

Gregory O. Block
Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, D.C. 20004-2950

**Re: CAVC Case No. 16-4053, Appellant Joseph Spellers
Supplemental Citation of Authority**

Dear Mr. Block:

Pursuant to Rule 30(b), U. S. Court of Appeals for Veterans Claims, Appellant provides the following as supplemental authority:

1. **Disability Evaluation Under Social Security, 1.00 Musculoskeletal System – Adult:**
 - 20 C.F.R. § Pt. 404, Subpt. P, App. 1, Sec. 1.00-1.02 (2018)
2. **Medical Considerations: Listing of Impairments in appendix 1:**
 - 20 C.F.R. § 404.1525 (2017)
3. **38 C.F.R. § 4.71a (2017), Diagnostic Codes 5255, 5262, 5276**

In his briefs, Appellant argued that the Board erred when it concluded the Veteran’s use of assistive devices is contemplated by his assigned 10 percent rating. *See* Appellant’s Br. at 7; Reply Br. at 5-9. Social Security recognizes that “ineffective ambulation” includes, but is not limited to, “the inability to walk without the use of a walker . . . [and] the inability to carry out routine ambulatory activities, such as shopping and banking.” 20 C.F.R. § Pt. 404, Subpt. P, App. 1, Sec. 1.00B2b2.

The inability to ambulate effectively is a Social Security listing. *Id.* at 1.02. The presence of an impairment in a listing means that that Social Security deems it totally disabling. *See* 20 C.F.R. § 404.1525(a) (“The Listing of Impairments (the listings) . . . describes . . . impairments that we consider to be severe enough to prevent an individual from doing any gainful activity, regardless of his or her age, education, or work experience.”).

Social Security further recognizes that “[t]he requirement to use a hand-held assistive device may also impact on [an] individual’s functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling.” 20 C.F.R. § Pt. 404, Subpt. P, App. 1, Sec. 1.00(j)(4).

VA has included the use of assistive devices in other diagnostic codes. *See* 38 C.F.R. § 4.71a, DC 5255 (impairment of femur with nonunion, without loose motion, weightbearing preserved with aid of brace, rated at 60 percent); DC 5262 (nonunion of tibia and fibula, with loose motion, requiring brace, rated at 50 percent); and DC 5276 (pronounced flatfoot, not improved by orthopedic shoes or appliances, rated at 50 percent for bilateral and 30 percent for unilateral).

Very truly yours,

/s/ Dana N. Weiner

Dana N. Weiner

Chisholm Chisholm & Kilpatrick

One Turks Head Place, Suite 1100

Providence, RI 02903

(401) 331-6300 Telephone

(401) 421-3185 Facsimile