



Department of Veterans Affairs  
Office of General Counsel  
Washington DC 20420

8 November, 2017

In reply refer to: **027J**

• Mr. Gregory O. Block  
Clerk of the Court  
U.S. Court of Appeals for Veterans Claims  
625 Indiana Avenue, NW  
Washington, DC 20004

Re: **FRANCISCO L. MARCELINO**  
**V. DAVID J. SHULKIN, M.D.**,  
Secretary of Veterans Affairs  
Vet. App. No. 16-2149

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), the Secretary hereby advises the Court of additional, pertinent, and significant authority that the undersigned counsel wishes to bring to the Court's attention since the Secretary filed his brief.

In his brief, the Secretary noted that policy interpretations of the Department of Veterans Affairs (VA) are frequently entitled to deference, as VA's interpretations of its own regulations are controlling unless plainly erroneous or inconsistent with the applicable regulations. Secretary's Brief at 5, *citing Reizenstein v. Shinseki*, 583 F.3d 1331, 1336 (Fed. Cir. 2009) (quoting *Auer v. Robbins*, 519 U.S. 452, 461 (1997)). The Secretary emphasized that the omission of obesity from the rating schedule was a conscious decision because the Agency does not consider obesity to be a medical disease state. Secretary's Brief at 14-15. In this respect, the Secretary notes the Court's decision in *Cox v. McDonald*, 28 Vet.App. 318 (2016), wherein it held that the Secretary's interpretation that Afghanistan was not considered to be a part of the Southwest Asia theater of operations was entitled to deference. This is relevant because the Secretary's interpretation was based on the absence of Afghanistan from the applicable regulatory provision, 38 C.F.R. § 3.17(e)(2), that identified which countries were considered to be a part of Southwest Asia for compensation purposes. The Secretary asserted that Congress expressly delegated to him, in 38 U.S.C. § 1117, the authority to promulgate regulations that describe which areas may be considered a part of Southwest Asia for compensation purposes.

Sincerely,

/s/ Omar Yousaf

**OMAR YOUSAF**

Appellate Attorney

Counsel for the Secretary