

**UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

**Samuel J. Rumph** : **Docket No.: 16-3113**  
**Appellant,** :  
**vs.**  
**Secretary of Veterans Affairs** :  
**Appellee.** :

**RESPONSE TO COURT ORDER**

The Appellant, through counsel, hereby submits the following response to the Court's order of September 28, 2016:

1. The Appellant, Mr. Rumph is appealing a decision of the Board of Veterans' Appeals dated May 2, 2016.
2. The 120<sup>th</sup> day to file an appeal of this decision was August 30, 2016.
3. The Appellant's appeal was filed on September 1, 2016, two days late.
4. The Appellant asserts that his current medical disabilities left him unable to timely file an appeal. Specifically, he is diagnosed with the debilitating disease of schizophrenia, which causes him to lose complete track of days. In August of 2016, the Veteran was suffering constantly and due to this disability was unable to timely file an appeal.

5. Attached medical documentation August 2016 shows a diagnosis of schizophrenia, an admission GAF score of 30, which indicates that “behavior is considerably influenced by delusions or hallucinations” and a discharge GAF score of 51, which shows that the Appellant still suffered from serious symptoms.
6. The VA only printed out these two pages of medical records for the Appellant (which he then submitted to counsel), and he does not have access to any of his other medical records. If the undersigned counsel attempts to get his medical records from the VA, the VA will generally not provide a response or the records for at least 8 months, well outside the response time required by this Court’s order.
7. The Appellant filed an untimely Notice of Appeal due to this severe disability.

The United States Supreme Court held that compliance with the 120-day deadline for filing a notice of appeal with the U.S. Court of Appeals for Veterans Claims was not a jurisdictional prerequisite for an appeal.

*Henderson v. Shinseki*, 131 S.Ct. 1197, 1206 (2011). The doctrine of equitable tolling is appropriate “when the principles of equity would make the rigid application of a limitation period unfair.” *Schlueter v. Varner*, 384 F.3d 69, 76 (3d Cir. 2004).

In the present case, the Appellant's severe mental health status prevented him from timely filing his appeal. Equitable principles call for allowing Mr. Brescia to proceed with his appeal.

Respectfully submitted,

**Date: October 28, 2016**

**/s/ Maxwell D. Kinman**

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OCTOBER25,2016

UNITED STATES COURT OF APPEALS FOR VETERAN CLAIMS NO:16-3113

SAMUEL J. RUMPH

APPELLANT

VS. ROBERT A. MCDONALD

APPEALLEE

SECRETARY OF VETERAN AFFAIRS

I ENLISTED IN NOVEMBER OF 1972 ARMY I SERVE THREE YEARS ACTIVE HONORABLE SEPERATED 11-28-75 AFTER A SLIGHT SET BACK OF FOUR YEARS,I RETURNED BACK TO MILITARY LIFE ONLY THIS TIME I WENT TO SEA ,I SPENT THE NEXT SEVEN IN THE US NAVY AND WHERE ALL MY MEDICAL BEGIN FINALLY I WAS DISCHARGEMEDICALLY PORTMOUTH VA.NAVAL IN 1986 I HAVE BEEN DEALING WITH THE VETERAN ADMINISTRATIONBUT ITHAS BEEN ONE LONG EVASION FOR THEM TO REALIZE MY SERVICE . CONNECTED DISABILITY WOULD EVEN IN DOCTOR'S STATED THAT MY CONDITION WOULD ONLY GET WORSE.

CIRRCUMSTANCES HAVE PREVENTED ME FROM FILING A TIMELY RESPONSE, AS SHOWN THE REASON IN MEDICL RECORDS WHICH THE VETERAN AFAIRS HAS BEEN VERY HENDERING. SO I AM INCLUDING ALL MEDICAL RECORDS SHOWING THAT I HAD BEEN MEDICALLY UNABLE

*Samuel J Rumph*

*Sincerely*



# Progress Notes

Printed On Oct 24, 2016

EXCEED 1 DOSE PER 24 HOURS. 90 DAY SUPPLY, NO EARLY REFILLS

**ACTIVE PROBLEMS:**

Keratosis (SCT 254666005)	Deformity of toe (SCT 299567001)
Foreign body in skin (SCT 93458008)	Sleep apnea (SCT 73430006)
Hyperlipidemia (SCT 55822004)	Foot pain (SCT 47933007)
Syncope (SCT 271594007)	Diabetes mellitus (SCT 73211009)
Obstructive sleep apnea syndrome (SCT 78)	Cannabis abuse
Disorder of palate	Mood disorder (SCT 46206005)
Aneurysm of iliac artery (SCT 13290008)	Low back pain (SCT 279039007)
Joint pain (SCT 57676002)	Hyperlipidemia (SCT 55822004)
Vitamin B 12 Deficiency	VITAMIN D DEFIC. NOS
Coronary arteriosclerosis (SCT 53741008)	Alcohol abuse, unspecified drinking behavior
Male erectile disorder	Morbid Obesity
Undifferentiated schizophrenia (SCT 11143)	Smoker (SCT 77176002)
Cocaine dependence	

**Labs:**

CBC (DIFF&PLT), BLOOD - Partial Panel found

WBC, BLOOD, 12/03/15@0909	4.74	k/cmm	(4.6 - 10.8)
RBC, BLOOD, 12/03/15@0909	4.58	M/cmm	(4.44 - 6.1)
HGB, BLOOD, 12/03/15@0909	13.0	Lg/dL	(13.9 - 18)
HCT, BLOOD, 12/03/15@0909	38.7	L %	(41 - 52)
MCV, BLOOD, 12/03/15@0909	84.5	um3	(80 - 98)
MCH, BLOOD, 12/03/15@0909	28.4	pg	(27 - 33.3)
MCHC, BLOOD, 12/03/15@0909	33.6	g/dL	(31.8 - 37.1)
PLT, BLOOD, 12/03/15@0909	141	k/cmm	(130 - 440)
RDW-SD, BLOOD, 12/03/15@0909	47.5	fL	(39.0 - 52.2)
RDW, BLOOD, 12/03/15@0909	15.6	H%	(11.5 - 14.5)
MPV, BLOOD, 12/03/15@0909	11.2	Hum3	(7.4 - 10.5)
GRAN #, BLOOD, 12/03/15@0909	2.69	k/cmm	(1.8 - 7.8)
LYMPH #, BLOOD, 12/03/15@0909	1.52	k/cmm	(1.2 - 3.6)
MONO #, BLOOD, 12/03/15@0909	0.46	k/cmm	(0.14 - 0.76)
EOSINO #, BLOOD, 12/03/15@0909	0.05	k/cmm	(0.0 - 0.3)
BASO #, BLOOD, 12/03/15@0909	0.02	k/cmm	(0.0 - 0.2)
IMMATURE GRAN.#, BLOOD, 12/03/15@0909	0.00	k/cmm	(0.00 - 0.2)
GRAN %, BLOOD, 12/03/15@0909	56.7	%	(54 - 65)
LYMPH %, BLOOD, 12/03/15@0909	32.1	%	(25 - 33)
MONO %, BLOOD, 12/03/15@0909	9.7	H%	(3 - 7)
EOSINO %, BLOOD, 12/03/15@0909	1.1	%	(0 - 3)
BASO %, BLOOD, 12/03/15@0909	0.4	%	(0 - 2)
IMMATURE GRAN.%, BLOOD, 12/03/15@0909	0.00	%	(0.00 - 2.00)
COMPREHENSIVE METABOLIC PANEL, PLASMA - Partial Panel found			
CREATININE, PLASMA, 04/08/16@0840	0.9	mg/dL	(0.5 - 1.2)
eGFR, PLASMA, 04/08/16@0840	>60	mL/min	( )

CHOL: 154 (08/03/15 08:40)

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)  
 RUMPH, SAMUEL JAMES  
 5641 CALIFORNIA AVENUE  
 APT#715  
 JACKSONVILLE, FLORIDA 32244  
 DOB:03/06/1954

VISTA Electronic Medical Documentation  
 Printed at JACKSONVILLE 1 VA CLINIC

# Progress Notes

Printed On Oct 24, 2016

Reports sleeping 8hrs, broken sleep, energy & concentration are fair, appetite & wt are stable. Denies current mania, hypomania, depression, psychosis, ah, vh, not responding to internal stimuli. Denies SI, HI, AH OR VH.

Reports taking Seroquel 100mg hs and Tegretol 200mg BID.

He only smokes 3-4 cigarettes per day, smoked on & off for 12 years. Drinks only sporadically 3-4 times per month, 1-2 drinks socially. Denies cocaine since 2013, last MJ was yesterday for anxiety & stress.

PAST PSYCHIATRIC HOSPITALIZATIONS: Numerous hospitalization (see HPI)

PAST PSYCHIATRIC MEDICATIONS: Prozac, Depakote, Zoloft, Trazodone, Zyprexa

## PRIOR HISTORY:

Pt of Dr. Brockunier ( 1995-2013 ), admitted to GNV x 7 times, last was 2013 as below. Seen Dr. Rowan, Dr. Owusu, ARNP Ashley Navarro also & most recent DX:

DATE OF ADMISSION: May 1, 2013

DATE OF DISCHARGE: May 8, 2013

ATTENDING PHYSICIAN: Rankupalli

RESIDENT PHYSICIAN: Rankupalli

## ADMISSION DIAGNOSIS:

Axis I: Mood NOS, polysubstance abuse vs dep (cocaine, MJ, etoh? by hx)

Axis II: e/f Cluster B traits

Axis III: Aneurysm Artery Iliac, cad, osa

Axis IV: limited support, financial stressors, relationship conflict

Axis V: 30

## DISCHARGE DIAGNOSIS:

Axis I: Mood NOS, polysubstance abuse vs dep (cocaine, MJ, etoh by hx)

Axis II: Cluster B traits

Axis III: Aneurysm Artery Iliac, cad, osa

Axis IV: limited support, financial stressors, relationship conflict

Axis V: 51

## PER DR. OWUSU ( EXCERPTS):

LIFE THREATENING EXPERIENCES:  NONE  MST  PTSD  OTHER

PAST PSYCHIATRIC: Records show several VA admissions between 1995 and 2013. They were mostly for depression suicidal ideation and hallucinations. The auditory hallucinations were never prominent. Discharge diagnosis included Cocaine Abuse, cocaine intoxication, Major Depression, Polysubstance dependence and Adjustment disorder. Other diagnosis reported in his records include Schizophrenia and Bipolar disorder. There was a "suicide attempt" in 1999 and according to that discharge summary, he presented with depression and suicidal ideation and had also fallen off the balcony onto his face the night before. He said he did not know why he went off the balcony, and was not sure if it was a

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