DEPARTMENT OF VETERANS AFFAIRS
Board of Veterans' Appeals
Washington DC 20001

In Reply Refer To: O1C2
[redacted]
DRIGHT, Preston J.

Preston J. Dright
619 Williams Street
Donaldsonville, LA 70346

MAY 06 2016

Dear Mr. Dright:

This letter responds to your Motion for Reconsideration of the Board of Veterans' Appeals (Board) decision of January 15, 2015. The Motion was received at the Board on March 7, 2016. I have been delegated the authority to rule on the Motion. *See* 38 C.F.R. § 20.102(a).

A Board decision is final unless the Board's Chairman, or his delegate, orders reconsideration to correct an obvious error in the record. 38 U.S.C. §§ 7103, 7104; 38 C.F.R. §§ 20.1000, 20.1001. Under 38 C.F.R. § 20.1000, the discretion of the Chairman or his delegate to grant reconsideration of an appellate decision is limited to the following grounds: (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. You have alleged, in essence, that the Board decision contains an obvious error of fact or law under 38 C.F.R. § 20.1000(a).

The Chairman, or his delegate, will order reconsideration of an appellate decision upon the ground of "obvious error of fact or law" only when it is shown that the Board committed an error in its decision which, if corrected, would change the outcome of the appeal. Obvious (or clear and unmistakable) error is a very specific and rare kind of error. It is the kind of error of fact or law that, when called to the attention of adjudicators, compels the conclusion, with which reasonable minds could not differ, that the result would have been manifestly different but for the error. Mere allegations that previous adjudicators improperly weighed and evaluated the evidence are inadequate to meet the standard of "obvious error," as are broad allegations of "failure to follow the regulations" or "failure to give due process," or any other general, non-specific claim of "error." *See Fugo v. Brown*, 6 Vet. App. 40, 44 (1993). The alleged error(s) of fact or law must be described with some specificity and persuasive reasons must be given as to why the result would have been manifestly different but for the alleged error. *Id*. Moreover, reconsideration will not be granted on the basis of an allegation of factual error where there is a *plausible basis* in the record for the factual determinations in the Board decision at issue. This includes situations in which a Board decision reflects the reasonable

judgment of one or more of its Veterans Law Judges regarding the credibility, probative value, and weight of the evidence.

In the January 15, 2015, decision, the Board denied service connection for left lower extremity disability, right lower extremity disability, and lumbar spine disability. In your Motion for Reconsideration, you address your lower extremities only. Therefore, this ruling relates only to the bilateral lower extremity disabilities.

In your Motion, you state that the Board wrongfully concluded that your in-service bilateral leg pain had resolved while still in service. Specifically, you state that you attempted to seek treatment for your bilateral leg pain but that medical personnel were dismissive of your concerns. Therefore, you allege that your bilateral leg pain did not, in fact, resolve, and the Board's conclusion was made in error. In the decision, the Board pointed out that at service discharge, clinical evaluations of the vascular system, lower extremities, and neurologic system were normal and that you did not report bilateral leg pain at that time. The Report of Medical History that you completed at service discharge shows that you specifically denied "cramps in your legs." The fact that a medical professional reported normal findings pertaining to the vascular system, lower extremities, and neurologic system and that you denied having cramps in your legs at service discharge establishes a plausible basis in the record for the Board to conclude that the bilateral leg pain had resolved during service. You also feel that the July 2012 VA examination was not thorough because the examiner did not obtain x-rays or a magnetic resonance imaging, and therefore the medical conclusions reached were speculative. The examiner stated that he reviewed your VA treatment records, which records contain the diagnoses that the examiner addressed in his medical conclusions, and which diagnoses were based on testing that VA provided at prior VA medical appointments. In other words, it does not appear that the July 2012 VA examiner needed to conduct studies, when such studies had previously been completed at VA and which results were in your record. Therefore, the Board's conclusion that this examination report was adequate has a plausible basis in the record.

In reading through your motion, it appears that you disagree with how the Board weighed the evidence in denying the claims for service connection for left lower extremity and right lower extremity disabilities. As stated above, allegations that the Veterans Law Judge decided the issue incorrectly or improperly weighed the evidence do not meet the standard of "obvious error of fact or law" to warrant reconsideration of the decision. I have reviewed the facts of the case and the January 2015 Board decision and find that the decision contains findings of fact that are supported by plausible reasons and bases. For these reasons, your Motion for Reconsideration is denied.

If you would like to file a new claim, or a claim to reopen, you may submit that claim and any pertinent evidence to your local VA regional office.

DRIGHT, Preston J.

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I hope this information is helpful to you. Should you have any questions concerning this letter, you may contact the Board's Status Line at 1-800-923-8387.

Sincerely yours,

David C. Spickler
Deputy Vice Chairman
Board of Veterans' Appeals

Enclosure:
Your Appellate Rights Relating to Our Denial of Your Motion for Reconsideration.

cc: Disabled American Veterans
cc: VARO, Hartford, Connecticut

Department of Veterans Affairs

YOUR APPELLATE RIGHTS RELATING TO OUR DENIAL OF YOUR MOTION FOR RECONSIDERATION

The attached letter informs you that the Board of Veterans' Appeals (BVA or Board) has denied your motion for reconsideration of one or more of its decisions. If you are satisfied with the outcome, you do not need to do anything. However, if you are not satisfied with the outcome, you have the following options:

- Appeal the Board decision that you asked the Board to reconsider to the United States Court of Appeals for Veterans Claims (Court)
- Appeal the denial of your motion for reconsideration of that Board decision to the Court, but only under certain circumstances.

How long do I have to start my appeal of the Board decision to the Court? You have **120 days** from the date the Board decision was mailed to you (as shown on the first page of the decision) to file a Notice of Appeal with the Court. However, if you filed your motion for reconsideration within this 120-day period, you now have an additional 120 days from the date of mailing of the enclosed letter denying that motion within which to file a Notice of Appeal with the Court. *Rosler v. Derwinski*, 1 Vet. App. 241 (1991). If you filed more than one motion for reconsideration of that same Board decision, you have an additional 120 days from the date of mailing of the enclosed letter ***only if*** the Board received each of your motions within 120 days after it mailed its decision or its denial of the prior reconsideration motion. *Murillo v. Brown*, 10 Vet. App. 108 (1997). It is your responsibility to make sure that your appeal to the Court is filed on time. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

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 website on the Internet at: http://www.uscourts.cavc.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.

Under what circumstances may I appeal the denial of my motion for reconsideration to the Court? You may appeal the Board's denial of your motion for reconsideration to the Court ***only*** if you filed a timely appeal of the Board decision that you asked the Board to reconsider. *Engelke v. Gober*, 10 Vet. App. 396 (1997).

Remember, you must file your Notice of Appeal within 120 days of the date of mailing of the enclosed letter. Send your Notice of Appeal to the address above for the Court.

Can someone represent me in my appeal to the Court? If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (855) 446-9678.