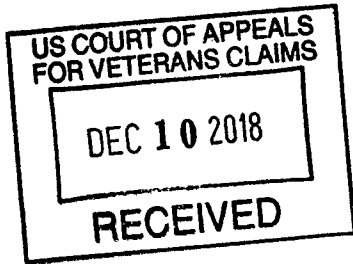


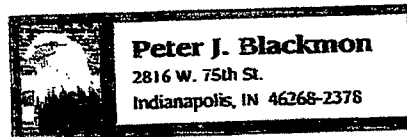
18-3011



APPELLANT'S BRIEF

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

No. [REDACTED]



Appellant

v.

SECRETARY OF VETERANS AFFAIRS,

Appellee

**Oliver W. Counsel
Lawyr & Lawyr
1111 J Street, NW
Washington, DC 20000
(202) 555-1212**

Attorney for Appellant

Form 2
(Rev 5/99)

DEC 10 2018

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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

625 Indiana Avenue, NW Suite 900
Washington, DC 20004-2950

APPELLANT'S INFORMAL BRIEF

Docket No: 18-3011

Peter J. Blackmon,

Appellant,

v.

Robert L. Wilkie,
Secretary of Veterans Affairs,

Appellee.

Type or legibly write your answers to each question. If the Court cannot read your handwriting, your brief may be returned to you.

1. If there is more than one issue listed on the first page of the Board decision, which issue(s) are you appealing?

Please note that if you choose not to list an issue here, the Court might not review that issue.

Furthermore, there was no medical diagnosis record given at the time of my TBI episode event, but my TBI had its onset during active service in the Vietnam War. The BVA "Finding of Fact" can't be considered a final decision to deny my TBI service-connected disability claim, unless, an examination for TBI medical record is given to include a second opinion, for a conclusion.

Whereas, an examination too distinguished the symptoms' similarities between TBI and PTSD, if not the same symptoms, is needed for the record and, however, for better medical treatment of my symptoms.

Questions 2-6 ask you for information regarding the issues you believe were incorrectly decided by the Board.

2. For each issue you listed in Question 1, did the Board incorrectly state any facts?

Yes ☒ No ☐

If yes, what are the correct facts? *Please list the page number(s) from the Record Before the Agency (RBA) that support your argument.*

Whereas, there was no medical diagnosis record to be found, the BVA's arguments or opinions are only choices. Whereby, in my opinion, the BVA gave a probative evidence ultimatum, to deny my TBI claim, or to say the BVA met their requirements served, based on the evidence of record does not contain probative evidence . . . no TBI diagnosis was given to be put on record.

Nevertheless, the BVA's arguments are not true facts as stated on page 1 "FINDING OF FACT" stating." The evidence does not demonstrate that it is at least as likely as not that the Veteran has a disability consisting of symptoms caused by or otherwise related to an in-service traumatic brain injury (TBI)". . . no probative evidence record found is not proof that my TBI did not occur.

Thereby, to say an assumption, my TBI was not an onset in active service of the Vietnam War. It is only speculation. The BVA's argument is not true fact, and I quote on page 2 of RBA: "In this case, the evidence of record does not contain probative evidence of a TBI at any time proximate to, or during, the claim." Based on an evidence of record as probative evidence, a TBI diagnosis was not given, at the time of the TBI episode event in the Vietnam War.

3. Are there any documents in the Record Before the Agency (RBA) that support your claim(s)?
Yes ☒ No ☐

If yes, what are those documents? *Please list the page number(s) in the RBA where they can be found and explain why you think they support your claim.*

Furthermore, the true fact of my TBI episode event speaks for itself without a doubt; in the Statement of the Case(SOC) page #28, the statement said, and I quote: "Sometimes TBI symptoms and mental disorder symptoms overlap," end of quote.

Nevertheless, it is without a doubt my emerging TBI symptoms are the same as my emerging PTSD symptoms as a result of different traumatic events occurrence during onset active service while in the Vietnam War, subjecting my mental capacity to an episode level of hypertension state of mind with permanent PTSD disability.

4. Did VA fail to obtain any documents identified by you or your representative or mentioned in the Record Before the Agency (RBA) when it was gathering evidence for your case?
Yes ☒ No ☐

If yes, list the page number(s) of the RBA that show that these documents exist and explain:

- How each document relates to your claim(s)
- Why each document is important to your case

The Court cannot consider documents that were not before the Board. Also, please do not attach any pages from the RBA.

Therefore, I do believe. It is BVA's acknowledgment of the facts, in their SOC; my TBI episode event did occur on military onset active duty time, during my tour of the Vietnam War (battlefield ground zero mortar rounds blast); it resulted in my emotional nerve of my central nervous system being damaged (an internal invisible wound/injury with emerging symptoms occurrence daily).

5. To your knowledge, did the Board fail to apply or misapply any law, case, or regulation?

Yes ☐ No ☐

If yes, what is that law, case, or regulation and how should the Board have applied it?

6. Do you think that the Board decision is wrong for any other reason(s)?

Yes ☒ No ☐

If yes, what are those reason(s)? Please list the page number(s) from the RBA that support your argument.

"My Issue(s) With the Board's Decision"

However if I may phrase, "Putting the Cart Before the Horse" it is wrong, you will get nothing. It does work in the order of: symptoms as evidence, an examination, a diagnose, then a decision.

The BVA has denied my TBI claim by an ultimatum choice based on speculation findings of the record of evidence . . . they made a wrong decision to deny my claim due to the absence of a TBI medical diagnose record that was never given. The BVA's argument decision, and I quote: "...but the record does not contain sufficient medical evidence to decide the claim", end of quote.

Finally, Questions 7-8 ask you for information that will help the Court process your case.

7. What action do you want this Court to take?

The BVA has stated in the "Finding Of Fact", pg#2, paragraph#4, pg#3, paragraph#1, and I quote: "The Board acknowledges that the Veteran was not afforded a VA examination relating directly to his TBI claim. On these facts, however, an examination is not required. VA will provide a medical examination or obtain a medical opinion if the evidence indicates the existence of a current disability or persistent or recurrent symptoms of a disability that may be associated with an event, injury, or disease in service, but the record does not contain sufficient medical evidence to decide the claim", end of quote. Please, schedule or order the TBI examination for proof of my emotional nerve damage anxiety symptoms and, for better diagnose treatment and disability.

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? 10+5=15

Please remember that your brief cannot exceed 30 pages total (including this form). Do not attach any pages from the RBA.

On any attached pages, make sure to include your name and your Court docket number.

Please sign and date this form after you have finished completing it.

Appellant's Telephone Number: (317) 387-9977

Appellant's Address: 2816 West 75th ST., Indpls., IN 46268

Appellant's Signature:

P. Blackman

Date: 11-7-18

Page 3 of 3

Whereas, an examination will support the need too distinguished the difference between my TBI and PTSD, for their cause and effects of the damages to my Central Nervous System Emotional nerve with symptoms. Therefore, to identify the extent affects of my TBI and PTSD events, with same symptoms similarities, but different in mood anxiety behaviors with uncontrollable energy impulse exertion (like excess sweaty palms) or, to exert excess energy by impulse mood swings is needed. Also, an examination is needed for the record and, however, for better precise medical diagnose treatment of my symptoms causing disability.

Department of Veterans Affairs

Appeal To Board Of Veterans' Appeals

APPELLANT'S INFORMAL BRIEF

pg. 1 of 3

To respond to the VA Board of Appeal decision "FINDING OF FACT" on page 3 second paragraph and, I quote "Thus, the most probative evidence fails to demonstrate that it is at least as likely as not that the Veteran has a current TBI that had its onset during active service . . ."

Whereas, my response for BVA's finding of fact: "probative evidence fails." I summarize, no TBI Medical Diagnose nor the lack of it is conclusive, it is not a poof to deny my TBI disability claim without the request of a TBI medical examination . . . the BVA has not met their requirements yet.

To explain, the BVA's decision with clarification, denying my service connection TBI claim, their decision was made precisely by, no TBI medical exam given, yet, no proof of evidence. To cite their argument in their S.O.C. (Statement of the Case) on page #28, and I quote: "Sometimes TBI symptoms and mental disorder symptoms overlap". . . a TBI exam is needed to be given, to get proof of evidence.

Therefore, the BVA's choice to deny my TBI claim is an ultimatum, based on their probative evidence failure: no TBI medical diagnosis record was their probative evidence; whereas, there was no medical diagnosis given to me during the War in Vietnam at the time of my TBI episode event!

Although it is obvious, the Board will not accept the only proofs of evidence which are my symptoms against their arguments, again enough is enough. The only proofs of evidence are my on going current symptoms; as I have explained the effects of the mortar rounds, blasts had on me, at the time, during the Vietnam War, to the current day and time. Now to get proof, give me a TBI medical examination, please. I am constantly suppressing my symptoms, but it has gotten too hard to cope with!

Now, the fact is my TBI event with emerging symptoms is service connected. Whereas, I was tested and diagnosed by the VAMC hospital, Indpls., with ongoing PTSD symptoms that prove I experienced traumatic events in the Vietnam War. It is BVA's acknowledgment of my TBI event.

Therefore, with ongoing current PTSD symptoms, please, tell me, how much more confusing can your decision be; since my PTSD and TBI symptoms are disguised (overlapping the other) as one and the same symptoms, they occurred due to different events in the Vietnam War, as I explained.

In God's name, it is hateful, for you to say my TBI event did not happen in the Vietnam War; whereby, as the traumatic events occurred in the war zone, my TB I/PTSD symptoms overlapped, emerged without a doubt, for which I have already been tested by the VAMC hospital, Indpls.

After my tour of duty in the Vietnam War, the proof of evidence of my TBI was diagnosed at VAMC, Indpls. for PTSD/TBI symptoms. After the traumatic events occurred, the symptoms overlapped, revealing that my TBI event did occur, which is the result of mortar rounds' blast, at ground zero in the Vietnam War zone, as I explained . . . and not before my tour of the War.

My point is clear and precise . . . a dependable trust worthy US Military Veteran of the Vietnam War (U.S. Patriot) does not need your respect to gain the Honorable Discharge for US Military Service, in which I have already earned. Then later to be called a liar, your denial of my TBI claim is a protest against the sacrifices I've made to protect the USA and preserve humanity for all.

Rather, whereas, an honorable discharge is earned by the sacrifices of time he or she has served, to gain freedom for all . . . therefore, it is only integrity with dignity for time served honorably, that will provide respect, that says who he or she really is, for bravery maintained, to support the needs and care and welfare of others.

Tell me, what is it you do not believe . . . the fact I did not die of the mortar blast, but should have! Maybe you do not believe in God Almighty and His miraculous miracles of protection, but I do!

However, it is irrelevant to me, whether you believe my statements are true or not, regarding the occurrence of events in the Vietnam War; yet, my TBI episode event has significance, in which, it only occurred during my tour of the Vietnam War front line battlefield at ground zero, a result of mortar rounds blasts attack. I should have died, but I survived w/injury; it is now apart of my life!

If you can't accept the truth, then believe whatever makes you happy . . . BVA's fact perhaps, that allows you to deny my TBI service disability claim. Furthermore, my TBI symptoms are proof of evidence without a doubt; in the BVA's Statement of the Case (SOC) page #28, they stated, and I quote: "Sometimes TBI symptoms and mental disorder symptoms overlap," end of quote.

I do believe. It is BVA's acknowledgment of the facts, in their SOC; my TBI episode event did occur on military service active duty, during my tour of the Vietnam War (battlefield ground zero mortar rounds blast); the blast(s) caused an internal invisible wound/injury with emerging symptoms occurrence to the present day and time.

Nevertheless, you say my TBI symptom's overlaps my PTSD mental disorder symptoms, as stated in your SOC. Therefore, without a doubt, my emerging TBI symptoms are the same as my emerging PTSD symptoms, as a result of different traumatic events occurrences.

One episode by mortar rounds blasts, and other episodes by deadly bullets firing close at me while on perimeter guard duty. I felt the bullets' force and pressure passing deadly close, less than a tenth of an inch of my left ear! It traumatically shattered my emotional nerve, subjecting my mental capacity to an episode level of hypertension state of mind with permanent PTSD disability.

However, when my brain was jolted (by traumatic forced or shaken from side to side in my head), as a result of every mortar round blast (over a short or extended period of time), an invisible brain injury with dizziness had occurred, and it caused lost consciousness, I pass out . . . my PTSD/TBI disabling injuries' share the same symptoms.

Whereas, for some strange reason you say no medical record was recorded nor reported, well-let me elaborate or enlighten you; no TBI medical diagnosis was given to me, in regards to my TBI episode event on the battlefield in time of war. An emergency only dictates to visible bleeding wounds whether you are in pain or not . . . need I say more about invisible internal wounds for your understanding!

Furthermore, no records were made after a visual check of myself at the time, but I felt different inside myself as usual. It was like sudden fear had taken control of my consciousness with shortness of breath. Although, inside of me something had gone wrong, nevertheless, Although, I decided to keep my TBI invisible wound/injury a secret to myself, I wanted to be brave at that young age of naiveness!

Yet, for some strange reason, at this present day and time, fifty years later, your protest comment yet seems familiar; for you to say my TBI episode event did not happen to me in the Vietnam War is insulting and aggravating to hear. Your comment is like a stroll down memory lanes to hear the protesting all over again of the Vietnam War Veterans, in which I experienced with regret!

Although, I was tested and diagnosed with service connected PTSD at VAMC Hospital, Indpls., several years later after the war, your comments are no different from calling me a liar; a repeat of the Vietnam War Veterans being protested over again, now with added hateful false accusations being called a liar, a protest's demonstration argument . . . an excuse for not wanting to know the true facts.

Whereas, your BVA comment somewhat aggravates me to the point of deciding to consult/and/or retain an attorney and file a Federal Lawsuit/ or Civil Lawsuit, perhaps I should do both against the BVA person(s) for trying to discredit my honorable discharge from active US Military duty by their protest bias comment.

Nevertheless, the BVA has stated my TBI episode event is not service connected. Therefore, they have falsely accused me to be a liar, for a fraud or false statement of the facts, stating my TBI episode event occurrence did happen in the Vietnam War.

Furthermore, I am at the end of my nerves, regarding your decision denying my service connected TBI ongoing symptoms' claim. Please spare me the added stress and depression, by your bias comments, as your argument. It is now affecting my heart condition with added stress, which will eventually take my life sooner than later.

Thank you, please respond.

Docket No: 18-3011

November 7, 2018

Peter J. Blackmon
2816 West 75th St
Indpls., IN 46268

VA File Number: C [REDACTED]

Notice of Disagreement

Docket Number: 18-3011

pg. 1 of 4

To respond to your decision denying my claim for Traumatic Brain Injury (TBI), I will appeal your decision until you can explain to me why my emotional nerve impairment (either permanent or temporary damage), has not ceased impairment, which is ongoing to the current day and time, due to fear of danger is near, a flash back to the Vietnam War.

The TBI episode event in my life experience occurred while touring the Vietnam War and during an extreme traumatic event while mortar rounds were exploding all around me.

Furthermore, as the earth shook beneath me with tremendous force, causing my brain to shake with extreme force, bouncing from side to side (jolting) inside my head, resulting in a TBI; I do believe I passed out due to intense pressure and dizziness while on the front line battlefield . . . my TBI episode events happen only at your request, the US Military (draft), to face the enemy in the Vietnam War.

I suppose you think I do not have a TBI, well allow me to explain again how it occurred; it was at the time when I traveled from base camp to the Boone docks (front line battlefield camps) by convoy to collect supply order requisitions for the troops. Due to the late hour I had to stay over night.

It was then the enemy tried to over run the base camp perimeter, and as we dug in, mortar rounds were ordered by the commanding officer to kill the approaching enemy. To me, what seemed like forever, the mortar rounds bombing blast appeared to fall all night long.

I began to panic as thought I was dying due to the constant earth vibration with every blast causing my brain to bounce (jolt) from side to side with extreme traumatic pain that felt like I was near death. Now, by all accounts of such extreme traumatic abuse episodes, with no doubt in my mind, I should have died.

However, by the grace of God, I escape death, only after receiving an internal (TBI) that has a damaging effect to my emotional nerve, caused an internal wound injury, shattering my emotional nerve, that is still impaired to the present day and time due to nerve damage.

It is an emotional nerve injury, causing symptoms of sensitive uncontrollable emotional nerve over loads of crying tears, shortness of breath, and sweatiness, that occurs when I fear danger is near, and when I see or hear that someone has been injured unto death.

Furthermore, my mind flash back to traumatic events of depression in the war, whereas, my TBI symptoms often parallel close with my PTSD symptoms. Therefore, during my tour of the Vietnam War, however, the Tet offence, base camp over run attempts by the enemy, was a significant traumatic occurrence, contributes to my phobias sensitivity fear of danger.

However, with danger all around me, I could not literally see my hand before my face in the pitch black of night, causing panic to occur, whereas, someone was crossing, into my space unaware . . . most extreme traumatic fear of being killed in action . . . situations were live or die, yet, fighting for Humanity and Freedom for all in the USA, yet, in the Vietnam War.

Now, my TBI symptom anxiety attack, sensitive to fear of phobias, however, reappears at the same time (parallel) to my PTSD symptoms, sensitive to fear of danger, that prolong the damage to my emotional nerve, causing panic attack, shortness of breath, excess sweaty palms, to exert sensitive nerve emotion impulse reaction, and crying uncontrollable tears.

Now, you say that a comprehensive review of my treatment records and service personnel records was conducted, well allow me to elaborate on that issue; at the age of 18 to 19 years old, I was too young and naive to admit that I had been injured, so I did not report the internal wound injury . . . only reported I survived the mortar rounds and glade to be alive.

Therefore, I had pride and wanted to be tough and brave, not a coward to face death. When I received my US Military Draft Notice in the mail, a request from friends and neighbors, unknown to me, I was not afraid of the draft. After my tour of the Vietnam War, to keep my TBI episode event to myself to avoid rejection, I told no one. Although, at the time of my TBI, my pride was the same identical mentality, I was not afraid to face death,

At that time, upon receiving that letter in the mail, I told myself, if I die in battle, I will die, but what I will not be is a draft dodger . . . I do believe at that point in time, God gave me the courage and bravery to fight for my country in the Vietnam War for your freedom, for which I came close to and escaped death on numerous occasions, more than I can count on my hand.

Now, on the other hand, I think you are naive in your intelligent decision, stating the TBI condition neither occurred in nor was caused by service. To respond to your statement, my response would be; you were not there, and no doubt in my mind, did not want to be there, only the brave at heart with patriotism takes that honor, your way of thinking insults me!

Furthermore, I am a shame of your thinking that worry me, that you would believe my TBI is no more than a joke, as if it did not happen, compounding my emotional nerve injury by degrading my nerve damage impairment, as I suffer daily.

Obviously, this is a major concern to our families and the United States Government, it just does not make sense, while fighting for freedom for our country and family, the effects cover a majority of US Military Troops on the battlefield at war, for which I am included.

To this day I have not discussed my TBI episode event at war to my family nor anyone, due to the damaged effect on my emotional nerve that has caused symptoms of sensitivity of crying tears, shortness of breath, and sweatiness that cannot be repaired to my knowledge. However, I've been keeping my TBI nerve damage secretly, a fear of rejection from people.

However, the same emotional nerve sensations occur when I am around other people for a short period of time, causing me to be on edge, panicky, depressed, shortness of breath, and sweatiness, that is somewhat ongoing daily without a cause. Now, I have a phobia to cope with, unfortunate until I die . . . like taking a trip down memory lanes of the Vietnam War!

Therefore, I am no longer currently employed, my termination date was 04/08/2013, due to poor uneffective work performance, based on my service connected disabilities of Ischemic Coronary Artery Heart Disease, Diabetes Mellitus Type2 Disease, PTSD, TBI symptoms, which means I am now unemployable and will not be able to hold a substantial job.

Again, I must say how naively can you get . . . if my circumstances were reverse (no draft), and you were chosen for the draft, my point of view is, how much difference would it be, if the situation of events had happened to you, as a circumstance in your life, and you lived to tell about it; then perhaps and only then you would probably try to forget it ever happen, however . . . if you can!

Thank You,

August 12, 2013

SSN: 4 [REDACTED]

Peter J. Blackmon
2816 West 75th St.
Indianapolis, IN 46268

(317) 387-9977

Department of Veterans Affairs
VA Regional Office
575 N. Pennsylvania Street
Indianapolis, IN 46204-1581

Docket No. 14-34 164

VA File Number
C [REDACTED]

326/211/jrr

NOTICE of DISAGREEMENT APPEAL

REPLY BRIEF

November 7, 2018

Peter J. Blackmon

2816 West 75th St.
Indianapolis, IN 46268
(317) 387-9977

pg. 1 of 2

Since the Board of Veterans' Appeals decision to deny my claim for no diagnoses, thank you in advance, again for your response regarding my TBI appeals claim for disability compensation.

Although my claim was denied as your final decision, stating lack of proof of medical diagnosis as record, please see my attachment comments that will make the proof of evidence more clear.

Therefore, the Board of Veterans Appeals will only accept a medical diagnosis for my TBI. Although, it is obvious, they have rejected my symptoms of anxiety as proof of evidence, again enough is enough!

Since there were no diagnoses given at the time of my TBI episode at War in Vietnam, I have explained the mortar blast(s) affected my central nervous system. Now, to get proof, give me an examination for my symptoms to determine the cause and effects, please, and thank you.

Furthermore, for more proof of evidence, on May 25, 2018, I was given a TBI consultation for the record (doctor too patient) which revealed the symptoms of my TBI internal nerve damage like: external symptoms of panic attack, excessive sweaty palms, dripping with uncontrollable wetness, with irritable sensation of stressful depression that you can also feel, yet alone see it!

In addition to my TBI internal emotional nerve damage, I suffer with noticeable shorten of breath and sluggish speech, while interacting with other people more than five minutes at a time due to panic attacks, peripheral neuropathy nerve pain in my hands, arms, legs, and feet, also, diabetic nerve pains in my feet that is extremely painful!

The mental health doctor has rescheduled another appointment for treatments at the mental health clinic on June 25, 2018 at Richard Roudebush, VAMC Hospital, Indianapolis, IN.

Now, I am not asking for the sympathetic concerns that were given, in regards after making your final decision, to deny my TBI claim as service-connected disability. Nevertheless, without a doubt, for the US Military record, believe it or not, I repeat, the effect of the mortar round blast episode; it forced everything in its present surroundings to shake by traumatic devastation to kill.

The force of the blast was destructive and meant to kill; affecting the surroundings both above and under ground, in which, I suffered an internal emotional nerve damage injury. The mortar rounds blasts are the known cause of my TBI that has affected my Central Nervous System . . . an emotional nerve damage!

Now, my symptoms are proof of my TBI, why mistreat me with disbelief of my emotional nerve damage for lack of evidence. To suppress my TBI symptoms are annoying, stressful, and hard to cope with!

However, by the grace of God, I survived the force of the mortar round blast, whereas, I endured an internal traumatic brain injury (TBI) occurrence by the blast. Without a doubt, the force of the blast cause the damage effects with symptoms to my emotional nerve . . . that has not been resolve yet.

Therefore, up to this day and time, in which the blast episode that caused my brain to be shaken so severely, bouncing from side to side in my skull until I passed out; it is my proof in battle with ongoing symptoms. Although, to my knowledge, my internal injury can't be medically diagnosed correctly yet. It is an unfortunate permanent injury for life . . . the worst TBI episode event, ever!

Since that time of the event episode occurrence back in 1968-69 Vietnam War, I've dealt with phobia suppression, in which I'm trying to cope with symptoms of shattered nerve damage like: panic attacks, shorten of breath, my words are sluggish while interacting with other people more than five minutes at a time, excessive wet sweaty palms for no apparent reason, it is an unthinkable reaction . . . enough!

Therefore, I need to exert emotional energy just to react, I get over bearing excessive wet sweaty palms, and fear someone is crossing my boundary line into my space. On other occasions I often experience extreme remorsefulness crying tears, when I see or hear someone has been hurt. Therefore, it is a phobia often similar to my PTSD symptoms. Nevertheless, it is very depressing and stressful.

My life style is by far the most withdrawn human being socially ever, with existing stressful oppression. Yet by far, I am respectful of other people, as I would have them respect me. I am currently in need of motivation to live, or of medical treatment to cure my harsh symptoms, before I expire by early death. I feel as though my life is a lost, existing in society only, without living my life . . . desperate for a change!

In your denial of my TBI service-connected disability claim, your comments keep indicating no proof of service-connect medical diagnose records. Therefore, now I want to know, why are you constantly omitting what I stated for the record from day one. Back in Vietnam War, there was no TBI medical diagnosis for me, at the time of the episode event in the War; **this is my notice of appeal attachment.**

Every exam after the War to the present, I received PTSD evaluations, while my TBI emotional nerve damage injury was omitted because of symptoms similarities. Although currently, I still suffer the same symptoms from my TBI episode event in the Vietnam War. Now, I need to know, why are you denying my TBI claim, for no diagnosis record never recorded as probative evidence, again enough is enough!

"My Issue(s) With the Board's Decision"

The Board's argument "FINDING OF FACT"... "The evidence does not demonstrate that it is at least as likely as not that the Veteran has a disability consisting of symptoms caused by or otherwise related to an in-service traumatic brain injury(TBI)."

My interpretation is, without a doubt, the BVA wants a medical record to prove a diagnosis was given at the time of the episode event occurrence. Yet, BVA's Finding of Fact, "Thus, the most probative evidence fails to demonstrate that it is at least as likely as not that the Veteran has a current TBI that had its onset during active service..." "a decision based on, no diagnosis given."

Whereas, without a doubt, I believe, a physical TBI examination is required to determine the extent of my TBI with symptoms. It will be proof of evidence, also, it will demonstrate probative evidence has not failed.

Although, the BVA argument has indicated to me, an ultimatum has been given somewhat. Yet, I believe their requirements have not been met yet, by which, the BVA needs to try harder to get a TBI examination as proof of evidence, before giving their final decision.

Nevertheless, the evidence presented by the Board is not conclusive proof of evidence has failed. Their decision was only by choice made. Whereas, to deny my TBI claim was their choice, for no proof of evidence or for the sake of no medical examination as record. Furthermore, it is not a failure of evidence, by which, the evidence is yet to be probative by a medical examination!

Furthermore, there was no medical diagnosis record given at the time of my TBI episode event, but my TBI had its onset during active service in the Vietnam War. The BVA "Finding of Fact" can't be considered a final decision to deny my TBI service-connected disability claim, unless, an examination for TBI medical record is given to include a second opinion, for a conclusion.

Whereas, an examination too distinguished the symptoms' similarities between TBI and PTSD, if not the same symptoms, is needed for the record and, however, for better medical treatment of my symptoms... if anyone can feel their illness, and maybe save a life from dying before their time, then a self diagnosis opinion is necessary or equal to a medial diagnose... again enough is enough!

"My Issue(s) With the Board's Decision"

Whereas, there was no medical diagnosis record to be found, the BVA's arguments or opinions are only choices. Whereby, in my opinion, the BVA gave a probative evidence ultimatum, to deny my TBI claim, or to say the BVA met their requirements served, based on the evidence of record does not contain probative evidence . . . no TBI diagnosis was given to be put on record.

Nevertheless, the BVA's arguments are not true facts as stated on page 1 "FINDING OF FACT" stating." The evidence does not demonstrate that it is at least as likely as not that the Veteran has a disability consisting of symptoms caused by or otherwise related to an in-service traumatic brain injury (TBI)". . . no probative evidence record found is not proof that my TBI did not occur.

Thereby, to assume in an argument, stating, that my TBI was not an onset in active service of the Vietnam War, their statement is only speculation. The BVA's argument is not true fact, on page 2 of RBA, and I quote: "In this case, the evidence of record does not contain probative evidence of a TBI at any time proximate to, or during, the claim", end of quote . . . a TBI diagnosis was not given, at the time of the TBI episode event in the Vietnam War, as proof of probative evidence to be found.

The speculation of the BVA's argument is a lie, an accusation, indicating that the mortar rounds' blasts event occurrence did not cause my traumatic brain injury, and then they made a decision by ultimatum to deny my TBI claim . . . it's just an absolute lie assumed, based on the absent of a TBI medical diagnosis record not given at the time of the episode in the Vietnam War.

Therefore, the BVA evidence findings are not true facts, demonstrated or not, whereas, the BVA has not met their requirements yet, without giving me the TBI medical examination for the record.

Whereas, an examination will support the need too distinguished, the cause and effects of my emotional nerve damage by the extent affects of my TBI and PTSD events with same symptoms similarities but different in mood behaviors. Also, an examination is needed for the record and, however, for a better medical diagnosis treatment of my symptoms.

“My Issue(s) With the Board’s Decision”

Furthermore, the true fact of my TBI episode event speaks for itself without a doubt; in the Statement of the Case(SOC) page #28, the statement said, and I quote: “Sometimes TBI symptoms and mental disorder symptoms overlap.” end of quote.

Nevertheless, it is without a doubt my emerging TBI symptoms are the same as my emerging PTSD symptoms as a result of different traumatic events occurrence during onset active service while in the Vietnam War, subjecting my mental capacity to an episode level of hypertension state of mind with permanent PTSD disability.

Therefore, I do believe. It is BVA’s acknowledgment of the facts, in their SOC; my TBI episode event did occur on military onset active duty time, during my tour of the Vietnam War (battlefield ground zero mortar rounds blast).

The results of the mortar rounds blast(s) had a traumatic affect on my Central Nervous System being damaged. Whereas, an internal invisible wound/injury effect of my Emotional Nerve with emerging symptoms has occurred daily, if not permanently, until a cure will be found.

“My Issue(s) With the Board’s Decision”

However if I may phrase, “Putting the Cart Before the Horse” it is wrong, you will get nothing. It does work in the order of: symptoms as evidence, an examination, a diagnosis for better medical treatment, then a decision about my TBI claim.

The BVA has denied my TBI claim by an ultimatum choice, based on speculation findings of the (record) of evidence . . . due to the absence of a TBI medical diagnose (record) that was never given, they denied my claim. The BVA’s argument decision, and I quote: “...but the record does not contain sufficient medical evidence to decide the claim,” end quote . . . a false statement.

Furthermore, there was no (record) found, no (record) given that contain a TBI diagnosis as proof of medical evidence to decide the claim, neither for nor against . . . only my symptoms are proof.

The BVA has stated in the “Finding Of Fact”pg#2, paragraph#4, pg#3, paragraph#1, and I quote: “The Board acknowledges that the Veteran was not afforded a VA examination relating directly to his TBI claim. On these facts, however, an examination is not required.

VA will provide a medical examination or obtain a medical opinion if the evidence indicates the existence of a current disability or persistent or recurrent symptoms of a disability that may be associated with an event, injury, or disease in service, but the record does not contain sufficient medical evidence to decide the claim,” end of quote.

Please, schedule or order the TBI examination for proof of my emotional nerve damage anxiety symptoms and, for better diagnose treatment of my disability.

“My Issue(s) With the Board’s Decision”

Whereas, an examination will support the need too distinguished the difference between my TBI and PTSD affects, and to treat the symptoms caused by their damage effects to my Central Nervous System Emotional nerves.

Therefore, to identify the extent of the affect of my TBI and PTSD events, with same symptoms similarities, but different in mood anxiety behaviors with uncontrollable energy impulse exertion (like excess sweaty palms) or, to exert excess energy by impulse mood swings, whereby, an examination is needed.

Also, an examination is needed for the record and, however, for better precise medical diagnose treatment of my symptoms causing disability.

Furthermore, the use of electrical shock therapy examination, as a treatment, does not effectively work, to determine the extent of my TBI damages, also, to treat the damage effects to my Central Nervous System Emotional Nerves with symptoms. However, by use of electrical shock therapy attachments to the brain as a treatment to diagnosis my emotional nerve injury, it only caused me more pain and suffering.

I was given the TBI examination a few years back in 2012 or 2013 as I can hardly remember, by the mental health clinic at the VAMC, Richard Roudebush VA Hospital, Indpls., IN.

The pain was traumatic, while wondering, I’m about to die, by a Heart Attack, due to the electric shocks attached to my head, whereas, the electric shocks also intensified the Diabetic Neuropathy nerve pains in my feet, with extreme traumatic pain, perhaps to give me a second Heart Attack!



BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: May 29, 2018

C [REDACTED]

PETER J. BLACKMON

Dear Appellant:

The Board of Veterans' Appeals (Board) has made a decision in your appeal, and a copy is enclosed.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will be contacting you regarding the next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached to this decision, for additional options.
Remand	Additional development is needed. VA will be contacting you regarding the next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached to this decision, for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

Kimberly Osborne
Deputy Vice Chairman

Enclosures (1)
CC: Disabled American Veterans



BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

**IN THE APPEAL OF
PETER J. BLACKMON
ALSO KNOWN AS
ROOSEVELT BLACKMON
REPRESENTED BY
Disabled American Veterans**

**C [REDACTED]
Docket No. 14-34 164**

DATE: May 29, 2018

ORDER

Entitlement to service connection for a traumatic brain injury is denied.

FINDING OF FACT

The evidence does not demonstrate that it is at least as likely as not that the Veteran has a disability consisting of symptoms caused by or otherwise related to an in-service traumatic brain injury (TBI).

CONCLUSION OF LAW

The criteria for entitlement to service connection for a traumatic brain injury, have not been met. 38 U.S.C. §§ 1101, 1110, 5103, 5103A, 5107 (b) (2012); 38 C.F.R. §§ 3.102, 3.159, 3.303 (2017).

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from January 1968 to January 1970.

IN THE APPEAL OF
PETER J. BLACKMON

C [REDACTED]
Docket No. 14-34 164

This matter comes before the Board of Veterans' Appeals (Board) on appeal of a July 2013 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO) in Indianapolis, Indiana.

1. Entitlement to Service Connection for TBI

The Veteran contends that he has a TBI that is directly related to his active service. Specifically, the Veteran contends that during combat in Vietnam he was exposed to mortar rounds "blasting all around me" that caused a TBI. *See*, Notice of Disagreement, received April 2012.

The existence of a current disability is the cornerstone of a claim for VA disability compensation. 38 U.S.C. § 1110; *see Degmetich v. Brown*, 104 F.3d 1328, 1332 (1997) (holding that interpretation of 38 U.S.C. §§ 1110 and 1131 as requiring the existence of a present disability for VA compensation purposes cannot be considered arbitrary). In the absence of proof of a present disability, there can be no valid claim. *Brammer v. Derwinski*, 3 Vet. App. 223, 225 (1992).

In this case, the evidence of record does not contain probative evidence of a TBI at any time proximate to, or during, the claim. In the October 2017 Appellate Brief, the Veteran's representative stated that the Veteran has a diagnosis for a TBI through VA and has received treatment for a TBI with VA. However, neither the VA treatment records nor private treatment records contain a diagnosis of, treatment for, or any other indication that the Veteran suffers from a TBI. Additionally, the Veteran has been provided VA examinations related to his service-connected posttraumatic stress disorder (PTSD). At the April 2015 PTSD examination, the Veteran stated that he suffered from a TBI. The VA examiner reviewed the record, interviewed the Veteran and conducted an in-person examination and stated that there was no evidence in the record that the Veteran has a diagnosis of a TBI.

✓ The Board acknowledges that the Veteran was not afforded a VA examination relating directly to his TBI claim. On these facts, however, an examination is not required. VA will provide a medical examination or obtain a medical opinion if

IN THE APPEAL OF
PETER J. BLACKMON

C [REDACTED]
Docket No. 14-34 164

the evidence indicates the existence of a current disability or persistent or recurrent symptoms of a disability that may be associated with an event, injury, or disease in service, but the record does not contain sufficient medical evidence to decide the claim. 38 U.S.C. § 5103A (d) (2); 38 C.F.R. § (c) (4) (i); *McLendon v. Nicholson*, 20 Vet. App. 79 (2006). In this case, the claim does not meet these requirements for obtaining a VA medical opinion. Because the weight of the evidence demonstrates no indication of a current disability, no examination is required. Absent evidence that indicates that the Veteran has a current claimed disability that is related to an injury or symptoms in service, the Board finds that a VA examination or opinion is not necessary for disposition of the claim. Accordingly, the Board finds that VA's duty to assist with respect to obtaining a VA examination or opinion with respect to the Veteran's claim for entitlement to service connection for a TBI has been met. 38 C.F.R. § 3.159 (c) (4).

Thus, the most probative evidence fails to demonstrate that it is at least as likely as not that the Veteran has a current TBI that had its onset during active service or that there is a current TBI that is otherwise causally or etiologically related to his active service. As such, service connection for a TBI is not warranted. *Degmetich*, 104 F. 3d at 1333.

The Board acknowledges the Veteran's assertions that he has a TBI. However, he has not been shown to have the medical training and knowledge required to diagnose such condition. See *Kahana v. Shinseki*, 24 Vet. App. 428, 435 (2011); *Buchanan v. Nicholson*, 451 F. 3d 1331, 1336-37. Therefore, his assertions are not considered competent and do not weigh against the probative value of the medical treatment records and private treatment records, which do not show a diagnosis of a TBI.

As noted above, the threshold requirement for service connection is competent medical evidence of the existence of the claimed disability at some point during the course of the appeal or in proximity to the claim. See *Degmetich*, 104 F. 3d at 1332; *Brammer*, 3 Vet. App. at 225; see also *McClain v. Nicholson*, 21 Vet. App. 319 (2007); *Romanowsky v. Shinseki*, 26 Vet. App. 289 (2013). Although the Board recognizes the Veteran's sincere belief in his claim, the most probative evidence of record does not show that he had a TBI at any point during or in proximity to the appeal period.

IN THE APPEAL OF
PETER J. BLACKMON

C [REDACTED]
Docket No. 14-34 164

While the Veteran has this complaint, a complaint, or symptoms, is not a "disability" for VA purposes. The Board cannot grant service connection for a complaint or symptom. Although the Board recognizes the Veteran's sincere belief in his claim, the most probative evidence of record does not show that he had a TBI at any point during or in proximity to the appeal period.

In the absence of proof of a current disability, there can be no valid claim. *Brammer*, 3 Vet. App. at 225. In this case there is an absence of proof of a traumatic brain injury during or in proximity to the appeal period. Without evidence of a current diagnosis of a traumatic brain injury the Board need not address the other elements of service connection. The preponderance of the evidence is therefore against the claim, the benefit-of-the-doubt doctrine is not for application, and the claim must be denied. 38 U.S.C. § 5107 (b); *see also Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

VA's Duty to Notify and Assist ✓

With respect to the Veteran's claim herein, VA has met all statutory and regulatory notice and duty to assist provisions. *See* 38 U.S.C. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126 (2012); 38 C.F.R. §§ 3.102, 3.156 (a), 3.159, 3.326 (2017); *see also Scott v. McDonald*, 789 F.3d 1375 (Fed. Cir. 2015).



U. R. POWELL
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD

B. G. LeMoine, Associate Counsel



YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. Your local VA office will implement the Board's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court *before* you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you*, you will have another 120 days from the date the Board decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *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.

How do I file a motion for reconsideration? You can file a motion asking the Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

**Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038**

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the Board to vacate any part of this decision by writing a letter to the Board stating why you believe you were denied due process of law during your appeal. See 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400-20.1411, and *seek help from a qualified representative before filing such a motion*. See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. See 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the Board, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso/>. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

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 the 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.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. See 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. See 38 C.F.R. 14.636(c)(2).


The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. See 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: If you hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. See 38 C.F.R. 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g)(3).

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. See 38 C.F.R. 14.636(i); 14.637(d).

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Notice Certifying that the Record
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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DECLARATION OF FINANCIAL HARDSHIP

Docket No. 14-34164

Peter J. Blackmon, Appellant/Petitioner,

v.

Secretary of Veterans Affairs, Appellee/Respondent.

I am the appellant/petitioner. I declare by my signature below, that payment of the fifty dollar (\$50.00) filing fee required by Rule 3(f) or Rule 21(a) of the Court's Rules of Practice and Procedure would be a financial hardship for me.

Pursuant to 28 U.S.C. § 1746, I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Peter J. Blackmon
Signature of Appellant/Petitioner

6-4-18
Date

(To be signed by Appellant, NOT Appellant's representative.)

INSTRUCTIONS

Send this Declaration (original only) to:

*Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950*

OR Fax (202) 501-5848

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NOTICE OF APPEAL

The following named appellant appeals to the Court from a final Board of Veterans' Appeals (BVA) decision. The Board's decision was dated May 29, 2018.

Peter J. Blackmon
Appellant's printed name
2816 West 75th St.
Indianapolis, IN 46268
pjb_mail@yahoo.com
Appellant's address

C [REDACTED]
VA claims file number
317 387-9977
Appellant's telephone number
Peter J. Blackmon
Signature of person filing this notice

Only if this Notice of Appeal is filed by a representative, check one of the following:

- ☐ My Notice of Appearance is attached.
☐ My representation is limited to the filing of this Notice of Appeal, and I aver to the Court, in accordance with Rule 46(b)(2), that the appellant has been advised, or alternatively will be advised, of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief. (Complete items below).

Representative's printed name

Representative's address

Representative's phone number

Representative's fax number

Representative's email address

INSTRUCTIONS

Send this Notice of Appeal (NOA) (original only) to:

Clerk, US Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

The NOA will be timely if it is properly addressed to the Court and bears a legible postmark affixed by the United States Postal Service (USPS) within 120 days after the mailing date of the BVA decision that you are appealing. A postage-metered date imprint other than one affixed by USPS does not qualify.

You may send this NOA by facsimile transmission to (202) 501-5848 or by means other than US mail. If you do that, or if you mail the NOA and it does not bear a legible USPS postmark, the NOA will be late if it arrives at the Court after the 120-day time limit.

There is a \$50 filing fee for an appeal. Send a check or money order, payable to "US Court of Appeals for Veterans Claims," with this NOA. Do not send cash. To request a waiver of the filing fee, attach a completed Form 4 (Declaration of Financial Hardship).

Form 1
(Rev. 08/11)

Docket No. 14-34164

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