you
We need information about you to process your claim faster.

3. What is your name?
   PHILIP M
   First: Middle: Last: Suffix (if applicable)

4. What is your Social Security number?

5. What is your sex?
   □ Male  □ Female

6a. Did you serve under another name?
   □ Yes (If "Yes," go to Item 6b)
   □ No (If "No," go to Item 7)

6b. Please list the other name(s) you served under
   N/A

7. What is your address?
   Street address, rural route, or P.O. Box
   POMPANO BEACH FL 33069-3071
   Apt. number
   611

8. What are your telephone numbers?
   Daytime: (954)
   Evening: (954)

9. What is your e-mail address?
   NONE

10. What is your date of birth?
    12/13/52
    month: day: year

11. Where were you born?
    Hackensack, N.J., USA
    City: State: Country

12a. Are you receiving disability benefits from the Office of Workers' Compensation (OWCP)?
   □ Yes  □ No
   (If "Yes," answer 12b and 12c also)

12b. When was the claim filed?

12c. What disability are you receiving benefits for?
   N/A

13a. What is the name of your nearest relative or other person we could contact if necessary?
   ROBERT W. SCHLORF II

13b. What is this person's address?
   Suite 195 G. OAKLAND Bldg 300
   LA MINEOLA, FL 33306

13c. What is his/her telephone number?
   Daytime: (954) 565-2550
   Evening: (954) 452-0015

13d. How is this person related to you?
   ATTORNEY
### SECTION III
Tell us about your active duty

1. Enter complete information for all periods of service. If more space is needed, use item 29 "Remarks.

2. Attach your original DD214 or a certified copy to this form. (We will return original documents to you.)

<table>
<thead>
<tr>
<th>14a. I entered active service the first time...</th>
<th>14b. I entered my second period of active service...</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/29/70</td>
<td>5/21/73</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14c. Place:</th>
<th>14d. Place:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ft. Campbell, KY</td>
<td>Fort Dix, NJ</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14e. Branch of Service:</th>
<th>14f. Branch of Service:</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14g. Grade, rank, or rating</th>
<th>14n. Grade, rank, or rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-5</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15a. Did you serve in Vietnam?</th>
<th>15b. When were you in Vietnam?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>☑ No</td>
<td>from / / / / to / / / /</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16a. Were you stationed in the Gulf after August 1, 1990?</th>
<th>16b. Do you want to have medical and other information about you included in the &quot;Gulf War Veterans' Health Registry&quot;?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
<td>☐ Yes</td>
</tr>
<tr>
<td>☑ No</td>
<td>☑ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17a. Have you ever been a prisoner of war?</th>
<th>17b. What country or government imprisoned you?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>☑ No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17c. When were you confined?</th>
<th>17d. What was the name of the camp or sector and what are the names of the city and country near its location</th>
</tr>
</thead>
<tbody>
<tr>
<td>from / / / / to / / / /</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### SECTION IV
Tell us about your reserve duty

<table>
<thead>
<tr>
<th>18a. Are you currently assigned to an active reserve unit?</th>
<th>18b. What is the name, mailing address, and telephone number of your current-unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>☑ No</td>
<td>(If &quot;Yes,&quot; answer item 18b also)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18c. Were you previously assigned to an active reserve unit within the last 2 years?</th>
<th>18d. What is the name, mailing address, and telephone number of that unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
<td>N/A</td>
</tr>
<tr>
<td>☑ No (If &quot;Yes,&quot; answer item 18d also)</td>
<td>(If &quot;Yes,&quot; answer item 18d also)</td>
</tr>
<tr>
<td>Section (Continued) IV Tell us about your reserve duty</td>
<td>18e. Do you have an inactive reserve obligation? (You perform no active duty, but you could be activated if there was a national emergency)</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Instructions 18g-18k</td>
<td>(If &quot;Yes,&quot; answer item 18f also)</td>
</tr>
</tbody>
</table>
| 1. Complete 18g-18k for that service only.            | 18f. What is your reserve obligation termination date?  
| 2. Attach proof of reserve service                      | N/A                                                                                                                           |

| Date: 5/22/73 Place: Ft. Lauderdale, FL | 18h. My service number was |

<table>
<thead>
<tr>
<th>18i. I left reserve service.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date: 8/19/76 Place: Ft. Lauderdale, FL</td>
</tr>
</tbody>
</table>

| Date: 5/22/73 Place: Ft. Lauderdale, FL | 18n. My service number was |

<table>
<thead>
<tr>
<th>18l. I entered reserve service.</th>
</tr>
</thead>
</table>

| Date: 8/19/73 Place: Ft. Lauderdale, FL | 18o. Branch of service 18p. Grade, rank, or rating |

| 18m. My service number was |

<table>
<thead>
<tr>
<th>Date: 19a. Are you currently a member of the National Guard?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☒ Not assigned yet</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19b. What is the name, mailing address, and telephone number of your current unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19c. Were you previously assigned to a guard unit within the last 2 years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☒</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19d. What is the name, mailing address, and telephone number of that unit?</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date: 19e. I entered Federal Active Duty.</th>
</tr>
</thead>
</table>

| 19f. My service number was |

<table>
<thead>
<tr>
<th>19g. I left Federal Active Duty.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>19h. Branch of service 19i. Grade, rank, or rating</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date: 19j. I entered National Guard.</th>
</tr>
</thead>
</table>

| 19k. My service number was |

<table>
<thead>
<tr>
<th>Date: 19l. I left National Guard.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>19m. Branch of service 19n. Grade, rank, or rating</th>
</tr>
</thead>
</table>

21-526, Part A
### SECTION VI
Tell us about your travel status

<table>
<thead>
<tr>
<th>20a. Were you injured while traveling to or from your military assignment?</th>
<th>20b. When did your injury happen?</th>
<th>20c. Where did your injury happen?</th>
<th>20d. Where were you treated? (Provide name and address of Doctor's office, hospital, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes ☒ No</td>
<td>□ mo day yr</td>
<td>(City, State, Country)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### SECTION VII
Tell us about your military benefits

When you file this application, you are telling us that you want to get VA compensation instead of military retired pay. If you currently receive military retired pay, you should be aware that we will reduce your retired pay by the amount of any compensation that you are awarded. VA will notify the Military Retired Pay Center of all benefit changes.

You must sign 21e if you want to keep getting military retired pay instead of VA compensation.

Please see page 4 of the General Instructions for VA Form 21-526.

If you have gotten both military retired pay and VA compensation, some of the amount you get may be recovered by VA, or in the case of VSI, by the Department of Defense.

### SECTION VIII
Give us direct deposit information

If benefits are awarded we will need more information in order to process any payments to you. Please read the paragraph starting with, "All federal payments..." and then either:

1. Attach a voided check, or
2. Answer questions 22-24 to the right.

---

21a. Are you receiving or will you receive retired or retainer pay that is based on your military service?

- □ Yes ☒ No

(if "Yes," answer Items 21b thru 21f. If "No," skip to Item 22)

21b. What branch of service is paying or will pay your retired or retainer pay?

- N/A

21c. What is the monthly amount?

- N/A

21d. What is your retirement based on?

- □ Length of service □ Disability □ TDRL (Temporary Disability Retired List)

21e. Sign here if you want to receive military retired pay instead of VA compensation

N/A

21f. Have you received or will you receive any of the following military benefits?

(please check the appropriate boxes and tell us the amount)

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) □ Lump Sum Readjustment Pay</td>
<td>$</td>
</tr>
<tr>
<td>(2) □ Separation pay under 10 USC 1174</td>
<td>$</td>
</tr>
<tr>
<td>(3) □ Special Separation Benefit (SSB)</td>
<td>$</td>
</tr>
<tr>
<td>(4) □ Voluntary Separation Incentive (VSI)</td>
<td>$</td>
</tr>
<tr>
<td>(5) □ Disability Severance Pay (name of disability)</td>
<td>$</td>
</tr>
<tr>
<td>(6) □ Other (tell us the type of benefit)</td>
<td>$</td>
</tr>
</tbody>
</table>

All federal payments beginning January 2, 1999, must be made by electronic funds transfer (EFT) also called Direct Deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 22, 23 and 24 to enroll in Direct Deposit. If you do not have a bank account we will give you a waiver from Direct Deposit, just check the box below in Item 22. The Treasury Department is working on making bank accounts available to you. Once these accounts are available, you will be able to decide whether you wish to sign-up for one of the accounts or continue to receive a paper check. You can also request a waiver if you have other circumstances that you feel would cause you a hardship to be enrolled in Direct Deposit. You can write to: Department of Veteran Affairs, 125 S. Main Street Suite B, Muskogee OK 74401-7004 and give us a brief description of why you do not wish to participate in Direct Deposit.

22. Account number (Please check the appropriate box and provide that account number, if applicable)

☒ Checking □ I certify that I do not have an account with a financial institution or certified payment agent

☐ Savings

Account number: [redacted]

23. Name of financial institution

BANK OF AMERICA

24. Routing or transit number
I certify and authorize the release of information:
I certify that the statements in this document are true and complete to the best of my knowledge. Any physician, dentist, or hospital that has treated or examined me, or that I have consulted professionally, may give the Department of Veterans Affairs any information about me, and I waive any privilege which makes the information confidential.

25. Your signature

26. Today's date

27a. Signature of witness (If claimant signed above using an "X")
N/A

27b. Printed name and address of witness
N/A

28a. Signature of witness (If claimant signed above using an "X")
N/A

28b. Printed name and address of witness
N/A

29. Remarks (If you need more space to answer a question or have a comment about a specific item number on this form please identify your answer or statement by the item number)

13a. You can also contact:

JEFFREY HARRISON
NATIONAL SERVICE OFFICE
PARALYZED VETERANS OF AMERICA
MIAMI VAMC
1201 N.W. 16th Street, Room 1C 39
MIAMI, FL 33125
(305) 325-7180
**VA Form 21-526, Part B: Compensation**

Use this form to apply for compensation. Remember that you must also fill out a VA Form 21-526, Part A: General Information, for your application to be processed. Be sure to write your name and Social Security number in the space provided on page 2.

**SECTION I: Tell us about your disability**

In the table below, tell us more about your disability or disabilities. Be sure to:
- List all disabilities you believe are related to military service.
- List all the treatments you received for your disabilities, including:
  - treatments you received in a military facility before and after discharge.
  - treatments you received from civilian and VA sources before, during, and after your service.

<table>
<thead>
<tr>
<th>1. What disability are you claiming?</th>
<th>2. When did your disability begin?</th>
<th>3. When were you treated?</th>
<th>4a. What medical facility or doctor treated you?</th>
<th>4b. What is the address of that medical facility or doctor?</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Multiple Sclerosis</td>
<td>Unknown</td>
<td>from 1975 to</td>
<td>Holy Cross Hospital</td>
<td>4725 N. Federal Hwy, Ft. Lauderdale, FL 33314</td>
</tr>
<tr>
<td></td>
<td>mo day yr</td>
<td>mo day yr mo day yr</td>
<td>Brian Steinberg, M.D.</td>
<td>5757 North Dixie Hwy, Oakland Park, FL 33307</td>
</tr>
<tr>
<td>Multiple Sclerosis</td>
<td>Unknown</td>
<td>from 3/1/86 to 4/1/87</td>
<td>Clyde T. Stoner, M.D.</td>
<td>3110 N. Federal Hwy, Lighthouse Point, FL</td>
</tr>
<tr>
<td></td>
<td>mo day yr</td>
<td>mo day yr mo day yr</td>
<td>(Deceased)</td>
<td></td>
</tr>
<tr>
<td>Multiple Sclerosis</td>
<td>Unknown</td>
<td>from 1/1/01 to</td>
<td>VA Culpepper Clinic</td>
<td>5599 North Dixie Hwy, Oakland Park, FL 33307</td>
</tr>
<tr>
<td></td>
<td>mo day yr</td>
<td>mo day yr mo day yr</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**VA FORM 21-526 SEP 1999**

21-526, Part B page 8
<table>
<thead>
<tr>
<th>Section II</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5a. Were you exposed to Agent Orange or other herbicides?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer items 5b and 5c also)</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>5b. What is your disability?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>5c. In what country were you exposed?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>6a. Were you exposed to asbestos?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer item 6b and 6c also)</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>6b. What is your disability?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>6c. When and how were you exposed?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>7a. Were you exposed to mustard gas?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer item 7b and 7c also)</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>7b. What is your disability?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>7c. When and how were you exposed?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>8a. Were you exposed to ionizing radiation?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer items 8b, 8c, and 8d also)</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>8b. What is your disability?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>8c. When was your last exposure?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>8d. How were you exposed to radiation?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Atmospheric testing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nagasaki/Hiroshima</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other, describe</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9a. Were you exposed to an environmental hazard in the Gulf War?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer items 9b and 9c also)</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>9b. What is your disability?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>9c. What was the hazard?</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>10a. Did you have a separation or retirement physical examination?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(If &quot;Yes,&quot; answer items 10b and 10c)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10b. When was the exam?</td>
<td></td>
<td></td>
<td>5/7/73</td>
</tr>
<tr>
<td></td>
<td>10c. Where did the exam occur?</td>
<td></td>
<td></td>
<td>Fort Dix</td>
</tr>
</tbody>
</table>

**Section III**

Tell us how your disabilities listed on Page 1 are related to your military service.

**11. Explanation**

I showed symptoms of multiple sclerosis after the service within the time period allowed by law.

Your Name: Philip

Your Social Security Number: 9
**VA Form 21-526, Part C: Dependency**

Use this form to tell us more about your dependents. Remember that you must also fill out a VA Form 21-526, Part A, General Information, Part B and/or Part D, for your application to be processed. Be sure to write your name and Social Security number in the space provided on page 3.

### SECTION 1

Tell us about your marriage

**NOTE:** You should provide a copy of your marriage certificate.

<table>
<thead>
<tr>
<th>1. What is your marital status?</th>
<th>2. When were you married?</th>
<th>3. Where did you get married?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Married</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Surviving Spouse</td>
<td>/ / /</td>
<td></td>
</tr>
<tr>
<td>□ Divorced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Never married</td>
<td>month day year</td>
<td></td>
</tr>
</tbody>
</table>

*If your spouse died, you are "divorced," or "never married" skip to Section III beginning on page 2.*

<table>
<thead>
<tr>
<th>4. What is your spouse’s name?</th>
<th>5. What is your spouse’s birthday?</th>
<th>6. What is your spouse’s Social Security number?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>/ / /</td>
<td></td>
</tr>
<tr>
<td></td>
<td>month day year</td>
<td></td>
</tr>
</tbody>
</table>

*If "Yes," answer Item 7b also.*

<table>
<thead>
<tr>
<th>7a. Is your spouse also a veteran?</th>
<th>7b. What is your spouse’s VA file number (if any)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td></td>
</tr>
<tr>
<td>□ No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Do you live with your spouse?</th>
<th>9. What is your spouse’s address?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>Street address, rural route, or P.O. Box</td>
</tr>
<tr>
<td>□ No</td>
<td>Apt. number</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. Tell us why you are not living with your spouse</th>
<th>11. How much do you contribute monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12. How were you married?</th>
<th>13. Intermittent or continuous care?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Ceremony by a clergyman or other authorized public official</td>
<td>□ Other (please describe in the space below)</td>
</tr>
<tr>
<td>□ Tribal</td>
<td>□ Intermittent or continuous care?</td>
</tr>
<tr>
<td>□ Proxy</td>
<td></td>
</tr>
<tr>
<td>□ Common-law</td>
<td></td>
</tr>
</tbody>
</table>

---

**VA Form 21-526, Part C**  
SEP 1999  
21-526  
21-526, Part C  
Page 1
SECTION Tell us about any previous marriages

NOTE: You should provide copies of divorce decrees or death certificates.

In the table below, tell us about:
- Your previous marriages, and
- Your spouse's previous marriages

Your previous marriages

<table>
<thead>
<tr>
<th>13.b. When were you married?</th>
<th>13c. Where were you married? (city/state or country)</th>
<th>13d. Who were you married to?</th>
<th>13e. When did your marriage end? (death, divorce)</th>
<th>13f. Why did your marriage end?</th>
<th>13g. Where did your marriage end? (city/state or country)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/23/82 mo day yr</td>
<td>Naples, FL</td>
<td>[Redacted]</td>
<td>11/19/86 mo day yr</td>
<td>Divorce</td>
<td>Ft. Lauderdale</td>
</tr>
<tr>
<td>1/11/87 mo day yr</td>
<td>Marina Del Rey, CA</td>
<td>[Redacted]</td>
<td>1/9/92 mo day yr</td>
<td>Divorce</td>
<td>Ft. Lauderdale</td>
</tr>
</tbody>
</table>

Your spouse's previous marriages

<table>
<thead>
<tr>
<th>14.b. When was your spouse married?</th>
<th>14c. Where was your spouse married? (city/state or country)</th>
<th>14d. Who was your spouse married to?</th>
<th>14e. When did your spouse's marriage end? (death, divorce)</th>
<th>14f. Why did your spouse's marriage end?</th>
<th>14g. Where did your spouse's marriage end? (city/state or country)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/65 mo day yr</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>1/1/65 mo day yr</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>1/1/67 mo day yr</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>1/1/67 mo day yr</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

SECTION Tell us about your other dependents

In this section we want to know whether your parents are financially dependent on you (Question 15) and more about your dependent children. VA may recognize a veteran's biological children, adopted children, and stepchildren as dependent. These children must be unmarried and:
- be under the age of 18, or
- be at least 18 but under 23 and pursuing an approved course of education, or
- have become permanently unable to support themselves before reaching the age of 18.

15. Are your parents financially dependent on you?

☐ Yes  ☑ No  (If "Yes," we will request additional information from you later)

You should provide:
- a copy of the public record of birth for each child or a copy of the court record of adoption for each adopted child.

16. Do you have dependent children?

☐ Yes

(If "No," Skip Items 17-21f). Go to the bottom of page 3 and write your name and Social Security number.

☐ No - but my adopted child received Social Security benefits due to my disability.

17. How many dependent children do you have?

☐ I don't know.

☐ 1

☐ 2

☐ 3 or more

Give us more information about these children in the tables on the next page (Items 18 through 21f).

I have not had contact for some time.

21-526, Part C page 2
### SECTION III
Tell us about your dependents (continued)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL</td>
<td>10/1/183</td>
<td>Los Angeles, CA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Tell us about your dependents listed above who don’t live with you

21a. Do all the children listed above live with you?

☐ Yes (If “Yes,” skip items 21b thru 21f and write your name and Social Security number below)

☒ No (If “No,” complete item 21b and the table below (items 21c-21f) and write your name and Social Security number below)

21b. How many of the children do not live with you?

1

21c. What is the name of your child?

(first, middle initial, last)

21d. What is your child's complete address?

Coral Springs, FL

21e. What is the name of the person your child lives with (If applicable)?

HE WANTED TO GET 1/2 OF WHAT HE RECEIVED FROM SOCIAL SECURITY

21f. How much do you contribute each month to the support of your child?

$ . .

$ . .

Your name

PHILIP

Your Social Security Number

21-526, Part C page 3
**SECTION:** Tell us about your disability and background

1a. What disability(ies) prevent you from working?

- **Multiple Sclerosis**

1b. When did the disability(ies) begin? [Start after leaving the Army, I don't know the exact date.]

- **Month** / **Day** / **Year**

2. Are you claiming a special monthly pension because you need the regular assistance of another person, are blind, nearly blind, or having severe visual problems, or are housebound?

- Yes [ ]
- No [ ]

3a. Are you now, or have you recently been hospitalized or given outpatient or home-based care?

- Yes [ ]
- No [ ]

3b. Tell us the dates of the recent hospitalization or care

- **Began** / **Month** / **Day** / **Year**
- **Ended** / **Month** / **Day** / **Year**

3c. What is the name and complete mailing address of the facility or doctor?

- [ ]

4a. Are you now employed?

- Yes [ ]
- No [ ]

4b. When did you last work? [Over 11 years ago]

- **Month** / **Day** / **Year**

4c. Were you self-employed before becoming totally disabled?

- Yes [ ]
- No [ ]

4d. What kind of work did you do?

- [Working for a fireworks company, locating sites for stands, obtaining permits, etc.]

4e. Are you still self-employed?

- Yes [ ]
- No [ ]

4f. What kind of work do you do now?

- **None**

4g. Have you claimed or are you receiving disability benefits from the Social Security Administration (SSA)?

- Yes [ ]
- No [ ]

4h. Circle the highest year of education you completed:

- **Grade school**
- **College**

4i. List the other training or experience you have and any certificates that you hold.

- **None**
In the table below, tell us about all of your employment, including self-employment, for one year before you became disabled to the present.

<table>
<thead>
<tr>
<th>5a. What was the name and address of your employer?</th>
<th>5b. What was your job title?</th>
<th>5c. When did your work begin?</th>
<th>5d. When did your work end?</th>
<th>5e. How many days were lost due to disability?</th>
<th>5f. What were your total annual earnings?</th>
</tr>
</thead>
<tbody>
<tr>
<td>FREEDOM FIREWORKS OCALA, FLORIDA</td>
<td>AREA MANAGER</td>
<td>3/2/90</td>
<td>2/2/92</td>
<td>(UNKNOWN WEEKS)</td>
<td>APPX. $30,000.00</td>
</tr>
<tr>
<td>(Since Never)</td>
<td></td>
<td>mo day yr</td>
<td>mo day yr</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FREEDOM FIREWORKS AREA MANAGER</td>
<td></td>
<td>mo day yr</td>
<td>mo day yr</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In this section, tell us if you are in a nursing home. If you are in a nursing home, give us more information about the nursing home.

To get your claim processed faster, provide a statement by an official of the nursing home that tells us that you are a patient in the nursing home because of a physical or mental disability and tells us the daily charge for your care.

6a. Are you now in a nursing home?  
   □ Yes  X No
   (If "yes," answer item 6b also)

6b. What is the name and complete mailing address of the facility or doctor?
   N/A

6c. Does Medicaid cover all or part of your nursing home costs?  
   □ Yes  □ No
   (If "no," answer item 6d also)

6d. Have you applied for Medicaid?
   □ Yes  X No

In this section, we ask you to give us specific information about your net worth and the net worth of your dependents. You will need to enter this information in the tables on page 3.

You must include all assets in your net worth except those items you use everyday (See definition of net worth below.)

You should subtract from the market value of your real estate any amounts that you owe on it (such as mortgages, liens, etc.)

You can subtract mortgages on any property, and the value of the house or part of a building that you live in as your primary residence.

You can report farms or buildings that you or a dependent own by reporting its value as "real property."

Definitions:
Net worth is the market value of all interest and rights in any kind of property less any mortgages or other claims against the property. However, net worth does not include the house you live in or a reasonable area of land it sits on. Net worth also does not include the value of personal things you use everyday like your vehicle, clothing, and furniture.

Go to Page 3 and fill out the table.

21-526, Part D  Page 2
<table>
<thead>
<tr>
<th>Source</th>
<th>Veteran</th>
<th>Spouse</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a. Cash, non-interest bearing bank accounts</td>
<td>$75,000</td>
<td>Unknown</td>
<td></td>
</tr>
<tr>
<td>7b. Interest bearing bank accounts, certificates of deposit (CDs)</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7c. IRAs, Keogh Plans, etc.</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7d. Stocks and bonds</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7e. Mutual funds</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7f. Value of business assets</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7g. Real property (not your home)</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7h. All other property</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SECTION V**

Tell us about the income you have received and you expect to receive.

In this section, we ask you to give us specific information about the income you have received and the income you expect to receive from all sources. You will need to enter this information in the tables on Page 4. In these tables,

- Report the total amounts before you take out deductions for taxes, insurance, etc.
- Do not report the same information in both tables.
- If you expect to receive a payment, but you don't know how much it will be, write "Unknown" in the space.
- If you do not receive any payments from one of the sources that we list, write "0" or "None" in the space.
- If you are receiving monthly benefits, give us a copy of your most recent award letter. This will help us determine the amount of benefits you should be paid.

- **Payments from any source will be counted, unless the law says that they don't need to be counted. VA will determine any amount that does not count.**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Will you receive any income from rental property or from operation of a business within 12 months of the day you sign this form?</td>
<td>No</td>
</tr>
<tr>
<td>9. Will you receive any income from the operation of a farm within 12 months of the day you sign this form?</td>
<td>No</td>
</tr>
<tr>
<td>10. Do you expect to receive money from a civilian agency, corporation, or individual, because of personal injury or death within 12 months of the day you sign this form?</td>
<td>No</td>
</tr>
</tbody>
</table>
**SECTION V (Continued)**

Monthly Income - Tell us the income you and your dependents receive every month.

For items 11a-12f if none write "0" or "None"

<table>
<thead>
<tr>
<th>Sources of recurring monthly income</th>
<th>Veteran</th>
<th>Spouse</th>
<th>I. Name:</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>11a. Social Security</td>
<td>1,016.00</td>
<td>unknown</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11b. U.S. Civil Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11c. U.S. Railroad Retirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11d. Military Retired Pay</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11e. Black Lung Benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11f. Supplemental Security (SSI)/Public Assistance</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11g. Other income received monthly Please write in the source below:</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Next 12 months - Tell us about other income for you and your dependents

<table>
<thead>
<tr>
<th>Sources of income for the next 12 months</th>
<th>Veteran</th>
<th>Spouse</th>
<th>I. Name:</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>12a. Gross wages and salary</td>
<td></td>
<td>0</td>
<td></td>
<td>unknown</td>
</tr>
<tr>
<td>12b. Total interest and dividends</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12c. Worker's compensation for injury</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12d. Unemployment compensation</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12e. Other military benefit (Please write in the source below:)</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12f. Other one-time benefit (Please write in the source below:)</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Your name: **Philip**

Your Social Security Number: **[Redacted]**
INITIAL REPORT
JANUARY 27, 1984

The patient is a 31 year old male referred to the office from North Ridge Emergency Room. The onset of a numb sensation over the left upper arm, sensation and when he stood up, something and then noted the sens time as a prickly sensation. The following morning, he said that the numbness was most prominent and over the following days, this sensation has gradually spread down the entire left upper extremity to the wrist. He said that the numb sensation is now constant. In addition, in the area of relevance, he notes an itching sensation which appears intermittently. He said that this itching has bothered him the most. It subsequently became evident that the sensation was mainly present on the outer aspect of the upper extremity. He has not noted any problems in the hand and denies any weakness. He has no neck pain and has had no previous problems with the neck. He has no difficulty using the left upper extremity. He denies any numbness in the face or left lower extremity. He has not experienced any headaches, dizziness, speech or swallowing problems. The patient has no systemic complaints, denies any weight loss, fevers etc...

Past Medical History
Unremarkable.

Personal History
He stated that he was in "sales". He quit smoking about 6 1/2 months ago. Family history is noncontributory.

Neurological Examination
MENTAL STATUS: The patient is alert, cooperative and oriented x 3. Affect is appropriate and speech is normal.
CRANIAL NERVES: C2 - The fundi are benign. Visual fields are full bilaterally. C3, 4, and 6 - pupils are equal and reactive to light and accommodation. No ptosis or nystagmus is noted. C5 - Motor, sensory and reflex functions are intact. Seven through twelve, within normal limits.

MOTOR: There is no wasting. Posture and tone are normal. There are no abnormal movements. Power is 5/5 throughout and symmetrical.

REFLEXES: Deep tendon reflexes are normoactive and symmetrical throughout. There are no pathological reflexes.

SENSORY: There is altered perception of light touch and superficial pain over the outer aspect of the left upper extremity in a C5, 6 distribution. He perceives these sensations as tingling or burning on the left and normal on the right. All modalities are symmetrically and well appreciated in the lower extremities. Joint position sense vibration are normal in all fours. Scratch marks are noted on the outer aspect of the left upper extremity, consistent with the distribution of his complaints.

COORDINATION: This is normal in the upper and lower extremities.

GAIT: Normal.

IMPRESSION

This is a 31 year old male with numbness in the left upper extremity for approximately six days in a C5/6 distribution. The patient was referred today to North Ridge Hospital for an x-ray of the cervical spine and I also gave him a prescription for Benadryl for symptomatic treatment of the complaint. Localization of these problems is not clear. This does not seem to be central in origin and in terms of a peripheral origin, retention of the biceps reflex is unusual. We will follow his progress closely.

Brian Steingo, M.D.

BS/JP

Dictated but not read
PROGRESS REPORT
FEBRUARY 17, 1984

The patient returns. Since his last visit approximately three weeks ago, he does note some decrease in the numbness in his left upper extremity. However, he now has a similar sensation in both lower extremities. He states that his legs both feel heavy and numb. He notes that when he walks, he is also aware of this particular sensation. He also said there was some numbness in his cheeks bilaterally. He said that this numbness was mildly evident in the buttock and this morning he noted some numbness spreading into the scrotum. His past history which he hadn't indicated to me last time was of some interest in that he said in 1981 following an automobile accident, he noted numbness of his left lower extremity from the groin down. He described it as "like you cut me in half from the waist down". He had at that time been seen by a neurologist and also an ophthalmologist apparently, but there was no obvious diagnosis. The neurological examination today is unremarkable apart from the subjective complaints. The possibility of a demyelinating disorder is of suspicion, especially with his past history. I plan to obtain somatosensory and visual evoked potentials and may then consider a CSF evaluation.

Brian Steingo, M.D.

RK/jp

Dictated but not read
HISTORY OF PRESENT ILLNESS:

31 year old male patient who was referred initially to our office in January of 1984 from the emergency room. The patient was referred because of an episode of onset of a numb sensation over the left upper arm. The patient had been playing cards at the time and when he stood up, he brushed his arm against something and then noted the sensation. The patient describes the sensation at times as a prickly sensation. When he awoke the following morning, he said that the numbness was more prominent and over the following days this sensation has gradually spread down the entire left upper extremity to the wrist. The patient relates that the numb sensation has been more or less constant. In addition, in the area of relevance he notices an itching sensation which appears intermittently. He said that the itching bothers him mostly on the outer aspect of the upper extremity. He has not noted any problems in the hand and denies any weakness. The patient has not had any neck pain and has had no previous problems with his neck. The patient has no difficulty using the left upper extremity and he denies any numbness in the face or left lower extremity. He has not experienced any headaches, dizziness, speech or swallowing problems and the patient has had no systemic complaints and denies any weight loss, fever, etc.

Over the last month the patient has noted some decrease in the numbness in his left upper extremity; however, he has now had onset of a similar sensation in both lower extremities. He relates that his legs both feel heavy and numb and he notes that when he walks he is also aware of this sensation. He has also noticed some numbness evident in the buttock area and numbness spreading into the scrotum area.

PAST MEDICAL HISTORY:

The patient was involved in an auto accident in 1981 after which he noted numbness of his left lower extremity from the groin area down. He had at that time been seen by a neurologist and also an ophthalmologist but there was no obvious diagnosis made. The neurologic examination has been normal up to this time.

PHYSICAL EXAMINATION:

31 year old male patient with the above complaints in no acute distress.

VITALS:

Stable.

NEUROLOGIC:

The patient is alert and oriented x 3. Memory is intact. Affect is appropriate. Cranial nerves II-XII are intact. Motor examination: Power is 5/5 throughout and symmetrical. Posture and tone are normal. There are no abnormal movements and no muscle wasting. Deep tendon reflexes are normal and symmetrical throughout. There are no pathological reflexes. Sensory exam: There is altered CONTINUED...
perception of light touch and superficial pain over the outer aspect of the left upper extremity in a C5-6 distribution. He perceives these sensations as tingling or burning on the left and normal on the right. In the lower extremities there is dysesthesia as described above. Gait, speech and posture are all normal.

IMPRESSSION:

1. Paresthesias with a possibility of a demyelinating disorder especially considering the patient's past history.

The patient is admitted at this time for a lumbar puncture and further evaluation appropriately.

MELANIE ROSS, PA FOR

BRIAN STEINGO, M.D.
31 year old white male patient admitted with progressive dysesthesias in all of the extremities and complaints of progressive sensory disturbance. The patient was admitted at this time for a lumbar puncture to evaluate for a demyelinating disorder.

On the day of his admission, 2/28/84, lumbar puncture was performed. Opening pressure was 120. The spinal tap was done with ease, though initially the spinal fluid was light pink, though clearing well. The patient tolerated the procedure well. There were no complications and the patient had only a slight headache afterwards. Vital signs remained stable.

Spinal fluid results: Red blood count was 1,438, white blood count 0, protein 46, glucose 58, except for the blood cells which were attributable to the spinal tap, the cerebrospinal fluid general screen was essentially within normal. Multiple tests were run on the spinal fluid including protein electrophoresis which revealed usual pattern of proteins including pre-albumin, oligoclonal banding was tested and the results were as follows: "An oligoclonal banding pattern was observed in the gamma zone and is consistent with demyelinating and other neurological disorder". Myeline basic protein was 4.1 which was interpreted as follows by the lab: (Weakly positive results consistent with mild demyelination). The ANA revealed a positive pattern as speckled with a titer of 1:80. Heavy metal screen was unremarkable. Sed rate was 8. CBC was within normal limits.

The patient was discharged in stable condition, to return to the office for follow-up.

FINAL IMPRESSION: Was that of paresthesia with a possibility of a demyelinating disorder and further observation and evaluation in the future would be necessary to further determine a specific etiology.

BRIAN STEINCO, M.D.

D: 4/28/84
T: 4/30/84
MRC: 10226

DISCHARGE SUMMARY
The patient returns. The results of the spinal fluid evaluation are at hand I have discussed these with him. The Myelin Basic Protein level was 4.1 with this level representing a "weekly positive result consistent with mild demyelination." However an oligoclonal pattern was observed in the gamma zone consistent with demyelinating or other neurological disorders. This CSF protein recorded was 62 which is of some interest since the level recorded in the hospital lab was 48. The patient also had a positive ANA with a speckled pattern and titer of 1 to 80. Despite the above findings, his condition has improved. He experiences rare itching in the left upper extremity but has had no more sensory involvement. He feels that his gait has improved and numbness in the legs has more or less resolved apart from a sensation in the left foot. The possibility of a demyelinating disorder has to be considered and this is strengthened by the fact that he had some type of numbness involving the left lower extremity several years ago. However, I don't feel that there is anything further to be done at the present time. The course of Steroids has just about ended and I have advised him to return should he ever experience any further symptoms. The picture may simply represent some nonspecific viral attack on the nervous system, and I have discussed this with him too.

Brian Steingo, M.D.

BS/jp

Dictated but not read
20 Aug 75 to 19 Aug 76, Authority AR 140-10.

28 JUL 76

ST. LOUIS, MO 63132

RESERVE COMMISSIONER'S PERSONNEL AND ADMINISTRATION CENTER

OFFICE OF THE ADJUTANT GENERAL

DEPARTMENT OF THE ARMY

STANDING

RESERVE PERSONNEL, ATTG. ADJUTANT GENERAL, SERVICE IN STANDBY RESERVE.

DD FORM 2A (RED), IS IN YOUR POSSESSION RETURN IT TO THIS HEADQUARTERS AS INSTRUCTIONS YOU ARE REMOVED FROM THE STANDBY RESERVE. IF RESERVED IDENTIFICATION

ADDITIONAL INSTRUCTIONS YOU ARE DISCHARGED FROM STANDBY IDENTIFIED.

YOU ARE DISCHARGED FROM STANDBY IDENTIFIED.

FT. LAUDERDALE, FL 33309
M 26117-7545

ORDERS O-21412414

AGT-PAD-R

OFFICIAL

TAC, PAC FOR

STANDING

RESERVE PERSONNEL, ATTG. ADJUTANT GENERAL, SERVICE IN STANDBY RESERVE.

DD FORM 2A (RED), IS IN YOUR POSSESSION RETURN IT TO THIS HEADQUARTERS AS INSTRUCTIONS YOU ARE REMOVED FROM THE STANDBY RESERVE. IF RESERVED IDENTIFICATION

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YOU ARE DISCHARGED FROM STANDBY IDENTIFIED.

FT. LAUDERDALE, FL 33309
M 26117-7545

ORDERS O-21412414

AGT-PAD-R

OFFICIAL

TAC, PAC FOR
**REPORT OF MEDICAL EXAMINATION**

**NAME:** HILIP MARK

**DATE:** 21 JUL 70

**ADDRESS:** LAUDERDALE, FLA.

**SEX:** M

**RACE:** C/W

**DATE OF BIRTH:** 13 DEC 52

**PLACE OF BIRTH:** HACKENSACK, NJ

**AGENCY:** 731-8782

**ORGANIZATION UNIT:**

<table>
<thead>
<tr>
<th>10. AGENCY</th>
<th>11. ORGANIZATION UNIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>731-8782</td>
<td></td>
</tr>
</tbody>
</table>

**EXAMINING FACILITY OR EXAMINER AND ADDRESS:**

**AFES CORAL GABLES, FLA.**

**RATING OR SPECIALTY:**

**TIME IN THIS CAPACITY (T/W):**

**LAST SIX MONTHS:**

---

**CLINICAL EVALUATION**

<table>
<thead>
<tr>
<th>Normal</th>
<th>Abnormal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTES:** (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

---

**DENTAL** (Place appropriate symbols, shown in example, above or below number of upper and lower teeth.)

<table>
<thead>
<tr>
<th>R</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES**

---

**LABORATORY FINDINGS**

<table>
<thead>
<tr>
<th>A. SPECIFIC GRAVITY</th>
<th>B. ALBUMIN</th>
<th>C. SUGAR</th>
<th>D. MICROSCOPIC</th>
<th>E. SECOLOGY</th>
<th>F. EKG</th>
<th>G. BLOOD TYPE AND RH FACTOR</th>
<th>H. OTHER TESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**CHEST X-RAY** (Place, date, film number and result)

**AFES CORAL GABLES, FLA.**

**21 JUL 70**
71. HEARING

RIGHT WV

/15 SV

/15

LEFT WV

/15 SV

/15

72. PSYCHOLOGICAL AND PSYCHOMOTOR

(A Test used and score)

73. NOTES (Continued) AND SIGNIFICANT OR INTEGRAL HISTORY

AFQT 74 70 1110
TRAINABILITY LIMITED
ADMIN. ACCEPTED
HIGH SCHOOL GRAD

(Use additional sheets if necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

75. RECOMMENDATIONS--FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)

76. A. PHYSICAL PROFILE

P

L

H

E

S

X

B. PHYSICAL CATEGORY

A

B

C

C

77. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

78. Typed or Printed Name of Physician

Signature

(Indicate which)

79. Typed or Printed Name of Physician

Signature

80. Typed or Printed Name of Dentist or Physician

Signature

81. Typed or Printed Name of Dentist or Physician

Signature

82. Typed or Printed Name of Person Approving Authority

Signature

27
REPORT OF MEDICAL HISTORY

THIS INFORMATION IS FOR OFFICIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS

1. LAST NAME: FIRST NAME: MIDDLE NAME
   MARK

2. SEX
   M

3. GRADE AND COMMISSION OR POSITION

4. INDENTIFICATION NO.

5. PURPOSE OF EXAMINATION

6. DATE OF EXAMINATION
   21 JULY 70

7. ADDRESS (Number, street or route, city or town, State and ZIP Code)
   330 S

8. CITY
   CAUC

9. TOTAL YEARS GOVERNMENT SERVICE
   7

10. AGENCY
    FEDERAL

11. ORGANIZATION UNIT
    731876.3

12. DATE OF BIRTH
    12/5/22

13. PLACE OF BIRTH
    WOODEN, N.J.

14. NAME, RELATIONSHIP, AND ADDRESS OF PATIENT’S FATHER
    EMILY HARRY

15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS
    ACFES CORAL GABLES, FLA.

16. Other Information

17. STATEMENT OF EXAMINEE’S PRESENT HEALTH OR DISEASE (Follow by description of past history, if complaint exists)

18. FAMILY HISTORY:

<table>
<thead>
<tr>
<th>RELATIVE</th>
<th>AGE</th>
<th>STATE OF HEALTH</th>
<th>IF DEAD</th>
<th>CAUSE OF DEATH</th>
<th>AGE AT DEATH</th>
</tr>
</thead>
<tbody>
<tr>
<td>FATHER</td>
<td>45</td>
<td>Euth.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MOTHER</td>
<td>37</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPOUSE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BROTHERS</td>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SISTERS</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

19. HAS ANY BLOOD RELATION (Parent, brother, sister, other)
    ON MOTHER OR FATHER

20. HAVE YOU EVER BEEN OR HAVE YOU NOW (Please check at left of each item)

21. HAVE YOU EVER (Check each item)

22. FEMALES ONLY: A. HAVE YOU EVER — B. COMPLETE THE FOLLOWING

23. HOW MANY LBS. HAVE YOU LOST IN THE PAST THREE YEARS?

24. WHAT IS THE LONGEST PERIOD YOU HELD ANY OF THESE DOSES?

25. WHAT IS YOUR Usual OCCUPATION?

26. ARE YOU (Check one)

27. DRAPER INSTALLER
   RIGHT-HANDED    LEFT-HANDED

28

<table>
<thead>
<tr>
<th>DATE</th>
<th>SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 May 70</td>
<td>Sore throat + ear ache</td>
</tr>
<tr>
<td></td>
<td>MD Sulfer</td>
</tr>
<tr>
<td></td>
<td>ORTHOPHARYNGEAL SUTURENED</td>
</tr>
<tr>
<td></td>
<td>Bil. adenitis</td>
</tr>
<tr>
<td></td>
<td>PARSIMONEA SUTURENED</td>
</tr>
<tr>
<td></td>
<td>L. R. C. OConnor</td>
</tr>
</tbody>
</table>

**RECORDS SCREENED UP**

PAR 17A(20), AR 604.5

3 Nov 1970

**PAT FARM ARMY HOSPITAL**

BRANCH DISPENSARY NO. 3

Fort Monmouth, N. J. 07703

**CHRONOLOGICAL RECORD OF MEDEICAL CARE**

SEX     RACE     GRADE, RATING, OR POSITION     ORGANIZATION UNIT     COMPONENT OR BRANCH     SERVICE, DEPT. OR AGENCY

PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME

PHILIP m.

DATE OF BIRTH (DAY-MONTH-YEAR)  IDENTIFICATION NO.

CHRONOLOGICAL RECORD OF MEDICAL CARE

Standard Form 600

30
Cold S.T. cough after
mild pricked lymph
Stanley 711

Tamoxifene

ECG

Plugging nose

Chest X-ray

Light and

Confirmed

Allergy extended except S.T.

Med. Suggest Tephrin

Increased

Virus +

George

Advised admitted
**HEALTH RECORD**

**CHRONOLOGICAL RECORD OF MEDICAL CARE**

<table>
<thead>
<tr>
<th>DATE</th>
<th>SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 AUG 1970</td>
<td>OPTOMETRY CLINIC UNITED STATES ARMY HOSPITAL FORT CAMPBELL, KENTUCKY</td>
</tr>
</tbody>
</table>

**1. SCREENING PROCEDURES:**

- **COVER TEST 20 FT:** (NORMAL) (ABNORMAL)
- **EXTERNAL EXAMINATION:** (NORMAL) (ABNORMAL)
- **PSEUDOISOCROMATIC COLOR PLATES:** missed of I (NORMAL) (ABNORMAL)
- **VISUAL ACUITY (AFVT) 20/20 STANDARD:** PASS (FAIL)

**PHYSICAL PROFILE:** (E1) (E2) (E3)

**11. PRESCRIPTION:** (AFES consult) (refraction) (duplication Civ-Rx)

- **TEMPORARY Rx (contact lens pt s):** OD: CS
- **UNAIDED VISUAL ACUITY:** OD: 20/ OS: 20/ OU: 20/
- **Rx:** OD: cx AIRED ACUITY: 20/
- **Rx:** OS: cx AIRED ACUITY: 20/

- **PD:** EYE SIZE: BRIDGE SIZE: TEMPLE: PAIRS:

**111. DIAGNOSIS:** REFRACTIVE ERROR (3800): MYOPIA HYPEROPIA ASTIGMATISM AMBLYOPIA (3865): (OD) (OS) STRABISMUS (3840)

**1V. REFER TO:** (dispensary) (ophthalmology clinic)

**V. ADDITIONAL FINDINGS/REMARDS:**

**SCREEN:**  
initials of indiv screening pt & duplicating rx (if needed)  
CAPTAIN, MSC  
OPTOMETRIST

**SEX** | **RACE** | **GRADE, RATING, OR POSITION** | **ORGANIZATION UNIT** | **COMPONENT OR BRANCH** | **SERVICE, DEPT. OR AGENCY** | **US ARMY** |
<table>
<thead>
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</tr>
</tbody>
</table>

**PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME**  
PHILIP M  
SSDMN  
R150  
32
REPORT OF MEDICAL EXAMINATION

1. LAST NAME—FIRST NAME—MIDDLE NAME
   [Redacted]

4. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP Code)
   Laud, Fla 33309

7. SEX
   Male

8. RACE
   Ca

13. DATE OF BIRTH
   Dec 52

15. EXAMINING FACILITY OR EXAMINER AND ADDRESS
   HACKENSACK, N.J. 3390 N.W. 39th St

29th Med Det APO 09154

3. TOTAL YEARS GOVERNMENT SERVICE
   3 Yr

10. AGENCY
   Military

11. ORGANIZATION UNIT
   Army

14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN
   Harry Boldin, father, Ft. Laud, Fla. 33309

1. GRADE AND COMPONENT OR POSITION
   SP5 RA

5. PURPOSE OF EXAMINATION
   BTS

6. DATE OF EXAMINATION
   1 Mar 73

16. OTHER INFORMATION
   (f) 26830 Weapon Support Radar Repair

CLINICAL EVALUATION

<table>
<thead>
<tr>
<th>(Check each item in appropriate column, enter &quot;NG&quot; if not evaluated.)</th>
<th>NORMAL</th>
<th>ABNORMAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. HEAD, FACE, NECK, AND SCALP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. NOSE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. SINUSES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21. MOUTH AND THROAT (Tonsils, adenoids, h/o tonsillectomy)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. EARS—GENERAL (Tinnitus, hearing loss, suppuration)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. DRUMS (Perforation)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. EYES—GENERAL (Visual acuity and refraction, color vision)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25. OPHTHALMOSCOPIC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. PUPILS (Equality and reaction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27. OCULAR MOTILITY (Associated peripheral neuralgia, nystagmus)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. LUNGS AND CHEST (Includes roentgenogram)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29. HEART (Throat, ear, rhythm, sounds)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30. VASCULAR SYSTEM (Peripheral pulse, blood pressure, h/o vascular disease)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31. ABDOMEN AND VISCERA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[Abdominal examination, fecal occult blood test, urinalysis, liver function tests]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32. ANUS AND RECTUM (Feces, rectal examination, h/o perianal disease)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33. ENDOCRINE SYSTEM (Hypothyroidism, h/o diabetes)</td>
<td></td>
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</tr>
<tr>
<td>34. G-U SYSTEM (H/O genitourinary infection or disease)</td>
<td></td>
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</tr>
<tr>
<td>35. UPPER EXTREMITIES (Strength, range of motion, reflexes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36. FEET (H/O deformities, foot problems)</td>
<td></td>
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</tr>
<tr>
<td>37. LOWER EXTREMITIES (Strength, range of motion, reflexes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38. SPINE, OTHER MUSCULOSKELETAL (H/o trauma, strain, sprain, disk herniation)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39. IDENTIFYING BODY MARKS, SCARS, TATTOOS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40. SKIN, LYMPHATICS (H/o skin disease, h/o lymph nodes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41. NEUROLOGIC (Equilibrium tests under item 74)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>42. PSYCHIATRIC (Specific personality deviations)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43. PELVIC (Females only) (Check low done)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>44. DENTAL (Place appropriate symbols, shown in examples, above or below number of upper and lower teeth.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R</td>
<td>L</td>
<td></td>
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<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>32</td>
<td>31</td>
<td>30</td>
</tr>
</tbody>
</table>

LABORATORY FINDINGS

45. URINALYSIS: A. SPECIFIC GRAVITY
   B. ALBUMIN: Neut
   C. SUGAR: Neut

46. CHEST X-RAY (Place, date, film number and result)
   394th Med Det APO 0914

47. SEROLOGY (Specify test used and result)
   RPR: Non-reactive

48. EKG

49. BLOOD TYPE AND RH FACTOR

50. OTHER TESTS

33
<table>
<thead>
<tr>
<th>Measurements and Other Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>57. Blood Pressure (Arm at Heart level)</td>
</tr>
<tr>
<td>A. Sitting</td>
</tr>
<tr>
<td>Right: 20</td>
</tr>
<tr>
<td>Left: 20</td>
</tr>
<tr>
<td>62. Heterophoria (Specify distance)</td>
</tr>
<tr>
<td>63. Accommodation</td>
</tr>
<tr>
<td>Right</td>
</tr>
<tr>
<td>64. Color Vision (Test used and results)</td>
</tr>
<tr>
<td>65. Depth Perception (Test used and score)</td>
</tr>
<tr>
<td>Uncorrected</td>
</tr>
<tr>
<td>66. Field of Vision</td>
</tr>
<tr>
<td>67. Night Vision (Test used and score)</td>
</tr>
<tr>
<td>68. Red Lens Test</td>
</tr>
<tr>
<td>69. Intracocular Tension</td>
</tr>
<tr>
<td>70. Hearing</td>
</tr>
<tr>
<td>Right WV</td>
</tr>
<tr>
<td>Left WV</td>
</tr>
<tr>
<td>71. Audimeter</td>
</tr>
<tr>
<td>Right</td>
</tr>
<tr>
<td>Left</td>
</tr>
</tbody>
</table>

72. Psychological and Psychomotor (Test used and score)

73. Notes (Continued) and Significant or Interval History

I am in Good Health

Medical Record Screened

74. Summary of Defects and Diagnoses (List diagnoses with item numbers)

75. Recommendations—Further Specialist Examinations Indicated (Specify)

None

76. A. Physical Profile

None

B. Physical Category

77. If Not Qualified, List Disqualifying Defects by Item Number

78. Typed or Printed Name of Dentist or Physician (Indicate which)

79. Typed or Printed Name of Receiving Officer or Approving Authority

Signature

34
Dear Mr.,

We received your application for VA Nonservice-Connected Disability Pension Benefits on September 12, 2001.

Your VA file number is: [redacted]. Please have this number available when contacting this office. Your claim will be handled by Team 25. If you have questions not covered in this letter, or the attached pamphlet, you can contact your case management team by dialing 1-800-827-1000 and simply keying in your VA file number when prompted.

We want you to know that we will help you get evidence to support your claim for benefits. In this letter we will tell you what evidence is necessary to establish entitlement, what information or evidence we still need from you, and what you can do to help with your claim. It will also tell you when and where to send the information or evidence, what has been done to help with your claim, and who to call if you have questions or need assistance.

**VA's Duty To Notify You About Your Claim**

The VCAA requires us to explain to you what information or evidence we need to grant the benefit you want. We will tell you when medical evidence is required. Medical evidence includes such things as doctors’ records, medical diagnoses, and medical opinions.

We will tell you what necessary information or evidence you must give us, such as income information, or the names and addresses of doctors who treated you for your medical condition. We will also tell you what necessary information or evidence we will try to get for you.

**VA's Duty To Assist You Obtain Evidence For Your Claim**

The law states that we must make reasonable efforts to help you get evidence necessary to support your claim. We will try to help you get such things as medical records, employment records, or records from other Federal agencies. You must give us enough information about these records so that we can request them from the person or agency who has them. It's still your responsibility to make sure these records are received by us.

[Signature]

35
We will also assist you by providing a medical examination or getting a medical opinion if we decide it's necessary to make a decision on your claim.

What Must The Evidence Show To Establish Entitlement?

To establish entitlement to nonservice-connected disability pension benefits, the evidence must show three things:

1. Active military service for 90 days or more with at least one day during a period of war (or discharge or release from service during a period of war for a service-connected disability). If you entered active military service after September 07, 1980, 24 months of continuous active military service, with at least one day during a period of war, is required, or you must have served the full period for which you were called to active military service. Also, your discharge from military service must have been under other than dishonorable conditions. If we do not already have evidence of your military service, we will get it and review it to see if you have qualifying service. We will also request any other necessary military service records.

2. Permanent disabilities that prevent you from working and supporting yourself. This must be shown by medical evidence, and the disabilities cannot be the result of your own willful misconduct. We will get any VA medical records or other medical treatment records you tell us about. If necessary, we will schedule you for a VA examination.

3. Your income must be below the limit set by law and you must meet net worth requirements. We will review the income and net worth information you provide to insure you qualify for pension. We will let you know if we need additional information.

What Information or Evidence Do We Still Need From You?

We need the following information from you:

- Complete, sign and return the enclosed VA Form 21-4142, Authorization for Release of Information, for Holy Cross Hospital. Use a separate form for each doctor or hospital where you were treated.

- We will request your private medical records for you if you will fully complete and return the enclosed VA Form(s) 21-4142, Authorization for Release of Information. Please complete a separate form for each doctor or facility that treated you, and provide
their complete names and addresses, including the zip codes, on the forms. Also, be sure to indicate the dates of treatment.

- We will do everything we can to help you obtain any evidence that you need to support your claim. However, any evidence that you can provide us would be appreciated and would help in expediting your claim. If you do not know of any additional evidence that you wish us to consider, please tell us so in writing on the enclosed VA Form 21-4138, Statement in Support of Claim.

- Before we can take further action on your recent claim for special monthly pension, it is necessary to request additional information from you.

Please furnish a statement from your personal physician in which the doctor briefly describes your limitations in performing the following functions of self-care.

1. your abilities to dress and undress yourself;

2. your abilities to keep yourself ordinarily clean and presentable;

3. your use and requirement of any prosthetic device (such as a cane, walker, etc.) in order to ambulate;

4. your ability to leave your residence; how frequently and for what distance can you travel?

5. your abilities to attend to the wants of nature unassisted;

6. your abilities to protect yourself from the hazards of daily living.

In addition to this evidence, your physician should also provide a specific diagnosis of your disability(ies). Records of recent medical treatment that adequately show your current condition and limitations can be submitted in lieu of the above.

If your physician is unable to provide this information from current records and you cannot afford another visit, please notify this office and we will take action to obtain medical evidence in support of your claim from other sources, including scheduling you for a Department of Veterans Affairs (VA) examination if necessary.

**What Can You Do To Help With Your Claim?**

You can help us with your claim by doing the following:

- Tell us about any additional information or evidence that you want us to try to get for you. Be sure to provide the name of the person, agency, or company who has relevant
records; the address of this person, agency, or company; the approximate time frame covered by the records and, in the case of medical records, the condition for which you were treated.

- Send us the evidence we need as soon as possible and be sure to put your VA File number on any evidence you send us.
- Tell us if your address or phone number changes.

**When And Where Do You Send The Information Or Evidence?**

Send the information describing additional evidence or the evidence itself to the address at the top of this letter within 60 days of the date of this letter. Please put your full name and VA file number on the evidence. If we don't receive the information or evidence within that time, we will decide your claim based only on the evidence we have received and any VA examinations or medical opinions.

If the information or evidence is received within one year from the date of this letter, and we decide that you are entitled to VA benefits, we may be able to pay you from the date we received your claim.

If the evidence isn't received within one year from the date of this letter, and we decide that you are entitled to VA benefits, we can only pay you from the date we receive the evidence.

**What Has Been Done To Help With Your Claim?**

- We have obtained the following evidence to support your claim: we have the medical evidence from Dr. Brian Steingo; and Dr. Clyde Stoner that you submitted.
- We have requested copies of your treatment records from the Oakland Park VA Outpatient Clinic. You previously indicated that you have been treated for this condition by them.

**Do You Have Questions Or Need Assistance?**

If you have questions or need assistance with this claim, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

If you call, please refer to your VA file number 29 147 926. If you write to us, please put your full name and VA file number on the letter. You can visit our web site at www.va.gov for more information about veterans' benefits.
A copy of this letter was sent to PVA because you appointed them as your representative. If you have questions or need assistance completing forms/claim, etc., you can also contact them.

Sincerely yours,

B. J. Harker
B. J. HARKER
Veterans Service Center Manager

Enclosure(s): VA Form 21-4142
   VA Form 21-4138(2)

cc: PVA
Dear Mr. [Name]

We have received your claim for disability compensation and have asked your service department to send us your service medical records. We must review these records to determine whether you are entitled to benefits.

Delays in processing claims often result from our inability to get these records. Sometimes, the reason we are unable to get them is because the veteran has them in his/her possession. If you have your service medical records, please send them to us. If you want them returned, we will make copies.

If you do not have them but know where they are, inform us of their location and we will request them. You may secure them yourself and send them directly to us.

If you are a member of a Reserve Unit, your records may have been sent to that unit. Please check with your commanding officer to see whether they are there.

Your assistance can help us expedite action on your claim.

Do You Have Questions Or Need Assistance?

If you have any questions, call us toll-free by dialing 1-800-827-1000. Our TDD number for the hearing impaired is 1-800-829-4833. If you call, please have this letter with you.

Sincerely yours,

B. J. Harker
B. J. HARKER
Veterans Service Center Manager

cc: PVA
Dear Mr.

We recently received your application for service connected benefits on September 12, 2001.

Your VA file number is [redacted]. Please have this number available when contacting this office. Your claim will be handled by Team 25. We want you to know that we will help you get evidence to support your recent claim for benefits. Specifically, we are referring to your claim for your Multiple Sclerosis. In this letter we will tell you what evidence is necessary to establish entitlement, what information or evidence we still need from you, and what you can do to help with your claim. It will also tell you when and where to send the information or evidence, what has been done to help with your claim, and who to call if you have questions or need assistance.

**VA's Duty To Notify You About Your Claim**

The law requires us to explain to you what information or evidence we need to grant the benefit you want. We will tell you when medical evidence is required. Medical evidence includes such things as doctors' records, medical diagnoses, and medical opinions.

We will tell you what necessary information or evidence you must give us, such as income information, or the names and addresses of doctors who treated the veteran's medical condition. We will also tell you what necessary information or evidence we will try to get for you.

**VA's Duty To Assist You Obtain Evidence For Your Claim**

The law states that we must make reasonable efforts to help you get evidence necessary to support your claim. We will try to help you get such things as medical records, employment records, or records from other Federal agencies. You must give us enough information about these records so that we can request them from the person or agency who has them. It's still your responsibility to make sure these records are received by us.

We will also assist you by providing a medical examination or getting a medical opinion if we decide it's necessary to make a decision on your claim.
If you do not know of any additional evidence you wish us to consider please tell us so in writing, using the enclosed Statement in Support of Claim (VA Form 21-4138).

What Must The Evidence Show To Establish Entitlement?

To establish entitlement for service connected compensation benefits, the evidence must show three things:

- An injury in military service or a disease that began in or was made worse during military service, or an event in service causing injury or disease. If we do not yet have them, we will get service medical records and will review them to see if they show you had an injury or disease in service. We will also get other military service records if they are necessary.

  OR

For certain conditions, you don't have to show that you had an injury or disease in service. These are called "presumptive conditions." These are medical conditions that were first shown after service, not during service. For most of these conditions, the evidence must show that you were diagnosed with the condition within one year after you left military service. Longer time limits apply for certain other medical conditions.

- A current physical or mental disability. This can be shown by medical evidence or other evidence showing you have persistent or recurrent symptoms of disability. We will get any VA medical records or other medical treatment records you tell us about. If necessary, we may schedule a VA examination for you to get this evidence. You may also submit your own statements or statements from other people describing your physical or mental disability symptoms. We will review this evidence to see if it shows you have a current disability or symptoms of a disability.

- A relationship between your current disability and an injury, disease, or event in service. This is usually shown by medical records or medical opinions. We will request this medical evidence for you if you tell us about it. If appropriate, we may also try to get this evidence for you by requesting a medical opinion from a VA doctor, or you can give us a medical opinion from your own doctor.

What Information or Evidence Do We Still Need From You?

We need the following information from you:

- the name of the person, agency, or company who has relevant records;
- the address of this person, agency, or company;
- the approximate time frame covered by the records; and
- the condition for which you were treated, in the case of medical records.
Complete, sign and return the enclosed VA Form 21-4142, "Authorization for Release of Information." You previously indicated that you have been treated by Holy Cross Hospital; we need you to complete the attached VA Form 21-4142 for only Holy Cross Hospital. We need you to use a separate form for each doctor or hospital where you were treated. The previous VA Form 21-4142 that you submitted has more than one facility doctor/hospital listed and we wish you to complete the form showing only Holy Cross Hospital since we have the medical evidence from Dr. Steingo and Dr. Stoner already.

**What Can You Do To Help With Your Claim?**

You can help us with your claim by doing the following:

- tell us about any additional information or evidence that you want us to try to get for you.
- send us the evidence we need as soon as possible and be sure to put your VA File number on any evidence you send us.
- tell us if your address or phone number changes.

**When And Where Do You Send The Information Or Evidence?**

Send the information describing additional evidence or the evidence itself to the address at the top of this letter within 60 days of the date of this letter. Please put your full name and VA file number on the evidence. If we don't receive the information or evidence within that time, we will decide your claim based only on the evidence we have received and any VA examinations or medical opinions.

If the information or evidence is received within one year from the date of this letter, and we decide that you are entitled to VA benefits, we may be able to pay you from the date we received your claim.

If the evidence isn't received within one year from the date of this letter, and we decide that you are entitled to VA benefits, we can only pay you from the date we receive the evidence.

**What Has Been Done To Help With Your Claim?**

- We have obtained the following evidence to support your claim: we have the medical evidence from Dr. Brian Steingo; and Dr. Clyde Stoner that you submitted.
- We have requested copies of your treatment records from Oakland Park VA Outpatient Clinic. You previously indicated that you have been treated for this condition by Oakland Park VA Outpatient Clinic.
Do You Have Questions Or Need Assistance?

If you have questions or need assistance with this claim, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

If you call, please refer to your VA file number 29 147 926. If you write to us, please put your full name and VA file number on the letter. You can visit our web site at www.va.gov for more information about veterans' benefits.

A copy of this letter was sent to Paralyzed Veterans of America because you appointed them as your representative. If you have questions or need assistance completing forms/claim, etc., you can also contact them.

Sincerely yours,

B. J. Harker
B. J. HARKER
Veterans Service Center Manager

Enclosure(s): Pamphlet
VA Form 21-4142
VA Form 21-4138

cc: PVA
September 18, 2001

PHILIP
M101
POMPANO BEACH FL 33069

In Reply Refer To: 317/231A/4

Dear Mr. [Redacted]

This letter acknowledges receipt of your claim.

Please note that your VA claim number is [Redacted]. This number is important in the identification of your claim/records.

Please have this number available if you contact your case management team.

Your claim will be managed by Team 25. You can contact your team by calling 1-800-827-1000 and simply keying in your claim number when prompted.

Please review the enclosed pamphlet and keep it for future reference. It answers many commonly asked questions and provides a good overview of the claims process.

Sincerely yours,

B. J. Harker
B. J. HARKER
Veterans Service Center Manager

Enclosure(s): Pamphlet

cc: PVA
Dear Sirs/Madam:

The veteran, Philip M [redacted], whose Social Security Number is [redacted], as applied for disability benefits showing treatment at your facility on or about 1975.

We are Requesting Medical Evidence

While it is the responsibility of claimants to furnish evidence required in support of their claim, it has been our consistent practice to assist all veterans and their dependents in every way possible. In keeping with this practice, we request, on their behalf, evidence in the possession of others; as in this case, evidence of the veteran having received medical treatment from you.

The veteran has consented to your giving us information concerning this treatment and has waived any privilege which renders such information confidential. Collection of the information requested is authorized by law (38 CFR 3.326).

We Request This Evidence Within 60 Days

As a service to the veteran we would appreciate you furnishing us a report of your findings and diagnosis, without charge as there are no funds available to pay for this service. We request this evidence be furnished as soon as possible, preferably within 60 days from the date of this letter.

When No Evidence Is Available

If no medical evidence is of record, a negative response on your letterhead paper would be greatly appreciated. While you are not required to respond, your cooperation is needed to make a determination as to the veteran's entitlement to disability benefits. Please be sure to show the veteran's full name and VA file number on all correspondence or evidence submitted. A pre-addressed envelope, requiring no postage is enclosed for your convenience along with a copy of this letter for your records.
Do You Have Questions Or Need Assistance

If you have any questions, call us toll-free by dialing 1-800-827-1000. Our TDD number for the hearing impaired is 1-800-829-4833. If you call, please have this letter with you.

Sincerely yours,

B. J. Harker
B. J. HARKER
Veterans Service Center Manager

Enclosure(s): VA Form 21-4142
Franked envelope
Copy of Letter

cc: PVA
ISSUE:

2. Entitlement to nonservice-connected pension.
3. Entitlement to aid and attendance benefits.

EVIDENCE:

A letter dated October 15, 2001, was sent to the veteran advising him of the Veteran's Claims Assistance Act of 2000 (VCAA), and informing him of what evidence is required to complete processing of his claim for service connection for multiple sclerosis and nonservice-connected pension benefits.
Treatment reports from the Department of Veterans Affairs Medical Center (VAMC), Miami, Florida, covering from October 2001 through January 2002.
A letter dated October 22, 2001, was sent to Holy Cross Hospital, requesting medical evidence to support the veteran's claim. A reply was subsequently received on stating that Holy Cross Hospital was no longer in business.
Treatment reports from Brian Steingo, M.D., and North Ridge General Hospital, covering from January 1984 to August 1986.
Treatment reports from Dr. Clyde T. Stoner, M.D., covering from March 1986 to April 2001.

DECISION:

1. Service connection for multiple sclerosis is denied.
2. Entitlement to pension is granted.
3. Entitlement to special monthly pension based on the need for aid and attendance is established effective September 12, 2001.

REASONS AND BASES:

1. Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. Service connection for multiple sclerosis is denied since this condition neither occurred in nor was caused by service. Although service connection may be presumed for multiple sclerosis if this condition is manifested to a compensable degree within a certain period after military discharge, service connection on this basis cannot be favorably considered because the evidence fails to provide a diagnosis or symptoms of multiple sclerosis within the 7 year presumptive period following the veteran's discharge from military service.
A letter dated October 15, 2001, was sent to the veteran advising him of the Veteran's Claims Assistance Act of 2000 (VCAA), and informing him of what evidence is required to complete processing of his claim for service connection for multiple sclerosis and nonservice-connected pension benefits.

The records in this case have been reviewed and the issues considered under the provisions of VCAA (Public Law 106-475). All indicated development has been undertaken and all reasonable efforts to assist the veteran in pursuing his claim have been exhausted. The evidence of record is sufficient to render a sound merits decision.

A review of the veteran's service medical records for the period August 20, 1970, to May 21, 1973, are completely silent for symptoms or diagnosis of multiple sclerosis during the veteran's active military service.

A letter dated October 22, 2001, was sent to Holy Cross Hospital, requesting medical evidence to support the veteran's claim. A reply was subsequently received on stating that Holy Cross Hospital was no longer in business, and that no records were available.

Treatment reports from the Department of Veterans Affairs Medical Center (VAMC), Miami, Florida, covering from October 2001 through January 2002, treatment reports from Brian Steingo, M.D., and North Ridge General Hospital, covering from January 1984 to August 1986, a report from North Ridge Neuro Service Center dated in March 2000, and treatment reports from Dr. Clyde T. Stoner, M.D., covering from March 1986 to April 2001, all reveal that the veteran is, and has been seen and treated for his diagnosed multiple sclerosis, and associated condition's. However, the earliest treatment report that shows symptomatology which could have been associated with multiple sclerosis, numbness in the upper extremities for approximately one week, was in January 1984, when the veteran was seen by Dr. Steingo, and was diagnosed with paresthesia with possible demyelinating disorder, which was subsequently diagnosed as multiple sclerosis.

Since the earliest evidence of symptomatology is dated in January 1984, with diagnosis in February 1984, this claim must be denied on both a presumptive and direct basis. The condition was not shown in service, or manifested or diagnosed within the 7 year presumptive period following the veteran's discharge from service on May 21, 1973.

2. The veteran is unable to secure and follow a substantially gainful occupation due to disability.

The veteran is 49 years old, has a level of education reported as three years of college, and last worked in 1990 as locating sites for a fireworks company. A letter dated October 15, 2001, was sent to the veteran advising him of the Veteran's Claims Assistance Act of 2000 (VCAA), and informing him of what evidence is required to complete processing of his claim for service connection for multiple sclerosis and nonservice-connected pension benefits.
The records in this case have been reviewed and the issues considered under the provisions of VCAA (Public Law 106-475). All indicated development has been undertaken and all reasonable efforts to assist the veteran in pursuing his claim have been exhausted. The evidence of record is sufficient to render a sound merits decision.

A letter dated October 22, 2001, was sent to Holy Cross Hospital, requesting medical evidence to support the veteran's claim. A reply was subsequently received on stating that Holy Cross Hospital was no longer in business.

Treatment reports from Brian Steingo, M.D., and North Ridge General Hospital, covering from January 1984 to August 1986, a report from North Ridge Neuro Service Center dated in March 2000, and treatment reports from Dr. Clyde T. Stoner, M.D., covering from March 1986 to April 2001, all provide a diagnosis of progressive multiple sclerosis.

The most recent treatment reports from the Department of Veterans Affairs Medical Center (VAMC), Miami, Florida, covering from October 2001 through January 2002, reveals that the veteran has weakness and motor disturbances in both upper and lower extremities, experiences difficulties in communication and has decreased visual acuity, all secondary to his multiple sclerosis. Although noted to be able to stand, the veteran can only walk a few feet, and is essentially confined to his wheelchair. He is also experiencing difficulties in transferring from his chair to bed, or into the bathroom. The records note that the veteran currently has an aid living with him to assist him with his activities of daily living.

For nonservice-connected pension purposes, the following disabilities and percentages of disability are assigned:

Impairment of the right (dominant) upper extremity due to multiple sclerosis: An evaluation of 70 percent is assigned for complete paralysis whenever adduction, abduction and rotation of the arm, flexion of the elbow, and extension of the wrist are lost or severely affected.

Impairment of the left upper extremity due to multiple sclerosis: An evaluation of 60 percent is assigned for complete paralysis whenever adduction, abduction and rotation of the arm, flexion of the elbow, and extension of the wrist are lost or severely affected.

Impairment of the right lower extremity due to multiple sclerosis: An evaluation of 60 percent is assigned for incomplete paralysis below the knee which is severe with marked muscular atrophy. A higher evaluation of 80 percent is not warranted unless there is evidence of complete paralysis, the foot dangles and drops, and no active movement of the muscles is possible below the knee with weakened flexion.
Impairment of the left lower extremity due to multiple sclerosis: An evaluation of 60 percent is assigned for incomplete paralysis below the knee which is severe with marked muscular atrophy. A higher evaluation of 80 percent is not warranted unless there is evidence of complete paralysis, the foot dangles and drops, and no active movement of the muscles is possible below the knee with weakened flexion.

Impairment of speech due to multiple sclerosis: An evaluation of 60 percent is assigned for constant inability to speak above a whisper. A higher evaluation of 100 percent is not warranted unless the record shows constant inability to communicate by speech.

Impairment of vision secondary to multiple sclerosis: A 30 percent evaluation is assigned when visual acuity in one eye is 20/100 and the visual acuity in the other eye is 20/70.

The veteran is found totally disabled for nonservice-connected disability pension purposes, effective September 12, 2001, the date his claim was received in the Department of Veterans Affairs, in accordance with 38 CFR 3.400.

3. The evidence shows the claimant needs daily assistance in performing routine activities. Entitlement to special monthly pension because of the need for aid and attendance is established.

A letter dated October 15, 2001, was sent to the veteran advising him of the Veteran's Claims Assistance Act of 2000 (VCAA), and informing him of what evidence is required to complete processing of his claim for service connection for multiple sclerosis and nonservice-connected pension benefits.

The records in this case have been reviewed and the issues considered under the provisions of VCAA (Public Law 106-475). All indicated development has been undertaken and all reasonable efforts to assist the veteran in pursuing his claim have been exhausted. The evidence of record is sufficient to render a sound merits decision.

Treatment reports from the Department of Veterans Affairs Medical Center (VAMC), Miami, Florida, covering from October 2001 through January 2002, reveal that the veteran's motor function of the upper and lower extremities is progressing, and the veteran requires assistance with his activities of daily living. The veteran is also noted to have hired an aid to assist him.

Resolving reasonable doubt in favor of the veteran, it is held that he requires the regular aid and attendance of another person to perform activities of daily living, and to protect him from the hazards incident to daily living. The effective date is established as September 12, 2001, the date the veteran's claim was received in the Department of Veterans Affairs, in accordance with 38 CFR 3.400.
**JURISDICTION:** 110;3 Original disability claim received September 12, 2001.

8. NSC (VE)
8018-8511 70% RIGHT UPPER EXTREMITY IMPAIRMENT, DUE TO MULTIPLE SCLEROSIS (Dominant)
8018-8511 60% LEFT UPPER EXTREMITY IMPAIRMENT, DUE TO MULTIPLE SCLEROSIS
8018-8520 60% RIGHT LOWER EXTREMITY IMPAIRMENT, DUE TO MULTIPLE SCLEROSIS
8018-8520 60% LEFT LOWER EXTREMITY IMPAIRMENT, DUE TO MULTIPLE SCLEROSIS
6519 60% IMPAIRED SPEACH, DUE TO MULTIPLE SCLEROSIS
6078 30% IMPAIRED VISUAL ACURITY, SECONDARY TO MULTIPLE SCLEROSIS

2. PT (VE) from 09-12-01

COMB NSC: 100%

43. Bilateral factor of 9.8% added for diagnostic codes 8018-8511, 8018-8511, 8018-8520, 8018-8520.

19B. Entitled to special monthly pension on account of need of regular aid and attendance from 09-12-01. Not entitled while maintained at government expense.
Dear Mr. Martin,

We made a decision on your claim received September 12, 2001.

This letter tells you about your entitlement amount, payment start date, what we decided, and how we calculated your benefits. It also tells you of your responsibilities as a veteran in receipt of disability pension, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

**What Is Your Entitlement Amount And Payment Start Date?**

Your monthly entitlement amount is shown below:

<table>
<thead>
<tr>
<th>Monthly Entitlement Amount</th>
<th>Payment Start Date</th>
<th>Reason For Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$242.00</td>
<td>Oct 1, 2001</td>
<td>Your original claim for VA pension with aid and attendance was granted</td>
</tr>
<tr>
<td>248.00</td>
<td>Dec 1, 2001</td>
<td>Legislative increase</td>
</tr>
<tr>
<td>252.00</td>
<td>Feb 1, 2002</td>
<td>We started counting the increase in your medicare premium.</td>
</tr>
</tbody>
</table>

We are paying you as a single veteran with no dependents.

**When Can You Expect Payment?**

Your payment begins the first day of the month following your effective date. You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.
What Did We Decide?
We granted disability pension benefits with aid and attendance effective September 12, 2001.

We determined that the following condition(s) was/were not related to your military service, so service connection couldn't be granted:

<table>
<thead>
<tr>
<th>Medical Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple sclerosis</td>
</tr>
</tbody>
</table>

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered and the reasons for our decision. You can find the decision discussed in the section titled "Decision." The evidence we considered is discussed in the section titled "Evidence." The reasons for our decision can be found in the portion of the rating titled "Reasons for Decision" or "Reasons and Bases."

We enclosed a VA Form 21-8768, "Disability Pension Award Attachment-Important Information," which explains important factors concerning your benefits.

What Income and Expenses Did We Use?
We used your total family income as shown below to award your pension benefit from October 1, 2001.

<table>
<thead>
<tr>
<th>Income We Counted</th>
<th>Annual Earnings</th>
<th>Annual Social Security</th>
<th>Annual Retirement</th>
<th>Annual Other Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yourself</td>
<td>$0</td>
<td>$12,744.00</td>
<td>$0.00</td>
<td>$0</td>
</tr>
</tbody>
</table>

We used your medical expenses of $600.00, as a continuing deduction from October 1, 2001. This reduces your countable income to $12,609.00. If the amount you pay for these medical expenses changes or you are no longer paying these medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. This money would have to be paid back.
We used your total family income as shown below to adjust your pension benefit from December 1, 2001.

**Income We Counted**

<table>
<thead>
<tr>
<th></th>
<th>Annual Earnings</th>
<th>Annual Social Security</th>
<th>Annual Retirement</th>
<th>Annual Other Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yourself</td>
<td>$0</td>
<td>$13,092.00</td>
<td>$0.00</td>
<td>$0</td>
</tr>
</tbody>
</table>

We used your medical expenses of $600.00, as a continuing deduction from December 1, 2001. This reduces your countable income to $12,969.00. If the amount you pay for these medical expenses changes or you are no longer paying these medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. This money would have to be paid back.

We used your total family income as shown below to adjust your pension benefit from February 1, 2002.

**Income We Counted**

<table>
<thead>
<tr>
<th></th>
<th>Annual Earnings</th>
<th>Annual Social Security</th>
<th>Annual Retirement</th>
<th>Annual Other Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yourself</td>
<td>$0</td>
<td>$13,092.00</td>
<td>$0.00</td>
<td>$0</td>
</tr>
</tbody>
</table>

We used your medical expenses of $648.00, as a continuing deduction from February 1, 2002. This reduces your countable income to $12,921.00. If the amount you pay for these medical expenses changes or you are no longer paying these medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. This money would have to be paid back.

**How Can You Claim Family Medical Expenses?**

To claim family medical expenses, complete the enclosed VA Form 21-8416, "Medical Expense Report," and return it to this office no later than December 31, 2002. We may consider family medical expenses you paid after September 12, 2001. A few examples are listed below. More examples are shown on the enclosed Medical Expense Report form.
What Do We Need From You To Complete Your Claim For Dependents?
The information you sent us about your dependents wasn't complete. Before we can pay additional benefits for your dependent, Michael, or any other dependents that you may have, send us the following:

- VA Form 21-674, "Request For Approval Of School Attendance," showing that Michael is in school.
- VA Form 21-686c, Declaration of Status of Dependents, to report dependents.

What Additional Information or Evidence Do We Still Need From You?
We still need the following information or evidence from you:

- If you wish us to consider your son, Michael, on your award as your dependent you will also need to provide his income and net worth information from 09-02-01 to 12-31-01, and his projected income for the year 2002. We have provided you the attached VA Form 21-0517-1, Improved Pension Eligibility Verification Report. This information is required in order for us to consider him on your award.
- Also, we will need to know the address where he resides. We will also need your signed statement on VA Form 21-4138, Statement in Support of Claim, indicating if you are currently providing Michael financial support. We cannot consider him as your dependent since you indicated that he used to get half of your Social Security. Since you did not specifically indicate that you currently provide him financial support, we cannot consider him as a dependent on your award.
- If you have provided Michael with financial support then we will need to know the monthly amount, over your signature. Please provided us with the monthly financial

Don't include unpaid medical bills, any paid bill that will be reimbursed, or bills that aren't for health expenses.
support that you have provided to Michael from date of claim 09-02-01 to present. Also include projected monthly financial support for Michael for the year 2002.

- You indicated on your original application for benefits that your son, Michael, is adopted. We will need a copy of the adoption papers.

When And Where Do You Send The Information Or Evidence?

Send the information or the evidence to the address at the top of this letter. Please put your full name and VA file number on the evidence.

We may be able to pay you from the date we received your claim, if we receive the information or evidence within one year from the date of this letter and we decide that you are entitled to VA benefits. If we do not receive the evidence within one year from the date of this letter, we can only pay you from the date we receive the evidence.

What Are Your Responsibilities?

You are responsible to tell us right away if:

- your income or the income of your dependents changes (i.e., earnings, Social Security Benefits, lottery and gambling winnings)
- your net worth increases (i.e., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

How Do You Start Direct Deposit?

Your money may be deposited directly into your checking or savings account. This is the safest and most reliable way to get your money. For more information about Direct Deposit, please call us toll free by dialing 1-877-838-2778.

What You Should Do If You Disagree With Our Decision.

If you do not agree with our decision, you should write and tell us why. You have one year from the date of this letter to appeal the decision. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

Do You Have Questions Or Need Assistance?

If you have any questions or need assistance with this claim, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
If you call, please refer to your VA file number 29 147 926. If you write to us, put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter. You can visit our web site at www.va.gov for more information about veterans' benefits.

We sent a copy of this letter to Paralyzed Veterans of America because you appointed them as your representative. If you have questions or need assistance, you can also contact them.

Sincerely yours,

B. C. Gibbard

B. C. Gibbard
Veterans Service Center Manager

Enclosure(s): Rating Decision
VA Form 21-8768
VA Form 21-674
VA Form 21-668c
VA Form 21-8416
VA Form 21 0517-1
VA Form 21-4138
VA Form 4107

cc: PVA
June 24, 2002

Veterans Service Center / Team 25
Department of Veterans Affairs Regional Office
9500 Bay Pines Blvd.
Bay Pines, FL 33708

RE: PHILLIP M.
C#: [redacted]

Sir/Madam:

We represent the above referenced claimant before the Department of Veterans Affairs (VA). Therefore, we are submitting the following information/paperwork in order to develop his/her claim.

1. Veteran's Notice of Disagreement (NOD) with decision denying service-connection for Multiple Sclerosis (MS).
2. Buddy statement(s), (4) that were not available at the time of the rating decision.

Our comments are as follows: Please provide Mr. [redacted] and our Organization with a new decision or a Statement of the Case (SOC).

If you need additional information concerning the above claimant, please contact our office.

Sincerely,

Richard M. Baker
National Service Officer

RMB/pf
cc: J. Harrison, NSO
Attachment(s): 2
3-26-02

To Whom it may concern,

I have been a close friend of Phillip since 1973. I lived in tryplex next door during 1974-1975 during this year. I remember him being in the Holy Cross Hospital for a few weeks. They weren't sure if he had a stroke or not, later they concluded he

60
did not!
but I'm not
sure of the
outcome.

Thank you,

Doug Unsinn

If you have any questions, please contact me.

Acknowledged before me on this
20th day of March 2000.
Douglas J. Unsinn personally
known to me.

Lesley A. Cruz
Phillip Mark

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I wish to file a NOD with your decision not to grant me SC for MS. Please see enclosed buddy statement's this evidence was not available at the time of the Rating. Please have a hearing review office look at this case.

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

Signature

Date Signed: June 03, 2002

Address:
Pompano Beach, FL 33069

Penalty - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VA FORM 21-4138 EXISTING STOCKS OF VA FORM 21-4138, SEP 1989, WILL BE USED.
To Whom it May Concern,

I have been a friend of Philip since the early 1970’s. For a brief time we were also roommates. I recall in 1974 – 1975, Philip was in Holy Cross Hospital for several weeks. The doctors originally thought he had had a stroke. They later found out he didn’t. I’m sorry I don’t recall exact dates, or the final outcome of that stay in the hospital, but as I said earlier I definitely recall him being in the hospital.

Yours Truly,

David Weinstein

3-6-02

3-6-02
March 31, 2002

To Who it Concerns:

To the best of my recollection it was the spring of 1975 when my friend [REDACTED] invited me to Florida to help him with his Fireworks business.

While there he became ill and was admitted into the Holy Cross Hospital on N. Federal Hwy. in Ft. Lauderdale. He was diagnosed with a stroke and was under treatment for several weeks.

Again in 1979 [REDACTED] became ill with the same symptoms. When he went to the hospital they suggested he see Dr. Steingo who diagnosed him with Multiple Sclerosis at that time.

Respectfully,

[Signature]

Susan G. Wesolowski  
Exp. Date 3/8/06  
Notary for State of New Jersey

[Signature]

[REDACTED]  
V.A. Claim No.  
Team No. 25

64
July 15, 2002

Veterans Service Center / Team 25
Department of Veterans Affairs Regional Office
9500 Bay Pines Blvd.
Bay Pines, FL 33708

RE: [Name Redacted]

Sir/Madam:

We represent the above referenced claimant before the Department of Veterans Affairs (VA). Therefore, we are submitting the following information/paperwork in order to develop his/her claim.


Our comments are as follows: This veteran already filed a notice of disagreement (NOD) with the denial of service-connection for Multiple Sclerosis (MS). The attached evidence is to further support the NOD. Please continue the review of the veteran's NOD.

If you need additional information concerning the above claimant, please contact our office.

Sincerely,

[Signature]
Richard M. Baker
National Service Officer

RMB/pf
cc: J. Harrison, NSO
Attachment(s): 2
June 15, 2002

Name of Veteran: Philip
VA File Number: 
Social Security: 
POA: Paralyzed Veterans of America

I Philip would like to request an appeal in the above case in which I was denied.

The denial stated that there is not enough evidence to support my claim that in 1975 I was admitted to Holy Cross Hospital, Ft. Lauderdale, Florida with symptoms of numbness in my legs. After several blood tests and coordination tests and two weeks time in the hospital it was not confirmed but suggested that I either had a stroke or that it could be Multiple Sclerosis. There were no tests to either confirm or deny these claims. I was released and went on with my life. Upon my request for any records that would confirm this claim personnel at Holy Cross Hospital told me that the records no longer existed from 1975.

In 1979 I suffered another attack consisting of numbness throughout all my limbs. I went to North Ridge Hospital and from there was referred to Dr. Brian Steingo, a highly regarded neurosurgeon that is affiliated with North Ridge Hospital. It was confirmed at that time that I did in fact have Multiple Sclerosis. Please refer to the records to date from Dr. Steingo that should already be in your possession.

I have also enclosed two signed, notarized letters from life long friends who visited me at Holy Cross Hospital in 1975.

In view of the above mentioned and the attacked letters confirming my hospitalization in 1975 I respectfully request that you re-evaluate my claim.

Any consideration given will be greatly appreciated.

Respectfully,

Philip Mark
May 15, 2002

To Whom it May Concern,

I, Doug Unsinn, have been a very close friend to Philip since 1973.

I lived next door to Philip from 1974 through 1975. During that year I recall that Philip was admitted to Holy Cross Hospital for about two weeks because he was experiencing numbness in his legs. I know that several tests were run but do not remember if there was ever any determination as to what the problem was.

If I can be of any more assistance to you in determining Philip's claim please do not hesitate to call me. (954) 523-6059.

Regards,

Doug Unsinn

Notary Public

Doug Unsinn who is personally known to me appeared on June 24, 2002.

Lesley A. Cruz

LESLIE A. CRUZ
MY COMMISSION # DD 079573
EXPIRES: April 5, 2006
Bonded thru Notary Public Underwriters

67
September 23, 2003

Dear Mr. Robin:

The enclosed "Statement of the Case" is our response to your recent "Notice of Disagreement" with our decision in your case. It lets you know how we reached our decision and will help you decide whether to continue your appeal to the Board of Veterans' Appeals.

If you do decide to continue your appeal, you will need to file a formal appeal. You can do that by completing and filing the enclosed VA Form 9, Appeal to Board of Veterans' Appeals. Please read the instructions that come with the VA Form 9 very carefully. They tell you what you need to do, and how much time you have to do it, if you want to continue your appeal. They also tell you about how to get assistance, about your hearing rights, and about a number of other important things.

Please let us know if you have any questions, or if you did not receive a copy of VA Form 9 with this mailing.

Sincerely yours,

B. C. Gibbard

B. C. Gibbard
Veterans Service Center Manager

Enclosure(s): VA Form 9

cc: Paralyzed Veterans of America
ISSUE:

Service connection for multiple sclerosis.

EVIDENCE:

Service medical records for the period 08-20-70 TO 05-21-73
A letter dated 10-22-01 was sent to Holy Cross Hospital requesting treatment records. A reply was received stating that Holy Cross Hospital was no longer in business.
Treatment records from Dr. Steingo and North Ridge General Hospital covering from January 1984 to August 1986
Report from North Ridge Neuro Service Center dated in March 2000
Treatment report from Dr. Clyde T. Stoner covering March 1986 to April 2001
Letter from David Weinstein, your friend, dated 03-06-02
Letter from Anthon A. Hayhen (?name illegible), your friend dated 03-31-02
Letter from Doug Unsinn, your friend, dated 05-15-02 and 03-27-02

ADJUDICATIVE ACTIONS:

Military Service: Honorable service from 08-20-70 to 05-21-73
09-12-01 Claim received.
02-12-02 Claim considered based on all the evidence of record.
02-25-02 You were notified of decision.
06-11-02 Notice of Disagreement received.
09-19-03 De novo review done by Decision Review Officer

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

§3.303 Principles relating to service connection.

69
(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word “Chronic.” When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorroidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure...
manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

(d) Postservice initial diagnosis of disease. Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid.

§3.304 Direct service connection; wartime and peacetime.

(a) General. The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) Presumption of soundness. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto. Only such conditions as are recorded in examination reports are to be considered as noted. (Authority: 38 U.S.C. 1111)

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to inception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.
(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record. (Authority: 10 U.S.C. 1219)

(c) Development. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation. (Authority: 38 U.S.C. 1154(b))

(e) Prisoners of war. Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of intercurrent origin. The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

(f) Post-traumatic stress disorder. Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed in-service stressor may be established by the veteran's lay testimony alone. If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed in-service stressor may be established by the veteran's lay testimony alone. (Authority: 38 U.S.C. 1154(b))
§3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) General. A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in §3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in §3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in §3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected. (Authority: 38 U.S.C. 1112)

(5) Diseases specific as to former prisoners of war. The diseases listed in §3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service. (Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to certain herbicide agents.

   (i) For the purposes of this section, the term herbicide agent means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period
beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram. (Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975 and has a disease listed at §3.309(e) shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. (Authority: 38 U.S.C. 501(a) and 1116(a)(3))

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in §3.303(b) will be considered. The diseases listed in §3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except:

(1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or

(2) Where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease. (Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions. No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay
evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree. The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.

(d) Rebuttal of service incurrence. Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service. (Authority: 38 U.S.C. 1113)

§3.309 Disease subject to presumptive service connection.

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of §3.307 are also satisfied.

- Anemia, primary.
- Arteriosclerosis.
- Arthritis.
- Atrophy, Progressive muscular.
- Brain hemorrhage.
- Brain thrombosis.
- Bronchiectasis.
- Calculi of the kidney, bladder, or gallbladder.
- Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling
hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Mycelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud's disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.
Title 38 CFR, is the statutory law governing benefits administered by this Administration.

The decision of a duly constituted rating agency on which an action was predicated will be final and binding as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by appellate determinations or for clear and unmistakable error. (38 CFR 3.104(a))

Substantive Appeal. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed. (38 U.S.C. 7105(b)(1), (d)(3)) (38 CFR 20.302)

§3.102 Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 5107)

(c) Should its efforts to obtain evidence prove unsuccessful for any reason which the claimant could rectify, the Department of Veterans Affairs shall so notify the claimant and advise him or her that the ultimate responsibility for furnishing evidence rests with the claimant. (Authority: 38 U.S.C. 5107)

Sec. 3.159 Department of Veterans Affairs assistance in developing claims.
(a) Definitions. For purposes of this section, the following definitions apply:
(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence. (1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim. VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot pay or provide any benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim.

(Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information.

(Authority: 38 U.S.C. 5102(b), 5103A(3))
(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate
a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.
(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant’s service medical records, if relevant to the claim; other relevant records pertaining to the claimant’s active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions. (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:
(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;
(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in Sec. 3.309, Sec. 3.313, Sec. 3.316, and Sec. 3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and
(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.
(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.
(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured.

(Authority: 38 U.S.C. 5103A(d))

(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for
benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:
(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;
(2) Claims that are inherently incredible or clearly lack merit; and
(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A(a)(2))

c) Duty to notify claimant of inability to obtain records. (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:
(i) The identity of the records VA was unable to obtain;
(ii) An explanation of the efforts VA made to obtain the records;
(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and
(iv) A notice that the claimant is ultimately responsible for providing the evidence.
(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA [[Page 45632]] will request that the claimant obtain the records and provide them to VA.

(Authority: 38 U.S.C. 5103A(b)(2))

(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.

(Authority: 38 U.S.C. 5102(b), 5103(a))

§3.2600 Review of benefit claims decisions.
(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by a Veterans Service Center Manager, or Decision Review Officer, at VA’s discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under §3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))
DECISION:

Service connection for multiple sclerosis is denied.

REASONS AND BASES:

Your claims file has been reviewed. The evidence considered in the previous decision has been considered by the Decision Review Officer.

It is the determination of the Decision Review Officer that the evidence of record does not support any change in the previous determination which is confirmed and continued. This decision is based on a de novo review of the evidence contained in the claims record without deference to the prior determination under authority of 38 CFR 3.2600.

We denied service connection for multiple sclerosis because there is no evidence that your multiple sclerosis began in service nor is there objective medical evidence showing manifestation of multiple sclerosis to a compensable degree within 7 years following discharge from service.

Your service medical records are silent for symptoms or diagnosis of multiple sclerosis during your active duty period.

You contend that you were hospitalized at Holy Cross Hospital in 1975 for symptoms of numbness in your legs. It was suggested that you either had had a stroke or that it could be multiple sclerosis.

A letter dated 10-22-01 was sent to Holy Cross Hospital requesting treatment records. A reply was received stating that Holy Cross Hospital was no longer in business.

You submitted buddy statements from several friends stating that they remember you being hospitalized for numbness in your legs.

Other cited medical evidence show treatment for multiple sclerosis. Records do not show any history relating a prior hospitalization for numbness of the legs to your current multiple sclerosis. Earliest treatment report that shows symptomatology that could have been associated with multiple sclerosis, numbness in the upper extremities for approximately one week, was in January 1984, when you were seen by Dr. Steingo, and was diagnosed with paresthesia with possible demyelinating disorder, which was subsequently diagnosed as multiple sclerosis. At the time of this initial visit, your past medical history was noted as "unremarkable". Record dated 02-17-84 indicated that your past history which you didn't indicate to the doctor last time, that in 1981, following an automobile accident, you noted numbness of your left lower extremity from the groin down. You had been seen by a neurologist at that time and there was no obvious diagnosis.
There is a letter to Mr. Christopher S. Bennett from you stating that you were diagnosed with multiple sclerosis in 1989.

Lay statements were considered, however, were given little weight as there is no medical evidence to show any symptoms of multiple sclerosis within the presumptive period.

Reasonable doubt was considered. The evidence is not so evenly balanced as to find in your favor.
November 14, 2003

Veterans Service Center / Triage
Department of Veterans Affairs Regional Office
9500 Bay Pines Blvd.
Bay Pines, FL 33708

RE: PHILLIP M.
C#: 

Sir/Madam:

We represent the above referenced claimant before the Department of Veterans Affairs (VA). Therefore, we are submitting the following information/paperwork in order to develop his/her claim.

1) VAF “9” dated 11-4-03.

Our comments are as follows: The veteran is submitting his substantive appeal on the issue of service-connection for Multiple Sclerosis (MS). It is the veteran’s contention service-connection can be established on a presumptive basis. The veteran believes the appropriate provisions of 38 CFR 3.307 can be favorably applied, in particular paragraph (c) of this section. In other words, the contention is the diagnosis of MS in early 1984 (less than four years after discharge from active military service), was the definitive medical documentation of the disease process for the symptoms the veteran experienced of MS during the seven year presumptive period. He therefore, believes the referenced regulation can be favorably applied to grant service-connection. If the benefit sought on appeal cannot be granted, then please schedule the hearing before a member of the Board of Veterans Appeals at the local office as the veteran has requested in the “9” form.

continued
PHILLIP M.
C#

If anything further is needed, please contact us.

Thank you.

Richard M. Baker
National Service Officer

RMB/pf
cc: Miami PVA

Attachment(s): 1
In 1975 or 1976, I was an out patient at Holy Cross Hospital due to vision problems (double vision, headaches, chest pains, and numbness in the legs). I was tested for two weeks at that time and was informed that nothing showed that I had a stroke or heart attack.

In 1978 or 1979, I was an in-patient for seven to ten days at North Broward Medical Center for the same problems (double vision, chest pains, and difficulty walking). I was falling several times a day if I didn't have something to hold on to. The doctors could not find a rational explanation for my problems.

I believe these early problems were indicators of multiple sclerosis. Unfortunately, Holy Cross Hospital (which is still in business) does not keep records for more than seven years and North Broward Medical Center has no records on me prior to 1993.

(Continue on the back, or attach sheets of paper, if you need more space.)
December 29, 2003

Veterans Service Center / Triage
Department of Veterans Affairs Regional Office
9500 Bay Pines Blvd.
Bay Pines, FL 33708

RE: PHILLIP M.
C#: ________

Sir/Madam:

We represent the above referenced claimant before the Department of Veterans Affairs (VA). Therefore, we are submitting the following information/paperwork in order to develop his/her claim.

1) Hearing election letter.

Our comments are as follows: In response to VA letter dated 12-3-03 the veteran is submitting the attached signed hearing "Election" statement dated 12-13-03.

Please schedule the hearing as soon as possible and notify the veteran, with a copy to PVA.

Thank you.

Richard M. Baker
National Service Officer

RMB/pf
cc: Miami PVA

Attachments: 1
RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (723), 810 Vermont Avenue, NW, Washington, DC 20420; and to the Office of Management and Budget, Paperwork Reduction Project (2900-0042), Washington, DC 20503. Please do not send application for benefits to these addresses.

PRIVACY ACT NOTICE: The information requested on this form is solicited under Section 7105(a) and (b)(2), Title 38, United States Code. This form, when completed, is a vehicle, which may be used to present information concerning the appeal of the individual whom you represent to the Board of Veterans Appeals. It is used by VA and the Board in processing the appeal and by the Board in deciding the appeal. Completion of the form is voluntary. The information may be disclosed outside of VA as permitted by law and as stated in the notices pertaining to VA's systems of records which are periodically published in the Federal Register in accordance with the Privacy Act of 1974. Examples of situations in which the information included in this form might be released to individuals outside of VA include release to the United States Court of Veterans Appeals, should the Board of Veterans' Appeals' decision in this case later be appealed to that court; disclosure to a medical expert outside of VA, should VA determine that a request for an opinion from such an expert under the provisions of Sections 5109 or 7109, Title 38, United States Code is appropriate; disclosure to law enforcement personnel and security guards in order to alert them to the presence of a dangerous person; disclosure to law enforcement agencies should a violation of law be indicated; disclosure to a congressional office in order to answer an inquiry from the congressional office made at your request or the request of the appellant whom you represent; and disclosure to Federal government personnel who have the duty of inspecting VA's records to make sure that they are being properly maintained. See the Federal Register notices described above for further details.

TO PARALYZED VETERANS OF AMERICA

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN

HILLIP M.

All evidence in connection with this appeal has been considered. Please complete and return the statement below on or before the date indicated. If we do not receive either the statement or a request for extension by this date, it will be necessary for us to certify the appeal to the Board of Veterans Appeals on the present record.

REPLY REQUESTED BY (Date) NAME AND MAIL ROUTING SYMBOL OF ORGANIZATION MAKING REQUEST

ASAP VETERAN’S SERVICE CENTER / APPEALS TEAM, HALCK, DRO

TO BE COMPLETED BY ACCREDITED REPRESENTATIVE

NOTE: Section 7105(a) and (b)(2), Title 38, United States Code, gives the claimant the right to be represented and give the accredited representative the right to file claims for the claimant. The presentation of an argument by the accredited representative is voluntary and not necessary for completion of the appeal. The opportunity of argument is given the accredited representative in order to accord the claimant the right of full representation at this stage of the appellate process. Failure to file this form may delay the appellate process.

I HEREBY CERTIFY that a statement of the case was furnished; that appellate review is desired on the evidence now on record; and that the issues for consideration by the Board of Veterans' Appeals are clearly defined.

☐ I REST THE APPEAL ON THE ANSWER TO THE STATEMENT OF THE CASE AND THE HEARING ON APPEAL (IF CONDUCTED), AND I HAVE NO FURTHER ARGUMENT.

X I WISH TO MAKE THE FOLLOWING ARGUMENT TO SUPPLEMENT THE ANSWER TO THE STATEMENT OF THE CASE AND OTHER ARGUMENT OF RECORD

ISSUE: Entitlement to service-connection for Multiple Sclerosis (MS).

COMMENTS: It remains the veteran’s contention service-connection should be granted for MS. He has requested a Travel Board Hearing before a member of the Board of Veterans Appeals on the issue. Please schedule the hearing and notify the veteran by letter with a copy to Paralyzed Veterans of America (PVA).

SIGNATURE AND TITLE OF REPRESENTATIVE

Richard M. Baker, Sr. National Service Officer

2-24-04
TRANSCRIPT OF HEARING
BEFORE
BOARD OF VETERANS' APPEALS
WASHINGTON, D.C. 20420

Sitting at St. Petersburg, Florida

IN THE APPEAL OF:

DATE:

September 29, 2005

REPRESENTED BY:
Richard Baker
Paralyzed Veterans of America, Inc.

MEMBER OF BOARD:
John Crowley, Chairman

WITNESSES:
Phillip M. Appellant
Michael Marsden
Susan Frenger
Laurie Funt
Mr. Schwarf
CHAIRMAN: This is John Crowley holding a hearing at the St. Petersburg VA Regional Office, the date is September 29th, 2005, the veteran's name is Phillip M. R-U-B-I-N, whose claim number with the Department is ____. He is represented by Richard Baker of the Paralyzed Veterans of America. Also testifying will be--

UNKNOWN: Yes, the witnesses we have your Honor would be Michael Marsden?

MR. MARSDEN: Marsden.


CHAIRMAN: Okay.

The issue certified for appellate consideration is service connection for multiple sclerosis. Anyone testifying if you could remain seated and raise your right hands.

(OATH ADMINISTERED)

CHAIRMAN: Thank you. If you'd like to proceed sir?

MR. BAKER: Thank you, your Honor. The issue is service connection for multiple sclerosis.

Mr. believes he has submitted evidence that sufficiently supports his central argument which is service connection can be established under the presumptive provisions of Department of Veterans Affairs law and regulation. He contends a fair adjudication by application of the appropriate provisions of law will allow the establishment of service connection. Namely 38 United States Code § 1112(a)(4) which states multiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service shall be considered to have
been incurred in or aggravated by such service notwithstanding there is no record of evidence of such disease during the period of service, unquote.

Likewise 38 C.F.R. § 3.309, diseases subject to presumptive service connection says a chronic disease shall be granted service connection although not otherwise established as incurred in or aggravated by service, if manifested to a compensable degree within the applicable time limits under 3.307 following discharge in a period of war noting Mr. Rubin had honorable wartime service from August 20th, 1970, to May 21st, 1973.

We also observe that this is a case where careful and critical application must be made of 3.307(c) because this section operates to reach the ultimate determination of whether MS developed or manifested to a compensable degree within the presumptive period and thus whether service connection can be allowed for a chronic disease under 3.309.

Turning to review of the evidence the issue on appeal began with Mr. Rubin filing VA Form 21-526, received in VA on September 12th, 2001, under Part B, Section 1, the veteran claimed disability of residuals due to MS first being treated in 1979, or excuse me, 1975 at Holy Cross Hospital in Fort Lauderdale, Florida.

In Section 3, Item 11, the veteran stated quote, I showed symptoms of MS after the service within the time period allowed by law, unquote. In Part D, Pension, Section 1(1)(b) in response to the question when did the disabilities begin, the veteran said quote shortly after leaving the Army. I don’t know the exact date it started, unquote.

Treatment is also shown in January 1984 from a Dr. Brian Steingo, that’s B-R-I-A-N, S-T-E-I-N-G-O, Neurologist in Fort Lauderdale. Dr. Steingo's treatment records beginning in January 1984 are in the claims folder. Unfortunately the Holy Cross Hospital records are not available.

Rating decision dated February 12th, 2002, was the initial adjudication of the issue of service connection. Under Reasons and Bases in discussing what the evidence must show in terms of did the disease become manifest to a compensable degree the following is stated quote, service connection on this basis cannot be favorably considered because
the evidence fails to provide a diagnosis or symptoms of MS within the seven-year presumptive period following the veteran's discharge from military service, unquote.

The foregoing was the opening paragraph of the Reasons and Bases and the following is the last paragraph quote, service, excuse me, since the earliest evidence of symptomatology is dated January 1984 with diagnosis in February 1984 this claim must be denied on the basis--on both a presumptive and direct basis. The condition was not shown in service or manifested or diagnosed within the seven-year presumptive period following the veteran's discharge from service on May 21st, 1973, unquote.

We believe the rating Reasons and Bases to be an incorrect application of 3.307(c). This regulation states in pertinent part quote, this will not be interpreted as requiring that the disease be diagnosed in the presumptive period, unquote. In short, the Reasons and Bases in stating that service connection cannot be established presumptively because it was not diagnosed within the seven-year presumptive period taints the rest of the Reasons and Bases because it caused it cause him to question the adjudicative analysis of the evidence in terms of the true merits decision based on the record at the time of the rating decision dated February 12th, 2002, was made and importantly what additional development may be necessary based on a showing that the evidence demonstrated there was at least a possibility of MS--the MS existed to the required 10 percent compensable degree during the seven-year presumptive period.

If such a determination is made an additional development may be necessary then such should include consideration of obtaining a VA medical opinion is authorized and required by 38 C.F.R. § 3.159(c)(4) providing medical examinations and/or medical opinions. Under this regulation it is stated under (i) quote, in a claim for disability compensation VA will provide a medical examination or obtain a medical opinion based upon review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim but (A) contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability, unquote.
We believe the need to apply these 3.159 provisions are even more necessary when considering the evidence received at VA subsequent to rating decision dated February 12th, 2002. The evidence available when the rating was made shows a February 17th, 1984, report evaluation by Dr. Steingo. The veteran's past history which had not been related the first time the doctor saw the veteran in January 1984 was that he, the veteran, had been in an automobile accident in 1981 and at that time he noted numbness of the left lower extremity from the groin down. He described it as quote, like it cut me in half from the waist down, unquote. The understanding is the veteran was seen by a neurologist and ophthalmologist in 1981 but apparently there was no diagnosis. There were further evaluations by Dr. Steingo dated February 28th, 1984, and March 26th, 1984.

The latter report discusses the spinal fluid results stating quote, weekly positive result consistent with mild demyelination, unquote. Of significance the report also says the possibility of a demyelinating disorder has to be considered and this is strengthened by the fact he has some type of numbness involving the left lower extremity several years ago. It seems here that the doctor had to be referring to the 1981 symptoms the veteran related in the February 17th, 1984, evaluation. Again referring to 38 C.F.R. § 3.307(c) it is stated quote, cases which a chronic condition is shown to exist within a short time following the applicable presumptive period but without evidence of manifestations within the presumptive period should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestations of a chronic disease to the required 10 percent degree, unquote.

An MRI dated April 4th, 1989, gives an impression of MS Grade IV. There does seem to be a constellation of neurological symptoms characteristic as MS in 1984 that were at least 10 percent compensable in degree at that time but importantly it is mentioned there-let me start that sentence over, but importantly as mentioned above there is documentation contemporaneous at the time of the February 17th, 1984, report of numbness of the lower extremity also the left lower extremity numbness that occurred in 1981 from the groin down. Indeed, the 1981 numbness symptoms seems to be bilateral in nature knowing the doctor's quoted comments quote like you cut me in half from the waist down unquote.
In other words there is evidence that the veteran did have symptoms characteristic of multiple sclerosis that began during the seven-year presumptive period. This understanding is derived by review of the veteran's comments on VA Form 21-526 that he received medical treatment in 1975 at Holy Cross Hospital. There are four sworn lay statements from individuals in the record that support the veteran was hospitalized at Holy Cross apparently for a couple of weeks in 1974 and 1975, thus we believe the four-point citation of the particular 3.159 provisions are very important should the Board determine a merits decision cannot be made without a medical opinion that answers the question as to whether it is as likely as not based upon review of the total record considering both medical and lay evidence including the testimony given today that the MS existed to a chronic 10 percent degree during the seven-year presumptive period from May 21st, 1973, to May 21st, 1980.

With that I would simply just like to begin questioning.

**MR. BAKER to Veteran:**

Q. Okay. Mr. first if I could ask you is your memory for history pretty good? I mean do you remember your military service and you could remember historical things pretty well?

A. I believe so.

Q. Okay, good. All right, you heard me talking in my opening statement about the fact that you filed your claim for service connection in September 2001 and of course you got out of military service in May 1973, can you just very briefly in your own words just say and again the contention is that you were having problems with the MS back in the first seven years of your discharge was there a reason why you didn't file a claim, was it you didn't know that you could file or what is the case?

A. That's the base answer I give, I didn't realize.
Q. Okay, so you never known that you could file a claim until when you actually did?

A. Correct.

Q. All right. Okay. To talk about the symptoms and problems that you were having, now you didn’t have any problems of a neurological nature that you could identify while you were in military service is that correct?

A. Yes.

Q. Yes, you did not or you did?

A. I did not.

Q. You didn’t. Okay. When can you say and again noting that you had the hospitalization there in Holy Cross in ’74 or ’75, you can’t identify whether it was ’74 or ’75 you don’t--you just know it was one of those two years?

A. I believe it was ’74.

Q. Okay.

A. But--

Q. Okay, then also I do want to ask you some questions about that hospitalization but to make it clear I believe in your substantive appeal that is your reply to the statement of the case you also mentioned that you were hospitalized again in 1979 is that right, in a different hospital that was Broward Medical Center?

A. Broward yes.

Q. Okay. So you had two hospitalizations for sure? You have to say it verbally.
A. Yes.

Q. Okay. All right. Prior to the hospitalization there in 1973 and 1974 what problems were you having. I know that you say that you went in because of numbness but what was going on? I mean what can you say as far as how you ended up going to the hospital. I mean most of the time before you go to the hospital you go see your doctor and your doctor does testing or whatever and then they send you to the hospital but how did it happen, can you recall that?

A. Back in those days I'd be walking along and all of a sudden I'd lose my balance and fall down and that's why I went to the hospital 'cause it just didn't seem right.

Q. Okay.

A. I mean I was playing hila back in those days and that's a sport that requires you be accurate, all of a sudden trying to walk along and I couldn't at all times it just didn't seem correct.

Q. Okay, so you're talking about the years '73, '75 that you were having the problems talking about the incoordination or what was it exactly, is that it? I mean what symptoms, what was the problem that you were having? Were you having a problem walking, stumbling or what?

A. Walking, stumbling, numbness.

Q. Okay. So you ended up going to Holy Cross Hospital and apparently you spent about two weeks there so was there a particular point where it got--you went to the hospital on your own without going first to a doctor, it just got so bad that you wanted to go to the emergency room or how was it?
A. To be honest the best I remember is they did a lot of it.

Q. Of the needles?

A. Right.

Q. Whatever, okay. Do you remember what they said you had?

A. No.

Q. And you were there for how many weeks?

A. Two.

Q. Inpatient?

A. Yes.

Q. Okay. It just went away?

A. At one point they were thinking I had a stroke but they didn't have any physical evidence on it.

Q. And it just--the condition just became better and they believed you?

A. Correct.

Q. Talking about the availability of records from Holy Cross unfortunately they are not available as I understand it and I believe someone actually went to Holy Cross and tried to obtain them and they said they didn't keep records that long so that's why we don't have those records. What I'm thinking is did you have insurance at that time? I mean did you like maybe was you know or how was it paid for I guess?
A. I'm sure I had insurance because my father was a real stickler about taking care of things like that.

Q. Right. I'm just wondering that you know trying to look at any possibility of getting any of those records by any other means, other paper trail like insurance companies or anything like that so if that comes up you know with any of your old papers that you might have we'd certainly want to try and do that. All right.

MR. BAKER: I'm sorry sir? What is your name?

MR. SCHWARTZ: My name is Robert Schwartf.

MR. BAKER: You attempted to get the records?

MR. SCHWARTZ: Yes. I'm his attorney.

MR. BAKER: Um-hum.

MR. SCHWARTZ: I've been his attorney for years. I took a signed authorization for release of medical information to North Broward Hospital and the Holy Cross and went to the Records Office in person to try and get these records and neither one of them said we do not keep records 25 years and not on microfiche, nothing and so I did everything I could to try to track these records down, I just couldn't do it. Thank you.

MR. BAKER to Veteran:

Q. Again okay Mr. back to the symptoms you were having. Okay so you were discharged from Holy Cross there in about '75 now, what was your condition on discharge. Had it pretty much cleared at that point?

A. No, it was still numbing but they said there's no sense in keeping me in a hospital so they discharged me.
A. I went to general admission because I wasn't thinking, you know, about emergency rooms. So I went in there to see somebody and a couple people saw me and I just let them handle it to their best ability.

Q. Okay. Were you working at the time?

A. Oh yes.

Q. Okay, doing what kind of work? Was that the fireworks? I know you were in some sort of fireworks business or--

A. That didn't start 'til after that.

Q. Okay. But all right so you went into the hospital, can you remember what treatment they did, what exactly the two weeks that you spent there, what did it consist of, what did they do in terms of testing or evaluation?

A. Being as honest as I can be they were doing tests on me to see how my feelings were. You know like this is probably wrong but like a needle test to see if you could feel everything so they were checking my feelings, how they reacted.

Q. Now that you're saying doing the needle testing, where were they doing the needle testing at?

A. Legs.

Q. Okay, because that's where--because you went in for numbness of the legs?

A. Correct.

Q. Did they do that a lot while you were in the hospital or what other testing or what else did they do maybe?
Q. All right. Did the doctors, what did the doctor say as far as advice, medical advice when you were discharged, if you remember?

A. Back then to the best of my memory was they had to do more tests. That was the end of it.

Q. Okay. They wanted to do more tests are you saying?

A. Yes.

Q. Did they want you to come back or what?

A. They were going to contact me but I don't know--I don't think anything ever did happen.

Q. Okay, all right. To move on in the period of time again I know that there's something there that you went in 1979 to the other hospital but did your problems that you were having with the numbness and whatever in the legs did that continue--continue to have that?

A. To the best of my memory yes.

Q. Was it--did it increase, become more frequent?

A. I don't remember.

Q. Okay. Were you still working, did you go back to work after your discharge in '75?

A. Yes.

Q. Okay. What--did you have problems at work?
A. Yes because when I was trying to work I'd be drilling--drilling in the ceilings to install draperies and things like that and my legs would just get numb. My one leg would just get numb.

Q. And you have a distinct recollection of that?

A. Yes.

Q. Did you--

CHAIRMAN: When was that?

MR. BAKER: When was the leg getting numb? What year?

VETERAN: That would be--

MR. BAKER: Approximately?

VETERAN: The year she was talking--he was--just bring it up and that was my legs got, my--basically my right leg got numb and was happening on a fairly regular basis.

CHAIRMAN: Do you remember what time period we're talking about?

VETERAN: I'm sorry.

MR. BAKER to Veteran:

Q. If I could follow up on your line of thought, your Honor. The Judge was asking you as far as the period of time. I know it can be difficult sometimes to recall exactly but was it during the period that we're talking about when you required the hospitalizations? I mean you were hospitalized in 1975 and then again in 1979, was--
A. (...Inaudible).

Q. Okay. Now okay now moving forward well--all right, you were hospitalized at Broward in 1979, was that for the same problem?

A. Yes, sir.

Q. For the numbness of the legs, same thing that you had before?

A. Yes, sir.

Q. Okay. What did they do that time?

A. I can't honestly say.

Q. Were you hospitalized there for a period, for a while in '79?

A. Yes, I was. They did tests but I never got the results that I know of.

Q. Okay. Do you remember anything about the hospitalization? I mean what, you know, as far as how you were feeling or whatever?

A. Other than the numbing everything else seemed all right.

Q. Okay. Now to move forward, when you started getting treated by Dr. Steingo, okay, not when did you actually first see Dr. Steingo, was it not 'til 1984 or was it before that?

A. Before that.

Q. 'Cause there's some indication in the record that you had saw him earlier, like in '79-'80?
A. Correct.

Q. Okay.

A. His office was right on Commercial Boulevard at the time.

Q. Yeah.

A. And I passed it every day so I went in there. I saw Dr. Steingo and that was when he was by himself. Later on in the years I went to see Dr. Steingo, he was with four other doctors and the whole thing got so messed up that they didn't want to bother with me. This is just in--'til later years.

Q. How did it get messed up?

A. This doctor didn't want to talk about anything with that from that doctor because Dr. Steingo wasn't there. He was there but he wasn't there. It was his office. They had all the doctors had their names up there and Dr. Steingo you couldn't get with him because he was busy with somebody else so they just told you you had to set up a new appointment.

Q. All right. Okay, as far as when you first started seeing Dr. Steingo so you're saying that you saw him at one place. In other words, he was at one place of business, you started seeing him first there and then he moved to another place and you continued to see him?

A. The first time I saw Dr. Steingo he was in an office by himself.

Q. Okay.

A. After that was a long time passed and he was in an office with 4 or 5 other doctors.
Q. Right.

A. And then none of them had time to go into it because there was no re--nothing of the files there.

Q. All right. What I'm mainly trying to get at is we have records from Dr. Steingo starting in January 1984 but you're saying you saw him before that, are you certain of that?

A. Yes.

Q. Well would there be records, other records available from him?

A. I would imagine there would have to be. When we tried to get them through Dr. Steingo nobody had any record of him.

Q. Of the earlier treatment? When is--okay you were hospitalized in 1979 at Broward Hospital, had you seen Dr. Steingo before that time do you remember or--

A. I saw Dr. Steingo before that. Before the hospital. I went into his office.

Q. Okay.

A. That's where I saw him and that's when he sent me to the hospital and what happened after that I don't know.

Q. So Dr. Steingo sent you to North Broward Hospital?

A. Correct.

Q. Okay, and that was in '79? You have to say ver--

A. Yes.
Q. Okay.

MR. SCHWARF: Could I interject here. I got the records that were provided from Dr. Steingo and I followed up with his office trying to get earlier records but there was something about moving or storing or something and they do not have those earlier records.

CHAIRMAN: No luck getting the hospitalization records from 1979?

MR. SCHWARF: No.

UNKNOWN: I went in first and kept trying.

UNKNOWN: What about that other doctor, Dr. Stoner or something?

VETERAN: Dr. Stoner was not the right doctor. He did work on me--

UNKNOWN: Right.

VETERAN: But he wasn't qualified.

UNKNOWN: Okay.

VETERAN: Like Steingo was.

MR. SCHWARF: Dr. Steingo was a neurologist, a (...)inaudible) neurologist I mean. He's still in practice?

VETERAN: Yes.

MR. BAKER to Veteran:
Q. Okay. Concerning Dr. Steingo's records that are in the file from January and February 1984 and again you heard me make reference to his comments where he was evaluating you at that time and something about an automobile accident that you were in in 1981, were you in some sort of an automobile accident at a point in time there?

A. Probably.

Q. Okay, but apparently it must not have been a major one, I mean you weren't hospitalized or anything--

A. No.

Q. --in other words you weren't taken by an ambulance from an accident site.

CHAIRMAN: Does anyone here remember what happened in the 1981--

MS. FRENGER: Yeah, he had an accident on the way home from work.

CHAIRMAN: One moment. Because there's so many people here I may ask you to identify your name before you talk. It's going to mess up the transcript a bit. (END OF TAPE ONE)

This is John Crowley continuing the appeal--I'm sorry ma'am what was your name again?

MS. FRENGER: Susan Frenger.

CHAIRMAN: Susan.

CHAIRMAN to Ms. Frenger:

Q. Do you remember the 1981 accident?
A. Yes.

Q. Okay. Do you remember what was the cause of the accident or do you--

A. No, I don't know what the cause was. He was working late and he came home and he had driven the car home surprisingly enough because it was pretty bad. He had gone off the road and hit some trees, just came home and told me. I remember walking out and being surprised that he was walking because the car was so bad. He really didn't remember what happened. So that was pretty much all I remember about the accident.

Q. Do you remember--did he complain about numbness around that period of time?

A. He had always complained about numbness.

Q. Thank you.

MR. BAKER: Thank you, your Honor. Just to, if I could follow up on that line of questioning then.

MR. BAKER to Ms. Frenger:

Q. As far as the accident he didn't have any medical treatment immediate that you know of then?

A. No, I don't recollect. Not immediate that I remember. Possibly the next day but like I said he seemed to be fine and so I don't really remember what he did after that.

Q. Did he mention about any cause for the accident, what happened?

A. No, he didn't. Did not.
MR. BAKER to Veteran:

Q. Okay. Mr. Baker, do you remember now perhaps your memory refreshed from what Susan was saying about the accident? I mean that's all right if you don't recall. I just was thinking we could talk about it somewhat.

A. I really don't.

Q. Okay, that's fine.

MR. BAKER: I believe that's all the questions I have of Mr. Baker right now.

CHAIRMAN: Okay. So basically we have about all the records that we could get we've got.

MR. BAKER: Yes.

CHAIRMAN: That's about it, okay.

CHAIRMAN to Veteran:

Q. Sir do you remember in general the difficulties you were having between 1973 and 1980 other than the hospitalizations we've talked about. I mean in your own words, what type of difficulties were you having?

A. I really don't remember any serious difficulties.

Q. Um-hum. But there were intermittent difficulties, problems?

A. Yes. The legs going numb and me falling down, things like that but that's things that happened when you really couldn't push it on anything.

Q. Okay.
A. It's one thing when you're walking along and everything seems fine, the next thing you know you're laying on the ground. That happened too much back then.

Q. But there were like periods of good times and then there was like these periods of bad times where--

A. Yes, sir.

Q. --you'd fall?

A. Yes, sir.

Q. Okay, and they became more and more frequent as time went on?

A. Yeah.

CHAIRMAN: That's all the questions I have.

MR. BAKER: Thank you, your Honor. If it's okay, I would just proceed to ask a few questions of the witnesses.

CHAIRMAN: Sure.

MR. BAKER: Thank you. First Susan to you.

MR. BAKER to Ms. Frenger:

Q. First Susan to you you were talking a little bit earlier about the accident there in 1981, okay, how long had you known Mr. Rubin?

A. Two years.
Q. Okay, beginning in from what?

A. We met the end of '79, December '79.

Q. And you were married for how long?

A. Four years. We were not married at the time he had the accident.

Q. Okay. So you obviously knew him for, uh very well for a long period of time around 1979 on, from that point?

A. Correct.

Q. Okay. Can you state in your own words, I mean did you ever observe him having problems with numbness or was he complaining about that?

A. Yes, he complained about it often. I remember him seeing doctors but nobody seemed to know what it was. They just--it was intermittent. It would come and go and I just remember him seeing doctors and really there was no diagnosis, nobody could ever pinpoint what was happening or what was wrong.

Q. You were definitely aware that he was having a problem?

A. Yes, yes.

Q. An additional problem that wasn't being diagnosed or medically dealt with?

A. Yes, sir.

Q. All right. I mean is there anything else that you could speak to as far as relating your knowledge concerning his condition?
A. Just in conversation him telling me, like I said I met him the end of '79 and he had told me about being hospitalized in '79 and no diagnosis being made and didn't know what was wrong and just him telling him, you know, what had happened previously.

Q. Okay.

MR. BAKER: All right. If I could then to Ms. Funt, Laurie.

MR. BAKER to Ms. Funt:

Q. As his sister have you all always been close, I mean, you know have a close association as far as having occasions to, you know, to observe him especially going back?

A. Oh yeah. I didn't leave Fort Lauderdale until 1987 so we saw each other often.

Q. Okay. Are you familiar with the--or do you have knowledge that he was in fact hospitalized in 1975?

A. Yes.

Q. And '79, do you know that?

A. I know that for a fact. I went--(inaudible) I went there, I was still living at home, I was like in 11th grade. We all went to go see him. My brothers and I.

Q. You went to go see him both times?

A. Yes. I don't think I did in '79 'cause I was married, had a child and everything but I did in '75 with my mom and dad, all of us went in the car I remember my two brothers and myself.
Q. All right. Obviously as a sister you all got together for family things and so forth? In other words you had a close--

A. Every Christmas, oh yeah.

Q. What can you say as far as you know did you observe anything, did he have the complaints that we're talking about--

A. Absolutely. I remember playing--he liked to play games like Monopoly and cards and stuff and he had problems with picking up the pieces, you know. I mean (...inaudible).

CHAIRMAN to Veteran:

Q. Do you remember any more details about the Holy Cross?

A. Not really. I just remember coming home from school and my mother telling me that he was in the hospital. I guess my father met us there and my two little brothers and I and my mom went to the hospital.

Q. Do you remember what I mean what they said it was or they didn't know?

A. They didn't know.

Q. Do you remember why he went in?

A. I don't remember but I know that he was--he was just complaining of--I don't remember I was young. I was like 17. I just remember we had to go see him.

MR. BAKER to Ms. Funt:

Q. Did you go see him more than once? I mean you know as far as a period of time we're talking. He was apparently there for--
A. He was there for about two weeks and my parents were real good about every day. My dad went every day. My mom would take us after school every day.

Q. Okay.

A. I think we went every day.

Q. Okay. But you don't remember the--you know he was hospitalized in '79 but you weren't able to go see him at that time?

A. No, I went to--no, in '79 I didn't see him in '79. I knew he was there. I think I might have sent him flowers or something I don't know but I didn't go see him because I had a 2-year-old child at the time and I was working and I don't think I saw him.

Q. All right. I know when we were talking earlier before we came in to the hearing you were talking something about your mother kept going to a medical book?

A. My mother was always reading books and she always read the medical books and she was always, you know, looking at stuff and trying to figure out what was wrong. We didn't have Internet back then you know.

Q. Right. So you're talking about she was doing this in the period of time he was hospitalized and so forth?

A. No well he didn't complain about his problems you know.

Q. Right.

A. I would too actually. I diagnosed (...inaudible) by doing what my mother did which is looking at the medical book, you know. I remember her looking at that and we couldn't figure out what was wrong.
Q. All right.

A. The doctor certainly couldn't.

Q. This was in what period?

A. This was like in 1977-78 maybe. I already had my child. I had five children. I always read the medical books even today you know.

Q. Congratulations. Okay, so then just in general then you can testify that you were aware that he was having this continuous problem of numbness and things?

A. Sometimes he'd be fine. I mean he really would be fine. It seemed like during fireworks he wasn't doing so well. I don't know (...inaudible) Fourth of July and he would have problems, you know. He was my big brother so I would follow him around but yeah he always had--

Q. All right. Thank you, Ms. Funt, I believe that's all the questions I have unless there's anything else that you want to volunteer?

A. Just no one could figure out and I remember he went to the hospital once and went in the hospital twice and you know just no one knew what was wrong with him. He went through a lot of tests I remember and I don't know.

Q. Okay, thank you.

MR. BAKER: All right, the other witness, Michael, you are Mr. [redacted] uncle.

MR. MARSDEN: Correct.

MR. BAKER to Mr. Marsden:
Q. Did you--you were saying earlier when we came in that you actually worked with him in the late 1970's?

A. I was employed by his father and his father and him in '78-'79, I'm not really sure, possibly the late seventies though.

Q. Okay.

A. I can recall he would always be rubbing his hands like that and he would always complain about his hands being numb. We had a couple drinks one night and he thought it was because of that so he stopped, he couldn't drink anymore and still had the effects. I can remember him complaining, he was always rubbing his hands like that, always. Anybody will testify to that.

Q. All right, so the period of time you're talking about was late seventies?

A. '78 and '79. 'Cause I went in for surgery in '79, that's when I stopped working for about a year after that. I had surgery on my back.

Q. But you had worked with him what like almost every day for a couple of years?

A. Oh yeah, every day.

Q. Okay. Did he in addition to the rubbing the hands you're talking about did he have verbal complaints?

A. He was always complaining about some kind of tingling and numbness in his hands, his legs, his--you know ours was a physical job and his hands and legs just wouldn't work like he wanted them to sometimes.

Q. All right. Do you know about the hospitalizations we've been talking about?
A. I am not real clear on that because the one in '74 or '75 is before me and the one in '79 I might have been in the hospital too, I don't remember that time. It wasn't—I just remember—I know it was in '78 because it was before I had my surgery that he was always complaining about his hands being just numb.

Q. Okay.

MR. BAKER: Actually I believe that's all the questions I have. Thank you, sir.

MR. MARSDEN: You're welcome.

CHAIRMAN: I have no further questions.

MR. BAKER: Your Honor I think I pretty much said everything in terms of a closing statement. I didn't mention anything about the statement of the case although I still believe in looking at the Reasons and Bases of the statement of the case. It doesn't use the language that the rating did in saying that service connection could not be granted if it's not diagnosed within the seven-year presumptive period but still uses language about objective medical evidence showing manifestation during the seven-year period. Again 3.307(c) speaks to medical board lay evidence so again I think it's very important that and we ask that you carefully evaluate the case in terms of there being sufficient evidence that it would warrant the scheduling of a specialist's examination so they could review the record and give a medical opinion.

With that, that's all I have except to say that I do have a letter here that I wrote to Mr. [redacted] dated May 20th, 2002, and with his permission and as you know sometimes letters that representatives write to veterans do get in the claims folder for different reasons but the reason that I would like to have that submitted is that we did submit a memorandum dated November 14th, 2003, and in that I inadvertently stated in talking about 3.307 that, you know, I said that you know the multiple sclerosis was diagnosed within four years after discharge from active military service and what I meant to say was that it was diagnosed within four years after the presumptive period so not that it's affected that's obvious that we do know what the requirements are but again I would just
like to submit that into the record for the grand scheme of things to just to solidify the contention that--the basic contention that the MS existed with the seven-year period and that that's the point that we were trying to make.

That's all I have and I appreciate the opportunity of appearing and allowing Mr. and his relatives and the witnesses to be here. Thank you.

CHAIRMAN: With that we'll end the record, unless there's anything else you'd like to say?

VETERAN: No. Thank you.

CHAIRMAN: Thank you. All right, with that we'll end the record.

(HEARING ADJOURNED)

WB--052790745.365--lmw
INFORMAL BRIEF OF APPELLANT
IN APPEALED CASE

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
BOARD OF VETERANS APPEALS
BVA DOCKET NUMBER 03-35007

IN THE APPEAL OF

PHILLIP M.
C/SS# APPELLANT

WILLIAM B. CREAGER
SENIOR APPELLATE REPRESENTATIVE
NATIONAL APPEALS OFFICE

SUBMITTED: OCTOBER 19, 2005
IN THE APPEAL OF:  
Phillip M.  

DATE: October 19, 2005  

REPRESENTED BY: William B. Creager, Senior Appellate Representative  
Paralyzed Veterans of America (PVA)  

QUESTION(s) AT ISSUE:  
Service connection for Multiple Sclerosis.  

SUMMARY OF ARGUMENTS:  
A. The veteran seeks presumptive service connection.  
B. The veteran presented credible lay evidence of symptoms during the presumptive period.  
C. The RO failed to comply with VA’s duty to assist.  
D. BVA should remand for a VA exam.  

SUBSTANTIVE ARGUMENTS:  
A. The veteran seeks presumptive service connection.  


The veteran served in the U.S. Army beginning August 20, 1970 until honorably discharged May 21, 1973, a period of War (Vietnam Era) as defined by 38 C.F.R. § 3.2(f).  

Service connection may be established for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a pre-existing injury suffered or disease contracted in line of duty. 38 U.S.C. §1110, 38 C.F.R. § 3.303. When a disease is first diagnosed after service, service connection may nevertheless be established by evidence demonstrating that the disease was in fact incurred during the veteran’s service, or by evidence that a presumption period applied. See 38 C.F.R. §§ 3.303, 3.307, 3.309. Service connection for certain listed presumptive disorders may be presumed if the disorder became manifest to a degree of 10 percent disabling during the veteran’s first year after separation from service. 38 U.S.C. §1112, 38 C.F.R. §§ 3.307, 3.309. The presumptive period applicable to Multiple Sclerosis is seven years. 38 U.S.C. § 1112(a)(4); 38 C.F.R. § 3.307(a)(3).
Generally, to prove service connection, the record must contain (1) medical evidence of a current disability, (2) medical evidence, or in certain circumstances lay testimony, of in-service incurrence or aggravation of an injury or disease, and (3) medical evidence of a nexus between the current disability and the in-service or presumptive disease or injury. See Pond v. West, 12 Vet. App. 341, 346 (1999); see also Rose v. West, 11 Vet. App. 169, 171 (1998). Alternatively, under 38 C.F.R. § 3.303(b), service connection may be awarded for a “chronic” condition when: (1) a chronic disease manifests itself and is identified as such in service (or within the presumption period under 38 C.F.R. § 3.307) and the veteran presently has the same condition; or (2) a disease manifests itself during service (or during the presumptive period), but is not identified until later, and there is a showing of continuity of related symptomatology after discharge, and medical evidence relates that symptomatology to the veteran’s present condition. See Savage v. Gober, 10 Vet. App. 488, 495-98 (1997).

In the case of a disease only, service connection also may be established under section 3.303(b) by evidence of (1) the existence of a chronic disease in service or of a disease, eligible for presumptive service connection pursuant to statute or regulation, during the applicable presumption period; and (2) present disability from it. Savage, 10 Vet. App. at 495. Either evidence contemporaneous with service or the presumption period or evidence that is post service or post presumption period may suffice. Id.

Notably, the Court observed in Savage at 496 that credible lay evidence of the presence of symptoms and not treatment during the presumptive period was sufficient to establish the claim if competent medical evidence provides the nexus between the symptoms described and the claimed disease, citing Wilson v. Derwinski, 2 Vet. App. 16, 19 (1991).

In this case, the veteran has proffered treatment records demonstrating the diagnosis of Multiple Sclerosis and lay evidence of symptoms during the presumptive period. See, e.g., treatment record of Dr. Steingo of April 1989 diagnosing MS, treatment record of February 1984 describing symptoms of numbness and suspecting demyelinating disorder. At that time the veteran recalled similar symptoms in 1981 and numbing, “several years ago.”

B. The veteran presented credible lay evidence of symptoms during the presumptive period.

In this case the veteran listed a history of care in 1975 at Holy Cross Hospital on his VA form 21-526 when he applied for service connection and for pension.

The veteran provided his sworn testimony at his personal hearing of September 29, 2005 that he experienced numbing of his legs and stumbling and difficulty walking for which he was hospitalized in 1974 and 1979, within one and six years following service.
Witness, S.F., the veteran’s spouse, testified that the veteran had a motor vehicle accident in 1981 but did not appear to be injured. She had known the veteran since 1979 and he had complained to her of symptoms of numbing since that time and that the doctors were unable to identify a cause.

Witness, L.F., the veteran’s sister, testified that she visited the veteran in the hospital in 1975 and that she observed that he had trouble picking up objects when playing board games. She stated she and her mother read books to try and understand the veteran’s symptoms during 1977-78.

Witness, M.M., the veteran’s uncle, testified that he worked with the veteran during 1978 and 1979. He recalled that during this period the veteran was always rubbing his hands because they were numb and the veteran complained of tingling and numbness in his hands and legs.

Witness, D.U., a friend and neighbor, provided a notarized statement that he knew the veteran in 1973 and lived next door in 1974-75. He recalled that the veteran was hospitalized because he was experiencing numbness in his legs.

Witness, D.W., a friend, recalled that the veteran was hospitalized in 1974-5 for several weeks and that the doctors thought he had a stroke.

Witness, A.H., recalled that he had moved to Florida in 1975 to help the veteran with his fireworks business. He stated the veteran became ill and was hospitalized for stroke. He recalled that the veteran became ill again in 1979 with the same symptoms.

Witness, R.S., the veteran’s attorney and friend, testified that he had obtained releases and attempted to locate the records of care from the relevant sources, but that they are unobtainable.

The record therefore contains competent medical evidence of a diagnosis of MS, the veteran’s sworn and written statements that he experienced symptoms and sought care for numbing and incoordination during the 1970s, and several witnesses corroborating contemporaneous observations of his complaints and recalling his hospitalization.

The veteran asks BVA to conclude that he has presented credible lay evidence of symptoms of numbing, gait disturbance and incoordination and care for those symptoms during the presumptive period.

C. The RO failed to comply with VA’s duty to assist.

Service connection may be allowed if a competent medical opinion provides a nexus between the symptoms described by the veteran and his witnesses and his current diagnosis of MS.
VA must make reasonable efforts to assist the appellant in obtaining evidence necessary to substantiate the claim for the benefit sought, unless no reasonable possibility exists that such assistance would aid in substantiating the claim. In compensation cases, if a medical examination or opinion is required to decide the case VA is required to provide the exam or obtain the opinion. See 38 U.S.C. § 5103A(d); Charles v. Principi, 16 Vet App 370 (2002); Duenas v. Principi, 18 Vet.App 512 (2004). See 38 C.F.R. § 3.159(c)(4):

(i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim.

If the symptoms described by the veteran and his witnesses are found to be symptoms of MS, then the claim may be allowed. Therefore, there is a reasonable possibility of allowing the claim. VA is therefore obligated to provide the exam and obtain the medical opinion.

D. BVA should remand for a VA exam.

The veteran asks BVA to remand and order VBA to arrange for a VA exam to include a review of the record and to opine as to the possibility that the symptoms present during the presumptive period were symptoms of MS consistent with Green v. Derwinski, 1 Vet. App. 121 (1991).

The veteran expressly waives further development for treatment records from that period as none are available.

William B. Greager, Senior Appellate Representative
IN THE APPEAL OF
PHILIP M. .

DOCKET NO. 03-35 007 ) DATE OCT 28 2005 )

) )

On appeal from the
Department of Veterans Affairs Regional Office in St. Petersburg, Florida

THE ISSUE

Entitlement to service connection for multiple sclerosis (MS).

REPRESENTATION

Appellant represented by: Paralyzed Veterans of America, Inc.

WITNESSES AT HEARING ON APPEAL

Veteran, the veteran's sister and uncle, S. F., and Mr. S.

ATTORNEY FOR THE BOARD

Michelle L. Nelsen, Counsel
INTRODUCTION

The veteran had active service from August 1970 to May 1973.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a February 2002 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in St. Petersburg, Florida.

The veteran and several witnesses testified before the undersigned at a Travel Board hearing in September 2005. A transcript of that hearing is associated with the claims folder.

FINDINGS OF FACT

1. The RO has provided all required notice and obtained all relevant evidence necessary for the equitable disposition of the veteran's appeal.

2. The medical evidence of record shows that MS symptoms were present as early as January 1984 and that the veteran was diagnosed as having MS in April 1989.

CONCLUSION OF LAW


REASONS AND BASES FOR FINDINGS AND CONCLUSION

Service connection may be granted if the evidence demonstrates that a current disability resulted from an injury or disease incurred or aggravated in active military service. 38 U.S.C.A. § 1110 (West 2002); 38 C.F.R. § 3.303(a) (2005). Service connection may be demonstrated either by showing direct service incurrence or
aggravation or by using applicable presumptions, if available. *Combee v. Brown*, 34 F.3d 1039, 1043 (Fed. Cir. 1994).

Direct service connection generally requires evidence of a current disability with a relationship or connection to an injury or disease or some other manifestation of the disability during service. *Boyer v. West*, 210 F.3d 1351, 1353 (Fed. Cir. 2000). A disorder may be service connected if the evidence of record reveals that the veteran currently has a disorder that was chronic in service or, if not chronic, that was seen in service with continuity of symptomatology demonstrated thereafter. 38 C.F.R. § 3.303(b); *Savage v. Gober*, 10 Vet. App. 488, 494-97 (1997). In addition, disorders diagnosed after discharge may still be service connected if all the evidence, including pertinent service records, establishes that the disorder was incurred in service. 38 C.F.R. § 3.303(d).

Some chronic diseases may be presumed to have been incurred in service, although not otherwise established as such. Specifically, if MS is manifested to a degree of ten percent or more within seven years of the date of separation from service, the disease is presumed to have been incurred in service. 38 U.S.C.A. §§ 1101(3), 1112(a)(1); 38 C.F.R. §§ 3.307(a)(3), 3.309(a).

With chronic disease shown as such in service (or within the presumptive period under Sec. 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clear-cut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word “Chronic.” When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the
condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim. 38 C.F.R. § 3.303(b).

Where the determinative issue involves medical causation or a medical diagnosis, there must be competent medical evidence to the effect that the claim is plausible; lay assertions of medical status do not constitute competent medical evidence. *Grottveit v. Brown*, 5 Vet. App. 91, 93 (1993); *Espiritu v. Derwinski*, 2 Vet. App. 492, 494 (1992). When there is an approximate balance of positive and negative evidence regarding any issue material to the determination, the benefit of the doubt is afforded the claimant. 38 U.S.C.A. § 5107(b).

Initially, the Board notes that there is no evidence or allegation that MS was diagnosed or manifested during the veteran’s period of active service or any competent evidence of a nexus between the MS and service. Therefore, service connection on a direct basis is not established. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303.

The veteran alleges that he manifested symptoms of MS within the seven-year period after his discharge from service, such that he is entitled to presumptive service connection for MS. The veteran was discharged in May 1973. Therefore, there must be evidence that MS was manifest to a compensable degree by May 1980 in order to establish service connection. 38 U.S.C.A. §§ 1101(3), 1112(a)(1); 38 C.F.R. §§ 3.307(a)(3), 3.309(a).

The Board has undergone a detailed review of the medical evidence of record and the testimony of the veteran and others at his hearing. The objective medical evidence of record shows that the veteran initially presented to B. S., M.D., in January 1984. He was referred from the North Ridge Emergency Room. The veteran had reported the onset of a numb sensation in the left arm six days before. Physical examination was completely normal. Dr. B. S. referred him to North Ridge Hospital for X-rays. The veteran returned to Dr. B. S. in February 1984. At that time, he related a history of numbness in the left leg in 1981 following an
automobile accident. Evaluation at that time yielded no diagnosis. Dr. B. S. noted that neurological examination remained unremarkable.

The veteran presented again later in February 1984. It was noted that the veteran was initially referred to Dr. B. S. in January 1984 and that past medical history was significant only for numbness in the left leg after an automobile accident in 1981.

The Board finds the above statement from the veteran is entitled to great probative weight. Such a statement by the veteran (made well before his claim for VA benefits) at that time (1984) provides very negative evidence against this claim, as it indicates a medical history that conflicts with the veteran’s testimony that he was having problems prior to 1981.

At this time, examination revealed altered sensation. The assessment was paresthesias with a possibility of a demyelinating disorder. A lumbar puncture was performed in February 1984. Testing of the cerebrospinal fluid revealed weakly positive results consistent with mild demyelination. Notes dated in March 1984 indicated that the veteran’s symptoms had largely resolved following treatment with steroids. Dr. B. S. stated that the possibility of demyelinating disorder had to be considered, but that the symptoms may simply represent some nonspecific viral attack on the nervous system. The veteran was counseled to return if he experienced further symptoms.

The veteran returned to Dr. B. S. in April 1989. Notes indicated that he initially saw the veteran in 1984. The veteran reported an eight-to-ten day history of right arm numbness. Physical examination supported a clinical diagnosis of MS. Magnetic resonance imaging (MRI) performed at that time confirmed the diagnosis of MS. In a January 1994 statement, Dr. B. S. related that the veteran was originally diagnosed as having MS in 1984, years after service.

Records from C. S., M.D., included progress notes and various insurance-related forms and correspondence. Notes dated in March 1986, indicated that the veteran reported a history of being diagnosed with MS in February 1984. In a form completed in December 1988, Dr. C. S. indicated that although the veteran’s history
suggested MS, there was no neurological or physical evidence of it. A November 1990 letter from the veteran to his insurance company included his statement that he was diagnosed as having MS in 1989. Correspondence dated in November 1991 stated that Dr. C. S. first saw the veteran in March 1986. MS was diagnosed in February 1984 but was not confirmed until the 1989 MRI.

The report of a June 1993 neurological consultation revealed that the veteran reported being in excellent health until early 1986, when presented with left-sided numbness for three to four days. He was hospitalized at Holy Cross Hospital, where he was told that he had had multiple strokes. The veteran left the hospital and over time had resolution of nearly all symptoms. About five years later, he had an attack of similar symptoms. At that time, he first saw Dr. B. S., who ordered a lumbar puncture, the results of which were consistent with MS. Handwritten notes from Dr. C. S. dated in October 1997 indicated that the veteran had had MS since 1986.

The Board finds that, as a whole, these medical reports (which the Board finds are also entitled to great probative weight) provide very negative evidence against this claim as they indicate a disorder (MS) which symptoms, by the veteran's own statements at this critical period of time (the 1980's), began well after the seven year presumptive period.

The most probative evidence reflects symptoms of a suspected by unconfirmed demyelinating disorder as early as only January 1984 and a confirmed diagnosis of MS in April 1989. Assuming the January 1984 records reflect symptoms to a compensable, the inset of the MS is shown more than seven years after the veteran's separation from service. Therefore, service connection may not be granted on a presumptive basis. Id.

The veteran has argued that he had been evaluated and hospitalized for MS symptoms prior to 1984. Specifically, he has variously indicated that he was hospitalized for about two weeks in 1974 or 1975 at Holy Cross Hospital for symptoms of MS. The veteran also asserts that he was hospitalized and evaluated again for about two weeks in 1979 at North Ridge Hospital (also identified as
Broward Medical Center, North Broward Hospital, and Broward Hospital) for symptoms he now believes were manifestations of MS. In fact, he testified that he first saw Dr. B. S. in 1979 and that Dr. B. S. actually sent him to the hospital. However, as clearly noted above, the medical records the Board has reviewed and cited above clearly conflict with his testimony regarding the critical issue of when the veteran began having MS symptoms. The medical history supplied by the veteran himself in the 1980’s clearly provides much negative probative evidence against this claim.

In addition, the veteran has provided several lay statements, and witnesses offered testimony at the Board hearing, indicating that the veteran was hospitalized for about two weeks in 1974 or 1975. Lay statements from A. H., D. W., and D. U. indicated that it was thought at that time that the veteran had a stroke. A. H. related that the veteran became ill with the same symptoms in 1979, he went to the hospital, where he was referred to Dr. B.S., who diagnosed MS at that time.

First, the Board acknowledges that the veteran and others are competent to relate and describe the symptoms the veteran experienced and when. However, the veteran is a lay person, not trained or educated in medicine. See Bostain v. West, 11 Vet. App. 124, 127 (1998), citing Espiritu. See also Routen v. Brown, 10 Vet. App. 183, 186 (1997) ("a layperson is generally not capable of opining on matters requiring medical knowledge"). Therefore, the veteran’s opinion as to whether those symptoms were in fact indicative of MS at the 10 percent level is not competent medical evidence needed to establish service connection. Grottveit, 5 Vet. App. at 93; Espiritu, 2 Vet. App. at 494.

Second, the Board finds that the statements and testimony provided by the veteran and his family members and friends do not present a history consistent with the medical evidence of record which the Board believes is entitled to greater probative value, discussed at length above. The medical records from Dr. B. S. are very clear and specific in noting that first saw the veteran in 1984. There is no indication in the records that prior treatment was ever suggested, either by Dr. B. S. or, most importantly, by the veteran himself. The only history of symptoms the veteran related prior to 1984 consisted of those complaints following a 1981 automobile
accident. At no time prior to the instant claim did the veteran ever relate a history of a two-week hospitalization in 1975 and a two-week hospitalization in 1979 for neurologic symptoms like those he reported in 1984. The Board finds it unlikely in the extreme that the veteran would never cite his alleged treatment in the 1970’s (records neither the VA nor the veteran can obtain) during his treatment in the 1980’s.

The Board has a duty to analyze the credibility and probative value of the evidence of record. Madden v. Gober, 125 F.3d 1477, 1481 (Fed. Cir. 1997); Wensch v. Principi, 15 Vet. App. 362, 367 (2001); Owens v. Brown, 7 Vet. App. 429, 433 (1995). Simply stated, the Board finds that the history the veteran provided contemporaneous with treatment in 1984 and thereafter to be of more probative value than the current recollection by the veteran (and others) of his treatment some 30 years ago.

The Board must note the lapse of many years between the veteran’s separation from service and the first treatment for the claimed disorder. The United States Court of Appeals for the Federal Circuit has determined that such a lapse of time is a factor for consideration in deciding a service connection claim. Maxson v. Gober, 230 F.3rd 1330, 1333 (Fed. Cir. 2000).

In summary, the Board finds that the preponderance of the evidence is against service connection for MS. 38 U.S.C.A. § 5107(b). There is no evidence of MS in service and no evidence relating the MS to service. The earliest manifestation or diagnosis of MS supported by the competent, probative evidence of record is in January 1984, more than ten years after the veteran’s discharge. Therefore, the evidence is not so evenly balanced as to require resolution of doubt in the veteran’s favor. Id. The appeal is denied.

The Duty to Notify and the Duty to Assist

Review of the claims folder reveals compliance with the Veterans Claims Assistance Act of 2000 (VCAA), 38 U.S.C.A. § 5100 et seq. See 38 C.F.R.
§§ 3.102, 3.156(a), 3.159, 3.326(a). That is, by letter dated in October 2001, as well as information provided in the February 2002 rating decision and September 2003 statement of the case, the RO advised the veteran of the evidence needed to substantiate his claims and explained what evidence was obligated to obtain or to assist the veteran in obtaining and what information or evidence the veteran was responsible to provide. In addition, the September 2002 statement of the case includes the text of the regulation that implements the notice and assistance provisions from the statute. Beyond this, a detailed review of this issue was undertaken by the undersigned at the hearing held in Florida. Thus, the Board finds that the RO has provided all notice required by the VCAA. 38 U.S.C.A. § 5103(a). See Quartuccio v. Principi, 16 Vet. App. 183 (2002).

The Board observes that the RO provided VCAA notice in October 2001, before the February 2002 adverse determination on appeal. Pelegrini v. Principi, 18 Vet. App. 112, 120 (2004). However, there is no indication that the RO ever asked the veteran to provide any evidence in his possession that pertains to the claim. Id. at 120-21. In any event, the Board is satisfied that the veteran and his representative knew to submit evidence in support of his appeal, as demonstrated by the submission of private medical evidence, lay statements, and hearing testimony. Defective notice may be cured by a claimant’s actual knowledge that certain evidence was required and that he should provide it. Mayfield v. Nicholson, 19 Vet. App. 103, 121 (2005). Moreover, neither the veteran nor his representative has made any showing or allegation that a defect in notice affected the essential fairness of the adjudication. Id. Therefore, the Board finds that any defect in VCAA notice has not resulted in any prejudice to the veteran. Bernard v. Brown, 4 Vet. App. 384, 392-94 (1993).

With respect to the duty to assist, the RO has secured the veteran’s service medical records and VA medical records. The veteran has provided private medical records from B. S., M.D., and C. S., M.D. The veteran has identified additional private medical records from Holy Cross Hospital and North Broward Medical Center (or Broward Hospital) for treatment in the 1970s. However, in his November 2003 substantive appeal and at his hearing before the Board, he indicated that he had attempted to secure those records himself and learned that Holy Cross Hospital did not retain records more than seven years and that North Broward Medical Center
had no records prior to 1983. In fact, in the October 2005 Informal Brief of Appellant in Appealed Case, the veteran's representative concedes that there are no additional private medical records available. Beyond this, the undersigned spoke directly with the veteran and his lawyer (who did not represent the veteran at the hearing) in order to determine if there was any chance to obtain these records. The response was negative.

If the undersigned believed there was any chance at all of obtaining these records, the Board would not hesitate to remand this case to help the veteran.

The representative argues that the Board should remand the appeal to secure a medical examination and opinion. He asserts that there is sufficient lay evidence of symptoms of MS within the presumptive period to warrant an examination and record review to secure an opinion as to whether those symptoms were in fact symptoms of MS.

VA's duty to assist includes providing a medical examination or obtaining a medical opinion when necessary to make a decision on the claim. 38 U.S.C.A. § 5103A(d). Such an examination or opinion is necessary to make a decision on a claim if all of the lay and medical evidence of record: (1) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and (2) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but (3) does not contain sufficient medical evidence for VA to make a decision on the claim. Id.

Clearly there is evidence of a current disability. Although there is lay evidence to suggest the disability was manifest within seven years from the date of the veteran's discharge, the Board finds that this evidence is insufficient to trigger the duty to secure an examination and opinion. See generally Wells v. Principi, 326 F.3d 1381 (Fed. Cir. 2003) (there must be some evidence of a causal connection between the alleged disability and the veteran's military service to trigger VA's obligation to secure a medical opinion pursuant to 38 U.S.C.A. § 5103A(d)). As discussed above, the only evidence of MS within the seven-year presumptive period is the veteran's current report of symptoms during that time, as well as other lay
statements indicating that the veteran was hospitalized. Unfortunately, there is what can only be described as significant and highly probative medical evidence which clearly conflicts with these recollections.

Without medical records that document the symptoms and treatment described, any medical opinion obtained will be based primarily on the veteran's history. A medical opinion that relies on history as related by the veteran is no more probative than the facts alleged by the veteran. Swann v. Brown, 5 Vet. App. 229, 233 (1993). The Board has already found that the history currently reported by the veteran has very limited probative value and is outweighed by other evidence. Therefore, remanding the case for a medical opinion would not result in any real benefit to the veteran. See generally Soyini v. Derwinski, 1 Vet. App. 541 (1991) (the Court would not require strict adherence to technical requirements and impose additional burdens on VA when there was no benefit flowing to the claimant). Accordingly, the Board finds no reasonable basis for providing further assistance to the veteran. Simply stated, the Board finds that the evidence, discussed above, which clearly indicates that the veteran did not receive treatment for the claimed disorder during service, or within seven years of service (despite recollections to the contrary decades later), and with no competent medical evidence showing or indicating a nexus between service and the disorder at issue, warrants the conclusion that a remand for an examination and/or opinion is not necessary to decide the claim. See 38 C.F.R. § 3.159 (c)(4) (2005). As service and post-service medical records provide no basis to grant this claim, and provide evidence against the claim, the Board finds no basis for a VA examination to be obtained.

ORDER

Service connection for MS is denied.

[Signature]

JOHN J. CROWLEY
Veterans Law Judge, Board of Veterans' Appeals
YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is no time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court before you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have 120 days from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you, you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, it is your responsibility to make sure that your appeal to Court is filed on time.*

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's web site on the Internet at www.vetapp.uscourts.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal with the Court, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA stating why you believe that the BVA committed an obvious error of fact or law in this decision, or stating that new and material military service records have been discovered that apply to your appeal. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Send your letter to:

Director, Management and Administration (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

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Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

**How do I file a motion to vacate?** You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management and Administration, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

**How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error?** You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management and Administration, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 - 20.1411, and seek help from a qualified representative before filing such a motion. See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

**How do I reopen my claim?** You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. See 38 C.F.R. 3.156(a).

**Can someone represent me in my appeal?** Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a list of these organizations on the Internet at: www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before VA, then you can get information on how to do so by writing directly to the Court. Upon request, the Court will provide you with a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. This information, as well as information about free representation through the Veterans Consortium Pro Bono Program (toll free telephone at: (888) 838-7727), is also provided on the Court's website at www.vetapp.uscourts.gov.

**Do I have to pay an attorney or agent to represent me?** Except for a claim involving a home or small business VA loan under Chapter 37 of title 38, United States Code, attorneys or agents cannot charge you a fee or accept payment for services they provide before the date BVA makes a final decision on your appeal. If you hire an attorney or accredited agent within 1 year of a final BVA decision, then the attorney or agent is allowed to charge you a fee for representing you before VA in most situations. An attorney can also charge you for representing you before the Court. VA cannot pay fees of attorneys or agents.

**Fee for VA home and small business loan cases:** An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. For more information, read section 5904, title 38, United States Code.

In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to:

**Office of the Senior Deputy Vice Chairman (012)**
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

The Board may decide, on its own, to review a fee agreement for reasonableness, or you or your attorney or agent can file a motion asking the Board to do so. Send such a motion to the address above for the Office of the Senior Deputy Vice Chairman at the Board.
BRIEF FOR APPELLANT
BRIEF FOR APPELLANT, PHILIP M.

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

PHILIP M. Appellant,
v.
R. JAMES NICHOLSON,
Secretary of Veterans Affairs,
Appellee.

Appeal from the Board of Veterans' Appeals

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Paralyzed Veterans of America
801-18th Street, NW
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Third-year Law Student
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STATEMENT OF THE ISSUES

I. Whether the Board of Veterans’ Appeals (Board) erred when it found compliance with the Veterans Claims Assistance Act (VCAA) by relying on a rating decision, a Statement of the Case (SOC), and an October 2001 letter from the VA Regional Office (RO).

II. Whether the Board exceeded its statutory authority when it determined that an insufficient VCAA notice was harmless error since it has no lawful authority to employ a prejudicial error analysis.

III. Whether Mr. was provided with a procedurally fair personal hearing when the Board member did not explain any potential issues raised by the evidence of record or what evidence would be beneficial for Mr. to submit to substantiate his claim.

IV. Whether the Decision Review Officer (DRO) may issue a review decision in an SOC when regulations specifically state that an SOC is not a decision and direct that the review decision be issued before the SOC.

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

Mr. seeks service connection for multiple sclerosis.

II. STATEMENT OF FACTS AND COURSE OF PROCEEDINGS.

Mr. served in the U.S. Army from August 1970 to May 1973.


Mr. filed a Notice of Disagreement (NOD) four months later in June 2002. R. at 309. In the NOD, Mr. stated that he was
hospitalized for two weeks at Holy Cross Hospital in 1975 with symptoms of numbness in his legs. *Id.* The doctors hypothesized that he either had a stroke or suffered from multiple sclerosis, but no diagnosis was made. *Id.* The NOD stated that he experienced numbness in his limbs again in 1979. *Id.* This time he went to North Ridge Hospital/North Broward Medical Center and was referred to Dr. Steingo, a neurosurgeon. *Id.* According to Mr. Dr. Steingo diagnosed him with multiple sclerosis during this visit. *Id.*

Accompanying the NOD were statements from four lay witnesses. In their statements, Mr. friends recall him staying in the hospital for several weeks sometime between 1974 and 1975. R. at 299-304. Another statement indicated that Mr. was ill again in 1979 for the same symptoms that resulted in the 1974-1975 stay. During this hospital visit, the statement indicated, a doctor diagnosed Mr. with multiple sclerosis. R. at 306.

The RO issued an SOC in September 2003. R. at 312-328. The SOC stated that a DRO reviewed Mr. claim and that the evidence supports the findings indicated in the rating decision. R. at 327.

VA provided Mr. a hearing on September 29, 2005. R. at 337. At the start of the hearing, Mr.'s representative, Richard Baker, stated
the issue as:

service connection for multiple sclerosis...where careful and critical application must be made of [§] 3.307(c) because this section operates to reach the ultimate determination of whether MS developed or manifested to a compensable degree within the presumptive period and thus whether service connection can be allowed for a chronic disease under [§] 3.309.

R. at 338-39. Mr. Baker then questioned Mr. about his two hospital visits in 1975 and 1979 at Holy Cross Hospital and Broward Medical Center, respectively. R. at 343-47. Mr. stated that prior to both hospital visits, he experienced numbness in his extremities and loss of balance. R. at 344-45. When Mr. Baker asked about the availability of these medical records, Mr. attorney, Robert Schlorff, stated that the records were not obtainable because neither hospital maintains records from 25 years ago. R. at 347. Mr. Baker questioned Mr. about other proof of his visits—such as insurance records or other methods of payment. R. at 346. Mr. Rubin responded that he was sure he had insurance. R. at 347.

Three other witnesses at the hearing testified about Mr.'s hospital visits during the 1970's. R. 359-64. Susan Frenger, Mr.'s girlfriend in 1979, said Mr. told her about his hospital stay when they first met at the end of that year. R. at 359. She also stated that he “always complained about numbness.” R. at 355. Regarding the 1975 hospital stay, Laurie Funt, Mr.'s sister, said she “kn[e]w...for a fact” that it
occurred. R. at 359. She remembers that "[h]e was there for about two weeks and [her] parents were real[ly] good about [visiting] every day. [Their] dad went every day [and their] mom would take [her siblings and her] after school every day." R. at 361. Michael Marsden, Mr. uncle, who was employed by Mr.'s father in the late 1970's, remembers Mr. "always...rubbing his hands...and...complaining about some kind of tingling and numbness in his hands [and] legs." R. at 363.

III. THE BOARD'S OCTOBER 28, 2005, DECISION

The Board issued its decision on this matter on October 28, 2005. R. at 1.

In denying Mr.'s claim for service connection for multiple sclerosis, the Board first addressed the merits of the case:

The objective medical evidence of record shows that the veteran initially presented to B.S., M.D. in January 1984...The veteran presented again later in February 1984. It was noted that the veteran was initially referred to Dr. B.S. in January 1984 and that past medical history was significant only for numbness in the left leg after an automobile accident in 1981.

The Board finds the above statement from the veteran is entitled to great probative weight. Such a statement by the veteran (made well before his claim for VA benefits) at that time (1984) provides very negative evidence against this claim, as it indicates a medical history that conflicts with the veteran's testimony that he was having problems prior to 1981.
R. at 4-5. The Board next discussed medical records from 1984 to 1997, which indicated a diagnosis of multiple sclerosis in 1989. R. at 5-6. The Board noted that:

as a whole, these medical reports (which the Board finds are also entitled to great probative weight) provide very negative evidence against this claim as they indicate a disorder (MS) which symptoms, by the veteran’s own statements at this critical period of time (the 1980’s), began well after the seven year presumptive period.

R. at 6 (emphasis in original).

Regarding statements by Mr. and other witnesses about his hospital visits in 1975 and 1979 at Holy Cross Hospital and Broward Medical Center, respectively, the Board said they “do not present a history consistent with the medical evidence of record which the Board believes is entitled to greater probative value.” R. at 7. In conclusion, the Board decided treatment records from 1984 and on were entitled to greater probative value than the testimonies of Mr. and other lay witnesses because there was no objective medical evidence to support those testimonies. R. at 8.

Next, the Board determined whether VA complied with provisions of the VCAA. The Board concluded that VA fulfilled its statutory duties under the VCAA by sending Mr. the October 2001 letter, the February 2002 rating decision, and the September 2003 SOC. According to the Board,
these documents:

advised the veteran of the evidence needed to substantiate his claims and explained what evidence [VA] was obligated to obtain or to assist the veteran in obtaining and what information or evidence the veteran was responsible [for] provid[ing]. In addition, the September 200[3 SOC] includes the text of the regulation that implements the notice and assistance provisions from the statute.

R. at 9.

The Board also noted that the RO “provided VCAA notice in October 2001…However, there is no indication that the RO ever asked the veteran to provide any evidence in his possession that pertains to the claim.” Id.

Nonetheless, the Board concluded, this defect did not result in any prejudice to Mr. Rubin because:

the Board is satisfied that the veteran and his representative knew to submit evidence in support of his appeal, as demonstrated by submission of private medical evidence, lay statements, and hearing testimony. Defective notice may be cured by a claimant’s actual knowledge that certain evidence was required and that he should provide it. Mayfield v. Nicholson, 19 Vet. App. 103, 121 (2005). Moreover, neither the veteran nor his representative has made any showing or allegation that a defect in notice affected the essential fairness of the adjudication.

Id.

Next, the Board examined VA’s duty to assist Mr. Id. The Board concluded that the RO fulfilled this duty by securing his service medical and VA medical records. Id. Mr. provided private medical
records from Doctors Brian Steingo and Clyde Stoner for the treatment period from 1984 to 2001. *Id.* Mr. [REDACTED] also tried to secure treatment records from two private hospitals that treated him in the 1970’s. *Id.* However, Holy Cross Hospital does not retain records for more than seven years and North Broward Medical Center has no records prior to 1983. R. at 9-10. The Board Member noted that he “spoke directly with the veteran...in order to determine if there was any chance [of] obtain[ing] these records. The response was negative.” R. at 10. However, if he “believed there was any chance at all of obtaining these records, the Board would not hesitate to remand this case to help the veteran.” *Id.*

Regarding VA’s duty to assist by providing a medical examination or obtaining a medical opinion, the Board felt that a remand for this purpose “would not result in any real benefit to the veteran.” R. at 11. The Board based this conclusion on the fact that Mr. [REDACTED] was not able to provide medical records for treatments he obtained in the 1970’s:

the only evidence of MS within the seven-year presumptive period is the veteran’s current report of symptoms during that time, as well as other lay statements indicating that the veteran was hospitalized. Unfortunately, there is what can only be described as significant and highly probative medical evidence which clearly conflicts with these recollections...Accordingly, the Board finds no reasonable basis for providing further assistance to the veteran.

R. at 10-11.
In conclusion, the Board wrote:

Simply stated, the Board finds that the evidence, discussed above, which clearly indicates that the veteran did not receive treatment for the claimed disorder during service, or within seven years of service (despite recollections to the contrary decades later), and with no competent medical evidence showing or indicating a nexus between service and the disorder at issue, warrants the conclusion that a remand for an examination and/or opinion is not necessary to decide the claim. See 38 C.F.R. § 3.159(c)(4) (2005). As service and post-service medical records provide no basis to grant this claim, and provide evidence against this claim, the Board finds no basis for a VA examination to be obtained.

R. at 11.

**SUMMARY OF THE ARGUMENT**

The Court should vacate and remand the October 2005 Board decision for four reasons. First, the Board impermissibly aggregated non-VCAA notifications to find compliance with the VCAA. Second, the Board exceeded its statutory authority by employing a prejudicial error analysis to find that an inadequate VCAA notice was harmless error. Third, Mr. [redacted] was not provided with a proper personal hearing, as the Board member did not explain to Mr. [redacted] any potential issues raised by the evidence of record or what evidence would be beneficial for him to obtain to substantiate his claim. Lastly, VA violated regulations when the DRO issued a review decision in an SOC when the regulations specifically prohibit it. For these reasons, the Court should remand the case for readjudication.
ARGUMENT

I. JURISDICTION AND STANDARD OF REVIEW.

Mr. appeals a final Board decision rendered on October 28, 2005. Mr. timely filed his Notice of Appeal on December 7, 2005, in accordance with 38 U.S.C.A. § 7266 (West 2002) and Vet. App. R. 4. Therefore, this Court has jurisdiction to hear his appeal. 38 U.S.C.A. § 7252 (West 2002).

This appeal presents the Court with straightforward questions of statutory and regulatory interpretation. Therefore, this Court reviews each issue under the de novo standard. Smith v. Gober, 14 Vet.App. 227, 230 (2000) (holding that de novo standard applies to review questions of law).

II. THE BOARD’S INTERPRETATION OF THE VCAA IS CONTRARY TO STATUTORY REQUIREMENTS, AS SHOWN BY THE FEDERAL CIRCUIT’S MAYFIELD OPINION.

The Court should remand the Board’s decision regarding VA’s duty to notify under 38 U.S.C.A. § 5103 for three reasons. (West 2002 & Supp. 2005). First, the Board erred when it determined that VA complied with the VCAA’s notice requirements by sending Mr. the October 2001 letter, the February 2002 rating decision, and the September 2003 SOC. Second, the October 2001 letter does not fulfill the requirements set out in § 5103(a). Lastly, the Board admitted that the October 2001 letter did not satisfy the
VCAA because it did not ask Mr. to provide any evidence in his possession that pertains to his claim.

A. The Board erred when it determined that the combination of the October 2001 letter, February 2002 rating decision, and September 2003 SOC provided adequate VCAA notice.

Section 5103, as amended by the VCAA, describes VA’s duty to assist veterans in filing claims. The VCAA requires VA, upon receipt of a complete or substantially complete application for benefits, to notify the claimant of “any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim.” The notice should also “indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary...will attempt to obtain on behalf of the claimant.” § 5103(a).

In a recent decision, the Federal Circuit held that the plain language of § 5103(a), (b) requires VA to issue a VCAA notice before adjudicating a claim. Mayfield v. Nicholson, 444 F.3d 1328, 1333 (Fed. Cir. 2006). Furthermore, the Board may not rely on or combine post-decisional documents—such as rating decisions, decision notification letters, SOCs, or SSOCs—when analyzing whether VA fulfilled its notice obligations. Id. The Mayfield Court also held that the notice must be tailored to the
particular circumstances of the case. *Id.* at 1333-34. The Federal Circuit noted that the purpose of the VCAA is to “provide affirmative notification to the claimant prior to the initial decision in the case as to the evidence that is needed and who shall be responsible for providing it.” *Id.* at 1333 (citing *Paralyzed Veterans of Am. v. Sec’y of Veterans Affairs*, 345 F.3d 1334, 1344-45 (Fed. Cir. 2003); 66 Fed. Reg. 45,620, 45,622-23 (Aug. 29, 2001).) Therefore, the duty to notify “is not satisfied by various post-decisional communications from which a claimant might have been able to infer what evidence the VA found lacking in the claimant’s presentation.” *Id.*

The Board’s finding that VA complied with the VCAA was incorrect because it combined several VA notice documents to support this determination. The Federal Circuit’s *Mayfield* opinion held that the Board may not combine non-VCAA notice documents such as rating decisions or SOCs to support a finding that adequate VCAA notice was provided. *Id.* In its decision, the Board stated that the October 2001 letter, the February 2002 rating decision, and September 2003 SOC “advised the veteran of the evidence needed to substantiate his claims.” R. at 9. This is contrary to the Federal Circuit’s holding because the February 2002 rating decision and the September 2003 SOC are the exact post-decisional correspondences that the Federal Circuit held could not provide a claimant with VCAA notification.
Therefore, the Board erred when it determined that VA provided Mr. Rubin with adequate VCAA notice. The Court should remand the appeal so that VA can provide Mr. Rubin with a VCAA notice that complies with § 5103.

B. The October 2001 letter does not satisfy VCAA notice requirements.

The Board determined that VA provided VCAA notice in the October 2001 letter. However, this letter does not satisfy the requirements set out in § 5103(a).

Regarding presumptive conditions, the letter stated that “the evidence must show that you were diagnosed with the condition within one year after you left military service. Longer time limits apply for certain other medical conditions.” R. at 243. This section of the letter violates § 5103(a) because it is not tailored to Mr. [redacted]'s case. *Mayfield*, 444 F.3d at 1133-34. Mr. [redacted]'s claim was for multiple sclerosis, which has a seven-year presumptive period. 38 U.S.C.A. § 1112(a)(4) (West 2002). The letter does not tell Mr. [redacted] that his multiple sclerosis is one of the “other medical conditions” in which a longer presumptive period applies. R. at 243. This statement is also legally incorrect. The statute does not require multiple sclerosis to have been “diagnosed” but merely to have developed to a ten percent degree of disability or more within seven years after service.
§ 1112(a)(4).

Regarding certain records, the letter said, "[i]f we do not yet have them, we will get service medical records and will review them if they show you had an injury or disease in service. We will also get other military service records if they are necessary." R. at 243. The VCAA states "the Secretary shall notify the claimant...of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim." § 5103(a) (emphasis added). At the time the letter was issued to Mr. [redacted] VA had already obtained this information. Informing Mr. [redacted] of the evidence VA had already received does not comply with the plain language of § 5103 because it does not help him substantiate his claim. Therefore, this section of the letter, by law, violates the statute because it includes information that the statute does not permit it to include.

The letter said Mr. [redacted] may show "a current disability" with "medical evidence or other evidence." R. at 243 (emphasis added). This letter violates § 5103(a) because it is not particularized to the circumstances of Mr. [redacted] case. Mayfield, 444 F.3d at 1334-34. Mr. [redacted], as a layperson, would not know what "other evidence" is needed to prove his current disability claim.
For the reasons stated above, the Court should remand this case so that Mr. [redacted] receives a VCAA letter that complies with the notice requirements set out in § 5103(a).

C. The Board acknowledged that the October 2001 letter did not comply with 38 C.F.R. § 3.159(b)(1).

The VCAA has four notice elements. VA must inform the claimant of information and evidence, not already in the record, (1) that is necessary to substantiate the claim, (2) that VA will seek to provide, and (3) that the claimant is expected to provide. § 5103(a); 38 C.F.R. § 3.159(b)(1) (2005); Quartuccio v. Principi, 16 Vet.App. 183, 187 (2002). Lastly, VA is required to “request that the claimant provide any evidence in the claimant’s possession that pertains to the claim.” 38 C.F.R. § 3.159(b)(1); Pelegrini v. Principi, 18 Vet.App. 112, 121 (2004).

In its decision, the Board found that “there is no indication that the RO ever asked the veteran to provide any evidence in his possession that pertains to the claim.” R. at 9. With this statement, the Board conceded that the fourth notice element is missing. Because the October 2001 letter clearly did not meet the requirements of § 5103(a) and § 3.159(b)(1), it did not provide adequate VCAA notice. And since an agency must act in accordance with applicable statutes and regulations, the Court should remand this case so that the RO may comply with its own statutes and

For the reasons listed above, the Court should remand the decision so that Mr. may receive the notification he is entitled to under § 5103(a), (b).

**III. THE BOARD DOES NOT HAVE LAWFUL AUTHORITY TO EMPLOY A PREJUDICIAL ERROR ANALYSIS.**

Even though “there is no indication that the RO ever asked the veteran to provide any evidence in his possession that pertains to his claim,” the Board found that a remand was not necessary. R. at 9. Since “defective notice may be cured by a claimant’s actual knowledge that certain evidence was required and that he should provide it,” the Board concluded that Mr. was not prejudiced because he submitted evidence – such as private medical evidence, lay statements, and hearing testimony – for his appeal to the Board. *Id.* (citing *Mayfield*, 19 Vet.App. at 121.). Mr. argues that the Board was incorrect to determine that he was not prejudiced by the defective notice because it does not have lawful authority to do so.

First, Congress did not give the Board authority to employ a prejudicial error analysis or to make findings of harmless error. There is a presumption that Congress acts intentionally and purposely when it incorporates particular language in one section of a statute but excludes it in

However, Chapter 71 of title 38, which describes the Board’s responsibilities, does not contain a similar provision. The fact that Congress specifically directs this Court to use a prejudicial error analysis but does not impose a similar responsibility on the Board proves that Congress did not intend to give the Board the same authority as it gave this Court. Therefore, the Board did not have lawful authority to find that VA’s failure to provide [Mr. redacted] with a complete VCAA notice was harmless error.

The Board, created by statute and under the administrative control and supervision of the Secretary, is limited to the powers that Congress gave it. 38 U.S.C.A. § 7101 (West 2002). The Board “has no power to act...unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). Since it is clear that Congress did not confer on the Board the power to make rulings of harmless error, the Board has no power to do so. Additionally, the Board may not confer power upon itself. *Id.* The courts are unwilling and unable to allow an agency to expand its power when Congress intentionally limited its power because doing so would give the agency power to override the policies set by Congress. *Id.*
Consequently, the Board may not making rulings of harmless error when Congress did not give it this authority.

Second, the Federal Circuit's opinion in *Mayfield* does not permit the Board to use a prejudicial error analysis. *Mayfield*, 444 F.3d at 1337. In that case, the Federal Circuit specifically explained how this Court may employ a prejudicial error analysis in the notice context. First, the Board must find that VA sent the claimant a sufficient VCAA notice. Then, this Court must determine that the notice was insufficient. Only after this may the Court decide whether the insufficient notice was prejudicial. *Id*. Even though *Mayfield* permitted this Court to conduct a prejudicial error analysis in limited circumstances, it did not extend this authority to the Board. The Board is not the Court. In fact, the Court has exclusive jurisdiction to review the Board's decisions. § 7252(a). Hence, the Board does not have the powers that the Court possesses. The Board cannot extrapolate a statutory power that the Court possesses and make it its own.

Because the Board does not have lawful authority to decide that VA's insufficient notice was not prejudicial to Mr. the Court should remand this case so that the Board may take this into consideration in a new Board decision.
IV. THE COURT SHOULD REMAND THIS CASE SO THAT MR. RECEIVES A PERSONAL HEARING THAT COMPLIES WITH REGULATORY REQUIREMENTS.

Section 3.103(c)(2) of 38 C.F.R. requires "the VA employee or employees conducting the hearing to explain fully the issues and [to] suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position." (1999-2004) (emphasis added). This Court has held that this requirement applies to personal hearings before the RO and before the Board. Costantino v. West, 12 Vet.App. 517, 520 (1999) (applying regulation to hearing officer at the RO); Douglas v. Derwinski, 2 Vet.App. 103, 110 (1992) (applying regulation to Board members). Furthermore, this Court held that the duty found in § 3.103(c)(2) requires the Board member conducting the hearing to fully explain the issues being raised, suggest the evidence necessary to establish the claim, and fully explain any potential issues raised by the evidence of record. Douglas, 2 Vet.App. at 110. The Court reasoned that by following the requirements of the regulation, the Board member's advice could "[e]nable a veteran to focus on submitting proof on that issue," as opposed to issues with little merit. Id. Therefore, it is imperative that the Board member conducting the personal hearing follow the regulation's requirements so that the claimant may know what is necessary to
substantiate the claim.

The hearing Mr. received on September 29, 2005, did not comply with the regulation's requirements. The transcript of the hearing shows that the Board member that conducted the hearing, Chairman John Crowley, made few comments to and asked few questions of Mr. R. at 349, 353-54, 356-57, 360. Significantly, none of the comments and questions explained any potential issues raised by the evidence of record, suggested evidence necessary to substantiate Mr.'s claim, or explained the issues in Mr.'s case. *Douglas*, 2 Vet.App. at 110.

First, Chairman Crowley did not explain any potential issues raised by the evidence of record, as required by § 3.103(c)(2). *Id.* The basis for the denial of Mr.'s claim was the lack of "competent, probative evidence" during the seven-year presumptive period. R. at 8. However, Chairman Crowley did not tell Mr. that this would be a problem for him. He did not explain that evidence, beyond lay statements, of those hospital stays would "be of advantage" to Mr.'s position. *Costantino*, 12 Vet.App. at 520. The only question he asked Mr. regarding this matter was, "No luck getting the hospitalization records from 1979?" R. at 353. If the lay testimonies of Mr. and his witnesses were not enough proof, Chairman Crowley should have told Mr. about this problem. Since
Chairman Crowley did not explain any potential issues raised by the record, the hearing was not procedurally adequate.

In addition to not explaining any potential issues raised by the evidence of record, Chairman Crowley also did not suggest other methods of obtaining evidence. *Douglas*, 2 Vet.App. at 110. At the hearing, Mr. Baker mentioned that it was possible for Mr. Rubin to look for insurance records of his 1970's hospital stays. R. at 347. At this point, Chairman Crowley should have suggested to Mr.____ other methods of proving his hospital stays. However, there was no further discussion on this matter. In its decision, the Board stated that “a detailed review of this issue was undertaken by the undersigned at the hearing held in Florida.” R. at 9. But the lack of Chairman Crowley's comments, questions, and suggestions in the transcript indicate otherwise. Since Chairman Crowley did not suggest other methods of obtaining evidence, the hearing was not lawful.

Lastly, at no point during the hearing did Chairman Crowley explain exactly what was at issue in Mr.____ case. *Douglas*, 2 Vet.App. at 110. This is evidenced by the lack of such explanation on the record. R. at 338-365.

Because Mr.____ did not receive a fair hearing that complied with § 3.103(c)(2), VA is in violation of its own regulations. “It is axiomatic that
an agency must act in accordance with applicable statutes and regulations...

"The agency has no discretion to deviate' from the procedure mandated by its regulatory scheme." *Paralyzed Veterans of Am.*, 138 F.3d at 1436 (citations omitted). Receiving a full and fair personal hearing from VA has a direct effect on Mr. right to benefits, and "where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 234 (1974); see also 38 C.F.R. § 20.904 (2004) (VA concedes the existence of a due process violation when there is a "prejudicial failure to afford the appellant a hearing").

Based on the failure to comply with the regulation's requirements, the Court should remand this case so that Mr. may receive a fair and procedurally adequate hearing.

V. THE DRO MAY NOT ISSUE A REVIEW DECISION IN AN SOC BECAUSE THE REGULATION SPECIFICALLY DIRECTS THAT AN SOC MAY NOT BE USED TO ANNOUNCE A REVIEW DECISION AND THE REVIEW DECISION WILL BE ISSUED BEFORE THE SOC.

Section 3.2600 of 38 C.F.R. explains the DRO review process. 38 C.F.R. § 3.2600 (2004). Upon the filing of the NOD, VA will have the claim reviewed by either a Veterans Service Center Manager (VSCM) or
DRO. § 3.2600(a). The reviewer may conduct any development necessary to resolve disagreements in the NOD. § 3.2600(c). After reviewing the claim, the DRO will issue a “review decision” that includes a summary of the evidence and laws, a discussion of how those laws affect the review decision, and a summary of the reasons for the review decision. § 3.2600(d). The regulation assures that the claimant’s appeal rights will not be affected by the DRO’s review decision. § 3.2600(e). After the DRO review decision has been issued, VA will continue with the traditional appellate process by issuing an SOC, unless the claimant withdraws his or her NOD. Id.

Part 19 of 38 C.F.R. discusses the SOC and SSOC. The purpose of the SOC is to help the claimant prepare an appeal to the Board. 38 C.F.R. § 19.29 (2004); 38 U.S.C.A. § 7105 (West 2002). It contains a summary of the pertinent evidence, a summary of the applicable laws and regulations, a decision on each issue, and a summary of the reasons for each decision. Id. The SOC also informs the claimant of the right to appeal, the time limit for filing, and other rights that pertain to the appeal. 38 C.F.R. § 19.30 (2004). The SSOC notifies the claimant of any material changes in, or additions to, the SOC or any prior SSOC. 38 C.F.R. § 19.31(a) (2004). The regulation also states that “[i]n no case will [an SSOC] be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in
the [SOC], or to respond to an [NOD] on newly appealed issues that were not addressed in the [SOC].” *Id.*

The plain language of §§ 3.2600, 19.29, and 19.31(a) proves that the DRO may not issue a review decision in an SOC. Section 3.2600(d), which explains what the DRO’s review decision should contain, does not say that the DRO’s review decision will be in the form of an SOC. Rather, the regulation requires a “review decision.” § 3.2600(d). If VA intended for the DRO to issue a review decision in an SOC, the regulation would have specifically said so.

Section 3.2600(b) also makes a distinction between a DRO’s review decision and an SOC. Subsection (b) of the regulation provides that if a claimant does not request a review under this section, VA will issue an SOC to begin the traditional appellate process. Since the use of different terms within related subsections of a regulation implies that different meanings were intended, the fact that VA used “review decision” and “SOC” in the same regulation means that VA intended for these two terms to mean two different things. *Cunningham v. Scibana*, 259 F.3d 303, 308 (4th Cir. 2001) (quoting 2A Norman J. Singer, *Sutherland’s Statutes and Statutory Construction* § 46.06, at 194 (6th ed. 2000)); *White v. Lambert*, 370 F.3d 1002, 1011 (9th Cir. 2004) (“It is axiomatic that when Congress uses
different text in ‘adjacent’ statutes it intends that the different terms carry a different meaning.").

This conclusion finds additional support in subsection (f) of § 3.2600. This subsection states that “[u]nless a claimant withdraws his or her [NOD] as a result of this review process, VA will proceed with the traditional appellate process by issuing an [SOC].” § 3.2600(f). According to the plain language of the regulation, the following steps will take place: (1) the claimant files an NOD and requests review under § 3.2600; (2) a VSCM or DRO reviews the claim and issues a review decision; (3) the claimant receives this review decision; (4) VA begins the traditional appellate process by issuing an SOC, unless the claimant withdraws the NOD. As in subsection (b), this subsection makes a distinction between a review decision by the DRO and an SOC. Because different words are intended to mean different things, VA must have intended for a review decision and an SOC to have different meanings.

The fact that an SOC is not intended as a document to announce a decision can also be found in VA’s rulemaking record. Commenting on § 19.31, VA said “[t]he purpose of Statements and Supplement Statements of the Case is to provide appellants with data which they need, but may not have, to prepare their appeal to the BVA...They are not appellate

From this comment, it is clear that VA did not intend for an appellate decision, such as a review decision, to appear in an SOC.

In [case], the DRO issued a decision in the September 19, 2003, SOC. R. at 327. The “Reasons and Bases” section of the SOC states, “Your claims file has been reviewed. The evidence considered in the previous decision has been considered by the Decision Review Officer.” Id. Since a DRO may not issue a decision in an SOC, VA is in violation of the regulations. As stated above, an agency must follow its own regulations. Paralyzed Veterans of Am., 138 F.3d at 1436 (“‘The agency has no discretion to deviate’ from the procedure mandated by its regulatory scheme.”) (citations omitted). Because the DRO issued his decision in an SOC, Mr. [redacted]’s rights to appeal were affected – he did not have the benefit of the DRO conducting whatever development was necessary to resolve disagreements in the NOD. § 3.2600(c). When the rights of claimants are affected, VA has the duty to follow its own procedures. Morton, 415 U.S. at 234. Therefore, VA had the duty to follow its own regulation by issuing a DRO decision that is independent from the SOC.

Because the DRO improperly issued a review decision in an SOC that affected Mr. [redacted]’s appellate rights, the Court should remand this case for
CONCLUSION

Based on the foregoing facts and reasoning, [redacted] respectfully requests that this Court vacate and remand the October 28, 2005, Board decision with instructions to VA to provide [redacted] with a legally adequate VCAA notice and a new adjudication of his claim that is consistent with the procedural and substantive requirements of the law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that a copy of this Brief for Appellant, was mailed, postage prepaid to:

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810 Vermont Avenue, N.W.
Washington, D.C. 20420

on July 19, 2006

[Signature]
Josie A. Nguyen
COURT REMAND ORDER
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No.

PHILIP M. APPELLANT,

V.

R. JAMES NICHOLSON,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before IVERS, Judge.

ORDER

Note: Pursuant to U.S. Vet. App. R. 30(a), this action may not be cited as precedent.

The appellant, Philip M. appeals, through counsel, an October 28, 2005, Board of Veterans' Appeals (Board or BVA) decision that denied his claim for service connection for multiple sclerosis (MS). This appeal is timely and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate. See Frankel v. Derwinski, 1 Vet.App. 23, 25-26 (1990). For the reasons set forth below, the Court will vacate the October 28, 2005, Board decision and remand the matter for further proceedings consistent with this order.

On appeal, the appellant argues that the Board erred when it determined that he had received adequate notice as required by the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096. Appellant's Brief (Br.) at 12-14. The Secretary concedes error and proposes remand of the Board decision on appeal. He confesses that a review of the October 2001 letter (R. at 242-48) revealed that the appellant was not notified of the information needed to substantiate his claim as required by the VCAA. See 38 U.S.C. § 5103(a); 38 C.F.R. § 3.159(b)(1) (2006); Quartuccio v. Principi, 16 Vet.App. 183 (2002). Secretary's Br. at 5. The Secretary admits failure to inform the claimant that his claim could be substantiated by submitting evidence demonstrating that his MS first manifested within seven years of discharge. Id.

The Court is puzzled that the Secretary spent considerable time and effort to prepare and file a brief for the sole purpose of confessing error. The patent nature of the error, as highlighted by appellant in his brief, would appear to cry out for joint remand. Counsel for appellant in a letter of November 7, 2006, to the Clerk of the Court makes the appropriateness of a joint remand even more
apparent. In that letter, counsel concurs with the Secretary's confession of error and with the proposed remand.

In this period of burgeoning caseloads at all levels of the appellate process, every effort must be made by all parties, and the Court to reduce the time required to advance matters through that process. Here, the Court has been called upon to review and opine upon a matter which could and should have been resolved by the parties and concluded months ago by an order of the Clerk.

Section 5103(a), as amended by the VCAA provides: "Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim." 38 U.S.C. § 5103(a); Pelegrini v. Principi, 18 Vet.App. 112, 121 (2004); Quartuccio, 16 Vet.App. at 187; 38 C.F.R. § 3.159(b). The Court reviews the Board's determination that a notification communication satisfies section 5103(a) under the "clearly erroneous" standard of review. Mayfield v. Nicholson, 444 F.3d 1328 (Fed. Cir. 2006).

There is no evidence in the record that the Secretary adequately notified the appellant about what was necessary to substantiate his claim. See 38 U.S.C. § 5103(a). Furthermore, the Secretary concedes error, stating that the October 2001 VCAA letter (R. at 242-48) failed to notify the appellant of the information needed to substantiate his claim. Secretary's Br. at 5.

Having found Board error, the Court must "take due account of the rule of prejudicial error." 38 U.S.C. § 7261(b); see Conway v. Principi, 353 F.3d 1369 (Fed. Cir. 2004); Overton v. Nicholson, 20 Vet.App. 427 (2006). The record on appeal does not contain notice to the appellant that meets the standard established by section 5103(a) and §3.159(b)(1). Nor is the Court convinced from its review of the record and pleadings that this appellant was able to meaningfully participate in the adjudication of this claim. Therefore, because the Court cannot conclude that the notice error was nonprejudicial, a remand for readjudication is required to permit the Secretary to correct that error and to provide VCAA compliant notice. See Overton, supra.

Because the Court is remanding this matter, the additional allegations of error made by the appellant are moot, as the Board is required to readjudicate his appeal anew, and the Court, in its discretion, will not address them. See Best v. Principi, 15 Vet.App. 18, 20 (2001) ("A narrow decision preserves for the appellant an opportunity to argue those claimed errors before the Board at the readjudication, and, of course, before this Court in an appeal, should the Board rule against him [or her].") On remand the appellant is free to proffer his arguments to the Board. See Kay v. Principi, 16 Vet.App. 529 (2002) (on remand, Board must consider additional evidence and argument in assessing entitlement to benefit sought); Kutscherovsky v. West, 12 Vet. App. 369, 372 (1999) (per curiam order) (on remand, the appellant is free to submit additional evidence and argument). "A remand is meant to entail a critical examination of the justification for the decision. The Court expects that the BVA will reexamine the evidence of record, seek any other evidence the Board feels is necessary, and issue a timely, well-supported decision in this case." Fletcher v.

Upon consideration of the foregoing, it is

ORDERED that the October 28, 2005, Board decision is VACATED and that the matter is REMANDED for proceedings consistent with this order.

DATED: DEC - 8 2006

BY THE COURT:

DONALD L. IVERS
Judge

Copies to:

Michael P. Horan, Esq.

VA General Counsel (027)