

IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS

MARTIN D. SPIGNER III,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-2636
	)	
DENIS MCDONOUGH,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

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FOR THE SECRETARY'S RESPONSE TO THE COURT'S ORDER

Pursuant to U.S. Vet. App. E-Rule 7, the Secretary hereby provides a table of contents for the attachments to his response to the Court's December 12, 2023, order.

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

<b>MARTIN D. SPIGNER III,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-2636
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLEE'S RESPONSE TO THE COURT'S  
DECEMBER 12, 2023, ORDER**

Appellee, Denis McDonough, Secretary of Veterans Affairs, hereby files this response to the Court's December 12, 2023, Order to 1) clarify whether Mr. Spigner had a tele-hearing that was completely offsite in October 2021 (so that he was not at the Columbia regional office (RO)), or whether it was a video conference hearing where he was onsite, and to 2) clarify whether Mr. Spigner did not appear at the August 2021 hearing or whether VA cancelled that hearing due to COVID or take some other measure to cancel that hearing. See Docket; Oral Argument at 1:05:50.

On December 20, 2023, Deputy Vice Chairman of the Board of Veterans' Appeals, provided the attached Declaration and supporting exhibits. The Deputy Vice Chairman indicated that 1) the Caseflow Hearing Details indicate that Appellant appeared in person at the Columbia RO for the virtual hearing on October 5, 2021, while his representative appeared

remotely, and 2) the Caseflow Hearing Details indicate that Appellant did not receive the notification letter for the August 18, 2021, hearing, that neither the Acting Veterans Law Judge nor Appellant's representative were able to reach him, and thus the hearing was rescheduled to October 5, 2021. See Declaration, numbered paragraphs 4-6; Exhibits B-D.

**WHEREFORE**, Appellee responds to the Court's December 12, 2023, Order.

Respectfully submitted,

**RICHARD J. HIPOLIT**  
Deputy General Counsel  
for Veterans Programs

**MARY ANN FLYNN**  
Chief Counsel

/s/ Carolyn F. Washington  
**CAROLYN F. WASHINGTON**  
Deputy Chief Counsel

/s/ Brian S. Carey  
**BRIAN S. CAREY**  
Appellate Attorney  
Office of the General Counsel (027D)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
(202) 632-4010

Attorneys for Appellee Secretary  
of Veterans Affairs

IN THE UNITED STATES COURT  
OF APPEALS FOR VETERANS CLAIMS

MARTIN D. SPIGNER, III,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-2636
	)	
DENIS MCDONOUGH,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

DECLARATION OF CHRISTOPHER A. SANTORO

I, Christopher A. Santoro, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury the following:

1. I am a Deputy Vice Chairman of the Board of Veterans' Appeals (Board), in the Department of Veterans Affairs (VA) and, as such, I am among those responsible for the control and supervision of the administrative appeals operations at the Board. The information contained in this declaration is based on a review of the information available in Caseflow (the Board's computerized tracking system) and the Petitioner's claims file, accessible to VA staff through the Veterans Benefits Management System (VBMS).
2. This declaration is provided in response to a December 12, 2023, order of the United States Court of Appeals for Veterans Claims (Court) directing the Secretary to submit additional information regarding the Appellant's Board hearings.
3. A Board hearing with a Veterans Law Judge was scheduled for the Appellant to be held on May 25, 2021. This scheduled hearing was postponed on April 16, 2021. Within Caseflow, internal notes from the Board's hearing staff are located in the Caseflow Hearing Details page. The notes in the Caseflow Hearing Details for this matter state that the hearing was postponed due to a schedule conflict. These notes do not state which particular party had the conflict. *See Exhibit A.*

4. The hearing was rescheduled for August 18, 2021. The notes in the Caseflow Hearing Details page state that neither the Acting Veterans Law Judge presiding at the hearing nor the Veteran's representative were able to reach the Veteran. The Caseflow Hearing Details notes further state that the Veteran did not receive the hearing notification letter through VBMS Package Manager, the Board's system through which VA contractors mail decisions and notifications to appellants and their representatives through the U.S. Postal Service. Therefore, this scheduled hearing was postponed. *See Exhibit B.*
5. In a letter dated August 18, 2021, the Appellant was notified that his hearing had been rescheduled for October 5, 2021. The notification letter informed the Veteran that the hearing would be held at the Columbia, South Carolina, Regional Office (RO), but that the Appellant had the option of participating in a virtual tele-hearing from any location. *See Exhibit C.*
6. The hearing was held on October 5, 2021. The notes in the Caseflow Hearing Details page indicate that the Appellant will report to the RO. The Caseflow Hearing Details indicate that this hearing was virtual. The Board's hearing staff reviewed the Caseflow Hearing Details and stated that the Caseflow Hearing Details indicate that the Appellant appeared in person at the RO, while the Appellant's representative appeared remotely. Technological limitations at this time required the Board's hearing staff to convert such hearings from video to virtual in the Caseflow system in order to generate a link for those appearing remotely. *See Exhibit D.*
7. Attached is a printout of the Caseflow Hearing Details page for the hearing scheduled May 25, 2021, (Exhibit A); a printout of the Caseflow Hearing Details page for the hearing scheduled August 18, 2021 (Exhibit B); the Board's August 18, 2021 notification of the October 5, 2021 hearing (Exhibit C); and a printout of the Caseflow Hearing Details page for the hearing held October 5, 2021 (Exhibit D).

I certify under the penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of December 2023.

A handwritten signature in black ink, appearing to read "Christopher A. Santoro". The signature is stylized with a large initial "C" and a long horizontal stroke at the end.

CHRISTOPHER A. SANTORO

## EXHIBIT A



# MARTIN SPIGNER's Hearing Details

Veteran ID:

HEARING DATE	DOCKET NUMBER	REGIONAL OFFICE		
05/25/2021	H 180824-123	Columbia regional office		
HEARING LOCATION	DISPOSITION	TYPE	AOD STATUS	
Columbia, SC	Postponed	Video	None	

## Hearing Details

VLJ

Hearing Coordinator

Hearing Room

Hue City

Hearing Type

Video

Waive 90 Day Evidence Hold

☐ Yes, Waive 90 Day Evidence Hold

Notes

Hearing postponed due to schedule conflict same time on different docket. [REDACTED] 4/16/2021

913 characters left

## Email Notifications

### Veteran Timezone

*Optional*

Eastern Time (US & Canada) (9:30 AM) ▼

The hearing time in email notifications is calculated based on the timezone.

### Veteran Email

*Optional*

[REDACTED]

This email address will be used to send notifications for this hearing only.

---

### POA/Representative Timezone

*Optional*

Eastern Time (US & Canada) (9:30 AM) ▼

The hearing time in email notifications is calculated based on the timezone.

### POA/Representative Email

*Optional*

[REDACTED]

This email address will be used to send notifications for this hearing only.

## Transcription Details

**Task #****Transcriber**Select... **Sent to Transcriber**

mm/dd/yyyy

**Expected Return Date**

mm/dd/yyyy

**Transcript  
Uploaded to VBMS**

mm/dd/yyyy

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## Transcription Problem

**Transcription  
Problem Type**Select... **Problem Notice  
Sent**

mm/dd/yyyy

**Requested Remedy**

- ☐ Proceed without transcript
- ☐ Proceed with partial transcript
- ☐ New hearing
- ☐ None

---

## Transcription Request

**Copy Requested by  
Appellant/Rep**☐ Yes, Transcript Requested**Copy Sent to  
Appellant/Rep**

mm/dd/yyyy

Cancel

**Save**

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[Send feedback](#)

## **EXHIBIT B**



# MARTIN SPIGNER's Hearing Details

Veteran ID:

HEARING DATE	DOCKET NUMBER	REGIONAL OFFICE	
08/18/2021	H 180824-123	Columbia regional office	
HEARING LOCATION	DISPOSITION	TYPE	AOD STATUS
Columbia, SC	Postponed	Virtual	None

## Hearing Details

VLJ

Hearing Coordinator

Hearing Room

Hearing Type

Waive 90 Day Evidence Hold

☐ Yes, Waive 90 Day Evidence Hold

Notes

AVLJ [REDACTED]/American Legion is unable to reach the Veteran.  
Veteran did not receive hearing letter through package manager.

876 characters left

## Virtual Hearing Links

**Guest Link:** Expired

**Conference Room:**

BVA0014837@vc.va.gov

**PIN:** [REDACTED]

## Email Notifications

### Veteran Timezone

Eastern Time (US & Canada) (8:30 AM) 

The hearing time in email notifications is calculated based on the timezone.

### Veteran Email

[REDACTED]

This email address will be used to send notifications for this hearing only.

---

**POA/Representative Timezone**

*Optional*

Eastern Time (US & Canada) (8:30 AM) 

The hearing time in email notifications is calculated based on the timezone.

**POA/Representative Email**

*Optional*

This email address will be used to send notifications for this hearing only.

Sent To	Email Address	Date Sent	Sent By
VLJ Email	[REDACTED]	Aug 17, 2021, 11:29 am EST	VACO [REDACTED]
Veteran Email	[REDACTED]	Aug 17, 2021, 11:29 am EST	VACO [REDACTED]

## Transcription Details

**Task #**

**Transcriber**

**Sent to Transcriber**

**Expected Return Date**

**Transcript Uploaded to VBMS**

## Transcription Problem

### Transcription Problem Type

### Problem Notice Sent

### Requested Remedy

- ☐ Proceed without transcript
- ☐ Proceed with partial transcript
- ☐ New hearing
- ☐ None

## Transcription Request

### Copy Requested by Appellant/Rep

☐ Yes, Transcript Requested

### Copy Sent to Appellant/Rep

[Cancel](#)

**Save**

[Send feedback](#)

## EXHIBIT C



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

August 18, 2021

MARTIN SPIGNER, III  
2098 US HIGHWAY 321  
NORTH  
WINNSBORO, SC 29180

In reply, refer  
to:319/HRGB/KLB  
File Number:  
[REDACTED]  
SPIGNER, MARTIN

Dear Appellant:

You have elected to travel to a VA Regional Office for a video hearing with a Veterans Law Judge as scheduled below. Due to COVID-19, many Regional Offices are not open to the public which limits the Board's ability to hold hearings at these locations. We encourage you to choose a virtual tele-hearing instead.

As a result of the VA Tele-Hearing Modernization Act, you may choose to have a **virtual tele-hearing**, which does **not** require you to travel to a Regional Office to have your hearing with a Veterans Law Judge. You could also withdraw your hearing request and allow the judge to decide your appeal based on the information already in your file.

**What is a virtual tele-hearing, and how do I request one?**

**The Board has immediate openings for virtual tele-hearings.** You can participate in a virtual tele-hearing from any location, including at your home. You will need a computer, tablet, or mobile device with a reliable internet connection, a camera, and a microphone (which most mobile phones have). Family members or caregivers may assist you, and your representative can join you from a different location in the virtual tele-hearing room. The enclosed provides additional information on virtual tele-hearings.

**If you would like a virtual tele-hearing instead, please contact your hearing coordinator.** A list of hearing coordinators is located on [bva.va.gov](http://bva.va.gov). We encourage you to also contact your representative and advise them you would like to switch to a virtual tele-hearing.

**When is my hearing scheduled?**

You are currently scheduled for a video hearing with a Veterans Law Judge as noted below. **Before leaving your home for your hearing, please contact the Regional Office and your representative to ensure the Regional Office is open.**

Page 2

File Number: [REDACTED]  
SPIGNER, MARTIN

**10/5/2021 at 8:30 am (EST)**

**COLUMBIA REGIONAL OFFICE  
6437 GARNERS FERRY ROAD  
COLUMBIA, SC 29209**

### **What should I expect on the day of my in-person video hearing?**

**First, call ahead to confirm that the facility is open.** All visitors to VA facilities should bring a photo ID and check in with security 30 minutes prior to the scheduled hearing and report to the front desk. You will be subject to security screening, including the inspection of personal belongings. Masks are required to enter VA facilities. It is against the law to bring firearms or any other dangerous weapons into a federal facility.

Hearings are scheduled in morning and afternoon shifts. The judge will hold each hearing as soon as possible; however, you should be prepared to wait. The approximate time for each hearing is 30 minutes.

### **What if I need to reschedule my hearing?**

Send a written request to reschedule your hearing at least two weeks before your scheduled hearing explaining why you have “good cause” for rescheduling the hearing.

If your hearing is less than 15 days away, or you missed your hearing and would like to reschedule, you must file a written motion for a new hearing date within 15 days of the originally scheduled hearing date, explaining why you missed the hearing and/or why a timely request for a new hearing date could not have been submitted.

A Veterans Law Judge will review your request and decide if the hearing can be rescheduled. You will get a decision about rescheduling your hearing in the mail. Examples of good cause include, but are not limited to, illness of the appellant (you) and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness.

### **What if I want to withdraw (cancel) my hearing?**

If you no longer want a hearing, please send a written request to withdraw or cancel your hearing by fax to (844) 678-8979, or by mail to Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

Page 3

File Number: [REDACTED]  
SPIGNER, MARTIN

**May I submit new evidence?**

If your appeal is an Appeals Modernization Act (AMA) appeal, you may only submit evidence at the hearing or within a 90-day window following the scheduled hearing date. If you withdraw your hearing, you may submit evidence within 90 days following receipt of the withdrawal. If you miss your hearing and do not request to reschedule, you may still submit additional evidence up to 90 days after the date your hearing was scheduled.

If your appeal is a Legacy (Pre-AMA) appeal, you may submit evidence at the hearing or up until the date a decision is rendered by the Board.

If you have questions about your appeal, you should contact your representative, if you have one. To obtain the status of your appeal, please call 1-800-827-1000 or visit [www.va.gov/claim-or-appeal-status/](http://www.va.gov/claim-or-appeal-status/).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christopher A. Santoro", with a stylized flourish at the end.

**Christopher A. Santoro**  
Deputy Vice Chairman

CC: The American Legion

## EXHIBIT D



## MARTIN SPIGNER's Hearing Details

Veteran ID:

HEARING DATE	DOCKET NUMBER	REGIONAL OFFICE	
10/05/2021	H 180824-123	Columbia regional office	
HEARING LOCATION	DISPOSITION	TYPE	AOD STATUS
Columbia, SC	Held	Virtual	None

### Hearing Details

VLJ

Hearing  
Coordinator

Hearing Room

Hearing Type

Waive 90 Day  
Evidence Hold☐ Yes, Waive 90  
Day Evidence  
Hold

Notes

The Veteran will report at the RO. AL- [REDACTED]

939 characters left

## Virtual Hearing Links

**Guest Link:** Expired

**Conference Room:**

BVA0019306@vc.va.gov

**PIN:** [REDACTED]

## Email Notifications

**Veteran Timezone**

Eastern Time (US & Canada) (8:30 AM) 

The hearing time in email notifications is calculated based on the timezone.

**Veteran Email**

[REDACTED]

This email address will be used to send notifications for this hearing only.

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**POA/Representative Timezone**

*Optional*

Eastern Time (US & Canada) (8:30 AM) 

The hearing time in email notifications is calculated based on the timezone.

**POA/Representative Email**

*Optional*

This email address will be used to send notifications for this hearing only.

Sent To	Email Address	Date Sent	Sent By
Veteran Email	[REDACTED]	Oct 04, 2021, 3:01 am EST	CSFLOW
Veteran Email	[REDACTED]	Sep 28, 2021, 3:03 pm EST	CSFLOW
VLJ Email	[REDACTED]	Sep 27, 2021, 7:57 am EST	VACO [REDACTED]
Veteran Email	[REDACTED]	Sep 27, 2021, 7:57 am EST	VACO [REDACTED]

Sent To	Email Address	Date Sent	Sent By

## Transcription Details

**Task #**
**Transcriber**

AMA562

**Sent to Transcriber**

12/20/2021

**Expected Return Date**

12/25/2021

**Transcript Uploaded to VBMS**

12/27/2021

## Transcription Problem

**Transcription Problem Type**

Select...

**Problem Notice Sent**

mm/dd/yyyy

**Requested Remedy**

- ☐ Proceed without transcript
- ☐ Proceed with partial transcript
- ☐ New hearing
- ☐ None

## Transcription Request

**Copy Requested by Appellant/Rep**
**Copy Sent to Appellant/Rep**

☐ Yes, Transcript  
Requested

mm/dd/yyyy

Cancel

**Save**

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[Send feedback](#)