

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

**J. RONI FREUND &
MARY S. MATHEWSON,**

Petitioners,

v.

DENIS MCDONOUGH,
in his capacity as
Secretary of Veterans Affairs,
Respondent.

Vet. App. No. 21-4168

***SOLZE* NOTICE**

This Court has directed that, in all cases before it, the parties are under a duty to notify the Court of developments that could deprive it of jurisdiction or otherwise affect its decision. *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013). This broad duty is continuing and encompasses “any development which *may conceivably affect*” the Court’s decision in a case. *Id.* at 302 (emphasis in *Solze*). When any such development occurs, it is “irrelevant” whether a party believes it *would* affect the Court’s decision because “that [is] not a question within the parties’ power to decide.” *Id.* The undersigned counsel understand this duty to apply to developments that may conceivably affect any Court decision, whether as to a procedural or a merits matter.

On September 14, 2022, Mark Freund moved to substitute in for J. Roni Freund as a Petitioner in this case. He apprised the Court that he also had applied with the Department of Veterans Affairs (“VA”) to substitute in for Ms. Freund for the purposes of processing to completion her claims that were non-final when she died. *See* Mot. to Substitute Pet’r, at 1. The Secretary initially took no position on the motion to substitute, reserving the right to file

a written response. *See id.* On September 19, 2022, the Court ordered the Secretary to respond to the motion to substitute by the end of September 28, 2022.

Mark Freund respectfully submits this *Solze* Notice to apprise the Court that, on September 22, 2022, VA granted his application to substitute in for Ms. Freund for the agency-level proceedings. This Notice's **Exhibit** is a copy of VA's letter notifying him of the grant of substitution.

Dated: September 22, 2022

Respectfully submitted,

/s/ John D. Niles

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Counsel for Petitioners

Exhibit



DEPARTMENT OF VETERANS AFFAIRS

September 22, 2022

MARK FREUND
4307 PACES STATION CLOSE
ATLANTA, GA 30339

In Reply Refer To: 397/SA

File Number: [REDACTED]
J R Freund

Dear Mr. Freund:

We made a decision on your request for substitution received September 8, 2022.

Every effort was made in considering your request. This notification tells you what we decided, how we made our decision and what evidence we used to make our decision. We have also included information on what to do if you disagree with our decision and who to contact if you have questions or need assistance.

What We Decided

We have granted your request for substitution for the purposes of processing the Veteran's pending appeal to completion.

Certain individuals have the right to obtain the accrued benefits that were due and payable to the Veteran at the time of the Veteran's death. As a substitute claimant, you have been found entitled to continue a claim or appeal on behalf of the deceased claimant for purposes of processing the claim or appeal to completion. Please note, the right to be a substitute claimant does not itself grant entitlement to payment of benefits.

- 1) We have not received your formal claim for accrued benefits. **Please complete the enclosed VA Form 21P-601, *Application for Accrued Amounts Due a Deceased Beneficiary*, and return it to us.** You have until March 31, 2023, to timely file a claim for accrued benefits.

Favorable Finding(s) applicable to the decision on your claim for benefits are as follows:

- You have been recognized as a substitute claimant.

This recognition of your request for substitution allows you to submit additional evidence in support of the previously pending appeal to determine your entitlement to accrued benefits.

The right to substitute may be waived by submitting the request in writing. We have enclosed VA Form 21-10210, *Lay/Witness Statement*, for this purpose. If the right to substitute is waived, VA will still render a decision on the accrued claim, if applicable, but based only on the evidence contained in the claims folder at the time of the original appellant's death.

File Number: [REDACTED]

J R Freund

Evidence Used to Decide Your Claim

Received August 23, 2022:

- VA 21-22 Appointment of Veterans Serv. Org. as Claimant Rep
- Legal Will
- Funeral Bill
- VA 21-0847 - Request for Substitution of Claimant Upon Death of Claimant
- Trust Documentation
- Agent Fee Agreement
- VA 21-534EZ Application for Dependency and Indemnity Compensation or Death Pension by a Surviving Spouse or Child
- Death Certificate

Who Is Eligible For Consideration To Be A Substitute Claimant

Persons eligible for substitution will include "a living person who would be eligible to receive accrued benefits due to the claimant." An accrued benefit is any money we owe a Veteran at the time of death. Accrued benefits are payable to the surviving spouse or qualified children, under 18 years of age (23 years of age if in school), of the Veteran.

In all other cases, only so much of the accrued benefit may be paid as may be necessary to reimburse the person who bore the expense of last sickness or burial based upon receipts presented.

Benefits to Which Substitution Applies

Substitution applies to the same benefits for which accrued benefits are payable, such as recurring monetary benefits (other than insurance and servicemember's indemnity) like compensation, pension, DIC, and Chapter 18 benefits.

Limits to Substitution

If a substitute claimant dies while the appeal is still pending and there is no next preferred member of a subordinate class, then there is no longer an opportunity for substitution on that claim.

You Can Submit Evidence

A substitute claimant, however, may submit additional evidence in support of the appeal. Similarly, VA is responsible for obtaining any additional evidence required and addressing notice or due process defects in the same manner as if the original claimant were still alive.

File Number: [REDACTED]

J R Freund

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you have one year from the date of this letter to select a review option in order to protect your initial filing date for effective date purposes. You must file your request on the required application form for the review option desired. The table below represents the review options and their respective required application form.

| Review Option | Required Application Form |
|---|---|
| Supplemental Claim | VA Form 20-0995, Decision Review Request: Supplemental Claim |
| Higher-Level Review | VA Form 20-0996, Decision Review Request: Higher-Level Review |
| Appeal to the Board of Veterans' Appeals | VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) |

The enclosed VA Form 20-0998, Your Rights to Seek Further Review of Our Decision, explains your options in greater detail and provides instructions on how to request further review. You may download a copy of any of the required application forms noted above by visiting www.va.gov/vaforms/ or you may contact us by telephone at 1-800-827-1000 and we will mail you any form you need.

What Is VA.gov?

VA.gov provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the VA.gov website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contract and direct deposit information and view payment history
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in VA.gov is easy. Just visit www.va.gov for more information. If you submit a claim in the future, consider filing through VA.gov. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

File Number: [REDACTED]

J R Freund

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

| If you | Here is what to do. |
|------------------|--|
| Telephone | Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711. |
| Use the Internet | Send electronic inquiries through the Internet at https://iris.custhelp.va.gov . |
| Write | VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> . |

In all cases, be sure to refer to your VA file number [REDACTED].

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We sent a copy of this letter to your representative, John D. Niles, Esq., whom you can also contact if you have questions or need assistance.

Sincerely yours,

Director
VA Decision Review Operations Center

Enclosures: VA Form 20-0998
 VA Form 21-601
 Legal Summary – Accrued Benefits
 Where to Send Your Written Correspondence

cc: John D. Niles, Esq.
 P.O. Box 2099
 Topeka, KS 66601