

## UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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

## APPELLANT'S INFORMAL BRIEF

U.S. COURT OF APPEALS  
FOR VETERANS CLAIMS

July 28, 2019

RECEIVED

Docket No: 19-1547

Marlene Stern,

Appellant,

v.

Robert L. Wilkie,  
Secretary of Veterans Affairs,

Appellee.

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

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

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

- overweight was a disability
- psychiatric disorder disability
- respiratory disability
- heart disease disability
- gallbladder surgery that left permanent damage (hospital records missing)

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

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

Yes ☒ No ☐

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

page 10, 11, 15, 19

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

Yes ☒ No ☐

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

Twice the VA Closed my husband case without a notice of denial. This alone should have ruled this case in my favor. The only reason the case was reopened was because Senator Gillibrand spoke on my behalf. My husband has been pursuing this case for decades, unfortunately he passed away.

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

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

Approval of VA benefits.

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? \_\_\_\_\_

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

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

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

Appellant's Telephone Number: 718-265-4463

Appellant's Address: 2940 Ocean Parkway Apt 7-L  
Brooklyn NY 11235

Appellant's Signature: Marlene Stern Date: 7-28-19

1398 Red Oak Drive  
Tarpon Springs, FL 34689

July 15, 2019

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

**NOTICE OF DISAGREEMENT**

Board of Veterans' Appeals Docket Number 18-14 775

Subject: ENTITLEMENT TO A TOTAL DISABILITY RATING BASED ON  
INDIVIDUAL UNEMPLOYABILITY

RE: RICHARD LYNN GAMBY

Appeal to Court of Veterans Appeals

In the matter of the appeal of the Board of Veterans' Appeals denial for entitlement to total disability rating based on individual unemployability (TDIU).

It is my contention; my bilateral hearing loss is severe enough to secure substantially gainful employment.

Total disability is considered to exist when there is an impairment, which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. 38 C.F.R. 3.340(a)(1). This paragraph coupled with the fact I meet the scheduler requirements 38 C.F.R. 4.15(a)

Resolving all doubt in the Veteran's favor, his service-connected disability precludes him from securing or following substantially gainful employment consistent with his education and industrial background.

**CONCLUSION OF LAW**

Resolving all doubt in the Veteran's favor, the criteria for a TDIU are met. 38 U.S.C.A. §§ 1155, 5103, 5103A, 5107 (West 2002 & Supp. 2010); 38 C.F.R. §§ 3.102, 3.159, 3.340, 3.341, 4.16 (2010).

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the benefit of the doubt shall be given to the claimant. 38 U.S.C.A. § 5107(b). When a reasonable doubt arises regarding service origin, such doubt will be resolved in the favor of the claimant. Reasonable doubt is

doubt which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. 38 C.F.R. § 3.102. The question is whether the evidence supports the claim or is in relative equipoise, with the claimant prevailing in either event, or whether a fair preponderance of the evidence is against the claim, in which event the claim must be denied. *Gilbert v. Derwinski*, 1 Vet. App. 49, 54 (1990).

It is the established policy of the VA that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. 38 C.F.R. § 4.16(b). A total disability will be considered to exist when there is present any impairment of mind or body, which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. A total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule. 38 C.F.R. § 3.340(a).

In this case, I, the veteran have service connected disability that is derived from auditory disabilities. That is, my bilateral hearing loss and tinnitus are considered a single disability based on a single body system, i.e. common etiology. My bilateral hearing loss imposes difficulties hearing speakers even with his hearing aids on. I have difficulties hearing speech on the telephone and in groups. When family members sat next to me, I still have difficulties hearing them. Further, even though my hearing aids amplify speakers' voices and environmental sounds, I still had difficulties with the pronunciation of what is being said. I strongly contend due to my bilateral hearing loss, I am not able to maintain gainful employment and should be granted the entitlement to Individual Unemployability

*Richard L. Gamby*

Respectfully,  
Richard L. Gamby