

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

|                                |   |                       |
|--------------------------------|---|-----------------------|
| FELIX PAUL PHILLIPS,           | ) |                       |
| Appellant,                     | ) |                       |
|                                | ) |                       |
| vs.                            | ) | Vet. App. No. 22-2575 |
|                                | ) |                       |
| DENIS MCDONOUGH,               | ) |                       |
| Secretary of Veterans Affairs, | ) |                       |
| Appellee.                      | ) |                       |

**APPELLANT’S NOTICE PURSUANT TO *SOLZE V. SHINSEKI***

In accordance with the “duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision,” *Solze v. Shinseki*, 26 Vet.App. 299, 301 (2013), counsel for Appellant advises the Court of the following development.

The Board granted service connection for a skin rash disability, to include epidermal cysts, carbuncles, and tinea pedis in a July 25, 2023 decision. Exhibit A. The Regional Office implemented the Board’s decision on August 15, 2023 and granted an effective date of August 2002 for a 60 percent rating based on all the Veteran’s service-connected skin disabilities. Exhibit B, p. 6-7. The Veteran has requested higher level review of the RO’s August 2023 denial of a higher rating, to include TDIU, from August 2002. Exhibit C.

Wherefore, the Appellant notifies the Court of the foregoing development.

Respectfully submitted,

/s/ Amy F. Odom

Amy F. Odom

Chisholm Chisholm & Kilpatrick Ltd

321 S Main St #200

Providence, RI 02903

(401) 331-6300

(401) 421-3185

Counsel for Appellant

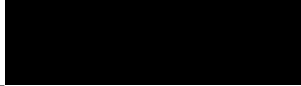
**EXHIBIT A**



## **BOARD OF VETERANS' APPEALS**

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**  
Represented by  
Virginia A. Girard-Brady, Attorney

  
Docket No. 230613-354164  
**Advanced on the Docket**

DATE: July 25, 2023

### **ORDER**

Entitlement to service connection for a skin rash disability, to include epidermal cysts, carbuncles, and tinea pedis, is granted.


### **REMANDED**

Entitlement to service connection for a skin rash disability, to include seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, and nodular elastosis, is remanded.

### **FINDING OF FACT**

The persuasive weight of the evidence supports a finding that the Veteran's epidermal cysts, carbuncles, and tinea pedis disabilities are proximately due to his service-connected acne vulgaris and onychomycosis disabilities.

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**

  
Docket No. 230613-354164  
**Advanced on the Docket**

### **CONCLUSION OF LAW**

The criteria for service connection on a secondary basis for a skin rash disability, to include epidermal cysts, carbuncles, and tinea pedis, have been met. 38 U.S.C. §§ 1110, 5107; 38 C.F.R. §§ 3.303, 3.310.

### **REASONS AND BASES FOR FINDING AND CONCLUSION**

The Veteran served on active duty from July 1966 to July 1968.

This appeal has been advanced on the Board of Veterans' Appeals' (Board) docket pursuant to 38 U.S.C. § 7107(b); 38 C.F.R. § 20.800(c).

This matter is on appeal from a May 2023 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO) which denied the claims based on the evidence of record at the time of the decision. The Veteran filed a VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (NOD) in June 2023 in which the Veteran elected the Direct Review option. Accordingly, the Board may only consider the evidence of record at the time of the agency of original jurisdiction (AOJ) decision on appeal, which is dated May 30, 2023. 38 C.F.R. § 20.301. If evidence was associated with the claims file during a period of time when additional evidence was not allowed, the Board has not considered it in its decision. *Id.*

As an initial matter, the Board notes that a claim of service connection encompasses all pertinent symptomatology, regardless of how that symptomatology is diagnosed. *See Clemons v. Shinseki*, 23 Vet. App. 1, 5, 9 (2009); *see also Grimes v. McDonough*, 34 Vet. App. 84 (2021) (holding that "a claim for service connection may encompass a related condition that is initially referenced by the claimant but not diagnosed until later in the appeal stream"). Here, although the Veteran's claims were variously characterized as service connection for a skin rash in the groin area, arms, ears, head, and legs, the medical evidence shows that the Veteran may have diagnoses of, and may have received

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**[REDACTED]  
Docket No. 230613-354164  
**Advanced on the Docket**

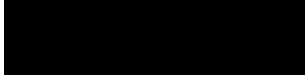
treatment for, different skin rash disabilities including seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, nodular elastosis, epidermal cysts, carbuncles, and tinea pedis. In light of *Clemons*, the Board has recharacterized the issues on appeal as reflected above. *Id.*

**Entitlement to service connection for a skin rash disability, to include epidermal cysts, carbuncles, and tinea pedis, is granted.**

The Veteran contends that he is entitled to service connection for his skin rash disabilities. Specifically, the Veteran asserts that his epidermal cysts, carbuncles, and tinea pedis disabilities are proximately due to his service-connected acne vulgaris and onychomycosis disabilities. The Board has carefully reviewed the evidence of record and, resolving reasonable doubt in the Veteran's favor, finds the Veteran's epidermal cyst, carbuncle, and tinea pedis disabilities are at least as likely as not associated with the Veteran's service-connected acne vulgaris and onychomycosis disabilities. *See* 38 C.F.R. § 3.303. The reasons follow.

In general, under the relevant laws and regulations, service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131. Generally, the evidence must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004); 38 U.S.C. § 5103(a).

Service connection may be granted for a disability which is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310(a). A claim for secondary service connection generally requires competent evidence of a causal relationship between the service-connected disability and the nonservice-connected disease or injury. *Jones v. Brown*, 7 Vet. App. 134 (1994). There must be competent evidence of a current disability; evidence of a service-connected disability; and competent evidence of a nexus between the service-connected disability and the current disability. *See Wallin v. West*, 11 Vet. App. 509, 512 (1998).

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**  
Docket No. 230613-354164  
**Advanced on the Docket**

As will be addressed below, the Board finds that service connection for the Veteran's epidermal cyst, carbuncle, and tinea pedis disabilities are warranted on a secondary basis so the Board will not address direct service connection further herein.

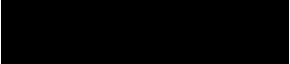
As to secondary service connection, various VA treatment notes indicate the Veteran was diagnosed with, and received treatment for, epidermal cysts and carbuncles. *See* June 2020 CAPRI; February 2020 CAPRI; January 2011 CAPRI. In addition, the Veteran was afforded VA examinations in January 2022 and September 2021 to assess the nature and etiology of any skin rash disabilities. The Veteran's diagnosis of tinea pedis was confirmed in each of these examinations. Together, these diagnoses were made during the pendency of this appeal and therefore the "current disability" element of secondary service connection has been met.

In addition, the Veteran is service connected for acne vulgaris and onychomycosis disabilities. Thus, the second element of secondary service connection has been met.

Therefore, the remaining question is whether there is a medical nexus demonstrating that the Veteran's epidermal cyst, carbuncle, and tinea pedis disabilities were either caused by or aggravated by the Veteran's service-connected acne vulgaris and onychomycosis disabilities. As to this matter, the evidence weighs in favor of a finding of nexus.

The Veteran was afforded VA examinations to assess the nature and severity of his epidermal cyst, carbuncle, and tinea pedis disabilities in September 2021, January 2022, and May 2023. Notably, neither the January 2022 nor the May 2023 VA examiners offered an opinion as to whether the Veteran's epidermal cyst, carbuncle, and tinea pedis disabilities were proximately related to his acne vulgaris and onychomycosis disabilities. The January 2021 and May 2023 VA examinations therefore have no probative value as to those matters. However, in the accompanying medical opinions, the September 2021 VA examiner opined that the Veteran's "recurrent epidermal inclusion cysts are likely the result of acne-related skin irritation causing epithelial implantation below the skin." The VA examiner

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**

  
Docket No. 230613-354164  
**Advanced on the Docket**

then explained that “[a]cne-related skin irritation/disruption can lead to infection and boil development (carbuncle)” and opined that the Veteran’s “past resolved carbuncles were likely cause [sic] by the acne.” Finally, the VA examiner stated the Veteran’s “tinea pedis was at least as likely as not cause [sic] by onychomycosis.”

After careful consideration, the Board finds that the persuasive weight of the evidence of record is in support of a nexus between the Veteran’s epidermal cyst, carbuncle, and tinea pedis disabilities and his service-connected acne vulgaris and onychomycosis disabilities. The VA examiner concluded in the September 2021 medical opinion that the Veteran’s epidermal cysts were likely the result of acne, for which the Veteran is service-connected. In addition, the VA examiner opined that the acne also likely caused the development of the Veteran’s carbuncles. Finally, the VA examiner reported that the Veteran’s tinea pedis was at least as likely as not caused by the Veteran’s onychomycosis, for which the Veteran is service-connected. This opinion was supported by rationale and a review of the Veteran’s medical records. Notably, there is no probative evidence of record contrary to this favorable opinion.

In light of the positive September 2021 medical opinion and lack of conflicting probative evidence, the Board finds that the evidence supports that the Veteran’s epidermal cyst, carbuncle, and tinea pedis disabilities are related to his service-connected acne vulgaris and onychomycosis disabilities. 38 U.S.C. § 1110; 38 C.F.R. § 3.303, 3.310. The benefit of the doubt will be conferred in the Veteran’s favor, and the service-connection claim for sleep apnea is thereby granted. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102; *Gilbert v. Derwinski*, 1 Vet. App. 49, 53-56 (1990).

### **REASONS FOR REMAND**

**Entitlement to service connection for a skin disability, to include seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, and nodular elastosis, is remanded.**




IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**[REDACTED]  
Docket No. 230613-354164  
**Advanced on the Docket**

The Veteran contends that he is entitled to service connection for his skin rash disabilities. Specifically, the Veteran asserted that his various skin rash disabilities were related to his exposure to herbicide agents while in service. Upon careful review of the record, the Board finds that the claim must be remanded. The Board sincerely regrets the additional delay caused by this remand but wishes to assure the Veteran that it is necessary for a full and fair adjudication of his claim.

Under the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), effective from August 10, 2022, VA is required to provide a disability examination and medical opinion for certain non-presumptive conditions involving toxic exposure risk activity (TERA). For such claims, VA is required to provide a disability examination and medical opinion when the Veteran submits a claim for compensation, has evidence of a disability, had evidence of participation in a TERA and such evidence is not sufficient to establish service connection for the disability. A Veteran can claim participation in a TERA explicitly or implicitly through service in a location presumed associated with toxic exposure, or records showing participation in a TERA; or, if VA has conceded exposure in a prior claim, or the file has a claim attributable to toxic exposure.

The Veteran was diagnosed with seborrheic dermatitis in a January 2022 VA examination and a September 2021 VA examination. In addition, various VA treatment notes indicate the Veteran was diagnosed with, and treated for, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, and nodular elastosis. *See* June 2020 CAPRI; February 2020 CAPRI; January 2011 CAPRI. In a May 2023 VA examination, the Veteran was also diagnosed with tinea corporis. Diagnoses for tinea cruris were recorded in a January 2022 VA examination, a September 2021 VA examination, as well as in various treatment notes. *See* January 2011 CAPRI. In an April 2012 VA examination, the Veteran was diagnosed with intertrigo. These diagnoses were made and continued during the pendency of this appeal and therefore the Veteran has a current disability.

The Board notes that during the pendency of this appeal the Veteran has also been diagnosed with the skin rash disabilities onychomycosis, acne vulgaris, and

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**  
Docket No. 230613-354164  
**Advanced on the Docket**


dyshidrotic eczema in previous VA examinations and treatment notes. However, the Veteran was granted service-connection for those disabilities in a May 2018 rating decision. Accordingly, the issues of service-connection for onychomycosis, acne vulgaris, and dyshidrotic eczema are not before the Board at this time.

The Veteran asserts that he was exposed to Agent Orange, an herbicide agent, while in active service. Specifically, the Veteran contends that he was stationed in Thailand with numerous temporary duty assignment in the Republic of Vietnam such that exposure to herbicide agents should be presumed. Moreover, VA has previously conceded herbicide agent exposure and therefore participation in a TERA. *See* April 2018 BVA Decision.

The Veteran has explicitly claimed that his diagnosed skin disabilities were the result of exposure to herbicide agents while in service. *See* August 2002 VA 21-438 Statement In Support of Claim; September 2003 NOD; July 2010 NOD. The current evidence is not sufficient to establish service connection for these disabilities. Thus, TERA specific examinations are required. On remand, VA should obtain TERA specific examinations to address the Veteran's claims for service connection with full assessment of the claims file, to include the Veteran's lay statements, as well as his complete medical history.

The matters are REMANDED for the following action:

1. Schedule the Veteran for a VA examination with the appropriate medical examiner to determine the nature and etiology of his seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, and nodular elastosis. Following a review of the complete claims file, including, but not limited to the evidence discussed above, the examiner is asked to opine whether it is at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) that any current skin rash disability had its onset during active service or is otherwise related to the Veteran's


IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**  
Docket No. 230613-354164  
**Advanced on the Docket**

period of active duty from July 1966 to July 1968. In so doing, the examiner must address the Veteran's diagnoses and treatment for seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, and nodular elastosis. *See* May 2023 C&P Exam p 2; January 2022 C&P Exam p 3; December 2021 C&P Exam p 3; September 2021 C&P Exam p 5; June 2020 CAPRI pp 5, 17-18, 21-22, 27, 29, 38, 42, 47, 51, 66, 73, 82, 89, 93, 99, 194, 197, 213; February 2020 CAPRI p 1, 3, 10, 18, 21, 27, 34; January 2011 CAPRI p 8-9, 35, 37, 66, 82, 99, 106-107; February 2005 VA Examination p 1. Please explain upon what facts, medical principles, and/or medical literature the opinion is based. All tests and studies deemed necessary by the examiner should be performed.

In providing the opinion the examiner is advised that under the PACT Act, as noted above, the Veteran has raised chemical exposure as the cause of his seborrheic dermatitis, comedonal acne, intermittent folliculitis, xerosis, lichenoid eruption, atopic dermatitis, tinea corporis, tinea cruris, intertrigo, and nodular elastosis disabilities and the examiner must therefore consider the total potential exposure through all applicable military deployments and service (to include in garrison and MOS specific risks) and conduct a synergistic and combined effect analysis of all toxic exposure risk activities that may provide service connection for the claimed disabilities.

The examiner is further advised that the Veteran was competent to report his symptoms and history, and such reports must be considered. If the examiner rejects the

IN THE APPEAL OF  
**FELIX PAUL PHILLIPS**

  
Docket No. 230613-354164  
**Advanced on the Docket**

Veteran's reports, he or she must provide a reason for doing so.

Rationale for all requested opinions shall be provided. If the examiner cannot provide an opinion without resorting to mere speculation, he or she shall provide a complete explanation stating why this is so. In so doing, the examiner shall explain whether the inability to provide a more definitive opinion is the result of a need for additional information or that he or she has exhausted the limits of current medical knowledge in providing an answer to that particular question.



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A. S. CARACCIOLO  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

Doyle, Stephan C.

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*

**EXHIBIT B**



**DEPARTMENT OF VETERANS AFFAIRS**  
**Department of Veterans Affairs**  
**Decision Review Operations Center**  
**(DROC)**  
**St. Petersburg Regional Office**

**FELIX PHILLIPS**

**VA File Number**



**Represented By:**  
**VIRGINIA A GIRARD-BRADY**  
**Rating Decision**  
**08/15/2023**

**INTRODUCTION**

The records reflect that you are a Veteran of the Vietnam Era. You served in the Army from July 11, 1966 to July 12, 1968. The Board of Veterans Appeals made their decision on your appeal on July 25, 2023. We have implemented their decision based on the evidence listed below.

**DECISION**

1. A clear and unmistakable error is found in the evaluation assigned for onychomycosis with dyshidrotic eczema, acne vulgaris which is currently 10 percent disabling, and an increased evaluation of 60 percent is assigned effective August 28, 2002.
2. Evaluation for onychomycosis with dyshidrotic eczema, acne vulgaris epidermal cysts, carbuncles and tinea pedis currently evaluated at 60 percent disabling, is confirmed and continued.

**EVIDENCE**



FELIX PHILLIPS

2 of 9

- VA Form 21-4138, Statement in Support of Claim, received November 25, 2009
- Third Party Correspondence, received November 25, 2009
- Photographs, received January 21, 2010
- Lay Statement (or) Statement Received in Support of Claim, received January 25, 2010
- Private Treatment Records, Massachusetts General Hospital, for the period of September 14-19, 1978, received January 25, 2010
- Rating Decision, dated March 1, 2010
- Notification Letter, dated March 4, 2010
- VA Form 21-0958, Notice of Disagreement, received July 16, 2010
- VA Form 21-4138, Statement in Support of Claim, received October 22, 2010
- VA Form 646, Statement of Accredited Representative in Appealed Case, received March 11, 2011
- Board of Veterans' Appeals Decision, dated April 5, 2012
- VA Form 21-4138, Statement in Support of Claim, received August 28, 2002, May 8, 2003, May 29, 2003
- Rating Decision, dated August 1, 2003
- Notification Letter, dated August 4, 2003
- Notice of Disagreement, received September 17, 2003
- Statement of Case, dated November 30, 2004
- VA Form 9, Appeal to Board of Veterans' Appeals, received January 5, 2005
- Lay Statement (or) Statement Received in Support of Claim, Effie M. Phillips, received February 3, 2005
- Correspondence, received February 3, 2005
- Disability Benefit Questionnaire, QTC, conducted February 3, 2005
- VA Examination, Robert Soule, M.D., conducted February 17, 2005
- Private Treatment Records, Massachusetts General Hospital, received January 25, 2010
- Correspondence, received January 25, 2010
- Rating Decision, dated March 1, 2010
- Notification Letter, dated March 4, 2010
- VA Form 21-0958, Notice of Disagreement, received July 16, 2010
- Statement of Case, dated January 21, 2011
- Supplemental Statement of Case, dated January 21, 2011
- Personal Hearing, dated May 3, 2011
- Board of Veterans' Appeals Decision, dated April 5, 2012
- Supplemental Statement of Case, dated November 8, 2012, November 9, 2012
- Board of Veterans' Appeals Decision, dated March 15, 2013
- United States Court of Appeals for Veterans Claims, dated April 12, 2013
- Rating Decision, dated April 18, 2013
- Notification Letter, dated April 18, 2013
- VA Form 21-0958, Notice of Disagreement, received August 8, 2013
- United States Court of Appeals for Veterans Claims, dated January 31, 2014, February 4, 2014
- Board of Veterans' Appeals Decision, dated April 23, 2014
- Disability Benefit Questionnaire, Houston VAMC, conducted July 11, 2016
- Supplemental Statement of Case, conducted July 30, 2016
- VA Examination, Medical Opinion, conducted November 2, 2017
- Board of Veterans' Appeals Decision, dated April 17, 2018
- Rating Decision, dated May 18, 2018



FELIX PHILLIPS

3 of 9

- Notification Letter, dated August 7, 2018
- VA Form 21-0958, Notice of Disagreement, received September 28, 2018
- VA Form 21-4138, Statement in Support of Claim, received September 28, 2018
- Statement of Case, dated May 20, 2019
- VA Form 20-0996, Decision Review Request - Higher Level Review, received June 7, 2019
- Rating Decision, dated July 25, 2019
- Disability Benefit Questionnaire, QTC, conducted September 5, 2019
- Rating Decision, dated April 8, 2020
- Notification Letter, dated April 10, 2020
- VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), received May 7, 2020
- Rating Decision, dated May 12, 2020
- Notification Letter, dated May 26, 2020
- VA Form 20-0996, Decision Review Request - Higher Level Review, received December 7, 2020
- Board of Veterans' Appeals Decision, dated January 28, 2021
- Disability Benefit Questionnaire, QTC, conducted April 13, 2021
- Rating Decision, dated October 25, 2021
- Notification Letter, dated October 26, 2021
- VA Form 20-0996, Decision Review Request - Higher Level Review, received November 4, 2021, November 19, 2021
- Rating Decision, dated December 7, 2021
- Notification Letter, dated December 10, 2021
- Social Security Administration Records, received December 14, 2021
- Disability Benefit Questionnaire, VES, conducted December 22, 2021
- Disability Benefit Questionnaire, QTC, conducted December 30, 2021, December 30, 2021
- Rating Decision, dated January 12, 2022
- Notification Letter, dated January 14, 2022
- Rating Decision, dated May 26, 2022
- Notification Letter, dated May 31, 2022
- VA Form 20-0996, Decision Review Request - Higher Level Review, received June 8, 2022
- Rating Decision, dated July 27, 2022
- Notification Letter, dated August 1, 2022
- Disability Benefit Questionnaire, QTC, conducted April 12, 2023
- Rating Decision, dated May 30, 2023
- Notification Letter, dated May 31, 2023
- VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), received June 13, 2023
- Board of Veterans' Appeals Decision, dated July 25, 2023
- Service Treatment Records, for the period of July 11, 1966 to July 12, 1968, received March 11, 2011, June 4, 2016
- Service Personnel Records, for the period of July 11, 1966 to July 12, 1968, received September 4, 1991, September 20, 1993, February 3, 2005
- DD Form 214, Certificate of Release or Discharge from Active Duty, for the period of July 11, 1966 to July 12, 1968, received June 4, 2016
- VAMC (Veterans Affairs Medical Center) treatment records, Houston VAMC, for the period of August 10, 1999 to August 4, 2023, received August 4, 2023





FELIX PHILLIPS

4 of 9

- Third Party Correspondence, Power of Attorney, received November 24, 2021

### **REASONS FOR DECISION**

#### **1. Whether the evaluation assigned for evaluation of onychomycosis with dyshidrotic eczema, acne vulgaris currently evaluated as 10 percent disabling was clearly and unmistakably erroneous**

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. (38 CFR 3.105)

Rating decision dated May 18, 2018, committed a clear and unmistakable error in incorrectly assigning a non-compensable for your service-connected onychomycosis with dyshidrotic eczema, acne vulgaris effective August 28, 2002, and then increased it on November 18, 2016, to 10 percent under 38 CFR 4.118 Diagnostic code 7806.

Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned. 38 C.F.R. 4.7. All benefit of the doubt will be resolved in the Veteran's favor. 38 C.F.R. 4.3.

As such, a Veteran's entire history is to be considered when making disability evaluations. 38 C.F.R. 4.1, and where entitlement to compensation already has been established and an increase in the disability rating is at issue, it is the present level of disability that is of primary concern.

Where the evidence contains factual findings that demonstrate distinct time periods in which the service-connected disability exhibits symptoms that would warrant different evaluations during the appeal, the assignment of staged ratings is appropriate.

However, please note, that Per 38 CFR 4.14, the evaluation of the same disability under different diagnoses is to be avoided. Therefore, your onychomycosis with dyshidrotic eczema, acne vulgaris condition is being evaluated together. (38 CFR 4.14, 38 CFR 4.118).

As such, disability evaluations are determined by the application of the facts presented to VA's Schedule for Rating Disabilities (Rating Schedule) at 38 C.F.R. Part 4. The percentage ratings contained in the Rating Schedule represent, as far as can be practicably determined, the average impairment in earning capacity resulting from diseases and injuries incurred or aggravated during military service and the residual conditions in civilian occupations. 38 U.S.C.A.1155; 38 C.F.R. 4.1.



FELIX PHILLIPS

[REDACTED]  
5 of 9

Essentially, the skin schedule rating criteria has changed on October 23, 2008, August 13, 2018, and November 19, 2018.

Effective October 23, 2008, Under DC 7806:

- A 10 percent rating is assigned for eczema affecting at least 5 percent but less than 20 percent of the entire body or exposed areas or requiring intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of less than 6 weeks during the past 12-month period.
- A 30 percent rating is assigned for eczema affecting from 20 to 40 percent of the entire body or exposed areas or requiring systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of 6 weeks or more, but not constantly, during the past 12-month period.
- A maximum 60 percent rating is assigned under DC 7806 for eczema affecting more than 40 percent of the entire body or exposed areas or requiring constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs during the past 12-month period. Id (Historical 38 CFR 4.118 effective prior to August 13, 2018)

On August 13, 2018, under DC 7806:

- A 10 percent rating is assigned for eczema affecting at least 5 percent but less than 20 percent of the entire body or exposed areas or requiring intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of less than 6 weeks during the past 12-month period.
- A 30 percent rating is assigned for eczema affecting from 20 to 40 percent of the entire body or exposed areas or requiring systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of 6 weeks or more, but not constantly, during the past 12-month period.
- A maximum 60 percent rating is assigned under DC 7806 for eczema affecting more than 40 percent of the entire body or exposed areas or requiring constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs during the past 12-month period. Id (Historical 38 CFR 4.118 effective prior to November 19, 2018)

On November 19, 2018, Under DC 7806:

- A 10 percent rating is assigned for eczema for the following characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body affected; or At least 5 percent, but less than 20 percent, of exposed areas affected; or Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA, or other immunosuppressive drugs required for a total duration of less than 6 weeks over the past 12-month period



FELIX PHILLIPS

[REDACTED]

6 of 9

- A 30 percent rating is assigned for eczema for the following characteristic lesions involving 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected; or Systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA, or other immunosuppressive drugs required for a total duration of 6 weeks or more, but not constantly, over the past 12-month period
- A maximum 60 percent rating is assigned under DC 7806 for eczema for the following Characteristic lesions involving more than 40 percent of the entire body or more than 40 percent of exposed areas affected; or Constant or near-constant systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, psoralen with long-wave ultraviolet-A light (PUVA), or other immunosuppressive drugs required over the past 12-month period.

Based on the evidence of record, we received your VA claim on August 28, 2002. VA treatment record dated August 20, 2001, confirmed a diagnosis of epidermal cyst. VA exam dated February 3, 2005, notes a general history stating rash on arms and legs with exudation, itching crusting, ulcer formation and shedding. VA exam dated February 17, 2005, reports that due to your skin condition you have exudation, ulcer formation, itching, shedding and crusting. The examiner noted that there are signs of skin disease on the hands bilaterally, left greater than the right with exfoliation, crusting, induration of more than six square inches, inflexibility of more than six square inches and abnormal texture. The examiner noted that your skin lesion coverage of the exposed area is 80 percent and relative to the whole body is 4 percent.

As the evidence clearly shows that a 60 percent evaluation is warranted, we have corrected the prior decision and increased your evaluation to 60 percent disabling, effective August 28, 2002, which is the date we received your VA claim. (38 CFR 3.400, 38 CFR 3.2500, 38 CFR 3.155, 38 CFR 4.1)

Please note, that the rating schedule for skin has changed on August 13, 2018, and November 19, 2018. However, a review reflects that a higher evaluation would not be warranted under either historical or current schedular criteria. Therefore, the evaluation regarding your service connected condition of onychomycosis with dyshidrotic eczema, acne vulgaris is confirmed and continued under the historical criteria 38 CFR 4.118. (38 CFR 3.102, 38 CFR 4.1, 38 CFR 4.2, 38 CFR 4.3, 38 CFR 4.6, 38 CFR 4.7)

This is the highest schedular evaluation allowed under the law for dermatitis. (Historical 38 CFR 4.118 effective prior to August 13, 2018, November 19, 2018) 38 CFR 3.951

**2. Evaluation for onychomycosis with dyshidrotic eczema, acne vulgaris epidermal cysts, carbuncles and tinea pedis currently evaluated at 60 percent disabling.**

In accordance with the Board of Veterans' Appeals decision dated July 25, 2023, service connection for a skin rash disability, to include epidermal cysts, carbuncles, and tinea pedis, is granted effective August 28, 2002, which is the date we received your VA claim, and although, you did not specifically mention this condition, service connection was considered as within the scope of your claim for service connection of onychomycosis with dyshidrotic eczema, acne



FELIX PHILLIPS

4  
7 of 9

vulgaris. Please refer to the Board's decision dated July 25, 2023, for the specific reasons and details regarding this decision. (38 CFR 3.102, 38 CFR 4.1, 38 CFR 4.2, 38 CFR 4.3, 38 CFR 4.6, 38 CFR 3.310, 38 CFR 3.155, 38 CFR 3.400, 38 CFR 3.2500)

However, please note, that Per 38 CFR 4.14, the evaluation of the same disability under different diagnoses is to be avoided. Therefore, your epidermal cysts, carbuncles and tinea pedis condition is being evaluated with your onychomycosis with dyshidrotic eczema, acne vulgaris. (38 CFR 4.14, 38 CFR 4.118). disability evaluations are determined by the application of the facts presented to VA's Schedule for Rating Disabilities (Rating Schedule) at 38 C.F.R. Part 4. The percentage ratings contained in the Rating Schedule represent, as far as can be practicably determined, the average impairment in earning capacity resulting from diseases and injuries incurred or aggravated during military service and the residual conditions in civilian occupations. 38 U.S.C.A.1155; 38 C.F.R. 4.1.

Based on the evidence of record, we received your VA claim on August 28, 2002. VA treatment record dated August 20, 2001, confirmed a diagnosis of epidermal cyst. VA exam dated February 3, 2005, confirmed a diagnosis of dyshidrotic eczema, and noted a general history stating rash on arms and legs with exudation, itching crusting, ulcer formation and shedding. VA exam dated February 17, 2005, also confirmed a diagnosis of dyshidrotic eczema with no changes to the diagnosis. The examiner reported that due to your skin condition you have exudation, ulcer formation, itching, shedding and crusting. The examiner noted that there are signs of skin disease on the hands bilaterally, left greater than the right with exfoliation, crusting, induration of more than six square inches, inflexibility of more than six square inches and abnormal texture. The examiner noted that your skin lesion coverage of the exposed area is 80 percent and relative to the whole body is 4 percent.

Exam dated April 18, 2012, notes you complained of blackheads on chest and back with recurrent rashes on groin and buttock, generalized itchiness, painful and itchy and rash. You currently used anti-acne medications and topical creams for your hands. You experience pruritus and occasional pain. Physical exam reported pitted scars on bilateral cheeks and forehead, open comedones on central chest and back, groin and intergluteal cleft, hand, no cutaneous abnormalities.

Exam dated September 28, 2012, July 2016, confirmed a diagnosis of onychomycosis with dyshidrotic eczema, acne vulgaris. The examiner noted topical treatment and reported that your acne vulgaris and onychomycosis exposed area was less than five percent and less than five percent total body area.

Exam dated September 5, 2019, confirmed a diagnosis of exczema and stated topical treatment with less than five percent body exposed and total body area. Examiner noted no rash on legs, ears, head, arms, and groin area.

Exam dated April 13, 2021 confirmed a diagnosis of exczema and tinea cruris, onychomycosis, seborrhea dermatitis, tinea pedis with topical treatment with less than five percent body exposed and total body area, Superficial acne (comedones, papules, pustules) of any extent. However, exam dated December 22, 2021, confirmed a diagnosis of onychomycosis with dyshidrotic



FELIX PHILLIPS

8 of 9

eczema and acne vulgaris, the examiner noted that you use topical cream and your onychomycosis affects your toenails, your eczema affects your hands, feet and extremities, and your acne impacts your back. The examiner noted Deep acne (deep inflamed nodules and pus-filled cyst, Affects body areas other than face and neck.

Exam dated December 30, 2021, confirmed a diagnosis of exczema and tinea cruris, onychomycosis, seborrhea dermatitis, tinea pedis, jock itch with less than five percent body exposed and total body area, with no skin condition regarding your acne. Exam dated April 2023, confirmed a diagnosis of eczema and tinea corporis with topical treatment and no acne skin condition affecting less than five percent to 20 percent of the total body area and exposed area.

Based on the evidence of record assigned a 10 percent evaluation for your onychomycosis with dyshidrotic eczema, acne vulgaris epidermal cysts, carbuncles and tinea pedis based on:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body

However, per 38 CFR 3.951 Preservation of disability ratings, A disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Department of Veterans Affairs will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation. (38 CFR 3.951)

Therefore, the evaluation for onychomycosis with dyshidrotic eczema, acne vulgaris epidermal cysts, carbuncles and tinea pedis currently evaluated at 60 percent disabling, is confirmed and continued.

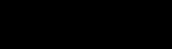
A maximum 60 percent rating is assigned under DC 7806 for eczema affecting more than 40 percent of the entire body or exposed areas or requiring constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs during the past 12-month period. Id (Historical 38 CFR 4.118 effective prior to August 13, 2018)

Please note, that the rating schedule for skin has changed on August 13, 2018, and November 19, 2018. However, a review reflects that a higher evaluation would not be warranted under either historical or current schedular criteria. Therefore, the evaluation regarding your service connected condition of onychomycosis with dyshidrotic eczema, acne vulgaris is confirmed and continued under the historical criteria 38 CFR 4.118. (38 CFR 3.102, 38 CFR 4.1, 38 CFR 4.2, 38 CFR 4.3, 38 CFR 4.6, 38 CFR 4.7)

This is the highest schedular evaluation allowed under the law for dermatitis. (Historical 38 CFR 4.118 effective prior to August 13, 2018, November 19, 2018)



FELIX PHILLIPS



9 of 9

**REFERENCES:**

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all Veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, [www.va.gov](http://www.va.gov).



**EXHIBIT C**

|   |  |
|---|--|
| <b>Department of Veterans Affairs</b>   | <b>VA DATE STAMP</b><br>(DO NOT WRITE IN THIS SPACE) |
| <b>DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW</b>   |  |
| <b>INSTRUCTIONS:</b> Before completing this form, read the Privacy Act and Respondent Burden on page 5. Use this form to request a Higher-Level Review of a decision you received. A Higher-Level Review is a new review of an issue(s) previously decided by VA based on the evidence of record at the time of the prior decision. For more information call us toll-free at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal relay number is 711. VA forms are available at <a href="https://www.va.gov/find-forms/">https://www.va.gov/find-forms/</a> . |  |
| <b>SECTION I - VETERAN'S IDENTIFICATION INFORMATION</b>   |  |
| <b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable check box to help expedite processing of the form.  |  |
| 1. VETERAN'S NAME (First, Middle Initial, Last)   |  |
| F e l i x   | P h i l l i p s                                      |
| 2. SOCIAL SECURITY NUMBER<br>   | 3. VA FILE NUMBER (If applicable)<br>                |
| 4. DATE OF BIRTH (MM/DD/YYYY)<br>   |  |
| 5. VA INSURANCE POLICY NUMBER (If applicable)<br>   |  |
| 6. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country)  |  |
|   |  |
| <input type="checkbox"/> I AM HOMELESS OR AT RISK OF HOMELESSNESS   |  |
| 7. TELEPHONE NUMBER (Include Area Code)   |  |
|   | Enter International Phone Number (If applicable)     |
| 8. E-MAIL ADDRESS (Optional)<br>  |  |
| <b>SECTION II - CLAIMANT'S IDENTIFICATION INFORMATION (If other than veteran)</b>   |  |
| 9. CLAIMANT'S NAME (First, Middle Initial, Last)  |  |
|   |  |
| 10. SOCIAL SECURITY NUMBER (If applicable)<br>  | 11. DATE OF BIRTH (MM/DD/YYYY) (If applicable)<br>   |
| 12. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country)   |  |
| No. & Street  |  |
| Apt./Unit Number  City  |  |
| State/Province  Country  ZIP Code/Postal Code   |  |
| 13. TELEPHONE NUMBER (Include Area Code)  |  |
|   | Enter International Phone Number (If applicable)     |
| 14. E-MAIL ADDRESS (Optional)<br>   |  |
| <b>SECTION III - BENEFIT TYPE</b>   |  |
| 15. <b>SELECT ONLY ONE</b> (If you file for multiple benefit types, you must complete a separate VA Form 20-0996 for each benefit type.)  |  |
| <input checked="" type="checkbox"/> COMPENSATION <input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS <input type="checkbox"/> FIDUCIARY <input type="checkbox"/> EDUCATION <input type="checkbox"/> VETERANS HEALTH ADMINISTRATION<br><input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT <input type="checkbox"/> LOAN GUARANTY <input type="checkbox"/> LIFE INSURANCE <input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION  |  |



**SECTION IV - OPTIONAL INFORMAL CONFERENCE**

16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER FOR THE SOLE PURPOSE OF POINTING OUT ERRORS OF FACT OR LAW IN THE PRIOR DECISION. (VA will only conduct one informal conference by telephonic communication associated with this request for Higher-Level Review.)

16A. I WOULD LIKE AN INFORMAL CONFERENCE. I understand electing an informal conference is optional and may delay a decision.

16B. IF YOU SELECTED THE BOX ABOVE, VA will make two attempts to contact you OR your representative to schedule the informal conference. Contact attempts will be between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time. INDICATE ONE PREFERENCE:

- Call me between 8:00 a.m. - 12:00 p.m. ET
  Call me between 12:00 p.m. - 4:30 p.m. ET  
 Call my representative between 8:00 a.m. - 12:00 p.m. ET
  Call my representative between 12:00 p.m. - 4:30 p.m. ET

17. IF YOU WOULD LIKE VA TO CONTACT YOUR REPRESENTATIVE, YOU MUST PROVIDE YOUR REPRESENTATIVE'S CONTACT INFORMATION BELOW:

17A. REPRESENTATIVE'S NAME (First, Last)

V i r g i n i a                      G i r a r d - B r a d y

17B. REPRESENTATIVE'S TELEPHONE NUMBER (Include Area Code)

7 8 5 - 7 4 9 - 2 4 4 0 Extn: 104

17C. REPRESENTATIVE'S E-MAIL ADDRESS

v i r g i n i a @ a b s l a w y e r . c o m

**SECTION V - ISSUES FOR HIGHER-LEVEL-REVIEW**

18. If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in 18A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

INDICATE EACH ISSUE DECIDED BY VA FOR WHICH YOU ARE REQUESTING A HIGHER-LEVEL REVIEW. Refer to your decision notice(s) for a list of adjudicated issues. For each issue, identify the date of VA's most recent decision on the issue. You may attach additional sheets, if necessary - include your name and file number on each additional sheet. IMPORTANT: You may only list issues for the benefit type selected in Section III. A separate form is required for each benefit type.

| 18A. SPECIFIC ISSUE(S) OF DISAGREEMENT (REQUIRED)  | 18B. DATE OF VA DECISION NOTIFICATION LETTER (REQUIRED)            |
|--|--|
| Example 1: Service connection for left knee<br>Example 2: Earlier effective date for hearing loss<br>Example 3: Reimbursement for non-VA emergency care<br>Example 4: Denial of entitlement to VR&E benefits and services<br>Example 5: Entitlement to Service-Disabled Veterans Insurance | MM/DD/YYYY<br>MM/DD/YYYY<br>MM/DD/YYYY<br>MM/DD/YYYY<br>MM/DD/YYYY |
| higher original rating for onychomycosis with dyshidrotic eczema, acne vulgaris, in excess of 60 percent, to include entitlement to individual unemployability   | 0 8 - 2 1 - 2 0 2 3  |
| *PLEASE EXPEDITE*  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |
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|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                                |

| SECTION V - ISSUES FOR HIGHER-LEVEL REVIEW (Continued) |   |
|--|---|
| 18A. SPECIFIC ISSUE(S) OF DISAGREEMENT (REQUIRED)      | 18B. DATE OF VA DECISION NOTIFICATION LETTER (REQUIRED) |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                     |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                     |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                     |
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|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                     |
|  | [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]                     |

**SECTION VI - CERTIFICATION AND SIGNATURE**

**NOTE:** This section is **MANDATORY** and completion is required to process your claim unless accompanied by VA Form 21-0972, *Alternate Signer Certification* or Section VII is completed.

**I CERTIFY** the statements on this form are true and correct to the best of my knowledge and belief.

|   |  |
|---|--|
| 19A. SIGNATURE OF VETERAN OR CLAIMANT (Sign in ink) | 19B. DATE SIGNED (MM/DD/YYYY)<br>[ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ] |
|---|--|

**SECTION VII - AUTHORIZED REPRESENTATIVE SIGNATURE**

**I CERTIFY** the statements on this form are true and correct to the best of my knowledge and belief.

**NOTE:** A representative's signature will not be accepted unless at the time of submission of this request a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual as Claimant's Representative*, indicating the appropriate representative is of record with VA or included with this application.

|   |  |
|---|--|
| 20A. NAME OF VA AUTHORIZED REPRESENTATIVE (First, Last)<br>V i r g i n i a      G i r a r d - B r a d y |  |
|---|--|

|   |  |
|---|--|
| 20B. SIGNATURE OF VA AUTHORIZED REPRESENTATIVE (Sign in ink)<br> | 20C. DATE SIGNED (MM/DD/YYYY)<br>0 8 - 2 2 - 2 0 2 3 |
|---|--|

**PENALTY:** The law provides severe penalties which include a fine, imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

**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 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 Veteran Readiness and Employment Records - VA, published in the Federal Register. Your obligation to respond is voluntary.

**RESPONDENT BURDEN:** We need this information to determine entitlement to benefits (38 U.S.C. 501). 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, find the information, and complete the 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.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).



**ABS LEGAL ADVOCATES P.A.**

901 New Hampshire Street  
Suite 201  
Lawrence, KS 66044-3805  
**Phone:** 888-511-9675  
**Fax:** 785-749-2423  
**Website:** www.ABSLawyer.com

**MANAGING ATTORNEY:** VIRGINIA A. GIRARD-BRADY  
**PARTNER:** BENJAMIN T. MALOTTE  
**SENIOR SPECIAL COUNSEL:** JAMIE M. ATWOOD  
**SENIOR ASSOCIATE:** EVA D. PERRING  
**ASSOCIATE:** SARAH C. JOHNSON  
**SENIOR CLAIMS CONSULTANT:** KELLY SHULER

August 22, 2023

Houston VA Regional Office  
6900 Almeda Road  
Houston, TX 77054

**RE: Felix Phillips**  
[REDACTED]

**REQUEST FOR HIGHER LEVEL REVIEW AND REQUEST FOR EXPEDITED CONSIDERATION.**

Dear Decision Review Officer:

I am the representative of record for Mr. Phillips. I have submitted a properly executed VA Form 21-22a. Enclosed with this letter is a completed and signed VA Form 20-0996, Request for Higher Level Review of the decision dated August 21, 2023, granting an increased rating for the veteran's service-connected skin conditions, effective August 28, 2002.

**Mr. Phillips is 82 years old and seeks priority processing of his clam.**

Mr. Phillips filed to reopen a previously denied claim for a skin condition in August 2002. In March 2008, he reported that he had last worked in 1978, that he wished to resume working, but did not feel physically or emotionally capable of doing so. In July 2010, he stated that he "never was able to work full time" because he could not wear shoes and had to "nurse his hands."

In two different decisions in 2018, the Board denied service-connection for a rash on the veteran's ears, head, arms, legs, and groin, and granted service-connection for onychomycosis of the feet, dyshidrotic eczema, and acne vulgaris. He appealed the ratings assigned to his service-connected conditions, explaining again that he had not worked since 1978 due to his symptoms. He opted all skin condition claims into AMA in 2019.

In November 2009, the veteran filed for service-connected benefits for a nervous condition. He reiterated that he had not worked since 1978 during subsequent mental health examinations in 2018 and 2019. His claim was opted into AMA in June 2019.

On July 25, 2023, the Board of Veterans Appeals found that the veteran was entitled to service-connection for several additional conditions, arising out of his original claim, as secondary to his service-connected acne vulgaris and onychomycosis disabilities. The Board remanded the matter to the VA Regional Office for implementation and the assignment of a rating and effective date. In response to the Board's remand, the veteran was granted an increased rating for his acne vulgaris and onychomycosis to 60 percent, from August 28, 2002. His combined rating increased to 60 percent from August 28, 2002, and 90 percent from November 25, 2009.

**The veteran asserts that VA erred when it failed to grant a rating in excess of 60 percent based total disability based on individual unemployability (TDIU).**

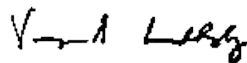
“[A] request for TDIU, whether expressly raised by a veteran or reasonably raised by the record, is not a separate claim for benefits, but rather involves an attempt to obtain an appropriate rating for a disability or disabilities.” *Rice v. Shinseki*, 22 Vet. App. 447, 453 (2009). TDIU is warranted when a veteran cannot secure or follow substantially gainful employment because of his service-connected disabilities. 38 C.F.R. § 4.16. When considering the issue of TDIU, the Department of Veterans Affairs (VA) “is expected to give full consideration to ‘the effect of combinations of disability.’” *Geib v. Shinseki*, 733 F.3d 1350, 1354 (Fed. Cir. 2013) (quoting 38 C.F.R. § 4.15).

The effective date for an increased rating, including TDIU, is the “[e]arliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred if a complete claim or intent to file a claim is received within 1 year from such date, otherwise, date of receipt of claim.” 38 C.F.R. § 3.400(o)(2).

In this case, the record established that Mr. Phillips has not worked since 1978, in large part due to his multiple service-connected skin conditions. Thus, the issue of entitlement to TDIU was reasonably raised as part of his pending skin condition claim and should have been considered by VA when it assigned the rating to his newly service-connected conditions.

I have requested an informal conference with a higher-level reviewer. I would respectfully request that such reviewer contact me in advance of such a hearing to ensure that I will be available at a scheduled time and date.

Sincerely,



Virginia A. Girard-Brady  
Attorney at Law

cc: file, veteran  
Enclosure - VA Form 20-0996