

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

JAMES V. MACALUSH,

Petitioner,

V.

Vet. App. No. 18-6759 WRIT

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Respondent.

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

JAMES V. MACALUSH,)	
Petitioner,)	
)	
v.)	Vet. App. No. 18-6759 WRIT
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
Respondent.)	

**SECRETARY'S RESPONSE TO PETITION FOR EXTRAORDINARY RELIEF
AND COURT ORDER DATED JANUARY 28, 2019**

On November 16, 2018, Petitioner, James V. Macalush, pro se, filed a petition for extraordinary relief in the form of a writ of mandamus (Petition). Petitioner states that the Department of Veterans Affairs (VA) has failed to act on his claim for VA disability benefits for malaria and loss of one of his fingers (compensation claims). See Petition. He also asserts that VA has improperly reduced his pension (pension claim). See *id.*

In its Order, the Court directed the Secretary to respond to the Petition.

The Secretary, hereby, responds to the Court's Order. For the reasons provided below, the Secretary respectfully submits that the Court should dismiss, in part, and deny, in part, the Petition.

SUMMARY OF PERTINENT FACTS

Compensation Claims

In an October 2002 rating decision, the VA Philadelphia Regional Office and Insurance Center (ROIC) granted service connection for amputation of Petitioner's right fifth finger distal to distal interphalangeal joint (right finger disability). See Secretary's Exhibit A at 1-8. A 0% disability rating was assigned, effective September 23, 2000. See *id.*

In February 2003, the Board of Appeals for Veterans' Claims (BVA), *inter alia*, denied Petitioner's claim of entitlement to service connection for residuals of malaria. See *id.* at 9-38.

In July 2016, VA received an "Application for Disability Compensation and Related Compensation Benefits" for disability benefits for disabilities including malaria and the right finger. See Secretary's Exhibit A at 39-43.

In a December 2016 rating decision, a VA Regional Office (RO) determined, *inter alia*, that Appellant had not submitted new and material to reopen his application for service connection for residuals of malaria. See *id.* at 44-76. The RO also continued the 0% disability rating for Petitioner's right finger disability. See *id.* The RO notified Petitioner of those determinations. See *id.* at 44-58.

In September 2017, VA received Appellant's Notice of Disagreement (NOD) to the December 2016 rating decision. See *id.* at 77-78.

On September 21, 2017, the RO notified Petitioner that it had received his claim and that it intended to process it promptly, but explained that, due to the volume of pending claims, further action on Petitioner's claims could be delayed. See Secretary's Exhibit A at 79. The RO also informed Petitioner that it was in the process of determining whether additional information was needed to support the claim, and, if so, he would be contacted. *See id.*

On September 26, 2017, the RO notified Petitioner that it had received his NOD to the December 2016 decision and advised him of the appeals process. *See id.* at 81.

On October 23, 2017, the RO informed Petitioner that it was still working on his NOD and provided him with information concerning the "Veterans Claims Assistance Act." *See id.* at 86-89.

On July 8, 2018, the RO again advised Petitioner that it was working on his claim and indicated that it needed additional evidence from him. *See id.* at 90-93.

In August 2018, Petitioner notified VA that he was electing the Rapid Appeals Modernization Program (RAMP) review of his claims. See Secretary's Exhibit A at 94. By electing to participate in RAMP, Petitioner agreed to withdraw all eligible pending compensation appeals in their entirety and any associated hearing requests. *See id.*

On November 8, 2018, the RO contacted Petitioner and advised him of the status of his claims. See Secretary's Exhibit A at 97. Petitioner was told that he

would receive retroactive payment for special monthly pension, that he was service connected for a fifth right finger amputation which was rated at 0%, and that he needed to submit new and material evidence to reopen his claim for service connection for malaria. *See id.*

Later in November 2018, the RO informed Petitioner that it had received his August 2018 election to participate in RAMP, that VA had stopped processing the appeals involving his right fifth finger amputation and residuals of malaria claims, and that his appeal could no longer be reinstated under the current appeals process. *See* Secretary's Exhibit A at 98-99. The RO also advised Petitioner that it would review his claims and provide him with a new decision based on the review option Petitioner had selected. *See id.*

In November 2018, the Board acknowledged that it had received correspondence from Petitioner in October 2018 concerning his claims. *See id.* at 103. The Board explained that in November 2017 VA launched RAMP and that he had selected that process in August 2018. *See id.* The Board advised Petitioner to contact his local RO if he had any questions. *See id.*

On February 1, 2018, the RO advised Petitioner that it had corrected his RAMP level of review to the supplemental claim lane. *See* Secretary's Exhibit A at 104-06.

On February 8, 2019, the RO denied Petitioner's claim for an increased disability rating for his right finger disability and his claim for service connection for

residuals of malaria. See *id.* at 107-16. Petitioner was notified of that determination and was provided his RAMP review rights. See *id.* at 107-10.

Pension Matter

Petitioner appears to assert that VA has improperly reduced his pension by \$418.00 for approximately 23 months. See Petition. The declaration of Matthew Wright, the supervisor of the Philadelphia Pension Management Center (PMC), explains the status of Petitioner's pension and the actions that have been taken on Petitioner's pension. See Secretary's Exhibit at B at 1-2. Mr. Wright explained that the determination of monthly pension rates is based on a projection of a Veteran's expected income and medical expenses. See *id.* at 1. He added that Petitioner's pension rate is based on his countable income from the Social Security Administration (SSA) and his reasonable predictable medical expenses, and that each year Petitioner submits unreimbursed expenses his pension is recalculated to reflect his adjusted countable income. See *id.* Mr. Wright further explained that since 2013, Petitioner's submissions and adjustments allowed VA to retroactively readjust his award to the maximum VA pension rate for the prior year. See *id.* Beginning in 2017, Petitioner was receiving a pension rate of \$868, which was based on his income from SSA and a projection of annual medical expenses of \$6380 yearly. See *id.* It was determined that after processing Petitioner's annual medical expenses for 2016, VA could not continue to project \$6380 in annual medical expenses for 2017, and Petitioner's projected medical expenses were

reduced to \$1380 a year in 2017 which resulted in a monthly pension rate in 2017 of \$446.00. See Secretary's Exhibit B at 1. In April 2017, Petitioner was advised of the adjustment of his 2017 monthly pension rate. See *id.* at 1, 3-10.

In July 2017, VA received Petitioner's NOD to the April 2017 reduction. See *id.* at 2, 11-14. In March 2018, VA readjusted the April 2017 reduction to reflect his exact medical expenses for that year. See *id.* at 2, 14-24. In August 2018, Petitioner's monthly pension rate for 2017 was increased to \$1794 per month. See *id.* at 2, 26-32. His award for 2018 was readjusted to the \$478 monthly payment based on a projection of his expenses. See *id.* at 2, 26. Petitioner was notified of the August 2018 determinations and was provided his appellate rights. See Secretary's Exhibit B at 2, 36-37.

In September 2018, the PMC received Petitioner's NOD to the August 2018 determination concerning his 2018 monthly pension payments. See *id.* at 2, 39-49. Based on Petitioner's 2018 medical receipts, the PMC readjusted Petitioner's 2018 pension payments to the maximum payment of \$1881.00 in January 2019 and increased his projected award for 2019. See *id.* at 2, 51-60. Petitioner was awarded retroactive payment in the amount of \$17,658. See *id.* at 2. Petitioner was notified of those awards by letter and by telephone. See Secretary's Exhibit B at 51-60, 61.

RESPONSE TO PETITION

In addition to its appellate jurisdiction, the Court has the authority to issue extraordinary writs necessary in aid of its prospective jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651 (a). See *Cox v. West*, 149 F.3d 1360, 1363-64 (Fed. Cir. 1998). However, “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. United States District Court*, 426 U.S. 394, 402, (1976)). Three conditions must be met before a court may issue a writ of mandamus: (1) The petitioner must lack adequate alternative means to attain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process, (2) the petitioner must demonstrate a clear and indisputable right to the writ, and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. See *Cheney v. U.S. Dist. Ct. D. C.*, 542 U.S. 367, 380-81 (2004); *Erspamer v. Derwinski*, 1 Vet.App. 3, 9 (1990) (quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384, 74 S.Ct. 145, 458, 98 L.Ed. 106 (1953)).

The Secretary submits that the petition should be dismissed, in part, as discussed below. The Court has adopted the jurisdictional restrictions of the case or controversy rubric under Article III of the Constitution of the United States. See *Aronson v. Brown*, 7 Vet.App. 153, 155 (1994); *Mokal v. Derwinski*, 1 Vet.App. 12, 13 (1990). Accordingly, a petition which seeks relief that has been accomplished

should be dismissed as moot. See *Thomas v. Brown*, 9 Vet.App. 269, 270 (1996) (*per curiam* order); *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (*per curiam* order) (Court lacks jurisdiction absent a case or controversy or when once live case or controversy becomes moot); *Mokal*, 1 Vet.App. at 15 (Court dismissed portion of petition seeking mandamus relief because controversy surrounding that portion of petition was moot).

The Court should dismiss the Petition with regard to the compensation claims.

Petitioner asserts that VA has failed to act on his right finger disability and residuals of malaria claims. See Petition. The Secretary responds that Petitioner has not provided a basis for the Court's issuance of extraordinary relief because the basis of the Petition on those matters has been satisfied. In a rating decision dated in February 2019, the RO denied Petitioner's claim for a compensable disability rating for his right finger disability and also determined that Petitioner had not submitted new and material evidence to reopen a claim for service connection for residuals of malaria. See Secretary's Exhibit at 111-21. The RO has effectively remedied these matters, thereby, rendering Petitioner's request for extraordinary relief moot. *Chandler v. Brown*, 10 Vet.App. 175, 177 (*per curiam* order); *Mokal*, 1 Vet.App. at 13. Therefore, the Court should dismiss the Petition. *Id.*

The Court should deny the Petition as to the pension claim.

As to the pension matter, the Secretary responds that the Court should deny the Petition because Petitioner has not established a clear and indisputable right to the writ. See *Cheney*, 542 U.S. at 380-81. Petitioner asserts that VA inappropriately reduced his pension. See Petition. The Secretary responds that it is not clear as to the date of the action which Petitioner contests. But it appears that he is challenging the 2017 and 2018 reductions of his monthly pension rates. As Mr. Wright explained in his declaration, the PMC addressed Petitioner's disagreement with the 2017 and 2018 adjustments, restored those payments to the maximum VA pension rates, and awarded him a retroactive payment of \$17,658. See Secretary's Exhibit B at 2, 51-60, 61. To the extent that Petitioner is dissatisfied with the PMC's determinations, he should seek appellate review before the BVA. See 38 U.S.C. § 7105. And if he is dissatisfied with the Board's determination he can appeal the matter to the Court. See 38 U.S.C. § 7266(a). But a writ for extraordinary relief cannot be used to obtain merits relief in lieu of an appeal to the Board. *Cheney*, 542 U.S. at 380-81 (a writ cannot be used as a substitute for an appeal); *Heath v. West*, 11 Vet.App. 400, 402-03 (1998) (a claimant may not invoke the Court's power under the All Writs Act to obtain a merits decision), *aff'd per curiam* 215 F.3d 1342 (Fed. Cir. 1999) (table). Petitioner cannot circumvent the appeals process by seeking judicial review of this matter through a petition for extraordinary relief in the form of a writ of mandamus. See

Lamb v. Principi, 284 F.3d 1378, 1384 (Fed. Cir. 2002) (stating that an extraordinary writ simply cannot be used as a substitute for an appeal).

Petitioner has not provided a basis for the Court’s issuance of extraordinary relief based on delay.

When delay is alleged as the basis for a petition, “[t]he overreaching inquiry in analyzing a claim of unreasonable delay is ‘whether the agency’s delay is so egregious as to warrant mandamus.’” *Martin v. O’Rourke*, 891 F.3d at 1338, 1344 (Fed. Cir. 2018) (quoting *Telecomms. Research & Action Ctr. v. FCC* (“TRAC”), 750 F.2d 70, 79 (D.C. Cir. 1984)). In *TRAC*, the U.S. Court of Appeals for the D.C. Circuit identified six factors relevant to that inquiry:

(1) the time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find “any impropriety lurking behind agency lassitude” in order to hold that agency action is unreasonably delayed.

750 F.2d at 80 (citations and internal quotations omitted). In *Martin*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) directed the Court to apply the foregoing factors when deciding petitions based on allegedly unreasonable delay.

Id.

To the extent that Petitioner has expressed delay in this case, the Secretary responds that the Court's issuance of a writ based on the TRAC factors is not warranted. In *TRAC*, the Court determined that the test for delay need be applied when the respondent has acted expeditiously on the petition. See *TRAC*, 750 F.2d at 80. As noted, above VA has satisfied the bases of the Petition as to the right finger and malaria claims. See Secretary's Exhibit at 23, 24, 28-38; *TRAC*, 750 F.2d at 80.

As to the pension claim, Petitioner asserts that VA improperly reduced his pension but does not appear to have asserted any delay regarding this matter. Also, it appears that the PMC has restored Petitioner's pension rates. See Secretary's Exhibit B at 2, 26-32, 51-60. Therefore, consideration of the TRAC factors is also not warranted. See *TRAC*, 750 F.2d at 80.

VA provided Petitioner information about his claims.

In its Order, the Court indicated that Petitioner asserts that VA has failed to respond to various requests. See January 28, 2019, Court Order. The Secretary notes that Petitioner's comments are not clear, but it appears that he has been requesting the status of his claims and expressing disagreement with the disposition of the claims. See Petition.

As to the right finger and malaria claims, the Secretary responds that VA has communicated with Petitioner about those matters. The Secretary notes that Petitioner has not provided the specific dates in which he requested information

about his claims. But the record shows that since Petitioner filed a claim for disability compensation in 2016, VA has advised Petitioner about the status of the claims. After receiving his NOD on September 19, 2017, VA, on September 21, 2017, informed Petitioner that it had reviewed his claim but explained that further action on the claim could be delayed due to an overload of pending claims (see Secretary's Exhibit A at 79), and on September 26, 2017, VA informed Petitioner that it had received his NOD (see Secretary's Exhibit A at 81-83). VA provided Petitioner more information about his claim in October 2017 (see Secretary's Exhibit A at 86-90), July 2018 (see Secretary's Exhibit A at 90-93), November 2018 (see Secretary's Exhibit A at 97, 100-02, 103), and February 2019 (see Secretary's Exhibit A at 104-110).

As to the pension claim, Mr. Wright indicated that, due to workload considerations, the PMC had not responded to Petitioner's correspondence regarding his pension disagreement. See Secretary's Exhibit B at 2. The Secretary apologizes to the Court and Petitioner for this omission. But in November 2018, the VA Regional Office in St. Petersburg contacted Petitioner about his pension and told him that his claim had been reviewed and that he would receive retroactive payment for special monthly compensation. See *id.* at 50. In January 2019, VA notified Petitioner that his 2017 and 2018 monthly pension payments had been restored to the maximum payment amounts. See *id.* at 61-66, 67.

Based on the foregoing, the Secretary submits that Petitioner has failed to show the inadequacy of the administrative adjudication and appellate review process or the need for Court-ordered circumvention of the Board. The All Writs Act is not a substitute for an administrative appeal. See *Bankers Life and Casualty Co. v. Holland*, 346 U.S. 379, 384 (1953). Neither has Petitioner shown that the potential jurisdiction of the Court would be frustrated. See *United States v. Black*, 128 U.S. 40, 48 (1888) (The Court should refuse to invoke extraordinary powers where it is not shown that an official has refused to act at all). In short, Petitioner has failed to demonstrate a clear and indisputable entitlement to extraordinary relief, and has not shown that he lacks an administrative remedy

CONCLUSION

For the foregoing reasons, Respondent respectfully urges that the Petitioner has failed to demonstrate a compelling basis for the issuance of an extraordinary writ. Therefore, the Petition should be dismissed, in part, and denied, in part.

Respectfully submitted,

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Kenneth A. Walsh
KENNETH A. WALSH
Deputy Chief Counsel

/s/ Bobbiretta E. Jordan

BOBBIRETTA E. JORDAN

Appellate Attorney

Office of General Counsel (027J)

U.S. Department of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, D.C. 20420

(202) 632-6955

Attorneys for the Respondent, Secretary of
Veterans Affairs

CERTIFICATE OF SERVICE

On February 26, 2019, a copy of the foregoing was mailed postage prepaid to:

James .V. Macalush
6731 Matt Pledoer Ct.
N. Ft. Myers, FL 33917

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/Bobbiretta E. Jordan

BOBBIRETTA E. JORDAN

Counsel for Appellee

EXHIBIT A

DEPARTMENT OF VETERANS AFFAIRS

VAROIC PHILADELPHIA
5000 WISSAHICKON AVE
PO BOX 8079
PHILADELPHIA PA 19101

OCT 28 2002

In Reply Refer To: 310/POST/r/s

JAMES V MACALUSH
4578 BARBARA LANE
WALNUTPORT PA 18088

MACALUSH, James V

Dear Mr. Macalush:

We made a decision on your claim for service connected compensation received on September 18, 2000.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What Did We Decide?

We denied entitlement to special monthly pension based on the need for aid and attendance.

We determined that the following condition(s) was/were related to your military service. We granted a 0% evaluation for each disability, however no monetary compensation can be awarded.

Medical Description
amputation right 5th finger distal to distal interphalangeal joint

The law says VA can't pay for disabilities that are less than 10% disabling.

Your monthly payment will continue unchanged.

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered and the reasons for our decision. You can find the decision discussed in the section titled "Decision." The evidence we considered is discussed in the section titled "Evidence." The reasons for our decision can be found in the portion of the rating titled "Reasons for Decision" or "Reasons and Bases."

2

██████████
Macalush, James V

We enclosed a VA Form 21-8764, "Disability Compensation Award Attachment-Important Information," which explains certain factors concerning your benefits.

Are You Entitled To Additional Benefits?

You are entitled to medical care by the VA health care system for any service connected disability. You may apply for medical care or treatment at the nearest medical facility. If you apply in person, present a copy of this letter. If you apply by writing a letter, include your VA file number and a copy of this letter.

What You Should Do If You Disagree With Our Decision.

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

Do You Have Questions Or Need Assistance?

If you have any questions or need assistance with this claim, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

If you call, please refer to your VA file ██████████ ██████████. If you write to us, put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter. You can visit our web site at www.va.gov for more information about veterans' benefits.

We sent a copy of this letter to American Legion because you appointed them as your representative. If you have questions or need assistance, you can also contact them.

Sincerely yours,

W. CLARK, SR

Veterans Service Center Manager

Email us at: phillyro.query@vba.va.gov.

Enclosure(s): Rating Decision

VA Form 4107

VA FORM 21-8764

cc: American Legion



DEPARTMENT OF VETERANS AFFAIRS

VAROIC

**Post Office Box 8079
Philadelphia PA 19101**

James V. Macalush

VA File Number

[REDACTED]

**Represented by:
AMERICAN LEGION**

**Rating Decision
October 28, 2002**

INTRODUCTION

You are a Korean Conflict Era and Peacetime veteran and served in the US Army from September 22, 1954 to August 27, 1957.

DECISION

1. Service connection for amputation right 5th finger distal to distal interphalangeal joint is granted with an evaluation of 0 percent effective September 23, 2000.
2. Entitlement to special monthly pension based on the need for aid and attendance is denied.

EVIDENCE

VA Examination, VAMC Wilkes Barre, dated April 9, 2001
VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, Dr. Rapport, received October 19, 2000
Reply to request for Service Medical Records dated May 1, 2002

James V. Macalush

Page 2

REASONS FOR DECISION**1. Service connection for amputation right 5th finger distal to distal interphalangeal joint.**

We have granted service connection for amputation right 5th finger distal interphalangeal joint at a 0% evaluation. A noncompensable evaluation is assigned unless there is amputation of the little finger at the proximal interphalangeal joint or proximal thereto. Service Medical Records are not available due to fire and there are no Surgeon General reports of this incident. Records received from the 60th Band do not show treatment, complaints or findings regarding amputation of distal interphalangeal joint, right 5th finger. Your claim is consistent with the evidence and circumstances of record and there is no information showing the injury was incurred before or after military service. VA examination shows that right little finger had an amputation of the distal phalanx. In the absence of any medical records which show the injury having occurred while in military service, as well as the absence of any medical information to show the amputation was incurred other than in military service, the Doctrine of Reasonable Doubt will apply. The doctrine is a defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent with the facts shown in every case. If, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant.

2. Entitlement to Special Monthly Pension based on the need for aid and attendance.

We have denied your claim for special monthly pension, aid and attendance. VA examination shows that you were able to attend the examination alone even though your son drove you to the hospital. You are not permanently bedridden or visually impaired. You are capable of managing your benefit payment and you can protect yourself from the hazards and dangers of the daily environment. You are capable of carrying on with day to day activities. Physical examination showed you to be alert, oriented times 3, comfortable and not in any distress. You were obese and well nourished. Your gait was normal. Upper extremities had strength, muscle power, coordination and tone within normal limits. You are able to feed, dress, bathe and attend to toileting on your own. You indicated you could not shave without assistance. Lower extremities have normal muscle strength, no contractures or weakness noted. Coordination is fair to normal. There is no focal sensory deficit over the lower extremities or upper extremities. You were unable to perform tandem walk. Spine, trunk and neck were normal, without point tenderness and full range of motion was present. No deformity of the thoracic spine was noted and no interference with breathing. You were able to walk without assistance. You indicated that you could walk up to one block and may use a cane or walker to prevent falling. You stated that you do not leave the residence for fear of falling. Form from Dr. Rapport does not show that you need the assistance of another person to

x

James V. Macalush
[REDACTED]

Page 3

accomplish the activities of daily living. Aid and attendance may be awarded when the claimant is blind in both eyes having visual acuity of 5/200 or less, or has contraction of the visual field to 5 degrees or less; is a patient in a nursing home because of mental or physical incapacity; or, when the evidence shows aid and attendance is required to perform routine activities of daily living. The routine activities of daily living are basic self-care tasks which include such things as the ability to dress or undress one's self, to keep one's self ordinarily clean and presentable, ability to feed one's self, the ability to attend to the needs of nature, or the ability to protect one's self from the hazards or dangers incident to his or her daily environment.

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 web site, www.va.gov.

Rating Decision		Department of Veterans Affairs VAROIC		Page 1 10/28/2002
NAME OF VETERAN James V. Macalush	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AMERICAN LEGION	COPY TO

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		NONE

JURISDICTION: New Claim Received 09/18/2000

SUBJECT TO COMPENSATION (1. SC)

5156 AMPUTATION RIGHT 5TH FINGER DISTAL TO DISTAL INTERPHALANGEAL JOINT
Service Connected, Peacetime, Incurred
0% from 09/23/2000

COMBINED EVALUATION FOR COMPENSATION:

0% from 09/23/2000

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Korean Conflict, Peacetime)

6304 MALARIA
Not Service Connected, Not Incurred/Caused by Service

5017 GOUT
Not Service Connected, Not Incurred/Caused by Service

PENSION ENTITLEMENT DECISIONS (2 PT and 9 NOT PT)

SPECIAL MONTHLY PENSION:

Veteran Entitled to SMP H/B - 100%/60% from 07/03/1999

Not Entitled to A&A

DISABILITIES CONSIDERED FOR PENSION PURPOSES ONLY

Rating Decision		<i>Department of Veterans Affairs</i> VAROIC		Page 2 10/28/2002	
NAME OF VETERAN James V. Macalush	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AMERICAN LEGION	COPY TO	

5292	DEGENERATIVE DISC DISEASE, LUMBAR SPINE Pension 40%
5290	DEGENERATIVE DISC DISEASE, CERVICAL SPINE Pension 30%
9433	DYSTHYMIC DISORDER Pension 30%
5201	RESIDUALS, RIGHT SHOULDER INJURY Pension 20%
7913	DIABETES MELLITUS Pension 20%
8100	HEADACHES Pension 10%
8620	PERIPHERAL NEUROPATHY RIGHT LOWER EXTREMITY Pension 10%
8620	PERIPHERAL NEUROPATHY LEFT LOWER EXTREMITY Pension 10%
8629	LEFT LATERAL FEMORAL CUTANEOUS NEUROPATHY, LEFT THIGH Pension 10%
7006	MYOCARDIAL INFARCTION WITH HYPERTENSION AND OCCLUDED CORONARY ARTERY Pension 100%

COMBINED EVALUATION FOR PENSION : 100% (Bilateral factor of 2.7 Percent for diagnostic codes 8620, 8620, 8629)

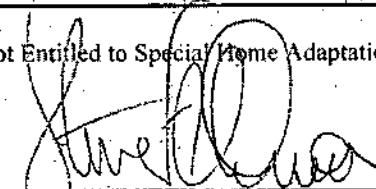
ANCILLARY DECISIONS

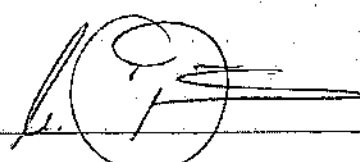
Not Entitled to Specially Adapted Housing

x

Rating Decision		Department of Veterans Affairs VAROIC		Page 3 10/28/2002	
NAME OF VETERAN James V. Macalush	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AMERICAN LEGION	COPY TO	

Not Entitled to Special Home Adaptation


Steve Feldman





BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
JAMES V. MACALUSH

DOCKET NO. 99-06 637A

) DATE FEB 27 2003
)
)

On appeal from the
Department of Veterans Affairs Regional Office in Philadelphia, Pennsylvania

THE ISSUES

1. Entitlement to service connection for residuals of malaria.
2. Entitlement to an effective date earlier than March 23, 1995 for the grant of a permanent and total disability rating for pension purposes.
3. Entitlement to special monthly pension on account of the need for aid and attendance of another person.

REPRESENTATION

Appellant represented by: The American Legion

ATTORNEY FOR THE BOARD

R.P. Harris, Counsel

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INTRODUCTION

The appellant had active service from September 1954 to August 1957, including as a member assigned overseas to the 60th Army Band, Fort Gulick, [Panama] Canal Zone.

Historically, a December 1995 rating decision granted a permanent and total disability rating for pension purposes, effective March 23, 1995. This matter came before the Board of Veterans' Appeals (Board) on appeal from August 1996 and May 1997 rating decisions by the Philadelphia, Pennsylvania, Regional Office (RO), which respectively denied special monthly pension on account of the need for aid and attendance of another person or on account of being permanently housebound and denied an effective date earlier than March 23, 1995 for the grant of pension benefits.

By a September 1999 rating decision (by a decision review officer), the RO granted special monthly pension on account of being permanently housebound, thereby rendering that issue moot; and denied special monthly pension based on the need for aid and attendance of another person. Since special monthly pension based on being permanently housebound represents a lesser benefit than special monthly pension based on the need for aid and attendance of another person, the latter issue remains in appellate status. See 38 U.S.C.A. § 1521(d),(e) (West 1991 & Supp. 2002). Appellant also appealed a subsequent 2000 rating decision, which denied service connection for residuals of malaria. In an April 2001 written statement, appellant withdrew an earlier request for a Board hearing. Accordingly, the Board will render a decision herein on the issues as delineated on the title page of this decision.

To the extent additional issues may have been raised, since they have not been formally adjudicated by the RO. To the extent there are specific issues for which appellant desires consideration, he should address that matter specifically with the RO. The Board has jurisdiction over the issues on the title page. *Kellar v. Brown*, 6 Vet. App. 157 (1994).

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FINDINGS OF FACT

1. It has not been shown, by credible, competent evidence, that appellant has residuals of malaria related to service.
2. Private clinical evidence of record indicates that appellant was apparently permanently and totally disabled on or about June 20, 1994, date of injuries sustained in a fall at a market.
3. Appellant's initial application for VA benefits was received by the RO March 23, 1995.
4. In December 1995, the RO granted a permanent and total disability rating for pension purposes, effective March 23, 1995.
5. Appellant did not file a specific claim for a retroactive pension award until September 1996.
6. Appellant did not have extensive hospitalization or physical or mental disability so incapacitating that it prevented him from filing a disability pension claim within a one-month period after that June 20, 1994 fall or prior to March 23, 1995.
7. Appellant's principal disabilities are degenerative discogenic disease of the lumbar and cervical spine, dysthymic disorder, residuals of a right shoulder injury, diabetes mellitus, headaches, dizziness, peripheral neuropathy of the lower extremities, left thigh lateral femoral cutaneous neuropathy, and myocardial infarction with hypertension and coronary artery disease.
8. Appellant is not institutionalized in a nursing home on account of mental or physical incapacity, blind, unable to feed and clothe himself, bedridden, or incapable of attending to the wants of nature without assistance.

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9. Appellant is able to ambulate freely without gait impairment, although he has fear of falling. He is able to engage in activities of daily living.

10. VA medical opinion states that appellant was not permanently bedridden; and that he was capable of protecting himself from hazards and dangers in his daily environment. That opinion is more persuasive than an earlier private medical opinion, which states, without adequate rationale provided, that appellant required the daily personal health care services of a skilled provider.

11. It is not as likely as not that appellant is unable to engage in activities of daily living due to his disabilities, and requires regular aid and assistance by another person to protect him from hazards or dangers incident to his daily environment.

CONCLUSIONS OF LAW

1. Appellant does not have residuals of malaria that were incurred in or aggravated by active service, nor may malaria be presumed to have been so incurred. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1131, 1137, 5107 (West Supp. 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309(b) (2002); *Brammer v. Derwinski*, 3 Vet. App. 223, 225 (1992).

2. The criteria for an effective date earlier than March 23, 1995 for a grant of a permanent and total disability rating for pension purposes have not been met. 38 U.S.C.A. §§ 5107, 5110, 5111 (West Supp. 2002); 38 C.F.R. §§ 3.31, 3.151, 3.400 (2002).

3. The criteria for entitlement to special monthly pension based on the need for regular aid and attendance of another person have not been met. 38 U.S.C.A. §§ 1502, 1521, 5107 (West Supp. 2002); 38 C.F.R. §§ 3.351, 3.352 (2002).

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REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

There has been a significant change in the law during the pendency of this appeal. On November 9, 2000, the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096 (2000), as codified at 38 U.S.C.A. § 5100 et. seq. (West Supp. 2002) became law. This law redefines the obligations of VA with respect to the duty to assist and includes an enhanced duty to notify a claimant as to the information and evidence necessary to substantiate a claim for VA benefits. There have also been final regulations promulgated to implement the new law. See 66 Fed. Reg. 45,620-32 (August 29, 2001) (codified at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, and 3.326 (2002)). This change in the law is potentially applicable to all claims filed on or after the date of enactment of the Veterans Claims Assistance Act of 2000, or filed before the date of enactment and not yet final as of that date. 38 U.S.C.A. § 5100 et. seq. (West Supp 2002); see also *Karnas v. Derwinski*, 1 Vet. App. 308 (1991).

However, recent decisions rendered by the United States Court of Appeals for the Federal Circuit have held that Section 3 of the Veterans Claims Assistance Act of 2000, dealing with notice and duty to assist requirements, does not apply retroactively to any claim filed prior to the date of enactment of that Act and not final as of that date. See *Dymont v. Principi*, 287 F.3d 1377 (Fed. Cir. 2002) and *Bernklau v. Principi*, 291 F.3d 795 (Fed. Cir. 2002). Thus, since appellant's claims at issue were not final on November 9, 2000, it appears that Section 3 of the Veterans Claims Assistance Act of 2000, dealing with notice and duty to assist requirements, may not be applicable here.

Even assuming arguendo, that Section 3 of the Veterans Claims Assistance Act of 2000 is applicable in the instant appeal, after reviewing the record, the Board is satisfied that all relevant facts have been properly developed. Although the majority of appellant's service medical records were apparently destroyed in a fire at the National Personnel Records Center (NPRC) in the 1970's, in 1993 NPRC attempted records reconstruction and did locate and provide the RO a copy of a June 1957 service separation examination report. The RO has subsequently sought

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appellant's additional service medical records on numerous occasions to no avail and although NPRC's search of alternative sources produced certain 1956 military morning reports, these provide no pertinent information. Additionally, appellant has submitted numerous post-service private medical records and VA examinations in May 1999 and April 2001 were conducted. He was informed of the last examination by rating action of October 2002. None of the credible, competent evidence of record confirms that appellant has any residuals of malaria related to service; and August and September 1998 private and VA malaria smears were specifically noted to be negative.

With respect to the issue of an effective date earlier than March 23, 1995 for the grant of pension benefits, the evidentiary record includes an application for VA disability benefits form dated in March 1994 but stamped as received by VA on March 23, 1995; numerous written statements and other documentary evidence that appellant has submitted; and numerous private medical records dated prior and subsequent to that date in question. The evidentiary record adequately sets forth information as to the date appellant initially filed for VA disability benefits and the circumstances pertaining to his health prior to March 23, 1995 to the extent it may have affected his ability to file.

With respect to the issue of special monthly pension based on the need for aid and attendance of another person, appellant has submitted private medical statements in support of his claim. Additionally, appellant was afforded appropriate VA examinations that provide a sufficiently detailed and comprehensive picture of the extent and severity of his principal disabilities, and adequately document the degree to which these impact upon his overall personal functioning.

Additionally, appellant was issued September 1996, April 1999, and October 2000 Statements of the Case and a September 1999 Supplemental Statement of the Case on the appellate issues, which included relevant laws and regulations, discussion of relevant clinical and documentary evidence, and a detailed explanation of the rationale for the adverse decisions. Additionally, in a March 2001 letter, the RO requested appellant, in part, to provide any clinical records or service medical

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records in his possession to substantiate his malaria service connection claim; and informed him that the current evidentiary record did not show that he has "active malaria or indications that you actually had it in the past." In a November 2001 Report of Contact form, it was reported that appellant did not have any other medical evidence to submit on the claims in question. Finally, the contents of the last physical examination were set forth in an October 2002 rating action which was provided to the veteran. Furthermore, appellant's representative has submitted additional argument with respect to the appellate issues.

The evidentiary record includes available service medical records, private and VA clinical records, appropriate VA examinations, and certain application forms and other information pertaining to the appellate issues. It does not appear that appellant has informed the VA of the existence of any other specific, competent available evidence that should be obtained or other necessary development that should be rendered in his appeal. The Board concludes it may proceed, as all evidence has been received to the extent of its availability, without regard to more specific notice as to which party could or should obtain which evidence. *See Quartuccio v. Principi*, 16 Vet. App. 183 (2002). It is the Board's opinion that there is no indication that other existing evidence should be obtained and that the duty to assist as contemplated by applicable provisions, including the Veterans Claims Assistance Act of 2000 to the extent it may apply, has been satisfied under the circumstances with respect to the issues on appeal.

I. Service Connection for Residuals of Malaria

In deciding the service connection appellate issue, the Board will consider applicable statutory and regulatory provisions, including the following:

Service connection for VA disability compensation purposes may be awarded for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C.A. §§ 1110, 1131.

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Where a veteran served continuously for ninety (90) days or more during a period of war or during peacetime service after December 31, 1946, and malaria becomes manifest to a degree of 10 percent within one year from date of termination of such service, such disease shall be presumed to have been incurred in service, even though there is no evidence of such disease during the period of service. This presumption is rebuttable by affirmative evidence to the contrary. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307, 3.309.

In pertinent part, for the showing of chronic disease in service, there are required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or diagnoses including the word "Chronic." Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic, or where the diagnosis of chronicity may legitimately be questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim. 38 C.F.R. § 3.303(b). Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

In *Pond v. West*, 12 Vet. App. 341, 346 (1999), the United States Court of Appeals for Veterans Claims (Court) held that "[g]enerally, to prove service connection, a claimant must submit (1) medical evidence of a current disability, (2) medical evidence, or in certain circumstances lay testimony, of in-service incurrence or aggravation of an injury or disease, and (3) medical evidence of a nexus between the current disability and the in-service disease or injury."

Appellant contends that during service, he contracted malaria in the Panama Canal Zone. Significantly, appellant does not assert that he received medical treatment for malaria in service or proximate thereto. Appellant's service record DD-214 form does indicate that he served as an Army bandmember in the Panama Canal Zone during the mid-1950's. However, even assuming that malaria is endemic to such

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tropical area, the evidentiary record is devoid of any credible, competent clinical evidence indicating that he has residuals of malaria related to service.

Although the majority of appellant's service medical records were apparently destroyed in a fire at NPRC in the 1970's, in 1993 NPRC attempted records reconstruction and did locate and provide the RO a copy of a June 1957 service separation examination report. The June 1957 service separation examination report, which did not include any complaints, findings, diagnoses, or history pertaining to malaria, is of substantial probative value, since it is an objective, detailed record of appellant's health status at time of service discharge. His temperature was 98 degrees and not indicative of any fever on that examination. Military "morning reports" mention appellant, but do not provide any relevant evidence on this appellate issue.

It is also significant that malaria was not alleged in appellant's March 1995 initial application for VA disability benefits nor in numerous private and VA clinical records and examinations dated in the 1980's and 1990's prior to April 1998, approximately three decades after service, when appellant initially alleged having contracted in-service malaria. None of these post-service medical records included any clinical findings of fever or associated complaints of chills or fever or history thereof. For example, a private clinical record dated in October 1986 and an October-November 1995 VA examination report noted that appellant's temperature was 98.6 and 98.4, respectively. Diagnoses included possible diabetes on that VA examination. Private clinical records dated in 1996 indicated that appellant was diabetic. In a May 1998 written statement, appellant stated that malaria is characterized by recurrent episodes of chills, fever, headaches, anemia, and muscle ache; that "I must have gotten bitten by a mosquito while in Panama"; that "I've had this for years"; and that just the other night, he had had chills and muscle ache carrying two large trash cans to the end of his driveway, which resolved after a couple hours.

A substantial negative piece of evidence is an August 1998 private laboratory study malaria smear result, which was negative for any blood/tissue parasites. On May

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1999 VA examination, a history of sweating and fatigue episodes in 1994 and negative August and September 1998 private and VA malaria smears were noted. The examiner stated that review of appellant's medical records did not indicate any clear documentation of any unusual infectious, immune, and nutritional disability; and that appellant had no documented fever, weight loss, anorexia, or unusual skin rash. Clinically, his temperature was 98.6 degrees. Malaria was neither clinically reported nor diagnosed on that examination.

In a March 2000 written statement, a private physician "D.M.R., M.D." (hereinafter referred to as "Dr. R."), reported that appellant "suffers from recurrent episodes of rigors, presumed secondary to malaria, for which he is under the treatment of Dr. G___, an Infectious Disease specialist." In a May 2000 written statement, "Dr. R." reported that he had treated appellant for a "myriad" of health complaints since 1994; that appellant had a history of malaria; and that he was under the care of "approximately 120 physicians." An October 2000 examination report, apparently conducted by "Dr. R.", did not include a malaria diagnosis.

In April 2001, appellant submitted a September 1998 written statement from "Dr. G___" addressed to "Dr. R." In that statement, "Dr. G___" reported that appellant complained of "fever of many years' duration.... [Appellant] states that his fever started right after he left the Army in 1957. He was not taking malaria prophylaxis while in Panama." Clinically, appellant was afebrile and there was no lymphadenopathy, abdominal organomegaly/masses, signs of peripheral embolization of the skin, jaundice, or other pertinent symptoms. The impression was "FUO" [fever of undetermined origin]. The physician remarked that FUO "brings up an extensive differential diagnosis included in the top of the list, malaria, which I could find to fit quite perfectly in this picture. Also, other recurrent illnesses over many years as in chronic brucellosis or borreliosis.... Other infectious process: SBE or occult abscess or undefined infectious fossa would be less likely since [appellant]'s fever has carried on for so many years." He stated that appellant would be provided malaria smears "to help us to pin down better his diagnosis"; and that "I would like to try him empirically on anti-malaria medication."

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On April 2001 VA examination, appellant alleged having “developed rigor and sweating during his Panama service; severe rigor ten years ago with chills and sweats; and that a private physician had prescribed hydroxychloroquine treatments. The examiner stated that review of appellant’s medical records revealed negative malarial smears, hepatitis profiles, and a normal serum laboratory study. The examiner also remarked that although appellant stated that a private physician had diagnosed malaria, “[t]he exact date of the diagnosis could not be determined from the review of [appellant’s] old records.” After clinical evaluation, the examiner stated that there was no current infectious etiology that could be ascertained. Clinically, appellant’s temperature was 98.4 degrees. Diagnoses included “history of malaria, as per patient. Documentation from his private physician and malarial smears are still pending.”

The Court, in *Brammer v. Derwinski*, 3 Vet. App. 223, 225 (1992), held that, referring to the veteran in that case:

He apparently is of the belief that he is entitled to some sort of benefit simply because he had a disease or injury while on active service. That, of course, is mistaken. Congress specifically limits entitlement for service-connected disease or injury to cases where such incidents have resulted in a *disability*. See 38 U.S.C. § 1110 (formerly § 310). In the absence of proof of a present disability there can be no valid claim. Our perusal of the record in this case shows no claim of or proof of present disability. *Rabideau v. Derwinski*, 2 Vet. App. 141, 143-44 (1992).

Appellant has not submitted any competent evidence that indicates that he currently has residuals of malaria or that residuals of malaria are related to service. Although in the 1990’s, *approximately three decades after service*, appellant initially alleged contracting malaria during his 1950’s Panama service period, malaria smears in

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1998 did not confirm the presence of any malarial parasites, nor does the evidentiary record include any clinical evidence confirming malarial infection. Rather, a private infectious disease specialist clearly stated that based upon appellant's history of in-service malaria with subsequent "fever of many years' duration", the *differential* diagnoses for appellant's "fever of unknown origin" include malaria, for which anti-malarial medication was *empirically* prescribed. However, appellant's post-service history of *in-service* malaria with subsequent "fever of many years' duration" is entirely unsubstantiated and appears in conflict with the June 1957 service separation examination report, which did not include any complaints, findings, or diagnoses pertaining to malaria or even a history of malarial infection; the negative post-service malaria smears; and the absence of fever recorded in the 1980's and 1990's clinical records.

Appellant has not presented any credible, competent evidence confirming that residuals of malaria are presently manifested and related to his active service. Appellant's *post-service* allegation of in-service malaria is simply not substantiated by the actual service separation examination record or any other objective source. As the Court has stated in *Smith v. Derwinski*, 1 Vet. App. 235, 237 (1991), "[d]etermination of credibility is a function for the BVA." Even assuming that an unsubstantiated medical history of in-service malaria was recorded by a physician decades after service, unenhanced by any additional medical comment, that recorded history does not constitute "competent medical evidence." See *LeShore v. Brown*, 8 Vet. App. 406 (1995). A bare transcription of a lay history is not transformed into "competent medical evidence" merely because the transcriber happens to be a medical professional. The Board is cognizant of decisions by the Court holding that a medical opinion based on an inaccurate factual premise has no probative value. See *Reonal v. Brown*, 5 Vet. App. 458 (1993). Therefore, since the private physician's differential diagnoses that apparently includes malaria was based upon appellant's *unsubstantiated* medical history of in-service malaria with subsequent fever, the Board assigns that private medical evidence no probative value with respect to the malaria service connection appellate issue.

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The Board concludes that the *credible*, competent evidence, does not confirm that malaria was contracted during service or that any residual malaria disability resulted and is presently manifested. As such, there is no malaria disability to service connect. *Brammer*. Appellant is not competent to offer medical opinion or diagnosis. *See Espiritu v. Derwinski*, 2 Vet. App. 492, 494 (1991).

Since the preponderance of the evidence is against allowance of this appellate issue, the benefit-of-the-doubt doctrine is inapplicable, for the aforesaid reasons.

II. An Earlier Effective Date for Pension Benefits, Prior to March 23, 1995

Appellant contends, in part, that the effective date for the pension benefits award should be back to March 1994, on the grounds that a pension claim was filed on that date.

A VA Form 21-526, titled "Veteran's Application for Compensation or Pension", was stamped as received by VA on March 23, 1995 (and March 29, 1995). In said application form, appellant reported that he had not previously filed a claim for any benefit with VA; that he had sustained a right shoulder tear, cervical disc herniation/bulge, and left thigh burning/numbness on June 20, 1994; that he had last worked on June 20, 1994; and that he was hospitalized on August 15, 1994. That form also included certain financial expenses and other information. At the bottom of said form was his signature, which appeared next to a box, in which was written "3/6/94" under the words "date signed."

An April 1995 RO letter informed appellant that his claim for pension benefits had been denied; and explained that his family income exceeded the pension income limit; and that he could submit additional financial evidence. In response to that letter, appellant submitted written correspondence and 1994-1995 medical expense reports. It is of substantial import that in an August 1995 letter sent to the RO, appellant stated: "[a]s you know, I first put an application in on March 1st 1995, and, I have been getting all kinds of requests for additional information needed...."

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After October-November 1995 VA examinations were conducted, a December 1995 rating decision granted pension, effective March 23, 1995. Notice of said rating decision was sent appellant in February 1996, informing him that the pension benefits were payable as of April 1, 1995. Parenthetically, under 38 U.S.C.A. § 5111 and 38 C.F.R. § 3.31, actual payment of monetary benefits based on an award of a permanent and total rating for pension purposes may not be made to an individual for any period before the first day of the calendar month following the month in which the award became effective.

A November 29, 1994 Social Security Administration (SSA) Supplemental Security Income Notice of Planned Action form, received by VA in December 1995, stated that as of January 1, 1995, appellant's payments would be discontinued; and that the type of eligibility was "individual-disabled."

Private clinical records dated from 1983 to October 1995, were received by VA in December 1995 and February 1996. A June 20, 1994 private emergency room clinical record indicated that appellant arrived limping. He complained of back and left knee pain from a fall approximately 50 minutes earlier. X-rays of the lumbar spine and left knee were negative, except for lumbar spine straightening "probably due to muscle spasm and minimal early degenerative spurring." The diagnosis was left knee sprain and back strain due to as fall; and appellant was discharged on Toradol with the advice to seek orthopedic/podiatric treatment. July 1994 MRI studies of the cervical and lumbar spine and right shoulder were interpreted as showing degenerative changes, lumbar disc bulging, a C3-C4 disc herniation, and right shoulder tendonitis with partial tendon thickness tear. August 1994 electromyographic/nerve conduction velocity tests were essentially negative. October 1994 electromyographic/nerve conduction velocity tests were interpreted as consistent with mild generalized polyneuropathy, with etiologies that would include diabetes. An October 1995 private medical statement reported that appellant was being treated for a right shoulder rotator cuff problem; that he was currently unable to engage in any occupation for which he was qualified by reason of training, experience, or education; and that this was expected to be a permanent disability.

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In an August 1994 private physician's written statement, received by VA in February 1996, appellant's chances of returning to his previous job as a prison chef were considered 50 percent if he had right shoulder surgery. August 1994 clinical records indicated that appellant was not working; that he was alert and oriented; that he reported independence in all activities of daily living and was able to drive; and that he was right-handed. In mid-August 1994, appellant underwent right shoulder acromioplasty and rotator cuff repair with no complications reported. A September 1994 private physician's written statement reported that after appellant's August right shoulder surgery, he was seen shortly afterwards physically improved but extremely depressed about being unable to pursue his job; that with medication, he was less depressed; that he continued to have physical therapy for his shoulder; that during evaluation for right shoulder surgery, borderline diabetes mellitus had been detected; and that a certain degree of post-traumatic stress disorder was suspected, in addition to his physical complaints.

In a March 1996 letter sent to the RO, appellant stated that he had "made my initial application for this benefit in March of 1994" and that at that time, "you asked me on many occasions to submit all my medical bills...which I submitted to you per your request."

In a September 1996 letter sent to the RO, appellant alleged that his "original application" had been completed at the Office of the Governor, Veterans Outreach and Assistance Center, in Pottstown, Pennsylvania; and that pension entitlement should be retroactive to the date "I 1st made application to this office listed above."

In a January 1997 letter received by the RO the following month, appellant requested "retroactive paid bills (year 1994) & retroactive payment." In this statement, he described his June 20, 1994 injury; and stated that his initial medical appointment was on June 23rd for the purpose of obtaining a knee brace.

A May 1997 rating decision denied an effective date earlier than March 23, 1995 for the grant of pension benefits.

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A June 1997 written statement from a private physician stated that it had been prepared at appellant's request "in support of his claim for benefits addressing the extent of his disability during the period extending from 6-20-94 through 3-29-95." It was explained that during that period, appellant was "undergoing extensive workup with aggressive physical therapy and multiple specialists referrals and surgical procedures. It is, also, documented that he was emotionally distraught, unable to sleep, and required sedatives, as well as anti-depressant treatment. He was severely debilitated with extreme pain and clearly this could have hampered his ability to file for benefits and conduct his own personal affairs."

According to legal documents dated in September 1995 and received by VA in August 1997, including a final pre-trial order prepared by appellant's attorney, on June 20, 1994, appellant reportedly slipped on a wet floor in a market; that he attempted to brace his fall by reaching for the freezer unit; that he landed on the linoleum floor on his knee; that he lifted himself from the floor and then left the store; that he began medical treatment for his injuries on the day he fell; that as a result of the fall, he sustained a torn right rotator cuff, torn left leg ligament, left calf and ankle injuries, injuries to the back and neck, herniated discs, a burst blood vessel, and bruises/contusions; that he required right shoulder surgery; that he required physical therapy sessions several times a week; and that he was permanently disabled as a result of said injuries.

In December 1998, appellant submitted a March 1, 1995 letter from a Veterans Outreach and Assistance Center regional representative. In that letter, the representative advised appellant to complete enclosed forms, including a VA Form 21-526, and VA Form 21-22 titled "Appointment of Veterans Service Organization as Claimant's Representative"; and that on completion of all forms, appellant should return the forms to "our office for review. We will then review them and forward them to the VA for you."

Except as otherwise provided, the effective date of an award of pension based on an original claim, a claim reopened after final disallowance, ... will be the date of

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receipt of the claim or the date entitlement arose, whichever is the later. 38 U.S.C.A § 5110; 38 C.F.R. § 3.400.

Based on the overwhelmingly negative evidentiary record on the question as to what date a pension claim was initially filed with VA, the Board finds that appellant filed an initial application for pension with VA no earlier than March 23, 1995. Although appellant apparently dated the application form March 9, 1994, this was clearly a clerical mistake and 1995 was the year intended, since by appellant's own August 1995 written admission, he filed the application in March 1995; the application form itself stated that no previous application for VA benefits had been filed by appellant; the application form itself stated that the entitlement to benefits was based on June 1994 injuries (which could not logically have been claimed if the application had been filed in March 1994); the application form itself was stamped as received by VA on or after March 23, 1995; and the March 1, 1995 letter from his service organization representative advising appellant to complete a VA Form 21-526 and return it so that the service organization representative could submit it to VA is consistent with the other evidence of filing said application with VA in March 1995. Further he reports in that document that he was hospitalized in August 1994, further suggesting that the form was filed in March 1995. It should be added that appellant's service organization representative is not an agent of, or part of, the VA, and that date of actual filing with the VA of said application for pension benefits is the determining factor in this effective date matter. *See also* 38 C.F.R. § 20.3 (2002); and *Bell v. Derwinski*, 2 Vet. App. 611 (1992) (constructive receipt applies only to VA records).

It should also be pointed out that there are no VA clinical records dated prior to that March 23, 1995 date of claim. Additionally, although certain private medical records are dated prior to that March 23, 1995 date of claim, and were received after that date, none of these private medical records may be considered an "informal" claim for pension as to warrant an earlier effective date, since a "formal" claim for VA benefits had not been filed earlier than that March 23, 1995 date in question. *See* 38 C.F.R. § 3.157 (2002). Parenthetically, date of receipt by VA of private

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medical records, not date treatment was rendered, constitutes date of an "informal" claim even if a "formal" claim had been filed. *Id.*

Thus, the March 23, 1995 effective date assigned by the RO is proper, since the date of receipt of the claim was later than the date entitlement arose. 38 U.S.C.A. § 5110; 38 C.F.R. § 3.400.

Appellant also contends, in essence, that after he sustained injuries from a June 1994 fall on a wet floor in a market, causing him to become permanently and totally disabled, such disabilities rendered him incapacitated and delayed him from filing a disability pension claim. He specifically alludes to factors including dizziness from his medications, pain, traveling to numerous physicians for treatment and tests, undergoing one operation, and wearing a neck brace as delaying him from filing a pension application.

If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. 38 C.F.R. § 3.400(b)(1)(ii)(B).

A pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. 38 C.F.R. § 3.151(b).

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The Court has held that a pension award may be effective earlier than the date of receipt of the claim resulting in an award only if: (1) the veteran specifically claims entitlement to retroactive benefits separately or together with the claim for disability pension, and the claim for retroactive benefits is received by VA within one year from the date on which the veteran became permanently and totally disabled; (2) for claims received on or after October 1, 1984, the disability is not the result of the veteran's own willful misconduct; and (3) the disability is so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled. *See Tetro v. Gober*, 14 Vet. App. 100, 105 (2000).

In this case, appellant arguably became totally and permanently disabled on or about June 1994, at the time he sustained injuries in a fall and ceased working. He initially filed for VA pension benefits on March 23, 1995. Under the law, unless appellant's disability was so incapacitating that it prevented him from filing a disability pension claim for at least the first 30 days immediately following the date on which he became permanently and totally disabled, the March 23, 1995 date, date of claim, is controlling. However, the evidentiary record does not substantiate his allegation that he was so disabled that it prevented him from filing a pension claim prior to the March 23, 1995 date. The evidentiary record clearly reveals that appellant's orthopedic treatment for his fall-related injuries did not require "extensive" hospitalization; that after the June 20, 1994 fall, he did not require immediate medical treatment and was able to walk into an emergency room later that same day where left knee and back sprain/strain was diagnosed and hospitalization was not required; that in a January 1997 letter, appellant divulged that after his June 20, 1994 injury, his initial medical appointment was three days later; that his subsequent medical treatment primarily involved office visits to physicians and physical therapists; that although August 1994 clinical records indicated that appellant was not working, he was alert and oriented and reportedly was able to engage independently in all activities of daily living; that the only hospitalization of record was in August 1994 for a right shoulder surgical procedure, which was not shown to result in serious complications or extensive

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convalescence; and that none of the medical records indicated that appellant was "incapacitated" by reason of physical or mental disabilities prior to the March 23, 1995 date in question. Although the Board has considered a June 1997 private medical statement, which opined that during the period in question, appellant was distraught, "debilitated", and preoccupied with his medical treatments and that this "could have hampered his ability to file for benefits", this medical statement appears speculative, does not in fact indicate that appellant was mentally or physically unable to file a claim prior to the March 23, 1995 date in question, and is assigned very minimal, if any, probative value.

Alternatively, the evidentiary record does not reveal that the veteran *specifically* claimed entitlement to retroactive benefits separately or together with the claim for disability pension or filed the claim for retroactive benefits with VA within one year from the date on which the veteran became permanently and totally disabled. Although appellant submitted medical expense items including June 1994 treatment and mentioned in his March 1995 pension claim application the June 1994 date of injuries, he did not expressly request retroactive pension benefits until September 1996 or February 1997, more than one year from the date on which the veteran arguably became permanently and totally disabled. See appellant's September 1996 written statement and a January 1997 written statement, received by VA the following month.

Accordingly, under the applicable law, the March 23, 1995 effective date assigned by the RO for pension benefits is controlling, since that was date of receipt of his claim. In short, the exception for entitlement to retroactive benefits prior to date of claim has not been met, since the evidentiary record is overwhelmingly negative and does not indicate that appellant was mentally or physically unable to file a claim prior to the March 23, 1995 date in question.

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III. Special Monthly Pension - Aid and Attendance

As reflected in a recent October 2002 rating decision sheet, service connection is in effect for amputation of the right 5th finger distal to the distal interphalangeal joint; and appellant's principal disabilities, for which service connection is not in effect, are degenerative discogenic disease of the lumbar and cervical spine, dysthymic disorder, residuals of a right shoulder injury, diabetes mellitus, headaches, peripheral neuropathy of the lower extremities, left thigh lateral femoral cutaneous neuropathy, and myocardial infarction with hypertension and coronary artery disease.

Where an otherwise eligible veteran is in need of regular aid and attendance, an increased rate of pension is payable. 38 U.S.C.A. § 1521(d). The law and regulations provide that, for pension purposes, a person shall be considered to be in need of regular aid and attendance if such person is (1) a patient in a nursing home on account of mental or physical incapacity or, (2) helpless or blind, or so nearly helpless or blind as to need the regular aid and attendance of another person. 38 U.S.C.A. § 1502(b); 38 C.F.R. § 3.351. The appellant, who was born in January 1936, has been rated as permanently and totally disabled for pension purposes since March 23, 1995. The evidentiary record does not reflect that he is blind, bedridden, or institutionalized, and it has not been otherwise contended.

Determinations as to need for aid and attendance must be based on actual requirements of personal assistance from others. In making such determinations, consideration is given to such conditions as: Inability of claimant to dress or undress himself/herself or to keep himself/herself ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which, by reason of the particular disability, cannot be done without aid; inability of claimant to feed himself/herself through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his/her daily environment. "Bedridden" will be a proper basis for the determination and is defined as that

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condition which, through its essential character, actually requires that the claimant remain in bed. It is not required that all of the disabling conditions enumerated above be found to exist before a favorable rating may be made. The particular personal functions which the claimant is unable to perform should be considered in connection with his/her condition as a whole. It is only necessary that the evidence establish that the claimant is so helpless as to need regular aid and attendance, not that there be a constant need. 38 C.F.R. § 3.352(a).

The Board has reviewed the entire evidentiary record consisting of 5 volumes, including the medical history and clinical findings over the years. The medical evidence discussed previously in this Board decision will not be repeated, except to the extent necessary. The clinical evidence as follows is representative of the voluminous evidence on file as it pertains to this appellate issue.

An April 1996 private medical statement from "D.M.R., M.D." (hereinafter referred to as "Dr. R") reported that appellant appeared permanently and totally disabled due to status post right rotator cuff tear with failed rotator cuff repair surgery; left thigh numbness and causalgia; cervical and lumbar degenerative discogenic/joint disease; diabetes; and claustrophobia, anxiety, and dizziness.

On July 1996 VA aid and attendance/housebound examination, appellant arrived with his son. Appellant did not require an attendant in the waiting or examination room. He was not blind (uncorrected visual acuity was 20/50 in the right eye and 20/70 in the other eye). His complaints included difficulty raising his right shoulder, neck pain, occasional episodes of dizziness and headaches, left thigh numbness, left knee weakness, and depression. Clinically, gait was normal. He was unable to abduct the right arm above shoulder level and there was slight right hand grip weakness. Fine movement in the hands was apparent. The cervical and lumbar spine did not exhibit any "significant" limitation of motion, although mild lumbar spasm was apparent. He had normal balance; good memory; was able to care for himself in terms of feeding, bowel movements, and eating; and reportedly stayed home a lot during the day and read or walked around the yard. He did not drive and someone would drive him whenever he went out. He walked without a

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cane; was able to walk approximately a half block to one block without difficulty; would leave home for physician visits; and would sit in the car when his wife shopped. He was considered capable of managing his benefit payments.

Private medical statements dated in 1996 and 1997 reported that appellant appeared permanently and totally disabled.

In a November 1998 private aid and attendance/housebound examination report, "Dr. R." stated that appellant had been driven by his son to the examination; that there were no restrictions of the lower extremities; that appellant was unable to rotate his neck or flex the back; that an enclosed list prepared by appellant referred to restrictions of activities caused by his injuries; that many medications had been prescribed; that numerous physicians visits and diagnostic testing had been accomplished; that he wore glasses, a TENS unit, and neck and back braces; that he had chronic pain; and that he had been permanently and totally disabled since June 20, 1994. That report did not indicate therein whether appellant required daily health care services.

On May 1999 VA aid and attendance/housebound examination, appellant had multiple musculoskeletal complaints, including herniated cervical disk, chronic low back pain, and frequent headaches. He was taking medications for diabetes and hypertension. He did not drive and was brought to the examination by his son. The examiner stated that appellant was not permanently bedridden; corrected visual acuity was 20/30 in the right eye and 20/25 in the other eye; he could manage his own benefits payments, keep good records, and protect himself from hazards and dangers in his daily environment; walk approximately one block without difficulty; climb a flight of stairs by himself; had ability to reason, good insight, and fair memory; and on a daily basis, stayed home, read most of the day, and would sit outside on a nice day. Clinically, state of nutrition was excellent; gait was normal; and blood pressure was 150/70. He could feed himself, fasten his clothing other than the upper button; bathe, shave, and toilet himself; had certain limitations of the cervical spine and shoulders; and had some pain in the lower extremities. He had adequate weight bearing and balance in propulsion gait. He was able to leave his

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home for medical care. Diagnoses included depression with chronic pain syndrome (on Prozac); multiple musculoskeletal complaints related to cervical and lumbar discogenic disease and shoulder rotator cuff tear; diabetes mellitus; hypertension, under control with medication; and costochondritis.

Other May 1999 VA examinations were also conducted, including neurologic, psychiatric, orthopedic, and cardiovascular examinations. On that cardiovascular examination, the examiner stated that there was no active ischemic heart disease and that hypertension was under control with medication. On that orthopedic examination, appellant was unable to fully abduct the right arm above shoulder level. Appellant reported not having driven since his June 1994 injuries because he did not feel confident to drive. On that neurologic examination, the assessment was mild diabetic peripheral neuropathy with lateral femoral cutaneous neuropathy of the left thigh; and chronic pain syndrome characterized by complaints of pain in the cervical and low lumbar spine and shoulders, without strong clinical evidence of abnormality. On that psychiatric examination, appellant reported not being employed since his June 1994 injuries; stated that he had chronic pain and other physical problems; and stated that he had been told he should not drive. Appellant stated that he could not perform most common household chores. He resided with his second wife and children; and stated that his only "occupation" was reading an enormous amount of books. Clinically, he appeared depressed and memory gaps were noted. Other clinical findings were essentially unremarkable. Dysthymic disorder was diagnosed. Significantly, the examiner opined that appellant's depression contributed to his general level of disability, "although in and of itself it could not be assumed to require the aid and attendance of a housebound individual."

Private clinical records reveal that in July 1999, acute anterior wall myocardial infarction was diagnosed and cardiac catheterization with angioplasty was performed.

In a May 2000 private medical statement, "Dr. R." stated that appellant had been receiving treatment for a "myriad" of health complaints and generally deteriorating condition since 1994; diagnoses were listed including non-insulin dependent

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diabetes, degenerative joint disease, right shoulder rotator cuff syndrome with failed surgery, neck and lumbar spine injuries, depression, anxiety, post-traumatic stress disorder, panic disorder, hypertension, chronic dyspepsia, and gastroesophageal reflux disorder; and that appellant was under the care of "approximately 120 physicians" with weekly physicians appointments. "Dr. R." stated that appellant was having increasing difficulty with activities of daily living and was dependent upon his wife for dressing and feeding; that his wife worked and was not available throughout the day; and that appellant "strongly feels that he is in need of a home aide in attendance." "Dr. R." also divulged that he wrote the letter in support of appellant's claim and could vouch for the fact that appellant was under the care of multiple specialists and was maintained on an extensive and complicated medical regimen.

In an October 2000 private aid and attendance/housebound examination report, "Dr. R." stated that appellant had been driven by his son and daughter to the examination; that appellant was "housebound"; and that appellant's complaints included being emotionally distraught, unable to sleep, extremely debilitated, and having extreme pain. He appeared depressed with neck and back held rigid. Upper extremities restrictions involved poor handgrip with very painful fine movements; an inability to button clothing without assistance; and being able to self-feed somewhat but requiring assistance mostly. Lower extremities restrictions did not prevent ambulation. Neck and back restrictions included painful bending, sitting, and ambulation due to cervical and lumbar disc herniation. "Dr. R." stated that during the typical day, appellant lay in bed or on the couch reading books; and that he was mostly confined at home except for physicians appointments, due to difficulty with mobility as well as anxiety, dizziness, and memory loss. "Dr. R." stated that appellant was not able to walk without the assistance of another person; that he was able to leave the premises only when another person could drive him to physicians offices; that he had neck, back, and left thigh braces and a TENS unit; and that he had had a few very serious heart attacks. "Dr. R." checked off a box certifying that appellant required the daily personal health care services of a skilled provider without which he would require hospital, nursing home, or other institutional care. However, that certification was without adequate rationale.

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On April 2001 VA aid and attendance/housebound examination, the examiner stated that the medical records had been reviewed, including 1994 MRI studies of the cervical and lumbar spine, a 1998 cardiac stress test; and laboratory studies results. Laboratory studies results were essentially unremarkable, except for glucose of 252 in January 2001 and 169 in May 2000 with hemoglobin A1C of 8.2 and elevated liver enzymes. Appellant stated that he was not taking his metformin and glyburide medication. The examiner stated that appellant was driven to the examination by his son but did not require an attendant to report his medical problems. Appellant reported that an angioplasty for coronary artery disease had been performed in July 1999. The examiner stated that appellant *was not permanently bedridden; that he was capable of managing benefits payments and protect himself from hazards and dangers in his daily environment*; and that visual acuity was 20/25 and 20/30 in the respective right and left eyes. Appellant complained of occasional dizziness, especially with postural changes; constant sweating; occasional anxiety attacks; and recent/remote memory loss. Although appellant complained of poor balance, *he could ambulate freely without falling, but stated that he had fallen a "few" times from loss of balance.*

The examiner stated that appellant could carry on with day to day activities; that appellant had traveled to California (during which time he had been hospitalized for renal calculi that he had passed); and that according to appellant, during the day he would take his medications, have breakfast, and watch television all day or lie down on the couch. According to appellant, he would not leave his house and socialize or meet with his friends for fear of falling. Clinically, he appeared alert, correctly oriented, comfortable, pleasant, and not in any distress. Height was 68 inches and weight was 215 pounds. Blood pressure was 126/70. He was described as obese and well-nourished. *Clinically, his gait was normal.* The upper extremities had normal strength, tone, muscle power, and coordination. He was able to feed himself, fasten his clothing, and bathe. He stated that he could not shave and required the assistance of his wife or son. He was able to manage toileting. Right shoulder movements were restricted with complaints of pain on movement. The lower extremities had normal muscle strength and fair to normal coordination.

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Straight leg raising testing was negative. There were no neurologic deficits of the extremities, except for decreased sensation over the anterior left thigh. He was unable to perform a tandem walk.

Appellant complained of dizziness on sitting up from a prone position during the examination. Ranges of motion of the neck, spine, and trunk were described as normal without point tenderness. It was reported that appellant was unable to walk without assistance of another person; that according to him, he could occasionally walk up to a block, but would occasionally trip and fall; and that he was always afraid to go out without someone accompanying him. The examiner stated that appellant could use a cane or walker if he was afraid of falling due to dizziness, but that it was "doubtful whether it would serve the purpose." According to appellant, he would "never" leave his home or the immediate premises for fear of dizziness and falling. Diagnoses were non-insulin dependent diabetes, hypertension, coronary artery disease, degenerative discogenic disease of the cervical and lumbosacral spine with disc bulging, right shoulder rotator cuff tear with acromioplasty and rotator cuff repair; dizziness probably secondary to postural hypotension/autonomic neuropathy secondary to diabetes; obesity; and elevated liver enzymes. Another April 2001 VA examination was also conducted. Diagnoses included elevated liver enzymes, probably secondary to medications.

The positive evidence includes a May 2000 private medical statement from "Dr. R.", wherein the physician stated that appellant was having increased difficulty with activities of daily living, that appellant was dependent on his wife (who worked during the day) for dressing and feeding, and that appellant reportedly felt he needed a home aide. An October 2000 private medical statement from that same physician reported that during the typical day, appellant lay in bed or on the couch reading books; that he was mostly confined at home except for physicians appointments, due to difficulty with mobility as well as anxiety, dizziness, and memory loss; that appellant was not able to walk without the assistance of another person; and that he was able to leave the premises only when another person could drive him to physicians offices. Although "Dr. R." checked off a box certifying that

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appellant required the daily personal health care services of a skilled provider, no adequate rationale was provided.

The negative evidence includes a May 1999 VA examination, wherein the examiner opined that appellant was able to protect himself from hazards and dangers in his daily environment; walk approximately one block without difficulty and climb a flight of stairs by himself; had the ability to reason with cognitive functions essentially intact; stayed home and read most of the day; and although he had certain limitations of the cervical spine and shoulders and pain in the lower extremities, his gait was normal and he could feed himself, fasten his clothing, bathe, and self-toilet. On April 2001 VA aid and attendance/housebound examination, although appellant complained of poor balance, he could ambulate freely without falling, but stated that he had fallen a "few" times from loss of balance. Although he reportedly did not venture outside his home due to a fear of falling and the examiner diagnosed dizziness apparently due to postural hypotension, it was divulged that appellant had traveled to California and that he did attend physicians appointments. It is also significant that clinically, his gait was normal.

It is also very significant that the private and VA medical evidence in question unequivocally establishes that appellant is able to leave his home for medical care; that he is not disoriented, psychotic, or otherwise severely mentally dysfunctional; that he has use of all extremities; and that he remains ambulatory. Furthermore, the VA examiners opined that appellant was not permanently bedridden and that he was capable of protecting himself from hazards and dangers in his daily environment. Although appellant reportedly stays home most of the time because he has a fear of falling outside from dizziness, this does not necessarily mean that regular aid and attendance by another person is required. The Board discounts "Dr. R."s October 2000 opinion as to the need for daily person health care services of a skilled provider, since it appeared premised on the fact that appellant was confined to his home. The fact that appellant is substantially confined to his home is conceded by the September 1999 rating decision, which granted special monthly pension on account of being permanently housebound. However, the evidentiary record in its

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entirety does not support the proposition that appellant requires the regular aid and attendance of another person. Although appellant spends most of a typical day alone, watching television or reading, he is able to perform activities of daily living, such as feed and clothe himself and self-toileting; and protect himself from the hazards and dangers in his daily environment. In short, he is able to engage in activities of daily living while his wife works during the day; and he leaves his home when driven to physicians appointments by his children.

As the Court explained in *Gilbert v. Derwinski*, 1 Vet. App. 49, 54-56 (1990), “[b]y reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility.”


While appellant has difficulties with certain activities of daily living, the overwhelming weight of the evidence is that he remains capable of performing self-care activities and live with his spouse without any reported serious difficulties in protecting himself from the hazards incident to his environment. Thus, it is clear that he is not so helpless as to be in need of “regular aid and attendance” as that term is contemplated by applicable laws and regulations. Thus, based on the entire evidentiary record, including VA medical opinion as to appellant’s ability to protect himself from the hazards and dangers in his daily environment, the Board concludes that the negative evidence outweighs any positive evidence on this appellate issue. Consequently, the criteria for special monthly pension by reason of being in need of regular aid and attendance of another person as set forth in 38 C.F.R. § 3.352(a) are not met.

Since the preponderance of the evidence is against allowance of the issue of special monthly pension on account of the need for aid and attendance of another person, the benefit-of-the-doubt doctrine is inapplicable, for the aforestated reasons.

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ORDER

Service connection for residuals of malaria, an earlier effective date prior to March 23, 1995 for the grant of entitlement to pension benefits, and special monthly pension on account of the need for aid and attendance of another person are denied. The appeal is denied in its entirety.



MICHAEL D. LYON
Member, Board of Veterans' Appeals

IMPORTANT NOTICE: We have attached a VA Form 4597 that tells you what steps you can take if you disagree with our decision. We are in the process of updating the form to reflect changes in the law effective on December 27, 2001. See the Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107-103, 115 Stat. 976 (2001). In the meanwhile, please note these important corrections to the advice in the form:

- These changes apply to the section entitled "Appeal to the United States Court of Appeals for Veterans Claims." (1) A "Notice of Disagreement filed on or after November 18, 1988" is no longer required to appeal to the Court. (2) You are no longer required to file a copy of your Notice of Appeal with VA's General Counsel.
- In the section entitled "Representation before VA," filing a "Notice of Disagreement with respect to the claim on or after November 18, 1988" is no longer a condition for an attorney-at-law or a VA accredited agent to charge you a fee for representing you.

Mr James Macalush
6731 Matt Pledger Ct
N Ft Myers, FL 33917

OMB Control No. 2900-0747
Respondent Burden: 25 minutes
Expiration Date: 11/30/2017

Department of Veterans Affairs

APPLICATION FOR DISABILITY COMPENSATION
AND RELATED COMPENSATION BENEFITS

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 10 before completing the form.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION

1. VETERAN/SERVICE MEMBER NAME (First, Middle Initial, Last)

JAMES V MACALUSH

2. SOCIAL SECURITY NUMBER

3. DATE OF BIRTH (MM,DD,YYYY)

Month Day Year

4. SEX

☒ MALE ☐ FEMALE

5. HAVE YOU EVER FILED A CLAIM WITH VA?

☒ YES ☐ NO (If "Yes," provide your file number in Item 6)

6. VA FILE NUMBER

7A. ARE YOU CURRENTLY HOMELESS OR AT RISK OF
BECOMING HOMELESS?

☐ YES ☒ NO (If "Yes," complete Items 7B & 7C)

7B. POINT OF CONTACT (Name of person that VA
can contact in order to get in touch with you)

CRYSTA WINTON

7C. POINT OF CONTACT TELEPHONE
NUMBER (Include Area Code)

239 849-1603

8A. SERVICE (Check all that apply)

☒ ARMY ☐ NAVY ☐ MARINE CORPS ☐ AIR FORCE ☐ COAST GUARD

8B. COMPONENT (Check all that apply)

☒ ACTIVE ☐ RESERVES ☒ NATIONAL GUARD

9A. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

Number and Street or Rural Route, P.O. Box 6731 Matt Pledger Ct

Apt./Unit Number

City, State, ZIP Code 6731 Matt P. Ct, N Ft Myers FL 33917

Country

9B. FORWARDING ADDRESS AND EFFECTIVE DATE

Number and Street or Rural Route, P.O. Box

Apt./Unit Number

City, State, ZIP Code

Country

Effective Date (MM,DD,YYYY): Month Day Year

9C. PREFERRED TELEPHONE NUMBER

239 931-5015

10A. PREFERRED E-MAIL ADDRESS (If applicable)

10B. ALTERNATE E-MAIL ADDRESS (If applicable)

11. LIST THE DISABILITY(IES) YOU ARE CLAIMING (If applicable, identify whether a disability is due to a service-connected disability, is due to confinement as a Prisoner of War, is due to exposure to Agent Orange, Asbestos, Mustard Gas, Ionizing Radiation, or Gulf War Environmental Hazards, or is related to benefits under 38 U.S.C. 1151).

Please list your contentions below. See the following examples, for more information:
• Example 1: Hearing loss
• Example 2: Diabetes-Agent Orange.(exposed 12/72, Da Nang)
• Example 3: Left knee - secondary to right knee

DISABILITIES	
1.	Heart Problems
2.	TOTAL OFF (12) STENTS
3.	TOOTH OF MAXILLA (PANAMA)
4.	(R) Shoulder Separated
5.	Arter Problems
6.	EYE - SIGHT - HIGH & LOW BLOOD SUGARS
7.	WEARS GLASSES
8.	WEARS LIFE - ALERT SYSTEM
9.	Type (2) Diabetes
10.	5TH FINGER ON (R) HAND CUT OFF
11.	Appeared in 1956 in Panama, During the
12.	Korean Conflict.
13.	LARGE Blisters on Both Feet Operated on
14.	Trouble Walking
15.	Dizzy when Walking
16.	Active Hearing Loss
17.	(3) Very Bad Knees - Very Sore
18.	A Weak Prosthetics - Shoes on Both Feet
19.	I Need Assistance To Bathe & Dress
20.	I Take (20) of Heart Meds. - Attached

12. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) AND PROVIDE TREATMENT DATES:

A. NAME AND LOCATION	B. DATE(S) OF TREATMENT
Lee County VA Clinic	4/2/16 6/14/16 5/21/16 6/12/16
3/24/16 - 5/31/16	7/28/16 - 1/12/17
3/23/16 11/6/16	9/20/16 - 1/20/17
2/2/17 1/15/17	

13. NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING, COMPLETE AND ATTACH THE REQUIRED FORM(S) AS STATED BELOW (VA forms are available at www.va.gov/vaforms).		
For:	Required Form(s):	
Dependents	VA Form 21-686c and, if claiming a child aged 18-23 years and in school, VA Form 21-574	
Individual Unemployability	VA Form 21-8940 and 21-4192	
Post-Traumatic Stress Disorder	VA Form 21-0781 and 21-0781a	
Specially Adapted Housing or Special Home Adaptation	VA Form 26-4555	
Auto Allowance	VA Form 21-4502	
Veteran/Spouse Aid and Attendance benefits	VA Form 21-2680 or, if based on nursing home attendance, VA Form 21-0779	

SECTION II: SERVICE INFORMATION

14A. DID YOU SERVE UNDER ANOTHER NAME? <input type="checkbox"/> YES (If "Yes," complete Item 14B) <input checked="" type="checkbox"/> NO (If "No," skip to Item 15A)		14B. PLEASE LIST THE OTHER NAME(S) YOU SERVED UNDER:
15A. MOST RECENT ACTIVE SERVICE ENTRY (MM/DD/YYYY) Month Day Year 09-23-1954	15B. SERVICE NUMBER (Fill out this item only if assigned a service number) RA-13510306	15C. RELEASE DATE OR ANTICIPATED DATE OF RELEASE FROM ACTIVE SERVICE Month Day Year 08-27-1957
15D. DID YOU SERVE IN A COMBAT ZONE SINCE 9-11-2001? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	15E. PLACE OF LAST OR ANTICIPATED SEPARATION New York	
16A. ARE YOU CURRENTLY SERVING OR HAVE YOU EVER SERVED IN THE RESERVES OR NATIONAL GUARD? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Items 16B thru 16F) (If "No," skip to Item 17A)	16B. COMPONENT <input type="checkbox"/> NATIONAL GUARD <input type="checkbox"/> RESERVES	16C. OBLIGATION TERM OF SERVICE From: Month Day Year To: Month Day Year
16D. CURRENT OR LAST ASSIGNED NAME AND ADDRESS OF UNIT: 60TH ARMY BRND Ft Caville PANAMA CANAL ZONE	16E. CURRENT OR ASSIGNED PHONE NUMBER OF UNIT (Include Area Code) A	16F. ARE YOU CURRENTLY RECEIVING INACTIVE DUTY TRAINING PAY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
17A. ARE YOU CURRENTLY ACTIVATED ON FEDERAL ORDERS WITHIN THE NATIONAL GUARD OR RESERVES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Items 17B & 17C)	17B. DATE OF ACTIVATION: (MM/DD/YYYY) Month Day Year N/A	17C. ANTICIPATED SEPARATION DATE: (MM/DD/YYYY) Month Day Year N/A
18A. HAVE YOU EVER BEEN A PRISONER OF WAR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Item 18B)	18B. DATES OF CONFINEMENT (MM/DD/YYYY) From: Month Day Year To: Month Day Year N/A	

SECTION III: SERVICE PAY

19A. DID/DO YOU RECEIVE ANY TYPE OF SEPARATION/SEVERANCE/RETIRED PAY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 19B and 19C)	19B. LIST AMOUNT (If known) \$ 868.00	19C. LIST TYPE (If known)
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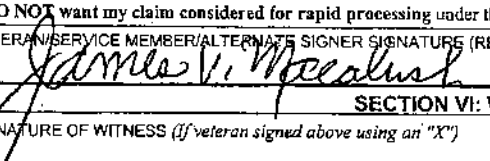
IMPORTANT: Submission of this application constitutes an election of VA compensation in lieu of military retired pay if it is determined you are entitled to both benefits. If you are entitled to receive military retired pay, your retired pay may be reduced by the amount of any VA compensation that you are awarded. VA will notify the Military Retired Pay Center of all benefit changes. Receipt of military retired pay or Voluntary Separation Incentive (VSI) and VA compensation at the same time may result in an overpayment, which may be subject to collection. However, if you do not want to receive VA compensation in lieu of military retired pay, you should check the box in Item 20. Please note that if you check the box in Item 20, you will not receive VA compensation, if granted.

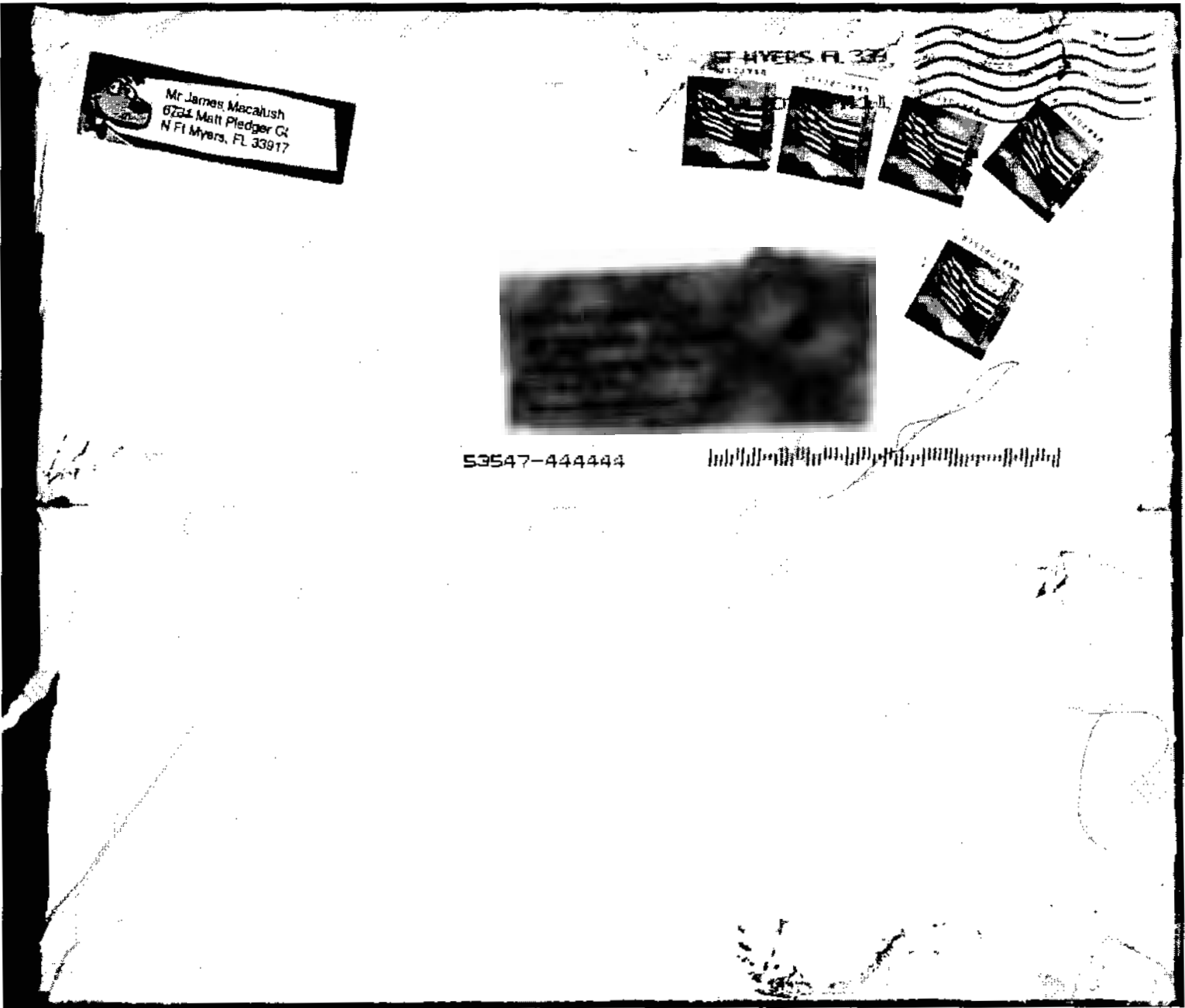
☐ 20. I want military retired pay instead of VA compensation

IMPORTANT: You may elect to keep the training pay for inactive duty training days you received from the military service department. However, to be legally entitled to keep your training pay, you must waive VA benefits for the number of days equal to the number of days for which you received training pay. In most instances, it will be to your advantage to waive your VA benefits and keep your training pay.

If you waive VA benefits to receive training pay by checking the box in Item 21, VA will adjust your VA award to withhold future benefits equal to the total number of inactive duty for training days waived and at the monthly rate in effect for the fiscal year period for which you received training pay. Your normal VA rate will be restored when the sufficient numbers of days' benefits have been withheld.

☐ 21. I elect to waive VA benefits for the days I accrued inactive duty training pay in order to retain my inactive duty training pay.

SECTION IV: DIRECT DEPOSIT INFORMATION	
The Department of Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 22, 23 and 24 to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.	
22. ACCOUNT NUMBER (Check the appropriate box and provide the account number, or simply write "Established" if you have a direct deposit with VA) <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> I CERTIFY THAT I DO NOT HAVE AN ACCOUNT WITH A FINANCIAL INSTITUTION OR CERTIFIED PAYMENT AGENT Account No.: _____ Account No.: _____	
23. NAME OF FINANCIAL INSTITUTION (Please provide the name of the bank where you want your direct deposit)	24. ROUTING OR TRANSIT NUMBER (The first nine numbers located at the bottom left of your check)
SECTION V: CLAIM CERTIFICATION AND SIGNATURE	
I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me, and I waive any privilege which makes the information confidential. I certify I have received the notice attached to this application titled, <i>Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits</i> . I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; OR, I have no information or evidence to give VA to support my claim; OR, I have checked the box in Item 25, indicating that I do not want my claim considered for rapid processing in the Fully Developed Claim (FDC) Program because I plan to submit further evidence in support of my claim. ALTERNATE SIGNER: By signing on behalf of the claimant, I certify that I am a court-appointed representative; OR, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; OR, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; OR, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; AND, that the claimant is under the age of 18; OR, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; OR, is physically unable to sign this form. I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization. 25. The FDC Program is designed to rapidly process compensation or pension claims received with the evidence necessary to decide the claim. VA will automatically consider a claim submitted on this form for rapid processing under the FDC Program. Check the box below ONLY if you DO NOT want your claim considered for rapid processing under the FDC Program because you plan on submitting further evidence in support of your claim. <input type="checkbox"/> I DO NOT want my claim considered for rapid processing under the FDC Program because I plan to submit further evidence in support of my claim.	
26A. VETERAN/SERVICE MEMBER/ALTERNATE SIGNER SIGNATURE (REQUIRED) 	26B. DATE SIGNED 7/15/16
SECTION VI: WITNESSES TO SIGNATURE	
27A. SIGNATURE OF WITNESS (If veteran signed above using an "X")	27B. PRINTED NAME AND ADDRESS OF WITNESS
28A. SIGNATURE OF WITNESS (If veteran signed above using an "X")	28B. PRINTED NAME AND ADDRESS OF WITNESS
SECTION VII: POWER OF ATTORNEY (POA) SIGNATURE	
I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge. NOTE: A POA's signature <i>will not</i> be accepted unless at the time of submission of this claim a valid VA Form 21-22, <i>Appointment of Veterans Service Organization as Claimant's Representative</i> , or VA Form 21-22a, <i>Appointment of Individual As Claimant's Representative</i> , indicating the appropriate POA is of record with VA.	
29A. POA AUTHORIZED REPRESENTATIVE SIGNATURE	29B. DATE SIGNED
PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: 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. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs. Social Security information: You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above. RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this 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 . If desired, you can call 1-800-427-1000 to get information on where to send comments or suggestions about this form.	





DEPARTMENT OF VETERANS AFFAIRS

December 21, 2016

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS FL 33917

In reply, refer to:
308/RR
File Number: [REDACTED]
James Macalush

Dear James Macalush:

We made a decision regarding your entitlement to VA benefits.

This letter tells you what we decided. It gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision and who to contact if you have questions or need assistance.

Your current benefit payment will continue unchanged.

What We Decided

We made the following decision(s):

Entitlement to special monthly compensation based on the housebound cannot be granted. You are service-connected for the following disabilities: Amputation right 5th finger distal to distal interphalangeal joint. Your overall combined evaluation is 0 percent. Special monthly compensation based on being housebound may be awarded when the claimant has a single permanent service-connected disability evaluated as 100 percent disabling and another disability, or disabilities, evaluated as 60 percent or more disabling. Housebound may also be awarded if the claimant has a single permanent disability evaluated as 100 percent disabling and, due to such disability, is permanently and substantially confined to the immediate premises. Entitlement to special monthly compensation based on being housebound is not warranted because you do not meet the above noted criteria.

Entitlement to special monthly compensation being in need of regular aid and attendance, cannot be granted. You are service-connected for the following disabilities: Amputation right 5th finger distal to distal interphalangeal joint. Your overall combined evaluation is 0 percent. Special monthly compensation based on the need for aid and attendance may be awarded when the

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File Number: [REDACTED]
 MACALUSH, JAMES V

claimant has service-connected conditions resulting in anatomical loss or loss of use of both feet, loss or loss of use of one hand and one foot, blindness in both eyes with vision 5/200 or lessor the visual field restricted to 5° or less. Aid and attendance may also be awarded when the claimant is shown to be bed ridden or in need of aid and attendance solely as a result of service-connected conditions. Entitlement to special monthly compensation based on the need for regular aid and attendance cannot be granted because the evidence fails to show that you are bed ridden or in need of aid and attendance solely as a result of service-connected conditions.

Issue/Contention	Percent (%) Continued
amputation right 5th finger distal to distal interphalangeal joint	0%
Explanation	
<ul style="list-style-type: none"> • The evaluation of amputation right 5th finger distal to distal interphalangeal joint is continued as 0 percent disabling. • A noncompensable evaluation is assigned unless there is amputation of the little finger at the proximal interphalangeal joint or proximal thereto. • We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation. 	

Issue/Contention
malaria
Explanation
<ul style="list-style-type: none"> • A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New means that the evidence has not been considered before and material means it applies to the specific issue for which you were previously denied. New and material evidence must raise a reasonable possibility, that when considered with all the evidence or record (both new and old), that the outcome (conclusion) would change. The evidence can't simply be redundant (repetitive) or cumulative of that which we had when we previously decided your claim. • The evidence from you is not new and material evidence because it does not establish a fact necessary to substantiate the claim and does not raise a reasonable possibility of substantiating the claim. • Rating decisions dated May 26, 2000 and August 16, 2000 denied service connection for malaria because although the medical statements from Dr. Rappaport note either a "history of malaria" or the "presumption" of malaria, there is no indication of a confirmed diagnosis of malaria and its relationship to your military service. The notation regarding malaria are speculative and are only current references which show no link between the suspected malaria and your military service. You were notified of the decision, and the appeal period for the decisions have expired. The evidence does not support a change in our prior decision. Therefore, we are confirming the previous denial of this claim.

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File Number: [REDACTED]
 MACALUSH, JAMES V

Issue/Contention
great toe, left foot (claimed as large big toes on both feet operated on, trouble walking)
Explanation
<ul style="list-style-type: none"> Service connection for great toe, left foot (claimed as large big toes on both feet operated on, trouble walking) is denied since this condition neither occurred in nor was caused by service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Issue/Contention
type (2) diabetes
Explanation
<ul style="list-style-type: none"> Service connection for type (2) diabetes is denied since this condition neither occurred in nor was caused by service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of type 2 diabetes, however, we did not find a link between your medical condition and military service.

Issue/Contention
left foot (claimed as prosthetic shoes and feet problems, trouble walking)
Explanation
<ul style="list-style-type: none"> Service connection for left foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied since this condition neither occurred in nor was caused by service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have been diagnosed with a left foot condition, however, we did not find a link between your medical condition and military service.

Issue/Contention
great toe, right foot (claimed as large big toes on both feet operated on, trouble walking)
Explanation
<ul style="list-style-type: none"> Service connection for great toe, right foot (claimed as large big toes on both feet operated on, trouble walking) is denied since this condition neither occurred in nor was caused by service.

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File Number: [REDACTED]
 MACALUSH, JAMES V

- Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Issue/Contention
left knee condition (claimed as bilateral knees very sore)
Explanation
<ul style="list-style-type: none"> • Service connection for left knee condition (claimed as bilateral knees very sore) is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Issue/Contention
right shoulder separated
Explanation
<ul style="list-style-type: none"> • Service connection for right shoulder separated is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have a right shoulder condition, however, we did not find a link between your medical condition and military service.

Issue/Contention
high blood pressure (also claimed as hypertension)
Explanation
<ul style="list-style-type: none"> • Service connection for high blood pressure (also claimed as hypertension) is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of hypertension, however, we did not find a link between your medical condition and military service.

Issue/Contention
liver problems

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File Number [REDACTED]
 MACALUSH, JAMES V

Explanation
<ul style="list-style-type: none"> • Service connection for liver problems is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of cirrhosis of the liver, however, we did not find a link between your medical condition and military service.

Issue/Contention
right knee condition (claimed as bilateral knees very sore)
Explanation
<ul style="list-style-type: none"> • Service connection for right knee condition (claimed as bilateral knees very sore) is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Issue/Contention
herniated bulging disc
Explanation
<ul style="list-style-type: none"> • Service connection for herniated bulging disc is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. We did not find a link between your medical condition and military service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Issue/Contention
bilateral hearing loss
Explanation
<ul style="list-style-type: none"> • Service connection for bilateral hearing loss is denied because your hearing loss has not been linked to service. • Service connection may not be established for disability due to impaired hearing unless the auditory threshold in any of the frequencies 500, 1000, 2000, 3000 or 4000 Hertz is 40 decibels or greater; or the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000 or 4000 Hertz are 26 decibels or greater; or speech recognition scores using the Maryland CNC Test are less than 94 percent. (38 CFR 3.385).

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File Number: [REDACTED]
 MACALUSH, JAMES V

- There are no audiometric findings in your service treatment records that meet the above requirements.
- Your VA examiner opined that it is less likely than not that your hearing loss is due to military noise exposure. Your examiner provided the following rationale: Evidence is lacking to prove or disprove hearing loss was caused by in-service noise exposure from playing the trumpet; however, considering his sudden onset of hearing loss (less than 5 months ago), extensive medical history (diabetes, heart disease, stroke, and high blood pressure, history of noise exposure from playing drums in a band postmilitary, as well as current profound degree of hearing loss, it is my opinion that the hearing loss is less likely than not related to or caused by in-service noise exposure..
- VA examination findings show the left ear with 92 percent discrimination. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 90 with a 75 dB loss at 1000 Hz, a 100 dB loss at 2000 Hz, a 105 dB loss at 3000 Hz, and a 105 dB loss at 4000 Hz. The average decibel loss is 96 in the left ear. The right ear shows a speech discrimination of 96 percent. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 75 with a 75 dB loss at 1000 Hz, a 90 dB loss at 2000 Hz, a 100 dB loss at 3000 Hz, and a 105 dB loss at 4000 Hz. The average decibel loss is 93 in the right ear.
- The evidence shows that you currently have hearing loss for VA purposes, but service connection cannot be granted without a medical link between your hearing loss and military service. Although you currently have a hearing loss for VA purposes, there is no medical link between your hearing loss and service. In the absence of such a link, service connection may not be granted. In addition, there is no evidence that disabling sensorineural hearing loss manifested itself to a compensable degree within a year of service.

Issue/Contention	
Bell's Palsy	
Explanation	
<ul style="list-style-type: none"> • Service connection for Bell's Palsy is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of Bell's Palsy, however, we did not find a link between your medical condition and military service. 	

Issue/Contention	
dizzy when walking	
Explanation	
<ul style="list-style-type: none"> • Service connection for dizzy when walking is denied since this condition neither occurred in nor was caused by service. 	

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File Number: [REDACTED]
 MACALUSH, JAMES V

- Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Issue/Contention
right foot (claimed as prosthetic shoes and feet problems, trouble walking)
Explanation
<ul style="list-style-type: none"> • Service connection for right foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from the Bay Pines VA Medical Center show you have been diagnosed with a right foot condition, however, we did not find a link between your medical condition and military service.

Issue/Contention
low blood pressure
Explanation
<ul style="list-style-type: none"> • Service connection for low blood pressure is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Issue/Contention
eye sight
Explanation
<ul style="list-style-type: none"> • Service connection for eye sight is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. We did not find a link between your medical condition and military service.

Issue/Contention
heart problems total of 12 stents

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File Number [REDACTED]
 MACALUSH, JAMES V

Explanation
<ul style="list-style-type: none"> • Service connection for heart problems total of 12 stents is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. Treatment records from Bay Pines VA Medical Center show you have been diagnosed with a heart condition, however, we did not find a link between your medical condition and military service.

Issue/Contention
right groin pain/hematuria
Explanation
<ul style="list-style-type: none"> • Service connection for right groin pain/hematuria is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. We did not find a link between your medical condition and military service.

Issue/Contention
stomach condition (claimed as continued stomach problems)
Explanation
<ul style="list-style-type: none"> • Service connection for stomach condition (claimed as continued stomach problems) is denied since this condition neither occurred in nor was caused by service. • Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Are You Entitled to Additional Benefits?

Did you know you may be eligible for a VA guaranteed mortgage with no down payment (potentially exempt from a funding fee depending on your rating)? For more information about this benefit, or to determine and print your Loan Guaranty Certificate of Eligibility, please visit the eBenefits website at <http://www.ebenefits.va.gov>.

If you served overseas in support of a combat operation you may be eligible for mental health counseling at no cost to you at the Veteran's Resource Center. For more information on this benefit please visit <https://www.myhealth.va.gov/mhv-portal-web/>.

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File Number: [REDACTED]
MACALUSH, JAMES V

The VA provides Blind Rehabilitation services to eligible blind, low vision, or visually impaired Veterans to help them regain their independence and quality of life. The Veteran's blindness, low vision, or vision impairment does NOT have to be related or caused by military service. If you need help with your vision loss, please contact your nearest Visual Impairment Services Team Coordinator (VIST) at the eye clinic at your nearest VA Medical Center. For more information, go to www.va.gov/blindrehab/.

Evidence Considered

In making our decision, we considered:

- VA letters concerning your claim, dated April 8, 2016 and September 23, 2016
- The medical statements of March 21, 2000 and May 19 2000 from Dr. Daniel Rappaport of the Medical Associates of the Lehigh Valley.
- Wilkes-Barre VAMC (Veterans Affairs Medical Center) treatment records, from April 9, 2001 through February 3, 2010
- Rating Decisions, dated May 26, 2000 and August 16, 2000
- Bay Pines VAMC (Veterans Affairs Medical Center) treatment records, from September 29, 2008 through December 12, 2016
- Bay Pines VA Examinations, dated October 24, 2016 and December 3, 2016
- Service Treatment Records, received August 11, 2016
- VA Forms 21-4138, Statements in Support of Claim, received July 18, 2016 and October 7, 2016
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, received October 7, 2016
- VA Form 21-526EZ Veteran's Fully Developed Claim, received July 18, 2016 and October 7, 2016
- A letter dated 03 13 00 was sent to the claimant requesting medical evidence showing the veteran has the claimed condition(s) medical evidence showing the veteran has a disability caused by the claimed condition(s) medical evidence connecting the claimed condition(s) to military service. As of this date no reply from the claimant has been received.
- Your written statements and receipts, received January 4, 2016, January 8, 2016, January 11, 2016, January 16, 2016, January 27, 2016, February 5, 2016, March 7, 2016, October 27, 2016, October 29, 2016, November 1, 2016, November 25, 2016 and November 29, 2016
- VA Form 21-4142 Authorization and Consent to Release Information to Department of Veteran's Affairs, received October 7, 2016
- DD Form 214, Certificate of Release or Discharge from Active Duty, received August 11, 2016

What You Should Do If You Disagree With Our Decision

For Compensation Claims:

If you do not agree with our decision, you must complete and return to us the enclosed VA Form 21-0958, *Notice of Disagreement*, in order to initiate your appeal. You have *one year from the*

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File Number: [REDACTED]
 MACALUSH, JAMES V

date of this letter to appeal the decision. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file [REDACTED]

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File Number [REDACTED]
MACALUSH, JAMES V

If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.

We sent a copy of this letter to AMERICAN LEGION, who you have appointed as your representative. If you have questions or need assistance, you can also contact your representative.

Thank you for your service,

Regional Office Director

Enclosure(s): VA Form 4107
 VA Form 21-0958
 Where to Send Your Written Correspondence

cc: AMERICAN LEGION



Department of Veterans Affairs

YOUR RIGHTS TO APPEAL OUR DECISION

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- Start an appeal by submitting a Notice of Disagreement.
- Give us evidence we do not already have that may lead us to change our decision.

This form will tell you how to appeal and how to send us more evidence. You can do either one or both of these things.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, you **must** submit VA Form 21-0958, "Notice of Disagreement," if that form was provided to you in connection with our decision. If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in Part III of VA Form 21-0958 each of the claims you are appealing. A filed VA Form 21-0958 is considered your Notice of Disagreement. If you did not receive VA Form 21-0958 in connection with our decision, then write us a letter telling us you disagree with our decision or enter your disagreement on VA Form 21-0958 in questions 10 or 11A. If you did not receive VA Form 21-0958 in connection with our decision, then either your statement or VA Form 21-0958 is considered your Notice of Disagreement. **Send your Notice of Disagreement to the address included on our decision notice letter.**

How long do I have to start my appeal? You have one year to start an appeal of our decision. Your Notice of Disagreement must be postmarked (or received by us) within one year from the date of *our* letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- Show that we were clearly wrong to deny the benefit *or*
- Send us new evidence that relates to the reason we denied your claim.

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. If you want to continue your appeal to the Board of Veterans' Appeals (the Board) after receiving a Statement of the Case, you must complete and return the VA Form 9 within one year from the date of our letter denying you the benefit *or* within 60 days from the date that we mailed the Statement of the Case to you, *whichever is later*. If you decide to complete an appeal by filing a VA Form 9, you have the option to request a Board hearing. Hearings often increase wait time for a Board decision. It is not necessary for you to have a hearing for the Board to decide your appeal. It is your choice.

Where can I find out more about the VA appeals process?

- You can find a "plain language" pamphlet called "How Do I Appeal," on the Internet at: http://www.bva.va.gov/How_Do_I_Appeal.asp.
- You can find the formal rules for the VA appeals process in title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.ecfr.gov>. A printed copy of the Code of Federal Regulations may be available at your local law library.

YOUR RIGHT TO REPRESENTATION

Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address included on our decision notice letter. See 38 C.F.R. 14.636(h)(4).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.



Department of Veterans Affairs

INFORMATION AND INSTRUCTIONS FOR COMPLETING NOTICE OF DISAGREEMENT (NOD)

IMPORTANT: Please read the information below carefully to help you complete this form quickly and accurately. Some parts of the form also contain notes or specific instructions for completing that part.

The use of this form is **mandatory** to initiate an appeal from the decision on disability compensation claims you received. This form has several key components, which, when filled out completely and accurately, will decrease the amount of time it takes to process your NOD.

FREQUENTLY ASKED QUESTIONS

How do I use this standard Notice of Disagreement (NOD) form?

You **must** use this form if you wish to indicate that you disagree with a decision you received regarding your claim for disability compensation. Examples of these decisions may include entitlement to service connection, percentage of evaluation assigned, and effective date among other things. This form is the only way that you can initiate an appeal from a decision on your claim for disability compensation.

Should I fill out this form?

You **must** fill out this form if you disagree with a decision issued by the VA regional office (RO) about your disability compensation claim. This includes an initial decision, a decision for an increased rating, or any other decision with which you disagree. Only those issues that you list on this NOD will be considered on appeal. For those issues you do not list on this NOD, you will still have one year from the date of the decision notification letter to file an appeal for those issues.

Where can I get help?

You can ask the Department of Veterans Affairs (VA) to help you fill out the form by contacting us at 1-800-827-1000. Before you contact us, please make sure you gather the necessary information and materials, and complete as much of the form as you can.

You can also contact your representative, if applicable, for assistance with completing this form. If you do not already have a representative, you can find a list of approved Veterans Service Organizations at www.va.gov/vso. You can be represented by a Veterans Service Organization representative, an attorney-at-law, or "agent". Contact your local RO for assistance with appointing a representative or visit www.ebenefits.va.gov.

What should I do when I have finished my NOD?

You should provide your signature in Item 13A and the date signed in Item 13B. Be sure to sign every form you fill out before you send it to us. If you don't sign the form, VA will return it for you to sign, and it will take longer to process.

Attach any materials that support and explain your NOD.

Mail your NOD to the address included on the VA decision notice letter or take your NOD to your local RO.

Do I need to keep a copy of this NOD form?

It is important that you keep a copy of all completed forms and materials you give to VA.

What constitutes a complete NOD form?

Generally, VA will consider your NOD "complete" if the following information is provided on the form:

(1) Part I - Information to identify the claimant such as name, Social Security Number, or VA claim number.

Please note that it would assist VA if you provide all the personal information in Part I. However, if you provide certain information specific to the claimant such as the claimant's last name and Social Security Number or VA file number, VA will be able to identify the claimant in our system and would not necessarily consider this NOD incomplete if other information in Part I, such as the claimant's address and telephone number, is excluded.

(2) Part IV - Information to identify the specific nature of the disagreement.

Please list the issues or conditions for which you seek appellate review in Item 11 of Part IV. At a minimum, please indicate the specific issue of disagreement in Item 11A such as "right knee disability" or "Post Traumatic Stress Disorder (PTSD)" and indicate the area of disagreement in Item 11B by checking the appropriate box. If you disagree with an evaluation of a disability, you may tell us what percentage evaluation you seek in Item 11C; however, you are not required to indicate the percentage of evaluation sought in Item 11C in order to complete this form.

(3) Part V - Claimant's signature.

Please be sure to sign the NOD, certifying that the statements on the form are true and correct to the best of the claimant's knowledge and belief.

IMPORTANT: If you do not provide the above information on this NOD, VA will consider your form incomplete and will request clarification from you. You must respond to this request for clarification either **60 days** from the date of VA's request for clarification or **one year** from the date of mailing of the notice of decision of the RO, whichever is later. If you do not provide VA with a completed form within that time frame, the decision will become final, and you will have to file a new claim.

SPECIFIC INSTRUCTIONS FOR THE NOD**Part I - Personal Information**

Please provide all personal contact information.

Part II - Telephone Contact**Why is VA asking to contact me by telephone?**

The purpose of the optional telephone contact is to help process your NOD faster by requesting clarification of any ambiguous information on the form. If you indicate you wish to be contacted by telephone, VA may make up to two attempts to call you at the telephone number provided during the time slot you select. It is important to make sure you select a time period you will be available to speak with a RO representative by telephone.

Part III - Election of Decision Review Officer (DRO) Review or Traditional Appellate Review**How does the DRO Review Process work?**

A DRO is a senior technical expert who did not participate in the decision being reviewed who is responsible for holding post-decisional hearings, if requested, and processing appeals. The DRO will conduct a new and complete review of your claim, without deference to the original decision. The DRO will determine if there is additional evidence necessary to resolve the appeal, may ask you to participate in an informal conference, and/or may pursue additional evidence. The DRO may issue a new decision that changes the original decision by the RO.

How does the Traditional Appellate Review Process work?

A VA staff member will examine your file and any new evidence that you submit with or after your NOD. The reviewer may change the original decision based on new evidence or upon a finding of clear and unmistakable error in that decision.

How do I complete this section?

If you wish to elect the DRO Review Process, please check the "Decision Review Officer (DRO) Review Process" box in Item 9. If you wish to continue in the Traditional Appellate Review Process, please check the "Traditional Appellate Review Process" box in Item 9. Please note that failure to complete this section will not render the form incomplete.

Part IV - Specific Issues of Disagreement**What date do I enter in the Notification/Decision Letter Date?**

You should enter the date stamped on the notification or decision letter you received that you disagree with in Item 10. Please do not enter today's date in this field. If you need help identifying the date of the notification or decision you disagree with, contact us at 1-800-827-1000.

How do I complete this section?

The purpose of this section is for you to individually identify each area of disagreement that you have with the VA decision notification letter. Please list *only* the issues or disabilities with which you disagree. Only those issues that you list on this NOD will be considered on appeal. For those issues you do not list on this NOD, you will still have *one* year from the date of the decision notification letter to file an appeal for those issues.

In the Specific Issue of Disagreement column in Item 11A, please individually identify in separate boxes each of the issues with which you disagree. For example, "left knee condition," "hearing loss," etc.

In the "Area of Disagreement" column, Item 11B, please check the area with which you disagree. For example, if you disagree with the effective date that VA assigned for a particular benefit, check the "Effective Date of Award" option. If VA granted a benefit, but you disagree with the evaluation that we assigned, check the "Evaluation of Disability" option. If you were claiming service connection for an injury or disability that you believe to be the result of your military service, and VA denied that claim, please check the "Service Connection" option. If you are disagreeing with our decision for reasons other than listed in the "Area of Disagreement" column, please check "Other" and specify your reason.

If you disagree with a disability evaluation that we have assigned and believe that the evidence justifies a specific evaluation, please list the percentage that you believe the evidence to warrant in the "Percentage of Evaluation Sought If Known" column, Item 11C, within Part IV of the form. To assist, please refer to our decision notification letter where we indicate what the evidence must show for the evaluation we assigned as well as the next higher evaluation. Please note that this information is not required and that, even if you limit your appeal by indicating a specific percentage evaluation sought in Item 11C, evaluation levels above the percentage evaluation sought will be considered in cases where the evidence supports a higher evaluation.

There is extra space provided for you in Item 12A, to explain why you feel VA incorrectly decided your claim, and to list any disagreements not covered by the form. Please utilize this space to briefly and clearly explain why you disagree with our decision.

Part V - Certification and Signature

Sign and date the NOD, certifying that the statements on the form are true to the best of your knowledge and belief.

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, 58/VA21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

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 30 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. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**

James Macalush

VA File Number



**Represented By:
AMERICAN LEGION**

**Rating Decision
12/13/2016**

INTRODUCTION

The records reflect that you are a veteran of the Korean Conflict Era and Peacetime. You served in the Army from September 22, 1954 to August 27, 1957. You filed a new claim for benefits that was received on July 18, 2016. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of amputation right 5th finger distal to distal interphalangeal joint, which is currently 0 percent disabling, is continued.
2. The claim for service connection for malaria remains denied because the evidence submitted is not new and material.
3. Service connection for Bell's Palsy is denied.
4. Service connection for bilateral hearing loss is denied.

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5. Service connection for dizzy when walking is denied.
6. Service connection for eye sight is denied.
7. Service connection for great toe, left foot (claimed as large big toes on both feet operated on, trouble walking) is denied.
8. Service connection for great toe, right foot (claimed as large big toes on both feet operated on, trouble walking) is denied.
9. Service connection for heart problems total of 12 stents is denied.
10. Service connection for herniated bulging disc is denied.
11. Service connection for high blood pressure (also claimed as hypertension) is denied.
12. Service connection for left foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied.
13. Service connection for left knee condition (claimed as bilateral knees very sore) is denied.
14. Service connection for liver problems is denied.
15. Service connection for low blood pressure is denied.
16. Service connection for right foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied.
17. Service connection for right groin pain/hematuria is denied.
18. Service connection for right knee condition (claimed as bilateral knees very sore) is denied.
19. Service connection for right shoulder separated is denied.
20. Service connection for stomach condition (claimed as continued stomach problems) is denied.
21. Service connection for type (2) diabetes is denied.

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22. Entitlement to special monthly compensation based on the housebound cannot be granted.

23. Entitlement to special monthly compensation being in need of regular aid and attendance, cannot be granted.

EVIDENCE

- VA Form 21-526EZ Veteran's Fully Developed Claim, received July 18, 2016 and October 7, 2016
- VA Forms 21-4138, Statements in Support of Claim, received July 18, 2016 and October 7, 2016
- Service Treatment Records, received August 11, 2016
- DD Form 214, Certificate of Release or Discharge from Active Duty, received August 11, 2016
- Your written statements and receipts, received January 4, 2016, January 8, 2016, January 11, 2016, January 16, 2016, January 27, 2016, February 5, 2016, March 7, 2016, October 27, 2016, October 29, 2016, November 1, 2016, November 25, 2016 and November 29, 2016
- VA letters concerning your claim, dated April 8, 2016 and September 23, 2016
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, received October 7, 2016
- VA Form 21-4142 Authorization and Consent to Release Information to Department of Veteran's Affairs, received October 7, 2016
- Wilkes-Barre VAMC (Veterans Affairs Medical Center) treatment records, from April 9, 2001 through February 3, 2010
- Bay Pines VAMC (Veterans Affairs Medical Center) treatment records, from September 29, 2008 through December 12, 2016
- Bay Pines VA Examinations, dated October 24, 2016 and December 3, 2016
- Rating Decisions, dated May 26, 2000 and August 16, 2000
- A letter dated 03 13 00 was sent to the claimant requesting medical evidence showing the veteran has the claimed condition(s) medical evidence showing the veteran has a disability caused by the claimed condition(s) medical evidence connecting the claimed condition(s) to military service. As of this date no reply from the claimant has been received.
- The medical statements of March 21, 2000 and May 19 2000 from Dr. Daniel Rappaport of the Medical Associates of the Lehigh Valley.

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REASONS FOR DECISION

1. Evaluation of amputation right 5th finger distal to distal interphalangeal joint currently evaluated as 0 percent disabling.

The evaluation of amputation right 5th finger distal to distal interphalangeal joint is continued as 0 percent disabling.

A noncompensable evaluation is assigned unless there is amputation of the little finger at the proximal interphalangeal joint or proximal thereto.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

2. Service connection for malaria.

The claim for service connection for malaria remains denied because the evidence submitted is not new and material.

A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

Rating decisions dated May 26, 2000 and August 16, 2000 denied service connection for malaria because although the medical statements from Dr. Rappaport note either a "history of malaria" or the "presumption" of malaria, there is no indication of a confirmed diagnosis of malaria and its relationship to your military service. The notation regarding malaria are speculative and are only current references which show no link between the suspected malaria and your military service. You were notified of the decision, and the appeal period for the decisions have expired.

The evidence from you submitted in connection with the current claim does not constitute new and material evidence because it does not relate to an unestablished fact necessary to substantiate the claim and does not raise a reasonable possibility of substantiating the claim.

The evidence does not support a change in our prior decision. Therefore, we are confirming the previous denial of this claim.

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3. Service connection for Bell's Palsy.

Service connection for Bell's Palsy is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of Bell's Palsy, however, we did not find a link between your medical condition and military service.

Service connection for Bell's Palsy is denied since this condition neither occurred in nor was caused by service.

4. Service connection for bilateral hearing loss.

Service connection for bilateral hearing loss is denied because your hearing loss has not been linked to service.

Service connection may not be established for disability due to impaired hearing unless the auditory threshold in any of the frequencies 500, 1000, 2000, 3000 or 4000 Hertz is 40 decibels or greater; or the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000 or 4000 Hertz are 26 decibels or greater; or speech recognition scores using the Maryland CNC Test are less than 94 percent. (38 CFR 3.385).

There are no audiometric findings in your service treatment records that meet the above requirements.

Your VA examiner opined that it is less likely than not that your hearing loss is due to military noise exposure. Your examiner provided the following rationale: Evidence is lacking to prove or disprove hearing loss was caused by in-service noise exposure from playing the trumpet; however, considering his sudden onset of hearing loss (less than 5 months ago), extensive medical history (diabetes, heart disease, stroke, and high blood pressure, history of noise exposure from playing drums in a band post military, as well as current profound degree of

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hearing loss, it is my opinion that the hearing loss is less likely than not related to or caused by in-service noise exposure.

VA examination findings show the left ear with 92 percent discrimination. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 90, at 1000 Hz is 75, at 2000 Hz is 100, at 3000 Hz is 105, and at 4000 Hz is 105. The average decibel loss is 96 in the left ear. The right ear shows a speech discrimination of 96 percent. Your right ear Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 75, at 1000 Hz is 75, at 2000 Hz is 90, at 3000 Hz is 100, and at 4000 Hz is 105. The average decibel loss is 93 in the right ear.

The evidence shows that you currently have hearing loss for VA purposes, but service connection cannot be granted without a medical link between your hearing loss and military service. Although you currently have a hearing loss for VA purposes, there is no medical link between your hearing loss and service. In the absence of such a link, service connection may not be granted. In addition, there is no evidence that disabling sensorineural hearing loss manifested itself to a compensable degree within a year of service.

Service connection for bilateral hearing loss is denied since this condition neither occurred in nor was caused by service.

5. Service connection for dizzy when walking.

Service connection for dizzy when walking is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for dizzy when walking is denied since this condition neither occurred in nor was caused by service.

6. Service connection for eye sight.

Service connection for eye sight is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

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Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. We did not find a link between your medical condition and military service.

Service connection for eye sight is denied since this condition neither occurred in nor was caused by service.

7. Service connection for great toe, left foot (claimed as large big toes on both feet operated on, trouble walking).

Service connection for great toe, left foot (claimed as large big toes on both feet operated on, trouble walking) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for great toe, left foot (claimed as large big toes on both feet operated on, trouble walking) is denied since this condition neither occurred in nor was caused by service.

8. Service connection for great toe, right foot (claimed as large big toes on both feet operated on, trouble walking).

Service connection for great toe, right foot (claimed as large big toes on both feet operated on, trouble walking) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for great toe, right foot (claimed as large big toes on both feet operated on, trouble walking) is denied since this condition neither occurred in nor was caused by service.

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9. Service connection for heart problems total of 12 stents.

Service connection for heart problems total of 12 stents is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from Bay Pines VA Medical Center show you have been diagnosed with a heart condition, however, we did not find a link between your medical condition and military service.

Service connection for heart problems total of 12 stents is denied since this condition neither occurred in nor was caused by service.

10. Service connection for herniated bulging disc.

Service connection for herniated bulging disc is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. We did not find a link between your medical condition and military service.

Service connection for herniated bulging disc is denied since this condition neither occurred in nor was caused by service.

11. Service connection for high blood pressure (also claimed as hypertension).

Service connection for high blood pressure (also claimed as hypertension) is denied.

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Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of hypertension, however, we did not find a link between your medical condition and military service.

Service connection for high blood pressure (also claimed as hypertension) is denied since this condition neither occurred in nor was caused by service.

12. Service connection for left foot (claimed as prosthetic shoes and feet problems, trouble walking).

Service connection for left foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have been diagnosed with a left foot condition, however, we did not find a link between your medical condition and military service.

Service connection for left foot (claimed as prosthetic shoes and feet problems) is denied since this condition neither occurred in nor was caused by service.

13. Service connection for left knee condition (claimed as bilateral knees very sore).

Service connection for left knee condition (claimed as bilateral knees very sore) is denied.

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Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for left knee condition (claimed as bilateral knees very sore) is denied since this condition neither occurred in nor was caused by service.

14. Service connection for liver problems.

Service connection for liver problems is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of cirrhosis of the liver, however, we did not find a link between your medical condition and military service.

Service connection for liver problems is denied since this condition neither occurred in nor was caused by service.

15. Service connection for low blood pressure.

Service connection for low blood pressure is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability. The evidence does not show that your disease developed

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to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Service connection for low blood pressure is denied since this condition neither occurred in nor was caused by service.

16. Service connection for right foot (claimed as prosthetic shoes and feet problems, trouble walking).

Service connection for right foot (claimed as prosthetic shoes and feet problems, trouble walking) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have been diagnosed with a right foot condition, however, we did not find a link between your medical condition and military service.

Service connection for right foot (claimed as prosthetic shoes and feet problems) is denied since this condition neither occurred in nor was caused by service.

17. Service connection for right groin pain/hematuria.

Service connection for right groin pain/hematuria is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. We did not find a link between your medical condition and military service.

Service connection for right groin pain/hematuria is denied since this condition neither occurred in nor was caused by service.

James Macalush

12 of 14

18. Service connection for right knee condition (claimed as bilateral knees very sore).

Service connection for right knee condition (claimed as bilateral knees very sore) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for right knee condition (claimed as bilateral knees very sore) is denied since this condition neither occurred in nor was caused by service.

19. Service connection for right shoulder separated.

Service connection for right shoulder separated is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have a right shoulder condition, however, we did not find a link between your medical condition and military service.

Service connection for right shoulder separated is denied since this condition neither occurred in nor was caused by service.

20. Service connection for stomach condition (claimed as continued stomach problems).

Service connection for stomach condition (claimed as continued stomach problems) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

James Macalush

13 of 14

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show a current diagnosed disability.

Service connection for stomach condition (claimed as continued stomach problems) is denied since this condition neither occurred in nor was caused by service.

21. Service connection for type (2) diabetes.

Service connection for type (2) diabetes is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show an event, disease or injury in service. The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection.

Treatment records from the Bay Pines VA Medical Center show you have a diagnosis of type 2 diabetes, however, we did not find a link between your medical condition and military service.

Service connection for type (2) diabetes is denied since this condition neither occurred in nor was caused by service.

22. Entitlement to special monthly compensation based on the housebound.

Entitlement to special monthly compensation based on the housebound cannot be granted.

You are service-connected for the following disabilities: Amputation right 5th finger distal to distal interphalangeal joint. Your overall combined evaluation is 0 percent.

Special monthly compensation based on being housebound may be awarded when the claimant has a single permanent service-connected disability evaluated as 100 percent disabling and another disability, or disabilities, evaluated as 60 percent or more disabling. Housebound may also be awarded if the claimant has a single permanent disability evaluated as 100 percent disabling and, due to such disability, is permanently and substantially confined to the immediate premises. Entitlement to special monthly compensation based on being housebound is not warranted because you do not meet the above noted criteria.

James Macalush

14 of 14

23. Entitlement to special monthly compensation being in need of regular aid and attendance.

Entitlement to special monthly compensation being in need of regular aid and attendance, cannot be granted.

You are service-connected for the following disabilities: Amputation right 5th finger distal to distal interphalangeal joint. Your overall combined evaluation is 0 percent.

Special monthly compensation based on the need for aid and attendance may be awarded when the claimant has service-connected conditions resulting in anatomical loss or loss of use of both feet, loss or loss of use of one hand and one foot, blindness in both eyes with vision 5/200 or less or the visual field restricted to 5° or less. Aid and attendance may also be awarded when the claimant is shown to be bedridden or in need of aid and attendance solely as a result of service-connected conditions.

Entitlement to special monthly compensation based on the need for regular aid and attendance cannot be granted because the evidence fails to show that you are bedridden or in need of aid and attendance solely as a result of service-connected conditions.

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 web site, www.va.gov.

Rating Decision	<i>Department of Veterans Affairs Veterans Benefits Administration</i>		Page 1 of 4 12/13/2016	
NAME OF VETERAN James Macalush	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AMERICAN LEGION	COPY TO

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
09/22/1954	08/27/1957	Army	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: New Claim Received 07/18/2016

ASSOCIATED CLAIM(s): 020; New/Reopen/Increase; 07/18/2016

SUBJECT TO COMPENSATION (1.SC)

5156

AMPUTATION RIGHT 5TH FINGER DISTAL TO DISTAL
INTERPHALANGEAL JOINT
Service Connected, Peacetime, Incurred
Static Disability
0% from 09/23/2000

COMBINED EVALUATION FOR COMPENSATION:

0% from 09/23/2000

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Peacetime, Korean Conflict)

5017

GOUT

Not Service Connected, Not Incurred/Caused by Service
Original Date of Denial: 02/17/2014

5201

RIGHT SHOULDER SEPARATED

Not Service Connected, Not Incurred/Caused by Service

5243

HERNIATED BULGING DISC

Not Service Connected, Not Incurred/Caused by Service

5260

LEFT KNEE CONDITION (CLAIMED AS BILATERAL KNEES VERY SORE)

Not Service Connected, Not Incurred/Caused by Service

5260

RIGHT KNEE CONDITION (CLAIMED AS BILATERAL KNEES VERY SORE)

Not Service Connected, Not Incurred/Caused by Service

Rating Decision	<i>Department of Veterans Affairs</i> <i>Veterans Benefits Administration</i>		Page 2 of 4 12/13/2016	
NAME OF VETERAN James Macalush	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA AMERICAN LEGION	COPY TO

5276 LEFT FOOT (CLAIMED AS PROSTHETIC SHOES AND FEET PROBLEMS, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

5276 RIGHT FOOT (CLAIMED AS PROSTHETIC SHOES AND FEET PROBLEMS, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

5281 GREAT TOE, LEFT FOOT (CLAIMED AS LARGE BIG TOES ON BOTH FEET OPERATED ON, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

5281 GREAT TOE, RIGHT FOOT (CLAIMED AS LARGE BIG TOES ON BOTH FEET OPERATED ON, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

6080 EYE SIGHT
Not Service Connected, Not Incurred/Caused by Service

6100 BILATERAL HEARING LOSS
Not Service Connected, Not Incurred/Caused by Service

6205 DIZZY WHEN WALKING
Not Service Connected, Not Incurred/Caused by Service

6304 MALARIA
Not Service Connected, Not Incurred/Caused by Service
Original Date of Denial: 05/26/2000

7005 HEART PROBLEMS TOTAL OF 12 STENTS
Not Service Connected, Not Incurred/Caused by Service

7015 LOW BLOOD PRESSURE
Not Service Connected, Not Incurred/Caused by Service

7101 HIGH BLOOD PRESSURE (ALSO CLAIMED AS HYPERTENSION)
Not Service Connected, Not Incurred/Caused by Service

7307 STOMACH CONDITION (CLAIMED AS CONTINUED STOMACH PROBLEMS)
Not Service Connected, Not Incurred/Caused by Service

7312 LIVER PROBLEMS
Not Service Connected, Not Incurred/Caused by Service

7538 RIGHT GROIN PAIN/HEMATURIA
Not Service Connected, Not Incurred/Caused by Service

Rating Decision	<i>Department of Veterans Affairs</i> <i>Veterans Benefits Administration</i>		Page 3 of 4 12/13/2016
NAME OF VETERAN James Macalush	VA FILE NUMBER [REDACTED]	POA [REDACTED] AMERICAN LEGION	COPY TO

7913 TYPE (2) DIABETES
Not Service Connected, Not Incurred/Caused by Service

8407 BELL'S PALSY
Not Service Connected, Not Incurred/Caused by Service

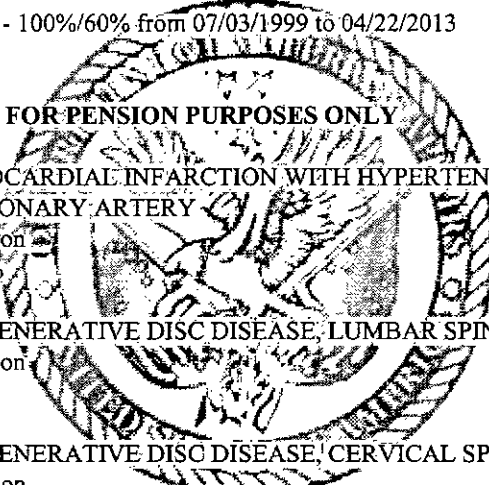
PENSION ENTITLEMENT DECISIONS (2 PT, 9 NOT PT, 11A, and 11B)

SPECIAL MONTHLY PENSION :

Veteran A&A - Not At Government Expense from 04/22/2013

Veteran Entitled to SMP H/B - 100%/60% from 07/03/1999 to 04/22/2013

DISABILITIES CONSIDERED FOR PENSION PURPOSES ONLY



7006 MYOCARDIAL INFARCTION WITH HYPERTENSION AND OCCLUDED
CORONARY ARTERY
Pension
100%

5292 DEGENERATIVE DISC DISEASE, LUMBAR SPINE
Pension
40%

5290 DEGENERATIVE DISC DISEASE, CERVICAL SPINE
Pension
30%

9433 DYSTHYMIC DISORDER
Pension
30%

5201 RESIDUALS, RIGHT SHOULDER INJURY
Pension
20%

7913 DIABETES MELLITUS
Pension
20%

8100 HEADACHES
Pension
10%

Rating Decision	<i>Department of Veterans Affairs</i> <i>Veterans Benefits Administration</i>		Page 4 of 4 12/13/2016
NAME OF VETERAN James Macalush	[REDACTED]	POA AMERICAN LEGION	COPY TO

8620 PERIPHERAL NEUROPATHY RIGHT LOWER EXTREMITY
Pension
10%

8620 PERIPHERAL NEUROPATHY LEFT LOWER EXTREMITY
Pension
10%

8629 LEFT LATERAL FEMORAL CUTANEOUS NEUROPATHY, LEFT THIGH
Pension
10%

COMBINED EVALUATION FOR PENSION: 100% (Bilateral factor of 2.7 Percent for diagnostic codes 8620, 8620, 8629)

I certify that I have reviewed and electronically signed
this decision, VBABALBAILEB



OMB Approved No. 2500-0791
Respondent Burden: 30 minutes
Expiration Date: 09/30/2018

Department of Veterans Affairs		NOTICE OF DISAGREEMENT	
<p>A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE VA REGIONAL OFFICE. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD). WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7105)</p> <p>TO FILE A VALID NOD, THERE IS A TIME LIMIT OF ONE YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPORTIONMENT, THIS TIME LIMIT IS 60 DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.</p>		<p>(DO NOT WRITE IN THIS SPACE) (VA DATE STAMP)</p>	
<p>NOTE: You can either complete the form online or by hand. Please print information using blue or black ink, neatly, and legibly to help process the form.</p>			
PART I - PERSONAL INFORMATION			
1. VETERAN'S NAME (First, middle initial, last)			
2. VETERAN'S SOCIAL SECURITY NUMBER			
3. VA FILE NUMBER			
CLAIMANT'S PERSONAL INFORMATION			
4. CLAIMANT'S NAME (First, middle initial, last)			
5. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)			
6. PREFERRED TELEPHONE NUMBER (Include Area Code)			
7. PREFERRED E-MAIL ADDRESS			
PART II - TELEPHONE CONTACT			
8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?			
<p>(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)</p> <p>8:00 a.m. - 10:00 a.m. 10:00 a.m. - 12:30 p.m. 12:30 p.m. - 2:00 p.m. 2:00 p.m. - 4:30 p.m.</p> <p>Phone number I can be reached at the above checked time: 239-731-5015</p>			
PART III - APPEAL PROCESS ELECTION			
9. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See Specific Instructions, Page 2, Part III for additional information)			
<p><input type="checkbox"/> Decision Review Officer (DRO) Review Process</p> <p><input type="checkbox"/> Traditional Appellate Review Process</p>			

VETERAN'S SSN [REDACTED]

PART IV - SPECIFIC ISSUES OF DISAGREEMENT

10. NOTIFICATION/DECISION LETTER DATE

12/13/16

11. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (if known)
MA Lacer	<input checked="" type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below)	
Amputation of (R) 5th Finger	<input checked="" type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below)	

12A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

You didn't take into consideration that I was stationed in the Panama Canal Zone (Terrible Heat) Area.

12B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

☒ YES ☐ NO (If so, how many?)

PART V - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

13A. SIGNATURE

James V. McEachern

13B. DATE SIGNED

9/12/17

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.


**Department of
Veterans Affairs**

 PO BOX 5206
 JANESVILLE WI 53547-5206

74

September 21, 2017

 JAMES V MACALUSH
 6731 MATT PLEDGER CT
 N FORT MYERS FL 33917

 In Reply Refer To:
 File Number:

 [REDACTED]
 J V MACAL
 Payee 00

We have received your claim. It is our sincere desire to decide your case promptly. However, as we have a great number of claims, action on yours may be delayed. We are now in the process of deciding whether additional evidence or information is needed. If we need anything else from you, we will contact you, so there is no need to contact us in the meantime. If you do write us, be sure to show YOUR file number and full name, or have it at hand if you call.

If your mailing address is different than that shown above, please advise us of your new mailing address. You should notify us immediately of any changes in your mailing address.

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached Where to Send Your Written Correspondence chart.

Kind regards,

REGIONAL OFFICE DIRECTOR

DEPARTMENT OF VETERANS AFFAIRS

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivors Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
All United States and Foreign Locations	Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville WI 53547-4444
*Note: For foreign Veterans Pension and Survivors Benefits please refer to the below addresses.	Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260

For correspondence relating to all **Veterans Pension** and **Survivors Benefits** claims:

Location of Residence	Address
Alabama Kentucky Missouri Arkansas Louisiana Ohio Illinois Michigan Tennessee Indiana Mississippi Wisconsin	Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville WI 53547-5192
Alaska Montana Texas Arizona Nebraska Utah California Nevada Washington Colorado New Mexico Wyoming Hawaii North Dakota Mexico Idaho Oklahoma Central America Iowa Oregon South America Kansas South Dakota Caribbean Minnesota	Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville WI 53547-5365
Connecticut New Hampshire South Carolina Delaware New Jersey Vermont Florida New York Virginia Georgia North Carolina West Virginia Maine Pennsylvania District of Maryland Rhode Island Columbia Massachusetts Puerto Rico Canada	Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville WI 53547-5206
Countries outside of North, Central or South America	



DEPARTMENT OF VETERANS AFFAIRS

September 26, 2017

JAMES MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS, FL 33917

In reply, refer to:
317/VSC/IPC/PAS
File Number [REDACTED]
James Macalush

Dear Mr. Macalush:

We received your written disagreement with the Department of Veterans Affairs (VA) decision of December 21, 2016. This letter describes what happens next.

How Will VA Try to Resolve My Disagreement?

This local VA office will try to resolve your disagreement through the Post-Decision Review Process. As part of this process, you must decide how you would like us to handle your appeal. You may choose to have a Decision Review Officer (DRO) assigned to your case or to follow the traditional appeal process. A DRO is a senior technical expert who is responsible for holding post-decisional hearing and processing appeals.

How Do I Select DRO or Traditional Appeal Process?

You must notify us within **sixty (60) days** from the date of this letter whether you want to have your case reviewed by the DRO or by the traditional appeal process. If we do not hear from you within 60 days, your case will be reviewed under the traditional appeal process.

How Does the Post Decision Review Process Work?

Complete review: The DRO will review the materials in your VA claims folder, including evidence and arguments, and statements from your representative. This may lead the DRO to request additional evidence from you, your doctor or some other source. You may be asked to participate in an informal conference with the DRO to discuss your case.

New decision: The DRO may make a new decision. The DRO has the authority to grant benefits based on clear and unmistakable error, de novo review, or the receipt of new and material evidence. Should the DRO make a new decision, you will be notified of the decision and your appeal rights. If the DRO cannot resolve your disagreement, you will receive a Statement of the Case that is explained below.

Page 2

File Number: [REDACTED]
MACALUSH, JAMES

How Does the Traditional Appeal Process Work?

Complete review: A VA staff member will check your file for completeness. Then a review will be made of your evidence and arguments, statements from your representative and any other information available in your claims folder. This may lead to a request for additional evidence from you, your doctor, or other sources. You may be asked to clarify questions about your disagreement.

What is a Statement of the Case?

If we cannot grant your appeal based on the review and an examination of any additional evidence, we will prepare a Statement of the Case (SOC) and send you a copy. The SOC will provide you with an explanation of the decision made on your case. The SOC will include a summary of the evidence, a citation to pertinent laws, a discussion of how these laws affect the decision, and a summary of the reasons for the decision. If you still do not agree with that decision and wish to continue your appeal, you need to submit a substantive appeal in response to the SOC, so that your case can be sent to the Board of Veterans' Appeals. Instructions on how to file substantive appeals will be provided in our letter notifying you of the decision.

May I be Represented?

You designated AMERICAN LEGION to represent you in presenting your claim to VA. We will work with this representative while trying to resolve your disagreement. If you have not already done so, you should contact your representative directly to discuss your case.

We hope we will be able to resolve your disagreement to your satisfaction.

What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Page 3

File Number: [REDACTED]
 MACALUSH, JAMES

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .

In all cases, be sure to refer to your VA file number, [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.

We sent a copy of this letter to your representative, AMERICAN LEGION, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Regional Office Director

Enclosures: Where to Send Your Written Correspondence
 Appeals Election Form

cc: AMERICAN LEGION

DEPARTMENT OF VETERANS AFFAIRS

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
All United States and Foreign Locations	Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville, WI, 53547-4444
*Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.	Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260

For correspondence relating to all **Veterans Pension** and **Survivor Benefit** claims:

Location of Residence	Address
Alabama Arkansas Illinois Indiana	Kentucky Louisiana Michigan Mississippi
Missouri Ohio Tennessee Wisconsin	Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604
Alaska Arizona California Colorado Hawaii Idaho Iowa Kansas Minnesota	Montana Nebraska Nevada New Mexico North Dakota Oklahoma Oregon South Dakota
Texas Utah Washington Wyoming Mexico Central America South America Caribbean	Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604
Connecticut Delaware Florida Georgia Maine Maryland Massachusetts	New Hampshire New Jersey New York North Carolina Pennsylvania Rhode Island
South Carolina Vermont Virginia West Virginia District of Columbia Puerto Rico Canada	Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604
Countries outside of North, Central or South America	

DEPARTMENT OF VETERANS AFFAIRS

APPEAL ELECTION FORM

NOD Dated:

Please select Decision Review Officer **OR** Traditional Appeal Process.
If you select both options, you will have your appeal processed by the Decision
Review Officer.

Veteran: James Macalush

VA File Number: 20763926

_____ I elect to have my appeal processed by the Decision Review Officer.

_____ I elect the Traditional Appeal process.

Signature _____

Date _____

DEPARTMENT OF VETERANS AFFAIRS



23 October 2017

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS FL 33917

In reply, refer to:
310/PMC/APPEALS/PW
File Number: [REDACTED]
James V. Macalush

IMPORTANT

Dear James Macalush:

We are working on your notice of disagreement.

This letter tells you what we will do with your claim and what you can do to help us. Please read the enclosure to this letter entitled, "Veteran Claims Assistance Act (VCAA)." The enclosure explains how we obtain evidence related to your claim and the legal requirements for supporting your claim.

Is There Anything Else You Need To Send? See below

- We have enclosed a "VCAA Notice Response." We encourage you to return this document, as it may expedite a decision on your claim.

Where Should You Send What We Need?

Please note that the quickest, easiest, and most secure way to submit any documents to us is via the eBenefits website. Just visit www.eBenefits.va.gov to register. Please also refer to the "What is eBenefits?" section of this letter for more information.

Please send what we need to this address:

Department of Veterans Affairs
Claims Intake Center
Attn: Phila Pension Center
P.O. Box 5206
Janesville WI 53547-5206

You can send what we need to the appropriate address listed on the attached Where to Send Your Written Correspondence chart.

Page 2

File [REDACTED]

James V. Macalush

How Soon Should You Send What We Need?

- We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you, we may make a decision on your claim after 30 days. However, you have up to one year from the date of this letter to submit the information and evidence necessary to support your claim. If we decide your claim before one year from the date of this letter, you will still have the remainder of the one-year period to submit additional information or evidence necessary to support your claim.

What Have We Done?

- We have made a second request for copies of treatment records or other evidence from:

Lee Physicians Group, Dr Butler
Lee Physicians Group, Dr Arcement

We did receive the medical information you provided from Dr Schultz and Dr Mina.

Even though we have asked for this information, it is your responsibility to see that VA receives it (except for any evidence kept by the VA, military or any other federal government agency). We will wait an additional 15 days for this evidence.

What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

Page 3

File Number: [REDACTED]
James V. Macalush

How Can You Contact Us?

If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov>. Otherwise, you can contact us in several ways. Please give us your VA file number, [REDACTED], when you do contact us.

- Call us at 1-800-827-1000 or 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711 (international number is 1-800-829-4833).
- Send us an inquiry using the Internet at <https://iris.va.gov>.

We look forward to resolving your claim in a fair and timely manner.

Sincerely yours,

RO Director

RO Director
VA Regional Office

Enclosures: Where to Send Your Written Correspondence
Veterans Claims Assistance Act (VCAA)

cc: AMERICAN LEGION

Page 5

File Number [REDACTED]
James V. Macalush

VCAA NOTICE RESPONSE

Date of Claim: May 3, 2017

We provided a notice to you about the evidence and information VA needs to support your claim for benefits. At this time, you may choose to indicate whether you intend to submit additional information or evidence that would help support your claim.

Your signed response will let us know whether to decide your claim without waiting 30 days, or whether we should give you the full 30 days from the date of the letter sent with this notice response before deciding your claim.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled;
- The assistance VA will provide you in obtaining evidence to support your claim; or
- The date any benefits will begin if your claim is granted.

RESPONSE

I elect *one* of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

☐ I have enclosed all the remaining information or evidence that will support my claim, or I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

☐ I will send more information or evidence to VA to support my claim. VA will wait the full 30 days from the date of the letter sent with this notice response before deciding my claim.

Claimant/Representative Signature

Date



DEPARTMENT OF VETERANS AFFAIRS

July 9, 2018

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS FL 33917

In reply, refer to:
339/VSR3/DOK
File Number: [REDACTED]
JAMES MACALUSH

Dear Mr. MACALUSH:

We are working on your claim.

What Do We Still Need From You?

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*

- On your application, you indicated that you received treatment from Dr. John Mina.

Complete and return the enclosed VA Form 21-4142, *Authorization to Disclose Information to the Department of Veterans Affairs (VA)*, and VA Form 21-4142a, *General Release for Medical Provider Information to the Department of Veterans Affairs (VA)*, so that we can obtain treatment records on your behalf. You may want to obtain and send us the records yourself, if possible.

Please complete both of the attached forms in order for us to assist with obtaining your records.

How Should You Submit What We Need?

Please note that the quickest, easiest, and most secure way to submit any documents to us is via the eBenefits website. Just visit www.eBenefits.va.gov to register. Please also refer to the 'What is eBenefits?' section of this letter for more information.

You can also send what we need to the appropriate address listed on the attached *Where to Send Your Written Correspondence* chart.

How Soon Should You Send What We Need?

File Number [REDACTED]
MACALUSH, JAMES V

We strongly encourage you to send any information or evidence as soon as you can. **If we do not hear from you, we may make a decision on your claim after 30 days.**

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.com/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our web site at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.com/>.

What Is eBenefits?

eBenefits provides electronic self-service resources to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if

File [REDACTED]
MACALUSH, JAMES V

you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized Veterans' Service Organizations and/or representatives. Veterans' Service Organizations, which are recognized or approved to provide services to the Veteran community, can also help you with any questions.

We look forward to resolving your claim in a fair and timely manner.

Thank you for your service,

Regional Office Director

Enclosure(s): Where to Send Written Correspondence
VA Form 21-4142a
VA Form 21-4142

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
All United States and Foreign Locations *Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.	Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville, WI, 53547-4444 Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260

For correspondence relating to all **Veterans Pension and Survivor Benefit** claims:

Location of Residence	Address
Alabama Kentucky Missouri Arkansas Louisiana Ohio Illinois Michigan Tennessee Indiana Mississippi Wisconsin	Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604
Alaska Montana Texas Arizona Nebraska Utah California Nevada Washington Colorado New Mexico Wyoming Hawaii North Dakota Mexico Idaho Oklahoma Central America Iowa Oregon South America Kansas South Dakota Caribbean Minnesota	Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604
Connecticut New Hampshire South Carolina Delaware New Jersey Vermont Florida New York Virginia Georgia North Carolina West Virginia Maine Pennsylvania District of Maryland Rhode Island Columbia Massachusetts Puerto Rico Canada	Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604
Countries outside of North, Central or South America	

VETERAN NAME:

Submitted by: VSO

FILE NUMBER:

RAMP OPT-IN ELECTION**RETURN THIS PAGE ONLY IF YOU WANT TO PARTICIPATE IN RAMP****(DO NOT complete this form if you wish to remain in the current legacy appeals process)**

Once you have read and understood the attached VA letter, please indicate your election by completing and returning this notice with the coversheet provided to the address noted below.

DEPARTMENT OF VETERANS AFFAIRS**EVIDENCE INTAKE CENTER****PO BOX 4444****JANESVILLE WI 53547-4444****OR****FAX TO: 844-531-7818**

By completing this form, I elect to participate in RAMP. I am withdrawing all eligible pending compensation appeals in their entirety, and any associated hearing requests, to participate in VA's RAMP initiative and have my eligible appeals proceed under the new process described in the Appeals Modernization Act. I understand that I cannot return to the current (legacy) appeals system for the issues withdrawn. I also acknowledge that, in the event I want the Board to review my claim, the Board will not consider my appeal until after the new appeals system goes into effect, which will not be earlier than February 2019.

I elect the following review option (select only one):

☐ **Supplemental Claim**

I elect to have all eligible issues currently on appeal processed as a supplemental claim. I would like to submit or have already submitted new and relevant evidence in support of my claim for benefits. I understand that I have 30 days from the date of my election to submit additional evidence or notify VA of evidence that VA can assist in gathering.

☒ **Higher-Level Review**

I elect to have all eligible issues currently on appeal reviewed in the higher-level review process. I understand that this review will be based upon the evidence submitted to VA as of the date of this election and VA will not seek additional evidence on my behalf as part of the higher-level review.

Place a check in the box below if you would like a one-time telephonic informal conference with the Higher-Level Reviewer. If you have an accredited representative (VSO, attorney, or agent) please include his or her contact information below. (This option may cause some delay in the processing of your higher-level review.)

☐ **Informal Conference**

Representative/Org. _____

Phone Number _____

Date _____

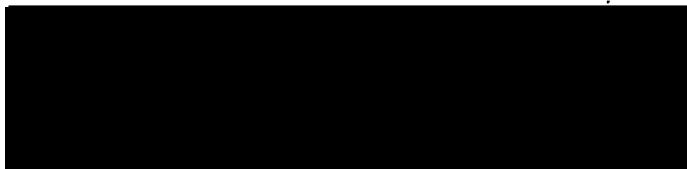
Claimant or Authorized Representative Signature _____

NOTICE

Appeals Resource Center

Please place this cover sheet on top of any information or documents you send in response to this letter. Failure to do so may delay review of the material you submit.

Section completed by VA personnel:



Last Name

MACALUSI

First Name

JAMES

Access to these records is limited to: AUTHORIZED PERSONS ONLY.

Information may not be disclosed from this file unless permitted by all applicable legal authorities, which may include the Privacy Act, 38 U.S.C. §§ 5701, 5705, 7332; the Health Insurance Portability and Accountability Act; and regulations implementing those provisions, at 38 C.F.R. §§ 1.460 – 1.599 and 45 C.F.R. Parts 160 and 164.

Anyone who discloses information in violation of the above provisions may be subject to civil and criminal penalties.

Appeals Resource Center/397



JAMES V. MACARTHUR
6731 MATTHEW ROBERTSON
N. FT. MYERS FL
33710

TAMPA FL 335
SAINT PETERSBURG FL
01 AUG 2018 PM 3 L



Dept. of Defense
Evidence Intake
Center
P.O. Box 4444
James V. MacArthur, 53547-4444

Department of Veterans Affairs		REPORT OF GENERAL INFORMATION	
NOTE - This form must be filled out in ink or on a typewriter or computer, as it becomes a permanent record in the veteran's folder.		1. VA OFFICE 317	2. IDENTIFICATION NUMBERS (C, XC, SS, XSS, V, K, etc.) [REDACTED]
3. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print) MACALUSH, JAMES V		4. DATE OF CONTACT (Month, day, year) 11/08/2018	
5. ADDRESS OF VETERAN (Include number and street or rural route, city or P.O., State and ZIP Code) 6731 Matt Pledger Ct N Ft Myers, FL 33917		6A. TELEPHONE NUMBER OF VETERAN (Include Area Code) DAY 2396344157 EVENING [REDACTED]	
		6B. E-MAIL ADDRESS (If applicable)	
7. NAME OF PERSON CONTACTED SAA		8. TYPE OF CONTACT <input type="checkbox"/> PERSONAL <input checked="" type="checkbox"/> TELEPHONE	
9. ADDRESS OF PERSON CONTACTED SAA		10. TELEPHONE NUMBER OF PERSON CONTACTED (Include Area Code)	
<input checked="" type="checkbox"/> I certify that I properly identified my caller using the ID Protocol			
11. BRIEF STATEMENT OF INFORMATION REQUESTED AND GIVEN: The St. Petersburg Regional Office provides the following information in response to your inquiry dated November 07, 2018: Mr. James Macalush was contacted on November 08, 2018 regarding his NSC Pension benefits, and the pending RAMP appeal, established under proper controls and dated August 07, 2018. Mr. Macalush's case is flashed for expedited processing due to his advanced age and hardship. Mr. Macalush was informed that his NSC Pension Award was recently reviewed, and he has received a retro active payment for the SMP that was granted effective from July 03, 1999, and his award has been resumed. Mr. Macalush was also informed that the rating for his AMPUTATION RIGHT 5TH FINGER DISTAL TO DISTAL INTERPHALANGEAL JOINT, has been rated zero percent disabling, effective from September 23, 2000. Mr. Macalush was provided the criteria to rate his condition at zero percent, an amputation of the distal joint (the tip of the finger) being zero percent, but if the amputation had been proximal, the joint closer to his hand, a compensable rating could be assigned. Claims for secondary conditions, such as arthritis were also discussed, and Mr. Macalush was informed that he may apply for an increased disability evaluation. Mr. Macalush stated he just wanted to be service connected for his 5th finger amputation, and for residuals of Malaria. The previous rating decision that denied service connected disability due to Malaria was reviewed, and Mr. Macalush was informed that in order to reopen a claim for this condition, that he must provide new and material evidence. What constitutes new and material evidence was also discussed. Mr. Macalush was provided the Lee County Veterans Service Office contact information, and encouraged to discuss his claims with his American Legion Service Officer. Mr. Macalush was appreciative of the contact.			
Notification of Action <input checked="" type="checkbox"/> I read the following statement to the caller: "I am a VA employee who is authorized to receive or request evidentiary information or statements that may result in a change in your VA benefits. The primary purpose for gathering this information or statement is to make an eligibility determination. It is subject to verification through computer matching programs with other agencies." cc: POA (If applicable): 074 - AMERICAN LEGION			
DIVISION OR SECTION VSC/21PC/SG		EXECUTED BY (Signature and title) Susan L. Goins 282579 <small>Digitally signed by Susan L. Goins 282579 Date: 2018.11.08 13:45:19 -05'00'</small>	
<p>PRIVACY ACT NOTICE: The 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 5, 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, 58VA/21/22/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.</p> <p>RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(n) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to respond to the questions on this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.</p>			



DEPARTMENT OF VETERANS AFFAIRS

November 19, 2018 .

JAMES MACALUSH
6731 MATT PLEDGER CT
N FT MYERS, FL 33917

In reply, refer to:
318/Appeals/AKM
File [REDACTED]
JAMES MACALUSH

Dear Mr. MACALUSH:

We received your election to participate in the Rapid Appeals Modernization Program (RAMP) on August 7, 2018. In response to your request, we have withdrawn your appeal(s) and discontinued appeals processing on the following condition(s)/issue(s):

- Evaluation of amputation right 5th finger distal to distal interphalangeal joint
- Service connection for malaria

Your appeal can no longer be reinstated under the current appeals process.

You elected to have the above noted condition(s)/issue(s) reviewed under the higher-level review lane.

We will review your claim and provide you with a new decision based on the review option selected. If we need additional information from you or find an error in the processing of your claim, we will notify you.

Note: Any issue(s) currently pending on appeal that **are not** listed above will remain in the legacy appeal process.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov .

Page 2

File Number: [REDACTED]
MACALUSH, JAMES

Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .
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In all cases, be sure to refer to your VA file number, [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We sent a copy of this letter to your representative, AMERICAN LEGION, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Regional Office Director

Enclosures: Where to Send Your Written Correspondence

cc: AMERICAN LEGION



DEPARTMENT OF VETERANS AFFAIRS

November 27, 2018

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FT MYERS FL 33917

In reply, refer to:
317/CM
File Number [REDACTED]
JAMES MACALUSH

Dear Mr. JAMES V MACALUSH:

We are working on your claim.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.com/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our web site at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.com/>.

File Number: [REDACTED]

What Is eBenefits?

eBenefits provides electronic self-service resources to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

We sent a copy of this letter to AMERICAN LEGION, who you have appointed as your representative(s). If you have questions or need assistance, you can also contact your representative.

We look forward to resolving your claim in a fair and timely manner.

Thank you for your service,

Regional Office Director

Enclosure(s): Where to Send Written Correspondence

cc: AMERICAN LEGION
POA National Organization

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
All United States and Foreign Locations *Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.	Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville, WI, 53547-4444 Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260

For correspondence relating to all **Veterans Pension** and **Survivor Benefit** claims:

Location of Residence	Address
Alabama Kentucky Missouri Arkansas Louisiana Ohio Illinois Michigan Tennessee Indiana Mississippi Wisconsin	Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604
Alaska Montana Texas Arizona Nebraska Utah California Nevada Washington Colorado New Mexico Wyoming Hawaii North Dakota Mexico Idaho Oklahoma Central America Iowa Oregon South America Kansas South Dakota Caribbean Minnesota	Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604
Connecticut New Hampshire South Carolina Delaware New Jersey Vermont Florida New York Virginia Georgia North Carolina West Virginia Maine Pennsylvania District of Maryland Rhode Island Columbia Massachusetts Puerto Rico Canada	Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604
Countries outside of North, Central or South America	



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

November 26, 2018

In Reply Refer To: 014CLB1991

MACALUSH, James V.

Mr. James V. Macalush
6371 Matt Pledger Court
North Fort Myers, FL 33917

Dear Mr. Macalush:

Thank you for your correspondence of October 4, 2018, which was received at the Board of Veterans' Appeals (Board) on October 11, 2018, concerning your claim. Your correspondence has been associated with your file.

In November 2017, VA launched the Rapid Appeals Modernization Program (RAMP) with the goal of providing eligible appellants with the earliest possible resolution of their disagreement with VA's decision on their claim. On August 15, 2018 you opted in to participate in the Rapid Appeals Modernization Program (RAMP). If you have any concerns regarding RAMP, please reach out to your local Regional Office.

I hope the information I have provided is helpful. If you would like to obtain a status update on your case, you may log in to www.vets.gov. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "David C. Spickler".

David C. Spickler
Vice Chairman
Board of Veterans' Appeals

cc: The American Legion



DEPARTMENT OF VETERANS AFFAIRS

February 1, 2019

JAMES MACALUSH
6731 MATT PLEDGER CT
N FT MYERS, FL 33917

In reply, refer to:
345/CET
File Number: [REDACTED]
JAMES MACALUSH

Dear Mr. MACALUSH:

This letter is to correct the RAMP Appeal Withdrawal letter sent to you on November 19, 2008. We have changed your lane from high level review to supplemental claim lane.

We received your election to participate in the Rapid Appeals Modernization Program (RAMP) on August 21, 2018. In response to your request, we have withdrawn your appeal(s) and discontinued appeals processing on the following condition(s)/issue(s):

- amputation right 5th finger distal to distal interphalangeal joint and malaria

Your appeal can no longer be reinstated under the current appeals process.

You elected to have the above noted condition(s)/issue(s) reviewed under the supplemental claim lane.

We will review your claim and provide you with a new decision based on the review option selected. If we need additional information from you or find an error in the processing of your claim, we will notify you.

Note: Any issue(s) currently pending on appeal that **are not** listed above will remain in the legacy appeal process.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov .

Page 2

File Number: [REDACTED]
MACALUSH, JAMES

Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .
-------	--

In all cases, be sure to refer to your VA file number, [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We have no record of you appointing a service organization or representative to assist you with filing an intent to file and/or your claim. You can contact us for a listing of the recognized Veterans Service Organizations and/or representatives. Veterans Service Organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

Sincerely yours,

Regional Office Director

Enclosures: Where to Send Your Written Correspondence

DEPARTMENT OF VETERANS AFFAIRS

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
All United States and Foreign Locations	Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville, WI, 53547-4444 Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260
*Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.	

For correspondence relating to all **Veterans Pension** and **Survivor Benefit** claims:

Location of Residence	Address
Alabama Arkansas Illinois Indiana	Kentucky Louisiana Michigan Mississippi
Missouri Ohio Tennessee Wisconsin	Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604
Alaska Arizona California Colorado Hawaii Idaho Iowa Kansas Minnesota	Montana Nebraska Nevada New Mexico North Dakota Oklahoma Oregon South Dakota
Texas Utah Washington Wyoming Mexico Central America South America Caribbean	Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604
Connecticut Delaware Florida Georgia Maine Maryland Massachusetts	New Hampshire New Jersey New York North Carolina Pennsylvania Rhode Island
South Carolina Vermont Virginia West Virginia District of Columbia Puerto Rico Canada	Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604
Countries outside of North, Central or South America	



DEPARTMENT OF VETERANS AFFAIRS

February 8, 2019

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FT MYERS, FL 33917

In Reply Refer To: 319/Post B/AG

MACALUSH, James V

Dear Mr. Macalush:

You have chosen to participate in the Rapid Appeals Modernization Program (RAMP). VA completed your request for supplemental level review received on August 21, 2018.

We made a decision regarding your entitlement to VA benefits.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What We Decided

Entitlement to a higher evaluation for amputation right 5th finger distal to distal interphalangeal joint, which is currently 0 percent disabling, is denied:

Medical Description	Percent (%) Assigned
Amputation right 5th finger distal to distal interphalangeal joint	0%

We determined that the following condition was not related to your military service, so service connection remains denied:


Medical Description
Malaria

Your overall or combined rating is 0%. We do not add the individual percentages of each condition to determine your combined rating. We use a combined rating table that considers the effect from the most serious to the least serious conditions.

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered, and the reasons for our decision. Your



2


Macalush, James V

Rating Decision and this letter constitute our decision based on the supplemental level claim review received on August 21, 2018. It represents all claims we understood to be specifically made, implied, or inferred in that claim.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have one year from the date of this letter to file one of the following options:

For review of a supplemental claim decision, you may

- File a Supplemental Claim
- Request a Higher-Level Review
- File an Appeal to the Board of Veterans' Appeals

For review of a higher-level review decision, you may

- File a Supplemental Claim
- File an Appeal to the Board of Veterans' Appeals

Please note: You **may not** request a higher-level review of a decision on a higher-level review or a decision on an appeal to the Board of Veterans' Appeals.

You must use the attached VA Form 21-4138, Statement in Support of Claim, "RAMP Selection" to notify us of your decision to seek further review. The VA Form 21-4138, "RAMP Selection" is the only form accepted by VA during RAMP.

If you elect to file an appeal with the Board of Veterans' Appeals, your Notice of Disagreement (NOD) will be assigned a docket number based upon the date of receipt. The Board will begin processing these appeals in the new, more efficient appeals process no earlier than October 2018. The enclosed "*RAMP Review Rights*," explains your options in greater detail and provides instructions on how to request further review.

If you would like to obtain or access evidence used in making this decision, please contact us by telephone, email, or letter as noted below letting us know what you would like to obtain. Some evidence may be obtained online by visiting www.eBenefits.va.gov.

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

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Macalush, James V

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

Sincerely,

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[REDACTED]

Macalush, James V

Regional Office Director

Information is available - <https://iris.custhelp.va.gov>

Enclosure(s): Rating Decision February 7, 2019
RAMP Review Rights
VA Form 21-4138, Statement in Support of Claim, "RAMP Selection"
Where to Send Your Written Correspondence

038/JM3926/AG



**DEPARTMENT OF VETERANS AFFAIRS
Veteran's Benefits Administration
Regional Office**

James Macalush

VA File Number
[REDACTED]

**Rating Decision
02/07/2019**

INTRODUCTION

As a result of the enactment of the Veterans Appeals Improvement and Modernization Act of 2017 (Public Law 115-55), the Department of Veterans Affairs (VA) is required to change its current appeals process. Under the authority of Public Law 115-55, VA created the Rapid Appeals Modernization Program (RAMP) to provide Veterans with the earliest possible resolution of their claims. You have chosen to participate in RAMP, and you selected to have your claim reviewed under the Supplemental Claim lane option.

We have received your supplemental claim on August 21, 2018

The records reflect that you are a veteran of the Korean Conflict Era and Peacetime. You served in the Army from September 22, 1954, to August 27, 1957. A special review of your file was mandated on August 21, 2018. Based on the review and the evidence listed below, we have made the following decision(s).

DECISION

1. Entitlement to a higher evaluation for amputation right 5th finger distal to distal interphalangeal joint, which is currently 0 percent disabling, is denied.
2. The previous denial of service connection for malaria is confirmed and continued.

James Macalush

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EVIDENCE

- RAMP Opt-in election, received August 21, 2018
- RAMP Appeal withdrawal letter, dated November 19, 2018
- RAMP Appeal withdrawal letter, dated February 1, 2019
- VA Form 21-526EZ Veteran's Fully Developed Claim, received July 18, 2016 and October 7, 2016
- VA Forms 21-4138, Statements in Support of Claim, received July 18, 2016 and October 7, 2016
- Service Treatment Records for the period of service from September 22, 1954, to August 27, 1957, received August 11, 2016
- Your written statements and receipts, received January 4, 2016, January 8, 2016, January 11, 2016, January 16, 2016, January 27, 2016, February 5, 2016, March 7, 2016, October 27, 2016, October 29, 2016, November 1, 2016, November 25, 2016 and November 29, 2016
- VA letters concerning your claim, dated April 8, 2016 and September 23, 2016
- VA Form 21-4142 Authorization and Consent to Release Information to Department of Veteran's Affairs, received October 7, 2016
- Wilkes-Barre VAMC (Veterans Affairs Medical Center) treatment records, from April 9, 2001 through February 3, 2010
- Bay Pines VAMC (Veterans Affairs Medical Center) treatment records, from September 29, 2008 through December 12, 2016
- Bay Pines VA Examinations, dated October 24, 2016 and December 3, 2016
- Rating Decisions, dated May 26, 2000 and August 16, 2000
- VA letter, dated March 13, 2000
- The medical statements of March 21, 2000 and May 19 2000 from Dr. Daniel Rappaport of the Medical Associates of the Lehigh Valley.
- Notice of Disagreement, received September 19, 2017
- Appeals Process Explanation letter, dated September 26, 2017
- Traditional Appeal process election, received October 3, 2017
- Section (§) 5103 Notice, dated October 3, 2017
- VA examination, Bay Pines VA Medical Center, dated June 4, 2018
- Deferred rating dated January 4, 2019
- VA Form 21-0820 Report of General Information (clarifying Supplemental claim review), dated January 29, 2019
- Treatment reports, Bay Pines VA Medical Center for treatment from September 29, 2008 to February 4, 2019
- Treatment reports, Wilkes Barre VA Medical Center for treatment from April 9, 2001 to February 3, 2010

REASONS FOR DECISION

1. Entitlement to a higher evaluation for amputation right 5th finger distal to distal interphalangeal joint currently evaluated as 0 percent disabling.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of

James Macalush

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the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term “relevant evidence” means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating. (specified under 38 C.F.R. §§ 4.1, 4.7).

The rating decision dated December 13, 2016 with notification letter dated December 21, 2016 confirmed the evaluation for amputation right 5th finger distal to distal interphalangeal joint.

Entitlement to a higher evaluation for amputation right 5th finger distal to distal interphalangeal joint, which is currently 0 percent disabling, is denied.

The evaluation of amputation right 5th finger distal to distal interphalangeal joint is continued as 0 percent disabling.

A noncompensable evaluation is assigned unless there is amputation of the little finger at the proximal interphalangeal joint or proximal thereto.

A higher evaluation of 10 percent is not warranted unless the evidence shows:

- Amputation of the long, ring or little finger without metacarpal resection, at proximal interphalangeal joint or proximal thereto; or,
- Favorable ankylosis involving the long and little fingers; or,
- Favorable ankylosis involving the ring and little fingers; or,
- Limited motion of the thumb: with a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers; or,

Because the hand allows multiple digits to be combined into a single diagnostic code, it is necessary to include all possible higher digit-combination criteria.

Favorable findings identified in this decision:

VA examination dated June 4, 2018, diagnosed you with amputation through the middle phalanx or at the distal joint.

Laws and regulations applicable to this issue:

38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.

38 C.F.R. §4.1 Essentials of evaluative rating.

James Macalush

[REDACTED]

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38 C.F.R. §4.2 Interpretation of Examination Reports.
38 C.F.R. §4.6 Evaluation of Evidence.
38 C.F.R. §4.7 Higher of two evaluations.
38 C.F.R. §4.10 Functional impairment.
38 C.F.R. §4.45 The joints
38 C.F.R. §4.69 Dominant hand
38 C.F.R. §4.71a Schedule of ratings - muscle injuries

2. Service connection for malaria.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

We have denied your claim for service connection for malaria because you do not have a diagnosis of malaria.

The rating decision dated December 13, 2016 service connection for malaria remains denied because the evidence submitted is not new and material. There was no evidence you were treated for or diagnosed with malaria in service and there was no evidence you had a diagnosis of malaria related to your military service. You were notified of this decision in our letter dated December 21, 2016. You filed a timely appeal

The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition.

The evidence does not show a current diagnosed disability.

Favorable findings identified in this decision:

None

Laws and regulations applicable to this issue:

James Macalush

[REDACTED]

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38 C.F.R. §3.105 Revision of Decision
38 C.F.R. §3.156 New and Material evidence
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.303 Principles relating to service connection direct (all).
38 C.F.R. §3.304 Direct service connection; Wartime & Peacetime (all).
38 C.F.R. §4.88b Schedule of ratings - infectious diseases, immune disorders and nutritional disorders (DC 6304)

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.

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COPY TO				

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
09/22/1954	08/27/1957	Army	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: Authorized Review Requested 08/21/2018

ASSOCIATED CLAIM(s): 683; RAMP - Supplemental Claim Review Rating; 08/21/2018

SUBJECT TO COMPENSATION (1.SC)

5156 AMPUTATION RIGHT 5TH FINGER DISTAL TO DISTAL INTERPHALANGEAL JOINT
 Service Connected, Peacetime, Incurred
 Static Disability
 0% from 09/23/2000

COMBINED EVALUATION FOR COMPENSATION :

0% from 09/23/2000

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSCPeacetime, Korean Conflict)

5017 GOUT
 Not Service Connected, Not Incurred/Caused by Service
 Original Date of Denial: 02/17/2014

5201 RIGHT SHOULDER SEPARATED
 Not Service Connected, Not Incurred/Caused by Service
 Original Date of Denial: 12/13/2016

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5243 HERNIATED BULGING DISC
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5260 LEFT KNEE CONDITION (CLAIMED AS BILATERAL KNEES VERY SORE)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5260 RIGHT KNEE CONDITION (CLAIMED AS BILATERAL KNEES VERY SORE)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5276 LEFT FOOT (CLAIMED AS PROSTHETIC SHOES AND FEET PROBLEMS,
TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5276 RIGHT FOOT (CLAIMED AS PROSTHETIC SHOES AND FEET PROBLEMS,
TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5281 GREAT TOE, RIGHT FOOT (CLAIMED AS LARGE BIG TOES ON BOTH FEET
OPERATED ON, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5281 GREAT TOE, LEFT FOOT (CLAIMED AS LARGE BIG TOES ON BOTH FEET
OPERATED ON, TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

5299-5201 ROTATOR CUFF PROBLEMS, RIGHT SHOULDER
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 08/22/2018

5299-5201 ROTATOR CUFF PROBLEMS, LEFT SHOULDER
Not Service Connected, Not Incurred/Caused by Service

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Original Date of Denial: 08/22/2018

6080 EYE SIGHT (CLAIMED AS LEFT EYE VERY BAD, CONTINUED LEAKING OF EYES AND VERY SORE AND WEARS GLASSES TO READ AND SEE OPTOMETRY QUITE A LOT)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

6100 BILATERAL HEARING LOSS
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

6205 DIZZY WHEN WALKING (CLAIMED AS I HAVE TROUBLE WALKING)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

6304 MALARIA
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 05/26/2000

7005 HEART PROBLEMS TOTAL OF 12 STENTS
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7015 LOW BLOOD PRESSURE
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7101 HIGH BLOOD PRESSURE (ALSO CLAIMED AS HYPERTENSION)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7307 STOMACH CONDITION (CLAIMED AS CONTINUED STOMACH PROBLEMS)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7312 LIVER PROBLEMS
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

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7538 RIGHT GROIN PAIN/HEMATURIA
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7805 GALL BLADDER OUT/SCAR ON MY BODY
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 08/22/2018

7817 CANCER OF THE SCALP (SKIN CANCER)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 08/22/2018

7913 TYPE (2) DIABETES
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

7913 DIABETES MELLITUS TYPE 2 (ALSO CLAIMED AS HYPERGLYCEMIA)
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

8407 BELL'S PALSY
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 12/13/2016

9499-6847 SLEEP PROBLEMS
Not Service Connected, Not Incurred/Caused by Service

Original Date of Denial: 08/22/2018

PENSION ENTITLEMENT DECISIONS (2 PT, 9 NOT PT, 11A, and 11B)

SPECIAL MONTHLY PENSION :

Veteran A&A - Not At Government Expense from 10/18/2012

Veteran Entitled to SMP H/B - 100%/60% from 07/03/1999 to 10/18/2012

COMBINED EVALUATION FOR PENSION : 100% (Bilateral factor of 2.7 Percent for diagnostic codes 8620, 8620, 8629)

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DISABILITIES CONSIDERED FOR PENSION PURPOSES ONLY

7006 MYOCARDIAL INFARCTION WITH HYPERTENSION AND OCCLUDED CORONARY ARTERY
Pension
100%

5292 DEGENERATIVE DISC DISEASE, LUMBAR SPINE
Pension
40%

5290 DEGENERATIVE DISC DISEASE, CERVICAL SPINE
Pension
30%

9433 DYSTHYMIC DISORDER
Pension
30%

5201 RESIDUALS, RIGHT SHOULDER INJURY
Pension
20%

8100 HEADACHES
Pension
10%

8620 PERIPHERAL NEUROPATHY LEFT LOWER EXTREMITY
Pension
10%

8620 PERIPHERAL NEUROPATHY RIGHT LOWER EXTREMITY
Pension
10%

8629 LEFT LATERAL FEMORAL CUTANEOUS NEUROPATHY, LEFT THIGH
Pension
10%

COMBINED EVALUATION FOR PENSION : 100% (Bilateral factor of 2.7 Percent for diagnostic codes 8620, 8620, 8629)

Rating Decision	<i>Department of Veterans Affairs</i> <i>Veteran's Benefits Administration</i>		Page 6 of 6 02/07/2019
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			COPY TO

eSign: certified by VSCTCHAR, RVSR



EXHIBIT B



Department of Veterans Affairs
Philadelphia Regional Office
PO Box 8079
Philadelphia PA 19101

DECLARATION OF MATTHEW WRIGHT

I, **Matthew Wright**, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury the following:

- I. I am the supervisor of the Philadelphia Pension Management Center (PMC) Appeals Team. I am providing a response on the Veteran's Pension appeal. This declaration is in response to the U.S. Court of Appeals for Veterans Claims January 28, 2019, Order in the matter of James V. Macalush, Petitioner, No.18-6759. In that Order, the Court instructed the Secretary to respond to Petitioner's petition. The facts attested to herein are based on my personal knowledge.

James Macalush served honorably in the U.S. Army from September 22, 1954 until August 27, 1957. Mr. Macalush is in receipt of non-service connected Pension benefits with Aid and Attendance.

A Veteran's monthly Pension rate is provisional, meaning it is paid at a rate based upon a projection of a Veteran's expected income and medical expenses. The Veteran is then provided an opportunity to file a claim for adjustment of the rate based upon actual income and expenses. In situations where a Veteran's income is lower or medical expenses are higher than projected, his or her Pension rate could potentially be retroactively increased, with a lump sum payment issued for the difference between that which was paid monthly and that which was due. Conversely, if a Veteran's income is higher, or medical expenses are lower than projected, his or her Pension rate could potentially be retroactively reduced, thus creating a debt owed back to VA for Pension benefits paid in excess.

Mr. Macalush's Pension rate is based on his countable income from Social Security along with his reasonably predictable medical expenses. Each year, he submits his unreimbursed expenses and his Pension is recalculated to reflect his adjusted countable income. Since 2013, these submissions and adjustments have enabled VA to retroactively readjust his award to the maximum VA Pension rate for the prior year.

In the beginning part of 2017, Mr. Macalush was receiving a Pension rate of \$868. This was based on his income from Social Security and a projection of annual medical expenses of \$6380 yearly. After processing his annual medical expenses for 2016, VA determined that we could no longer project \$6380 in annual medical expenses for 2017. The projected medical expenses were reduced to \$1380 yearly 2017. This resulted in a reduction in his ongoing pension for 2017 to \$446.00 monthly.

In April 2017, Mr. Macalush was advised of the reduction in his 2017 pension rate. He filed a Notice of Disagreement (NOD) in July 2017 to that reduction, amongst other things. In March 2018, while this NOD was pending, VA readjusted his 2017 award to reflect his exact medical expenses 2017, which he submitted. In August 2018, his award for 2017 was retroactively increased from \$446 monthly to \$1794 monthly, thus satisfying the NOD with the 2017 Pension rate. His 2018 VA Pension rate was adjusted to \$478 monthly based on our projection of his expenses. Mr. Macalush was given the appropriate appellate rights to appeal any aspect of that August 15, 2018, decision.

Mr. Macalush, however, on September 27, 2018, filed an NOD with his 2018 VA Pension rate. He continued to express disagreement with the ongoing pension rate, essentially requesting that VA project a higher amount of medical expenses, to allow for a higher rate of monthly Pension. Essentially, Mr. Macalush has requested that VA project additional medical expenses in order to pay him a higher rate of Pension on a month to month basis, as opposed to recalculating his annual award on a retroactive basis based on actual paid expenses. Mr. Macalush submitted correspondences since the September 2018 NOD. He has also submitted several correspondences expressing his request for VA's immediate attention to his claims and appeals. In November 2018, Mr. Macalush submitted a report of his 2018 unreimbursed medical expenses in support of his appeal along with additional correspondences requesting readjustment and review.

Due to workload and the focus on appeals that have been pending longer than his, Mr. Macalush's appeal had not yet been fully reviewed nor had his correspondences regarding his Pension disagreement been addressed. In response to this inquiry, the Philadelphia PMC has reviewed the NOD, medical expenses and other correspondence. In January 2019, this office made an adjustment to his award for a full grant of benefits sought under this Pension appeal. We readjusted Mr. Macalush's award to reflect his countable 2018 medical expenses. Additionally, we increased his projected award for 2019 to begin projecting additional recurring medical expenses. The recent award results in a retroactive payment due to Mr. Macalush in the amount of \$17,658.00 that should be payable in the next 7-10 business days. Mr. Macalush was informed of the January 2019 adjustment by letter dated in January 2019 and by telephone also in January 2019.

I certify, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed on **02/15/2019**

Matthew W. Wright
151829

Digitally signed by Matthew W.
Wright 151829
Date: 2019.02.15 13:52:41 -05'00'

SIGNATURE BLOCK



DEPARTMENT OF VETERANS AFFAIRS

4-26-17

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS, FL 33917

In Reply Refer To: 310/PMC/M2/CDP

MACALUSH, James V

Dear Mr. Macalush:

We amended your disability pension award based on your claim we received on January 9, 2017.

This letter tells you about your award rate, payment change date, what we decided, how we made our decision, the evidence used to decide your claim, and how we calculated your benefits. It also tells you of your responsibilities, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Award Amount and Payment Change Date

Your monthly award amount is shown below:

Monthly Award Amount	Payment Change Date	Reason For Change
\$1,788.00	Jan 1, 2015	Countable Income Adjustment
1,794.00	Dec 1, 2016	Cost of Living Adjustment
446.00	Jan 1, 2017	Countable Income Adjustment

We are paying you as a veteran with no dependents.

Your monthly rate includes an aid and attendance allowance because you need another person's constant help with your daily activities.

You Can Expect Payment

You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

What We Decided

We increased your disability pension benefits effective February 1, 2015.

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Macalush, James V

We reduced your disability pension benefits effective January 1, 2017.

How Did We Make Our Decision?

We increased your disability pension benefits because you submitted additional medical expenses.

We reduced your disability pension benefits because you reported significantly less continuous expenses than what we were previously counting.

Evidence Used to Decide Your Claim

In making our decision, we used the following evidence:

- Medical Expense Reports
- VA Form 21-686c Declaration of Dependents

What Income And Expenses Did We Use?

We used your total income as shown below to adjust your pension benefit from January 1, 2015.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$16,786	\$0	\$0

We used your medical expenses you paid in the amount of \$39,341.00 which reduces your countable income to \$0.00.

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Macalush, James V

We used your total income as shown below to adjust your pension benefit from January 1, 2016.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourselves	\$0	\$16,786	\$0	\$0

We used your medical expenses you paid in the amount of \$51,807.00 which reduces your countable income to \$0.00.

We used your total income as shown below to adjust your pension benefit from December 1, 2016.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourselves	\$0	\$16,836	\$0	\$0

We used your medical expenses you paid in the amount of \$51,807.00 which reduces your countable income to \$0.00.

We used your total income as shown below to adjust your pension benefit from January 1, 2017.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourselves	\$0	\$16,836	\$0	\$0

We used your medical expenses of \$1,308.00, which represents the amount you pay for Medicare part B premiums as a continuing deduction from January 1, 2017. This reduces your countable income to \$16,173.00. If the amount you pay for medical expenses changes or you

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Macalush, James V

are no longer paying medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money.

What Income And Expenses Were Used / Not Used?

We didn't use the expenses you reported to calculate your benefit:

- ***Shampoo***
We did not allow this expense as we need to know the name of the shampoo expense along with a doctor's statement showing that you need this particular expense for medical purposes.
- ***Aetna Insurance***
We did not allow this expense beyond 2016 because you did not provide the frequency for this expense. Please let us know whether or not this expense is considered recurring.

We were not able to allow your grandchildren to your benefits previously as they are not considered dependents for VA purposes. In order for the VA to allow your grandchildren, they would need to be adopted by you.

Also in the future please lump similar expenses such as prescriptions, or vitamins together on your medical expense report. This will ensure faster processing of your claim.

What Are Your Responsibilities?

You are responsible to tell us right away if:

- your income or the income of your dependents changes (e.g., earnings, Social Security benefits, lottery and gambling winnings)
- your net worth increases (e.g., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA

Macalush, James V

- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.


If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address shown below: Department of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center PO Box 5206 Janesville, WI 53547-5206

In all cases, be sure to refer to your VA file number [REDACTED]

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Macalush, James V

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We sent a copy of this letter to your representative, American Legion, whom you can also contact if you have questions or need assistance.

Sincerely yours,

RO Director
VA Regional Office

To email us visit <https://iris.va.gov>

Enclosure: VA Form 4107

cc: American Legion

**YOUR RIGHTS TO APPEAL OUR DECISION**

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- Start an appeal by submitting a Notice of Disagreement.
- Give us evidence we do not already have that may lead us to change our decision.

This form will tell you how to appeal and how to send us more evidence. You can do either one or both of these things.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, you **must** submit VA Form 21-0958, "Notice of Disagreement," if that form was provided to you in connection with our decision. If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in Part IV of VA Form 21-0958 each of the claims you are appealing. A filed VA Form 21-0958 is considered your Notice of Disagreement. If you did not receive VA Form 21-0958 in connection with our decision, then write us a letter telling us you disagree with our decision or enter your disagreement on VA Form 21-0958 in questions 11 or 12A. If you did not receive VA Form 21-0958 in connection with our decision, then either your statement or VA Form 21-0958 is considered your Notice of Disagreement. **Send your Notice of Disagreement to the address included on our decision notice letter.**

How long do I have to start my appeal? You have one year to start an appeal of our decision. Your Notice of Disagreement must be postmarked (or received by us) within one year from the date of **our** letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- Show that we were clearly wrong to deny the benefit **or**
- Send us new evidence that relates to the reason we denied your claim.

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. If you want to continue your appeal to the Board of Veterans' Appeals (Board) after receiving a Statement of the Case, you must complete and return the VA Form 9 within one year from the date of our letter denying you the benefit **or** within 60 days from the date that we mailed the Statement of the Case to you, **whichever is later**. If you decide to complete an appeal by filing a VA Form 9, you have the option to request a Board hearing. Hearings often increase wait time for a Board decision. It is not necessary for you to have a hearing for the Board to decide your appeal. It is your choice.

Where can I find out more about the VA appeals process?

- You can find a "plain language" pamphlet called "How Do I Appeal," on the Internet at: http://www.bva.va.gov/How_Do_I_Appeal.asp.
- You can find the formal rules for the VA appeals process in title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.ecfr.gov>. A printed copy of the Code of Federal Regulations may be available at your local law library.

YOUR RIGHT TO REPRESENTATION

Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do 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 us at the address included on our decision notice letter 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).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.



Department of Veterans Affairs

NOTICE OF DISAGREEMENT

A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE VA REGIONAL OFFICE. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD.) WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7105)

TO FILE A VALID NOD, THERE IS A TIME LIMIT OF **ONE** YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPORTIONMENT, THIS TIME LIMIT IS **60** DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.

(DO NOT WRITE IN THIS SPACE)
(VA DATE STAMP)

NOTE: You can *either* complete the form online or by hand. Please print information using blue or black ink, neatly, and legibly to help process the form.

PART I - PERSONAL INFORMATION

1. VETERAN'S NAME (First, middle initial, last)

JAMES V. MACALUSKY

2. VETERAN'S SOCIAL SECURITY NUMBER

[REDACTED]

3. VA FILE

C/CSS - [REDACTED]

CLAIM [REDACTED] PERSONAL INFORMATION [REDACTED]

4. CLAIMANT'S NAME (First, middle initial, last)

JAMES V. MACALUSKY

5. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street 6731 Matt Phedon

Apt./Unit Number 6731 City NORTH Fort Myers Florida

State/Province Country ZIP Code/Postal Code 33917 -

6. PREFERRED TELEPHONE NUMBER (Include Area Code)

239 - 731 - 5015

7. PREFERRED E-MAIL ADDRESS

Same As Above

PART II - TELEPHONE CONTACT

8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

☒ YES ☐ NO

IMMEDIATELY

(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

☐ 8:00 a.m. - 10:00 a.m. ☒ 10:00 a.m. - 12:30 p.m. ☒ 12:30 p.m. - 2:00 p.m. ☐ 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time: ANY TIME 239-731-5015

PART III - APPEAL PROCESS ELECTION

9. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See Specific Instructions, Page 2, Part III for additional information)

☒ Decision Review Officer (DRO) Review Process

☐ Traditional Appellate Review Process

VETERAN'S SSN

PART IV - SPECIFIC ISSUES OF DISAGREEMENT

10. NOTIFICATION/DECISION LETTER DATE

4/26/17

(R) Shoulder Separation = 100%

11. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

A. Specific Issue of Disagreement

B. Area of Disagreement

C. Percentage (%) Evaluation Sought (If known)

Heart (12) STENTS
I must wear
Diabetic Shoes
☐ Service Connection
☐ Effective Date of Award
☒ Evaluation of Disability
☐ Other (Please specify below)
100%
100%Type #2 Diabetas
I must wear GLASSES
To Read.
☐ Service Connection
☐ Effective Date of Award
☒ Evaluation of Disability
☐ Other (Please specify below)
100%
100%Enlarged Spleen
6/10/17 - (L) Eye operation
6/20/17 - (R) Eye operation
My DAILY functions
ARE Nil -
☐ Service Connection
☐ Effective Date of Award
☒ Evaluation of Disability
☐ Other (Please specify below)
100%
100%
100%My Eyes Are Still Bad.
The Many Medications
& Shots I TAKE
Play another Role in my
☐ Service Connection
☐ Effective Date of Award
☒ Evaluation of Disability
☐ Other (Please specify below)
100%
100%The Many Medications
& Shots I TAKE
Play another Role in my
☐ Service Connection
☐ Effective Date of Award
☒ Evaluation of Disability
☐ Other (Please specify below)

100%

12A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

In Forecasting my expenses for the 2017 year you only used my Part (B) Med. Payment of \$105.00 x 12 months. I immediately sent you a letter explaining & sending you copies of my expenses 1/17 thru 4/17 - All of my May Med Expenses are (Recurring) you have a letter to them sent 4/13/17.

12B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

☐ YES ☒ NO (If so, how many?)

5th Pinky Finger Amputated

PART V - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

13A. SIGNATURE

13B. DATE SIGNED

James V. Meraldo

7/2 7/17

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.

COAL BLADE CUT = 100%

R/Foot BIG toe CARTAGE CUT = 100%

Prove to the Court.

(5) Hypertension Exacerbated Dis = 100%

Macalush, James V
6731 Matt Pledger Ct
Fort Myers, FL 33917

FT MYERS FL 339

28 JUL 2017 PM 4 L



Philadelphia PMC

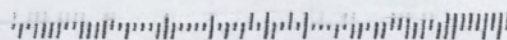
Department of Veterans Affairs

Intake Center

Attention: Philadelphia Pension Center

PO Box 5206

Janesville, WI 53547-5206





DEPARTMENT OF VETERANS AFFAIRS

March 6, 2018

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FORT MYERS, FL 33917

In Reply Refer To: 310/PMC/APPEALS/PW

MACALUSH, James V

Dear Mr. Macalush:

We amended your disability pension award based on the BVA decision made on February 8, 2018 and medical expense report and Notice of disagreement we received on September 21, 2017 and July 31, 2017.

This award is a full grant of your appeal for the earlier effective date of special monthly pension and the notice of disagreement regarding your pension rate received July 31, 2017. Your remaining open appeal pertains to service connected compensation and will be handled separately.

This letter tells you about your award rate, payment change date, what we decided, how we made our decision, the evidence used to decide your claim, and how we calculated your benefits. It also tells you of your responsibilities, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Award Amount and Payment Change Date

Your monthly award amount is shown below:

Monthly Award Amount	Payment Change Date	Reason For Change
\$1,683.00	Nov 1, 2012	Special Monthly Pension Adjustment
1,690.00	Dec 1, 2012	Cost of Living Adjustment
1,732.00	Feb 1, 2013	Countable Income Adjustment
1,758.00	Dec 1, 2013	Cost of Living Adjustment
1,788.00	Dec 1, 2014	Cost of Living Adjustment
1,794.00	Dec 1, 2016	Cost of Living Adjustment
1,782.00	Jan 1, 2017	Countable Income Adjustment
1,789.00	Dec 1, 2017	Cost of Living Adjustment
478.00	Jan 1, 2018	Countable Income Adjustment

We are paying you as a single veteran with no dependents.

2


Macalush, James V

Your monthly rate includes an aid and attendance allowance because you need another person's constant help with your daily activities.

You Can Expect Payment

You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

What We Decided

We increased your disability pension benefits effective October 18, 2012.

We again increased disability pension benefits effective January 1, 2017.

We enclosed a VA Form 21-8768, "Disability Pension Award Attachment" which explains important factors concerning your benefits.

How Did We Make Our Decision?

We increased your disability pension benefits because we granted the aid and attendance benefit from October 18, 2012.

We increased your disability pension benefits January 1, 2017 because we counted your medical expenses for 2017. Please note, we did not count your shampoo submission because there was no evidence that it was medically related. You have until December 31, 2018 to resubmit this expenses with a physician statement telling us it is medically necessary and why.

Evidence Used to Decide Your Claim

In making our decision, we used the following evidence:

- Medical expense reports related to expenses paid for 2017

We have enclosed a copy of the Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered, and the reasons for our decision. Your Rating Decision and this letter constitute our decision based on your claim received on February 8, 2018. It represents all claims we understood to be specifically made, implied, or inferred in that claim.

3

Macalush, James V

What Income And Expenses Did We Use?

We used your total family income as shown below to adjust your pension benefit from January 1, 2017.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$16,836.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$17,340.00 which reduces your countable income to \$141.00.

We used your total family income as shown below to adjust your pension benefit from December 1, 2017.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,172.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$17,340.00 which reduces your countable income to \$490.00.

4

Macalush, James V

We used your total family income as shown below to adjust your pension benefit from January 1, 2018.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,172.00	\$0.00	\$0

We used your medical expenses of \$1,608.00 which represents the amount you pay for Medicare and private medical insurance as a continuing deduction from January 1, 2018. This reduces your countable income to \$16,222.00. If the amount you pay for medical expenses changes or you are no longer paying medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money.

How Can You Claim Family Medical Expenses?

At the end of each year, you can submit your out of pocket medical expenses. VA can count all medical expenses over the deductible for that given year. The deductible for 2017 was \$645.00.

To claim family medical expenses, complete the enclosed VA Form 21-8416, "Medical Expense Report," and return it to this office *no later than* December 31, 2019. We may consider family medical expenses you paid after January 1, 2018. A few examples are listed below. More examples are shown on the enclosed Medical Expense Report form.

- Medicare/health insurance premiums
- Prescriptions
- Medical/dental expenses

Don't include *unpaid* medical bills,
any paid bill that will be reimbursed, or
bills that aren't for health expenses.

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Macalush, James V

What Are Your Responsibilities?

You are responsible to tell us right away if:

- your income or the income of your dependents changes (e.g., earnings, Social Security benefits, lottery and gambling winnings)
- your net worth increases (e.g., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

6

Macalush, James V

If you	Here is what to do.
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Department of Veterans Affairs Claims Intake Center Attn: Phila Pension Center P.O. Box 5206 Janesville WI 53547-5206

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We sent a copy of this letter to your representative, American Legion, whom you can also contact if you have questions or need assistance.

Sincerely yours,

RO Director
VA Regional Office

To email us visit <https://iris.va.gov>

Enclosure(s): VA Form 21-8768
VA Form 21-8416
VA Form 4107
Rating decision

cc: American Legion



DISABILITY PENSION AWARD ATTACHMENT

Information concerning Department of Veterans Affairs, Federal, State or local benefits may be obtained from your nearest VA office or any national service organization representative. You may call VA toll-free at 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833) or contact VA by Internet at <https://iris.va.gov>.

WHEN IS YOUR VA CHECK DELIVERED?

A check covering the initial amount due under this award will be mailed within 15 days. Thereafter, checks will be delivered at the beginning of each month for the prior month.

HOW CAN YOU RECEIVE ADDITIONAL BENEFITS FOR DEPENDENTS?

You may be entitled to additional benefits for your unmarried children if the children are under age 18 or under 23 if attending an approved school, or if, prior to age 18, the child has become permanently incapable of self-support because of mental or physical defect. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE AID AND ATTENDANCE OR HOUSEBOUND BENEFITS?

VA may pay a higher rate of pension to a veteran who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE HOSPITALIZATION AND OUTPATIENT TREATMENT?

Veterans who are entitled to pension and/or special monthly pension (aid and attendance or housebound benefits) as determined by the Veterans Benefits Administration are eligible for medical care through the VA health care system. If you are interested in obtaining VA medical care, you may contact your nearest VA health care facility or the VA Health Benefits Service Center at 1-877-222-8387.

HOW CAN CERTAIN EXPENSES INCREASE YOUR RATE OF IMPROVED PENSION?

Family medical expenses and educational or vocational rehabilitation expenses actually paid by you may be used to increase your rate of pension. Family medical expenses are amounts paid by you for medical expenses for yourself and relatives you are under an obligation to support, including premiums paid for health insurance. VA will deduct the amount you paid for medical expenses from your countable income if the expenses qualify for exclusion under the formula provided by law. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials, and may be deducted from the income of a veteran or the earned income of a child, if the child is pursuing a course of postsecondary education or vocational rehabilitation or training. Keep track of the unreimbursed amounts you pay. Normally these expenses are reported at the end of the year with an Eligibility Verification Report. Family maintenance (hardship) expenses may also be used to increase your rate of pension. VA can exclude all or part of your dependent child's income if it is not reasonably available to you or if it would cause hardship to consider this income in determining your rate of pension. If VA is not currently excluding your children's income and you feel that it should be, contact the nearest VA office and complete VA Form 21-0571, *Application for Exclusion of Children's Income*.

HOW CAN YOU RECEIVE INFORMATION ABOUT GOVERNMENT LIFE INSURANCE?

If you are paying premiums of Government life insurance (GI insurance) and are unable to work, you may be entitled to certain benefits as provided in your policy. For complete information about GI Insurance, contact the Department of Veterans Affairs Insurance Center at 1-800-669-8477 or visit our website at <http://www.insurance.va.gov>.

ARE YOUR BENEFITS EXEMPT FROM CLAIMS OF CREDITORS?

VA pension payments are exempt from claims of creditors. With certain exceptions, the payments are not assignable and are not subject to attachment, levy, or seizure except as to claims of the United States.

HOW DO YOU REPORT A CHANGE OF ADDRESS?

Please notify this office immediately of any change of address.

WHAT CONDITIONS AFFECT RIGHT TO PAYMENTS?

1. Your rate of pension depends upon the amount of family income and the number of dependents. Your benefits may be affected by any changes in the amount of family income and marital or dependency status of you or your dependents.

a. Change in family income and net worth: You are required to report the total amounts and sources of all income and net worth for you and your dependents for whom you have been awarded benefits. Some income is not countable. If you report such income, VA will exclude it when computing your income for VA purposes. Benefit rates and income limits change frequently; however, you can find out what the current income limitations and rates of benefits are by contacting VA as shown above.

b. Change in marital or dependency status. You or your survivors must notify us of any change in marital or dependency status or upon death. Examples of changes in marital or dependency status include the death of a dependent, the marriage of you or your dependent child, and discontinuance of a child's school attendance.

2. Your benefits may be reduced as shown below if you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense. If you are receiving the aid and attendance allowance, your rate may also be reduced to the housebound rate as of the first day of the second calendar month following the month of admission. Benefits at the full rate may be resumed the date of discharge.

Veterans receiving Old Law Pension (pension awarded under the law in effect prior to July 1, 1960): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense for six months or more, your pension may be reduced to \$30.00 or half of the monthly amount payable, whichever is greater, as of the first day of the seventh calendar month following the month of admission. We will pay you the withheld amount after an approved discharge by the institution authorities. If the discharge is for disciplinary reasons or against medical advice, the withheld amount will not be paid for six months from the date of discharge. If you are readmitted within six months of a prior period of such care and the prior discharge was not approved, the new period of care is considered a continuation of the previous period. Benefits will be reduced the first day of the seventh calendar month following the prior admission or the date of readmission, whichever is the later date.

Veterans receiving Section 306 Pension (pension awarded under laws in effect from July 1, 1960, and prior to January 1, 1979): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$50.00 as of the first day of the third calendar month following the month of admission. If you are readmitted for such care within six months of a prior period of care that lasted two or more full calendar months, the rate of pension may not exceed \$50.00 as of the date of readmission.

Veterans receiving Improved Pension (pension awarded under laws in effect from January 1, 1979): If you have no dependents and are furnished VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$90.00 as of the first day of the fourth calendar month following the month of admission. If you are readmitted for such care within six months of the prior period of care, your rate of pension may not exceed \$90.00 as of the first day of the month following readmission.

3. If your award includes aid and attendance benefits based on nursing home patient status, you must immediately notify us when you are no longer a nursing home patient.

4. Your benefits will be discontinued effective the 61st day of incarceration in a Federal, State or local penal institution following conviction for a felony or misdemeanor. Your spouse or dependent children may be entitled to benefits at the death pension rate from the date your benefits are discontinued if a claim is received within one year after we notify you of discontinuance of benefits. Any payments made to your spouse or child will continue until we receive notice that the incarceration has ended.

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7. The law provides severe penalties which include fine or imprisonment, or both, for the fraudulent acceptance of any payment to which you are not entitled.

IMPORTANT

Notify us immediately if there is a change in any condition affecting your right to continued payments. Failure to notify us of these changes immediately will result in an overpayment which is subject to recovery.

**YOUR RIGHTS TO APPEAL OUR DECISION**

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- Start an appeal by submitting a Notice of Disagreement.
- Give us evidence we do not already have that may lead us to change our decision.

This form will tell you how to appeal and how to send us more evidence. You can do either one or both of these things.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, you **must** submit VA Form 21-0958, "Notice of Disagreement," if that form was provided to you in connection with our decision. If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in Part III of VA Form 21-0958 each of the claims you are appealing. A filed VA Form 21-0958 is considered your Notice of Disagreement. If you did not receive VA Form 21-0958 in connection with our decision, then write us a letter telling us you disagree with our decision or enter your disagreement on VA Form 21-0958 in questions 10 or 11A. If you did not receive VA Form 21-0958 in connection with our decision, then either your statement or VA Form 21-0958 is considered your Notice of Disagreement. ***Send your Notice of Disagreement to the address included on our decision notice letter.***

How long do I have to start my appeal? You have one year to start an appeal of our decision. Your Notice of Disagreement must be postmarked (or received by us) within one year from the date of **our** letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- Show that we were clearly wrong to deny the benefit **or**
- Send us new evidence that relates to the reason we denied your claim.

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. If you want to continue your appeal to the Board of Veterans' Appeals (the Board) after receiving a Statement of the Case, you must complete and return the VA Form 9 within one year from the date of our letter denying you the benefit **or** within 60 days from the date that we mailed the Statement of the Case to you, **whichever is later**. If you decide to complete an appeal by filing a VA Form 9, you have the option to request a Board hearing. Hearings often increase wait time for a Board decision. It is not necessary for you to have a hearing for the Board to decide your appeal. It is your choice.

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YOUR RIGHT TO REPRESENTATION

Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address included on our decision notice letter. See 38 C.F.R. 14.636(h)(4).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: *Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.*

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**

James Macalush

VA File Number
[REDACTED]

**Represented By:
AMERICAN LEGION
Rating Decision
02/23/2018**

INTRODUCTION

The records reflect that you are a Veteran of the Korean Conflict Era and Peacetime. You served in the Army from September 22, 1954, to August 27, 1957. The Board of Veterans Appeals made their decision on your appeal on February 8, 2018. We have implemented their decision based on the evidence listed below.

DECISION

Entitlement to an earlier effective date for the grant of aid and attendance benefits is granted, with a new effective date of October 18, 2012.

EVIDENCE

- Correspondence received October 18, 2012 recognized by the Board of Veterans Appeals as a claim for aid and attendance
- VA Rating Decision, July 24, 2015
- Statement of the Case, April 5, 2016

James Macalush

[REDACTED]

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- Board of Veterans Appeals Decision, dated February 8, 2018

REASONS FOR DECISION

Entitlement to an earlier effective date for the grant of aid and attendance benefits.

Entitlement to an earlier effective date for the grant of aid and attendance benefits is granted because the Board of Veterans Appeals Decision, dated February 8, 2018 granted entitlement to an earlier effective date based on correspondence received October 18, 2012.

This is considered a full grant of benefits for this issue.

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.



DEPARTMENT OF VETERANS AFFAIRS

August 15, 2018

JAMES V MACALUSH
6731 MATT PLEDGER CT
N FT MYERS, FL 33917

In Reply Refer To: 310/PMC/ [REDACTED]
[REDACTED] 26
MACALUSH, James V

Dear Mr. Macalush:

We amended your disability pension award based on your Notice of disagreement report of additional medical expenses we received on March 20, 2018.

This award is a full grant of your appeal.

Please note, your BVA granted appeal for aid and attendance from the earlier effective date of October 18, 2012 was processed March 6, 2018.

You have an appeal for compensation that is still being processed.

This letter tells you about your award rate, payment change date, what we decided, how we made our decision, the evidence used to decide your claim, and how we calculated your benefits. It also tells you of your responsibilities, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Award Amount and Payment Change Date

Your monthly award amount is shown below:

Monthly Award Amount	Payment Change Date	Reason For Change
\$1,794.00	Jan 1, 2017	Medical expense adjustment paying maximum rate
1,830.00	Dec 1, 2017	Cost of Living Adjustment
478.00	Jan 1, 2018	Medical Expense Adjustment

We are paying you as a single veteran with no dependents.

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Macalush, James V

Your monthly rate includes an aid and attendance allowance because you need another person's constant help with your daily activities.

You Can Expect Payment

You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

What We Decided

We increased your disability pension benefits effective January 1, 2017.

We enclosed a VA Form 21-8768, "Disability Pension Award Attachment" which explains important factors concerning your benefits.

How Did We Make Our Decision?

We increased your disability pension benefits because we applied the additional 2017 Medical expense reported.

Evidence Used to Decide Your Claim

In making our decision, we used the following evidence:

- Medical expense reports
- Notice of disagreement

What Income And Expenses Did We Use?

We used your total family income as shown below to adjust your pension benefit from January 1, 2017.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$16,836.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$58,246.00 which reduces your countable income to \$0.00.

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Macalush, James V

We used your total family income as shown below to adjust your pension benefit from December 1, 2017.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,172.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$58,246.00 which reduces your countable income to \$0.00.

We used your total family income as shown below to adjust your pension benefit from January 1, 2018.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,172.00	\$0.00	\$0

We used your medical expenses of \$1,608.00 which represents the amount you pay for Medicare premiums as a continuing deduction from January 1, 2018. This reduces your countable income to \$16,222.00. If the amount you pay for medical expenses changes or you are no longer paying medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money.

We did not count the mileage because you did not individually list the date or purpose, however this did not affect your rate of pension. We also did not count the shampoo as a medical expense but this did not affect your rate of pension.

How Can You Claim Family Medical Expenses?

You do not need to file an appeal to submit a medical expense adjustment. In the future, you can submit your medical expenses as a standard claim. Please only list medical expenses you

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Macalush, James V

paid out of pocket. If you have insurance which covers some of your doctor visits or medication, you should only list your co-pay – the amount you paid out of pocket.

To claim family medical expenses, complete the enclosed VA Form 21-8416, "Medical Expense Report," and return it to this office *no later than* December 31, 2019. We may consider family medical expenses you paid after January 1, 2018. A few examples are listed below. More examples are shown on the enclosed Medical Expense Report form.

- Medicare/health insurance premiums
- Prescriptions
- Medical/dental expenses

***Don't include unpaid medical bills,
any paid bill that will be reimbursed, or
bills that aren't for health expenses.***

What Are Your Responsibilities?

You are responsible to tell us right away if:

- your income or the income of your dependents changes (e.g., earnings, Social Security benefits, lottery and gambling winnings)
- your net worth increases (e.g., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal

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Macalush, James V

- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Department of Veterans Affairs Claims Intake Center Attn: Phila Pension Center P.O. Box 5206 Janesville WI 53547-5206

In all cases, be sure to refer to your VA file number [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service

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[REDACTED]

Macalush, James V

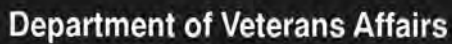
organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

Sincerely yours,

RO Director
VA Regional Office

To email us visit <https://iris.va.gov>

Enclosure(s): VA Form 21-8768
VA Form 21-8416
VA Form 4107



MEDICAL EXPENSE REPORT

1. FIRST NAME OF VETERAN	2. MIDDLE NAME OF VETERAN	3. LAST NAME OF VETERAN	4. SUFFIX NAME OF VETERAN
5. VETERAN'S SOCIAL SECURITY NO.			6. VA FILE NUMBER
7. FIRST NAME OF CLAIMANT	8. MIDDLE NAME OF CLAIMANT	9. LAST NAME OF CLAIMANT	10. SUFFIX NAME OF CLAIMANT
11. STREET ADDRESS OF CLAIMANT			12. APT. NO.
13. CITY		14. STATE	15. ZIP CODE
16. DAYTIME TELEPHONE NO. OF CLAIMANT <i>(Include Area Code)</i>		17. EVENING TELEPHONE NO. OF CLAIMANT <i>(Include Area Code)</i>	
18. CHANGE OF ADDRESS <i>(Check box if address in Items 11-15 is different from last address furnished to VA)</i> <input type="checkbox"/>			19. EMAIL ADDRESS OF CLAIMANT <i>(If applicable)</i>

20. ITEMIZATION OF EXPENSES RELATED TO TRANSPORTATION FOR MEDICAL PURPOSES

Report expenses related to transportation to a hospital, doctor, or other medical facility that you paid between the dates _____ and _____. If no dates appear on this line, refer to the accompanying letter or Eligibility Verification Report for the dates you should report medical expenses.

NOTE: If you claim miles traveled to a medical facility in a personal conveyance (car, motorcycle, other), VA will calculate the allowable expense amount based on the current mileage rate (41.5 cents per mile).

[illegible]

IMPORTANT: Be sure to sign this form in Item 22A on the reverse side. Unsigned reports will be returned.

21. ITEMIZATION OF MEDICAL EXPENSES

Report medical expenses that you paid between the dates _____ and _____. If no dates appear on this line, refer to the accompanying letter or Eligibility Verification Report for the dates you should report medical expenses.

[illegible]

CERTIFICATION: I have not and will not receive reimbursement for these expenses. I certify that the above information is true.

22A. SIGNATURE OF CLAIMANT (*Do NOT print*)

22B. DATE

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it is false, or fraudulent acceptance of any payment to which you are not entitled.



DISABILITY PENSION AWARD ATTACHMENT

Information concerning Department of Veterans Affairs, Federal, State or local benefits may be obtained from your nearest VA office or any national service organization representative. You may call VA toll-free at 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833) or contact VA by Internet at <https://iris.va.gov>.

WHEN IS YOUR VA CHECK DELIVERED?

A check covering the initial amount due under this award will be mailed within 15 days. Thereafter, checks will be delivered at the beginning of each month for the prior month.

HOW CAN YOU RECEIVE ADDITIONAL BENEFITS FOR DEPENDENTS?

You may be entitled to additional benefits for your unmarried children if the children are under age 18 or under 23 if attending an approved school, or if, prior to age 18, the child has become permanently incapable of self-support because of mental or physical defect. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE AID AND ATTENDANCE OR HOUSEBOUND BENEFITS?

VA may pay a higher rate of pension to a veteran who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE HOSPITALIZATION AND OUTPATIENT TREATMENT?

Veterans who are entitled to pension and/or special monthly pension (aid and attendance or housebound benefits) as determined by the Veterans Benefits Administration are eligible for medical care through the VA health care system. If you are interested in obtaining VA medical care, you may contact your nearest VA health care facility or the VA Health Benefits Service Center at 1-877-222-8387.

HOW CAN CERTAIN EXPENSES INCREASE YOUR RATE OF IMPROVED PENSION?

Family medical expenses and educational or vocational rehabilitation expenses actually paid by you may be used to increase your rate of pension. Family medical expenses are amounts paid by you for medical expenses for yourself and relatives you are under an obligation to support, including premiums paid for health insurance. VA will deduct the amount you paid for medical expenses from your countable income if the expenses qualify for exclusion under the formula provided by law. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials, and may be deducted from the income of a veteran or the earned income of a child, if the child is pursuing a course of postsecondary education or vocational rehabilitation or training. Keep track of the unreimbursed amounts you pay. Normally these expenses are reported at the end of the year with an Eligibility Verification Report. Family maintenance (hardship) expenses may also be used to increase your rate of pension. VA can exclude all or part of your dependent child's income if it is not reasonably available to you or if it would cause hardship to consider this income in determining your rate of pension. If VA is not currently excluding your children's income and you feel that it should be, contact the nearest VA office and complete VA Form 21-0571, *Application for Exclusion of Children's Income*.

HOW CAN YOU RECEIVE INFORMATION ABOUT GOVERNMENT LIFE INSURANCE?

If you are paying premiums of Government life insurance (GI insurance) and are unable to work, you may be entitled to certain benefits as provided in your policy. For complete information about GI Insurance, contact the Department of Veterans Affairs Insurance Center at 1-800-669-8477 or visit our website at <http://www.insurance.va.gov>.

ARE YOUR BENEFITS EXEMPT FROM CLAIMS OF CREDITORS?

VA pension payments are exempt from claims of creditors. With certain exceptions, the payments are not assignable and are not subject to attachment, levy, or seizure except as to claims of the United States.

HOW DO YOU REPORT A CHANGE OF ADDRESS?

Please notify this office immediately of any change of address.

WHAT CONDITIONS AFFECT RIGHT TO PAYMENTS?

1. Your rate of pension depends upon the amount of family income and the number of dependents. Your benefits may be affected by any changes in the amount of family income and marital or dependency status of you or your dependents.

a. Change in family income and net worth: You are required to report the total amounts and sources of all income and net worth for you and your dependents for whom you have been awarded benefits. Some income is not countable. If you report such income, VA will exclude it when computing your income for VA purposes. Benefit rates and income limits change frequently; however, you can find out what the current income limitations and rates of benefits are by contacting VA as shown above.

b. Change in marital or dependency status. You or your survivors must notify us of any change in marital or dependency status or upon death. Examples of changes in marital or dependency status include the death of a dependent, the marriage of you or your dependent child, and discontinuance of a child's school attendance.

2. Your benefits may be reduced as shown below if you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense. If you are receiving the aid and attendance allowance, your rate may also be reduced to the housebound rate as of the first day of the second calendar month following the month of admission. Benefits at the full rate may be resumed the date of discharge.

Veterans receiving Old Law Pension (pension awarded under the law in effect prior to July 1, 1960): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense for six months or more, your pension may be reduced to \$30.00 or half of the monthly amount payable, whichever is greater, as of the first day of the seventh calendar month following the month of admission. We will pay you the withheld amount after an approved discharge by the institution authorities. If the discharge is for disciplinary reasons or against medical advice, the withheld amount will not be paid for six months from the date of discharge. If you are readmitted within six months of a prior period of such care and the prior discharge was not approved, the new period of care is considered a continuation of the previous period. Benefits will be reduced the first day of the seventh calendar month following the prior admission or the date of readmission, whichever is the later date.

Veterans receiving Section 306 Pension (pension awarded under laws in effect from July 1, 1960, and prior to January 1, 1979): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$50.00 as of the first day of the third calendar month following the month of admission. If you are readmitted for such care within six months of a prior period of care that lasted two or more full calendar months, the rate of pension may not exceed \$50.00 as of the date of readmission.

Veterans receiving Improved Pension (pension awarded under laws in effect from January 1, 1979): If you have no dependents and are furnished VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$90.00 as of the first day of the fourth calendar month following the month of admission. If you are readmitted for such care within six months of the prior period of care, your rate of pension may not exceed \$90.00 as of the first day of the month following readmission.

3. If your award includes aid and attendance benefits based on nursing home patient status, you must immediately notify us when you are no longer a nursing home patient.

4. Your benefits will be discontinued effective the 61st day of incarceration in a Federal, State or local penal institution following conviction for a felony or misdemeanor. Your spouse or dependent children may be entitled to benefits at the death pension rate from the date your benefits are discontinued if a claim is received within one year after we notify you of discontinuance of benefits. Any payments made to your spouse or child will continue until we receive notice that the incarceration has ended.

5. Monthly payments of your award may be stopped if you fail to furnish evidence as requested or if you furnish VA, or cause to be furnished, any false or fraudulent evidence.

6. Information submitted, including income information, is subject to verification through computer matching programs with other agencies.

7. The law provides severe penalties which include fine or imprisonment, or both, for the fraudulent acceptance of any payment to which you are not entitled.

IMPORTANT

Notify us immediately if there is a change in any condition affecting your right to continued payments. Failure to notify us of these changes immediately will result in an overpayment which is subject to recovery.

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After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

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How long do I have to start my appeal? You have one year to start an appeal of our decision. Your Notice of Disagreement must be postmarked (or received by us) within one year from the date of **our** letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

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Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address included on our decision notice letter. See 38 C.F.R. 14.636(h)(4).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: *Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.*

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.

Department of Veterans Affairs

Where to Send Your Written Correspondence


In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For Correspondence relating to all **Compensation** claims:

Location of Residence	Address
<p>All United States and Foreign Locations</p> <p>*Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.</p>	<p>Department Of Veterans Affairs Evidence Intake Center P.O. BOX 4444 Janesville, WI 53547-4444</p> <p>Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260</p>

For Correspondence relating to all **Veterans Pension** and **Survivor Benefit** claims:

Location of Residence	Address
<p>Alabama Kentucky Missouri Arkansas Louisiana Ohio Illinois Michigan Tennessee Indiana Mississippi Wisconsin</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. BOX 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604</p>
<p>Alaska Montana Texas Arizona Nebraska Utah California Nevada Washington Colorado New Mexico Wyoming Hawaii North Dakota Mexico Idaho Oklahoma Central America Iowa Oregon South America Kansas South Dakota Caribbean Minnesota</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. BOX 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604</p>
<p>Connecticut New Hampshire South Carolina Delaware New Jersey Vermont Florida New York Virginia Georgia North Carolina West Virginia Maine Pennsylvania District of Maryland Rhode Island Columbia Massachusetts Puerto Rico Canada</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. BOX 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604</p>
Countries outside of North, Central or South America	


 JAMES V. MACALAST
 Phila. Pension Dept.
 DATE
 Completed (3/2019). Are you people on
 DRUGS, Sick, Not Sympathetic.
 Can't you see the Ureonly Here?
 Thieve. Crooks- ARE TREATED A LOT
 BETTER THAN ME.
 I AM A VETERAN of (3) YEARS Active
 Duty. (PANAMA CANAL ZONE) - 1954-1957,
 during the (KOREAN-WAR).
 I Need (Police) - In Brake & IN
 Desperate Need Right Now,
 My HONEST Reputation Is Being
 CHALLENGED by you.
 Why, don't you do a BACKGROUND
 INVESTIGATION ON ME,
 My Medical Expenses ARE DRIVING
 My Crazy & INSANE,
 I'm NOT BACKING Down, I Will
~~Continue~~ CONTINUE To Write & To Call your
 Pension Dept. UNTIL I DIE.

09282018 - VA Claims Intake Center, Janesville WI

2018 SEP 27 A 9:29

MACALUSH (VS)
Phila. Pension Dept.

I'm Not Crazy or INSANE.
I would like to know how MANY
OTHER VETERANS ARE IN THE SAME
POSITION AS I AM?

I'm Divorced, Broke, Lonely,
Disgraced, Ready To Give Up ON
All This.

Yes - I know I've sent you many letters,
So - Why Are you ^{not} letting me know
WHAT your Actions are?

I'm (OVERWHELMED) Today.

I'm walking on a tight-rope waiting
for your Affirmative Decisions.

I HAVE Type 2 Diabetes Very Bad,
(CONTINUED) (Low-Blood) pressure Is
VERY SCARY, AS SHAKES, AN TERRIBLE
SWEATING OCCURS, FAINTING OCCURS.
I believe there WAS A RUSH-TO
JUDGMENT IN MY CASE (WHY)?

2018 SEP 27 A 3 29

[REDACTED]

MACA List
MONTHLY Pension

You Put Me In the Position of Being
POOR Why?

OR M. N. A. S. Documents that I Sent you
that you requested you have NOT
GIVEN ME AN ANSWER - AS WHAT did
you FIND? WHY NOT tell Me?

This Case Should Be done QUICKLY &
EFFICIENTLY & HONESTLY, I deserve This.

(5) HERNIATED & Bulging Disc.
In My BACK, Very Sore, AND, Continues
to Hinder Me SITTING.

I WANT To KNOW WHY I've Been
Singled Out And Been Picked ON
AN BEING THREATENED?

I SET IN My Bedroom, Day In &
Day Out. Just Thinking All Alone,
I WANT To Be Left Alone, I don't
WANT To TALK To Anyone. Just Let
Me Alone.

09282018 - VA Claims Intake Center, Janesville WI

09282018 - VA Claims Intake Center, Janesville WI

2018 SEP 27 A 2:29
JANESVILLE, WI 53101
FBI 310

MACALYST
Phila. Pension Dept. Troubles

Now I Am on Food-Stamps,
And Seeking (Food-Pantries) To
Help.

I'll Be Seeking Housing thru
The Veterans Department

I don't know if I gave the
Doctors who take care of operated
on me And Installed (12) Stents

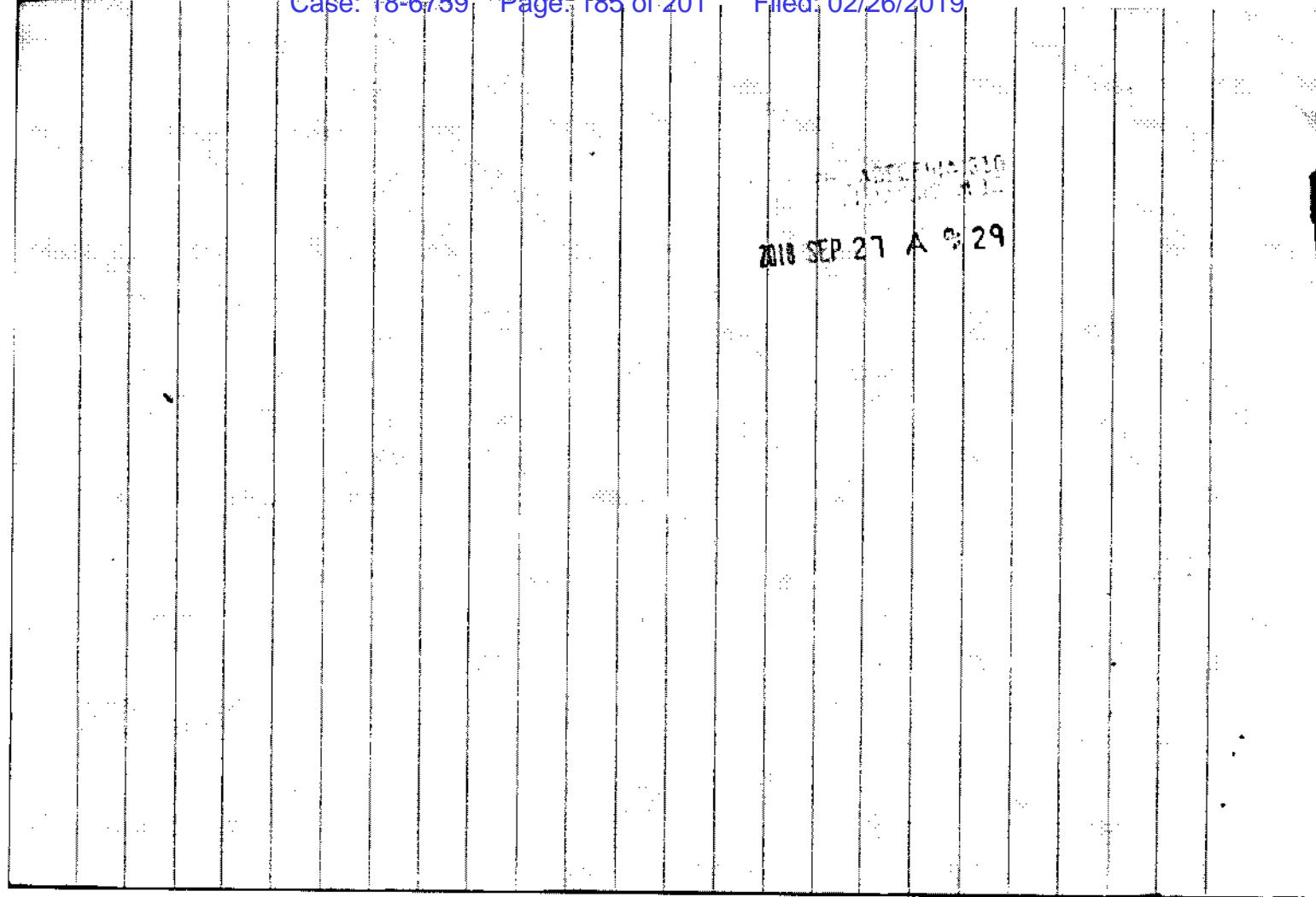
DR. Arcement & DR. Butler.
I contacted the Red Cross For
help waiting for there answer.

VA-Pension WAS \$864.00
Then Reduced To \$446.00. Taking
\$418.00 From Me.

I Got \$15.00 P/Month (Food-Stamps)
Even Heulogue & LANTAS

My Eye Drops Are - Brimonidine -

Bimatoprost - Atropine - a Floxacin -
Redizone & Timolol - THANK YOU



09282018 - VA Claims Intake Center, Janesville WI

6731 Art Pledge Ct.
N. Ft. Myers, FL 33917

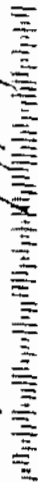
2018 SEP 27 A 9 19

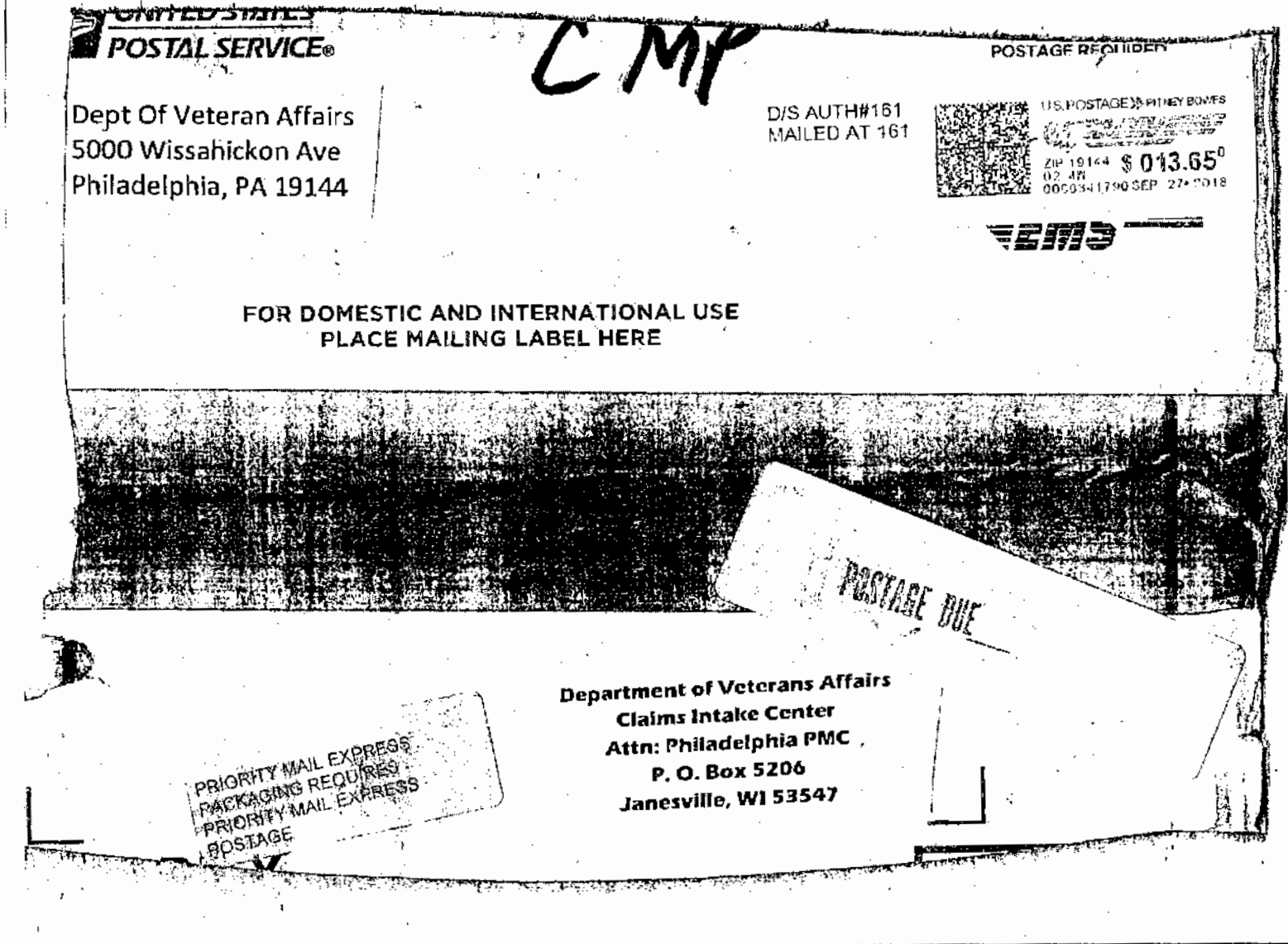
POSTAGE WILL BE PAID BY ADDRESSEE
FIRST CLASS PERMIT NO. 1113 JANESVILLE, WI 53539



Dept. of Veterans Affairs
c/o VA. Management Center -
P.O. Box 8009,
Philadelphia, Pa 19101

19101-117979





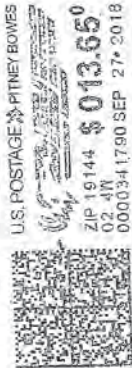
UNITED STATES
POSTAL SERVICE®

Dept Of Veteran Affairs
5000 Wissahickon Ave
Philadelphia, PA 19144

CMP

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MAILED AT 161

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FOR DOMESTIC AND INTERNATIONAL USE
PLACE MAILING LABEL HERE

POSTAGE DUE

Department of Veterans Affairs
Claims Intake Center
Attn: Philadelphia PMC
P. O. Box 5206
Janesville, WI 53547

PRIORITY MAIL EXPRESS
PACKAGING REQUIRES
PRIORITY MAIL EXPRESS
POSTAGE



Department of Veterans Affairs

REPORT OF GENERAL INFORMATION

NOTE - This form must be filled out in ink or on a typewriter or computer, as it becomes a permanent record in the veteran's folder.

1. VA OFFICE

317

2. IDENTIFICATION NUMBERS (C, XC, SS, XSS, V, K, etc.)

3. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)

MACALUSH, JAMES V

4. DATE OF CONTACT (Month, day, year)

11/08/2018

5. ADDRESS OF VETERAN (Include number and street or rural route, city or P.O., State and ZIP Code)

6731 Matt Pledger Ct
N Ft Myers, FL 33917

6A. TELEPHONE NUMBER OF VETERAN (Include Area Code)

DAY
2396344157

EVENING

6B. E-MAIL ADDRESS (If applicable)

7. NAME OF PERSON CONTACTED

SAA

8. TYPE OF CONTACT

☐ PERSONAL ☒ TELEPHONE

9. ADDRESS OF PERSON CONTACTED

SAA

10. TELEPHONE NUMBER OF PERSON CONTACTED
(Include Area Code)☒ I certify that I properly identified my caller using the ID Protocol

11. BRIEF STATEMENT OF INFORMATION REQUESTED AND GIVEN:

The St. Petersburg Regional Office provides the following information in response to your inquiry dated November 07, 2018: Mr. James Macalush was contacted on November 08, 2018 regarding his NSC Pension benefits, and the pending RAMP appeal, established under proper controls and dated August 07, 2018.

Mr. Macalush's case is flashed for expedited processing due to his advanced age and hardship. Mr. Macalush was informed that his NSC Pension Award was recently reviewed, and he has received a retro active payment for the SMP that was granted effective from July 03, 1999, and his award has been resumed. Mr. Macalush was also informed that the rating for his AMPUTATION RIGHT 5TH FINGER DISTAL TO DISTAL INTERPHALANGEAL JOINT, has been rated zero percent disabling, effective from September 23, 2000. Mr. Macalush was provided the criteria to rate his condition at zero percent, an amputation of the distal joint (the tip of the finger) being zero percent, but if the amputation had been proximal, the joint closer to his hand, a compensable rating could be assigned. Claims for secondary conditions, such as arthritis were also discussed, and Mr. Macalush was informed that he may apply for an increased disability evaluation. Mr. Macalush stated he just wanted to be service connected for his 5th finger amputation, and for residuals of Malaria. The previous rating decision that denied service connected disability due to Malaria was reviewed, and Mr. Macalush was informed that in order to reopen a claim for this condition, that he must provide new and material evidence. What constitutes new and material evidence was also discussed. Mr. Macalush was provided the Lee County Veterans Service Office contact information, and encouraged to discuss his claims with his American Legion Service Officer. Mr. Macalush was appreciative of the contact.

Notification of Action

☒ I read the following statement to the caller:

"I am a VA employee who is authorized to receive or request evidentiary information or statements that may result in a change in your VA benefits. The primary purpose for gathering this information or statement is to make an eligibility determination. It is subject to verification through computer matching programs with other agencies."

cc: POA (If applicable): 074 - AMERICAN LEGION

DIVISION OR SECTION

VSC/21PC/SG

EXECUTED BY (Signature and title)

Susan L. Goins 282579

Digitally signed by Susan L. Goins 282579
Date: 2018.11.08 15:45:19 -05'00'

PRIVACY ACT NOTICE: The 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 5, 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, 58VA/21/22/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to respond to the questions on this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.



DEPARTMENT OF VETERANS AFFAIRS

January 30, 2019

In Reply Refer To: 310/pmc/appeal/pdw

JAMES V MACALUSH
6731 MATT PLEDGER
CT N FT MYERS, FL
33917

MACALUSH, James V

Dear Mr. Macalush:

We amended your disability pension award based on your Notice of disagreement regarding the amount of your ongoing Pension rate that we received on September 27, 2018.

This award is a full grant of that appeal.

This letter tells you about your award rate, payment change date, what we decided, how we made our decision, the evidence used to decide your claim, and how we calculated your benefits. It also tells you of your responsibilities, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Any issues related to service connected compensation claims and appeals will be addressed under separate cover.

Your Award Amount and Payment Change Date

Your monthly award amount is shown below:


Monthly Award Amount	Payment Change Date	Reason For Change
\$1,830.00	Dec 1, 2017	Cost of Living Adjustment
1,881.00	Dec 1, 2018	Cost of Living Adjustment

We are paying you as a single veteran with no dependents.

Your monthly rate includes an aid and attendance allowance because you need another person's constant help with your daily activities.

The rates above represent the maximum VA Pension rate.

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Macalush, James V

You Can Expect Payment

You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

What We Decided

We increased your disability pension benefits effective January 1, 2018 to the present time.

We enclosed a VA Form 21-8768, "Disability Pension Award Attachment" which explains important factors concerning your benefits.

How Did We Make Our Decision?

We increased your disability pension benefits because we applied most of the medical expenses you submitted.

Based on your medical expenses for 2018 and in reviewing prior year submissions, we have extended a continuing medical expense for 2019 of \$18,322.00 annually. This brings your income for VA purposes to zero. *In order to verify this allowed continuing medical expense, you may receive a separate letter asking you for provider proof of your claimed expenses. You may also be asked to provide a pharmacy print out of the costs for these prescriptions and medical supplies for 2018/2019.*

Based on this adjustment, your VA Pension has now been readjusted to the maximum rate for 2018 and going forward. In 2013 through 2017, your VA Pension was adjusted to the maximum rate, typically through a retroactive award adjustment.

Evidence Used to Decide Your Claim

In making our decision, we used the following evidence:

- Notice of disagreement
- Medical expenses for 2018
- Various correspondence

3

Macalush, James V

What Income And Expenses Did We Use?

We used your total family income as shown below to adjust your pension benefit from January 1, 2018.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,172.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$43,270.00 which reduces your countable income to \$0.00.

We used your total family income as shown below to adjust your pension benefit from December 1, 2018.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,646.00	\$0.00	\$0

We used family medical expenses you paid in the amount of \$43,270.00 which reduces your countable income to \$0.00.

We used your total family income as shown below to adjust your pension benefit from January 1, 2019.

Income We Counted

	Annual Earnings	Annual Social Security	Annual Retirement	Annual Other Sources
Yourself	\$0	\$17,646.00	\$0.00	\$0

4

██████████
Macalush, James V

We used \$18,322.00 as your medical expense for 2019 which represents your total income as a continuing deduction from January 1, 2019. This reduces your countable income to \$0.00. We allowed this amount prospectively based on your 2017 and 2018 medical expenses.

If the amount you pay for medical expenses changes or you are no longer paying medical expenses that are at least \$18,322.00 annually, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money.

You asked about the amount of Social Security income VA counts. VA counts the gross amount (total before Medicare). We then allow the Medicare premiums as an expense which reduces your income.

Some of your expenses were not counted. This is because the amount did not seem fair market value, or mileage claimed did not state the destination or medical purposes, or the expense could not be confirmed to be medical in nature. We also noticed that the mileage claimed to certain destinations was inconsistent. We counted the lower amount of miles claimed for each provider (*for instance 60 miles for Dr Dean*).

Denying these expenses did not adversely affect your rate of pension because your income for VA purposes is already reduced to zero using the expenses we could allow. Additional medical expenses would have no possible increase on your award as VA cannot pay Pension benefits in excess of the maximum rates.

What Are Your Responsibilities?

You are responsible to tell us right away if:

- your income or the income of your dependents changes (e.g., earnings, Social Security benefits, lottery and gambling winnings)
- your net worth increases (e.g., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA

5

C [REDACTED]
Macalush, James V

- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Department of Veterans Affairs Claims Intake Center Attn: Phila Pension Center P.O. Box 5206 Janesville WI 53547-5206

In all cases, be sure to refer to your VA file [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

6

[REDACTED]

Macalush, James V

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.

Sincerely yours,

RO Director
VA Regional

Enclosure(s): VA Form 21-8768
VA Form 4107



DISABILITY PENSION AWARD ATTACHMENT

Information concerning Department of Veterans Affairs, Federal, State or local benefits may be obtained from your nearest VA office or any national service organization representative. You may call VA toll-free at 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833) or contact VA by Internet at <https://iris.va.gov>.

WHEN IS YOUR VA CHECK DELIVERED?

A check covering the initial amount due under this award will be mailed within 15 days. Thereafter, checks will be delivered at the beginning of each month for the prior month.

HOW CAN YOU RECEIVE ADDITIONAL BENEFITS FOR DEPENDENTS?

You may be entitled to additional benefits for your unmarried children if the children are under age 18 or under 23 if attending an approved school, or if, prior to age 18, the child has become permanently incapable of self-support because of mental or physical defect. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE AID AND ATTENDANCE OR HOUSEBOUND BENEFITS?

VA may pay a higher rate of pension to a veteran who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. You may contact VA as shown above for information on applying for this benefit.

HOW CAN YOU RECEIVE HOSPITALIZATION AND OUTPATIENT TREATMENT?

Veterans who are entitled to pension and/or special monthly pension (aid and attendance or housebound benefits) as determined by the Veterans Benefits Administration are eligible for medical care through the VA health care system. If you are interested in obtaining VA medical care, you may contact your nearest VA health care facility or the VA Health Benefits Service Center at 1-877-222-8387.

HOW CAN CERTAIN EXPENSES INCREASE YOUR RATE OF IMPROVED PENSION?

Family medical expenses and educational or vocational rehabilitation expenses actually paid by you may be used to increase your rate of pension. Family medical expenses are amounts paid by you for medical expenses for yourself and relatives you are under an obligation to support, including premiums paid for health insurance. VA will deduct the amount you paid for medical expenses from your countable income if the expenses qualify for exclusion under the formula provided by law. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials, and may be deducted from the income of a veteran or the earned income of a child, if the child is pursuing a course of postsecondary education or vocational rehabilitation or training. Keep track of the unreimbursed amounts you pay. Normally these expenses are reported at the end of the year with an Eligibility Verification Report. Family maintenance (hardship) expenses may also be used to increase your rate of pension. VA can exclude all or part of your dependent child's income if it is not reasonably available to you or if it would cause hardship to consider this income in determining your rate of pension. If VA is not currently excluding your children's income and you feel that it should be, contact the nearest VA office and complete VA Form 21-0571, *Application for Exclusion of Children's Income*.

HOW CAN YOU RECEIVE INFORMATION ABOUT GOVERNMENT LIFE INSURANCE?

If you are paying premiums of Government life insurance (GI insurance) and are unable to work, you may be entitled to certain benefits as provided in your policy. For complete information about GI Insurance, contact the Department of Veterans Affairs Insurance Center at 1-800-669-8477 or visit our website at <http://www.insurance.va.gov>.

ARE YOUR BENEFITS EXEMPT FROM CLAIMS OF CREDITORS?

VA pension payments are exempt from claims of creditors. With certain exceptions, the payments are not assignable and are not subject to attachment, levy, or seizure except as to claims of the United States.

HOW DO YOU REPORT A CHANGE OF ADDRESS?

Please notify this office immediately of any change of address.

WHAT CONDITIONS AFFECT RIGHT TO PAYMENTS?

1. Your rate of pension depends upon the amount of family income and the number of dependents. Your benefits may be affected by any changes in the amount of family income and marital or dependency status of you or your dependents.

a. Change in family income and net worth: You are required to report the total amounts and sources of all income and net worth for you and your dependents for whom you have been awarded benefits. Some income is not countable. If you report such income, VA will exclude it when computing your income for VA purposes. Benefit rates and income limits change frequently; however, you can find out what the current income limitations and rates of benefits are by contacting VA as shown above.

b. Change in marital or dependency status. You or your survivors must notify us of any change in marital or dependency status or upon death. Examples of changes in marital or dependency status include the death of a dependent, the marriage of you or your dependent child, and discontinuance of a child's school attendance.

2. Your benefits may be reduced as shown below if you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense. If you are receiving the aid and attendance allowance, your rate may also be reduced to the housebound rate as of the first day of the second calendar month following the month of admission. Benefits at the full rate may be resumed the date of discharge.

Veterans receiving Old Law Pension (pension awarded under the law in effect prior to July 1, 1960): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense for six months or more, your pension may be reduced to \$30.00 or half of the monthly amount payable, whichever is greater, as of the first day of the seventh calendar month following the month of admission. We will pay you the withheld amount after an approved discharge by the institution authorities. If the discharge is for disciplinary reasons or against medical advice, the withheld amount will not be paid for six months from the date of discharge. If you are readmitted within six months of a prior period of such care and the prior discharge was not approved, the new period of care is considered a continuation of the previous period. Benefits will be reduced the first day of the seventh calendar month following the prior admission or the date of readmission, whichever is the later date.

Veterans receiving Section 306 Pension (pension awarded under laws in effect from July 1, 1960, and prior to January 1, 1979): If you have no dependents and are furnished hospital, VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$50.00 as of the first day of the third calendar month following the month of admission. If you are readmitted for such care within six months of a prior period of care that lasted two or more full calendar months, the rate of pension may not exceed \$50.00 as of the date of readmission.

Veterans receiving Improved Pension (pension awarded under laws in effect from January 1, 1979): If you have no dependents and are furnished VA domiciliary or nursing home care at government expense, your rate of pension may not exceed \$90.00 as of the first day of the fourth calendar month following the month of admission. If you are readmitted for such care within six months of the prior period of care, your rate of pension may not exceed \$90.00 as of the first day of the month following readmission.

3. If your award includes aid and attendance benefits based on nursing home patient status, you must immediately notify us when you are no longer a nursing home patient.

4. Your benefits will be discontinued effective the 61st day of incarceration in a Federal, State or local penal institution following conviction for a felony or misdemeanor. Your spouse or dependent children may be entitled to benefits at the death pension rate from the date your benefits are discontinued if a claim is received within one year after we notify you of discontinuance of benefits. Any payments made to your spouse or child will continue until we receive notice that the incarceration has ended.

5. Monthly payments of your award may be stopped if you fail to furnish evidence as requested or if you furnish VA, or cause to be furnished, any false or fraudulent evidence.

6. Information submitted, including income information, is subject to verification through computer matching programs with other agencies.

7. The law provides severe penalties which include fine or imprisonment, or both, for the fraudulent acceptance of any payment to which you are not entitled.

IMPORTANT

Notify us immediately if there is a change in any condition affecting your right to continued payments. Failure to notify us of these changes immediately will result in an overpayment which is subject to recovery.

**YOUR RIGHTS TO APPEAL OUR DECISION**

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- Start an appeal by submitting a Notice of Disagreement.
- Give us evidence we do not already have that may lead us to change our decision.

This form will tell you how to appeal and how to send us more evidence. You can do either one or both of these things.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, you **must** submit VA Form 21-0958, "Notice of Disagreement," if that form was provided to you in connection with our decision. If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in Part III of VA Form 21-0958 each of the claims you are appealing. A filed VA Form 21-0958 is considered your Notice of Disagreement. If you did not receive VA Form 21-0958 in connection with our decision, then write us a letter telling us you disagree with our decision or enter your disagreement on VA Form 21-0958 in questions 10 or 11A. If you did not receive VA Form 21-0958 in connection with our decision, then either your statement or VA Form 21-0958 is considered your Notice of Disagreement. ***Send your Notice of Disagreement to the address included on our decision notice letter.***

How long do I have to start my appeal? You have one year to start an appeal of our decision. Your Notice of Disagreement must be postmarked (or received by us) within one year from the date of **our** letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- Show that we were clearly wrong to deny the benefit **or**
- Send us new evidence that relates to the reason we denied your claim.

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. If you want to continue your appeal to the Board of Veterans' Appeals (the Board) after receiving a Statement of the Case, you must complete and return the VA Form 9 within one year from the date of our letter denying you the benefit **or** within 60 days from the date that we mailed the Statement of the Case to you, **whichever is later**. If you decide to complete an appeal by filing a VA Form 9, you have the option to request a Board hearing. Hearings often increase wait time for a Board decision. It is not necessary for you to have a hearing for the Board to decide your appeal. It is your choice.

Where can I find out more about the VA appeals process?

- You can find a "plain language" pamphlet called "How Do I Appeal," on the Internet at: http://www.bva.va.gov/How_Do_I_Appeal.asp.
- You can find the formal rules for the VA appeals process in title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.ecfr.gov>. A printed copy of the Code of Federal Regulations may be available at your local law library.

YOUR RIGHT TO REPRESENTATION

Can I get someone to help me with my appeal? Yes. You can have a Veterans Service Organization representative, an attorney-at-law, or an "agent" help you with your appeal. You are not required to have someone represent you. It is your choice.

- Representatives who work for accredited Veterans Service Organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal? It depends on who helps you. The following explains the differences.

- Veterans Service Organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address included on our decision notice letter. See 38 C.F.R. 14.636(h)(4).

GIVING VA ADDITIONAL EVIDENCE

You can send us more evidence to support a claim whether or not you choose to appeal.

NOTE: Please direct all new evidence to the address included on our decision notice letter. You should not send evidence directly to the Board at this time. You should only send evidence to the Board if you decide to complete an appeal and, then, you should only send evidence to the Board after you receive written notice from the Board that they received your appeal.

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing with your local VA office.

In writing. To support your claim, you may send documents and written statements to us at the address included on our decision notice letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a hearing with an employee at your local VA office at any time, whether or not you choose to appeal. We do not require you to have a local hearing. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a local hearing, send us a letter asking for a local hearing. Use the address included on our decision notice letter. We will then:

- Arrange a time and place for the hearing
- Provide a room for the hearing
- Assign someone to hear your evidence
- Make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review any new evidence, including the record of the local hearing, if you choose to have one, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you complete an appeal, we will send the new evidence and the record of any local hearing to the Board.

- A private attorney or an "agent" can also represent you. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. Your local bar association may be able to refer you to an attorney with experience in veterans' law. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

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Department of Veterans Affairs		REPORT OF GENERAL INFORMATION	
NOTE - This form must be filled out in ink or on a typewriter or computer, as it becomes a permanent record in the veteran's folder.		1. VA OFFICE 310/pmc	2. IDENTIFICATION NUMBERS (C, XC, SS, XSS, V, K, etc.) [REDACTED]
3. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print) Macalush, James		4. DATE OF CONTACT (Month, day, year) 01/30/2019	
5. ADDRESS OF VETERAN (Include number and street or rural route, city or P.O., State and ZIP Code) 6731 Matt Pledger Ct N Ft Myers FL 33917		6A. TELEPHONE NUMBER OF VETERAN (Include Area Code) DAY [REDACTED] EVENING [REDACTED]	
		6B. E-MAIL ADDRESS (If applicable)	
7. NAME OF PERSON CONTACTED Mr. Macalush		8. TYPE OF CONTACT <input type="checkbox"/> PERSONAL <input checked="" type="checkbox"/> TELEPHONE	
9. ADDRESS OF PERSON CONTACTED same as above		10. TELEPHONE NUMBER OF PERSON CONTACTED (Include Area Code) 239 634 4157	
<input checked="" type="checkbox"/> I certify that I properly identified my caller using the ID Protocol			
11. BRIEF STATEMENT OF INFORMATION REQUESTED AND GIVEN: I called up Mr. Macalush about his Pension NOD from September 2018. I explained that we were going to readjust his 2018 award based on his expenses and we were going to project expenses for 2019 to increase his regular monthly check, based on his history of high annual medical expenses. He reiterated that his expenses are in excess of \$50,000 yearly and he was agreeable to this adjustment. I explained how the pension program worked and how he would not likely receive any lump sum pension because if the pension is paid at a max rate on a month to month basis, there is no additional payment. I explained how he should continue to track his expenses and let us know of any changes in them to prevent possible overpayment. I explained a lump sum for the back pay will be forthcoming within the next 7-10 business days and explained the increased check would be seen in March 1st payment as the Feb 1st check would already be set. He was appreciative of the call and indicated he understood. I gave him my name and telephone number for additional questions on his pension adjustments. I apologized for our delays in addressing his NOD and his request for expedited handling.			
Notification of Action <input checked="" type="checkbox"/> I read the following statement to the caller: "I am a VA employee who is authorized to receive or request evidentiary information or statements that may result in a change in your VA benefits. The primary purpose for gathering this information or statement is to make an eligibility determination. It is subject to verification through computer matching programs with other agencies." cc: POA (If applicable):			
DIVISION OR SECTION 21pmc		EXECUTED BY (Signature and title) Matthew W. Wright 151829 <small>Digitally signed by Matthew W. Wright 151829 Date: 2019.01.30 12:51:37 -05'00'</small>	
PRIVACY ACT NOTICE: The 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 5, 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, 58VA/21/22/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.			
RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to respond to the questions on this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain . If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.			