

Before the Court, Petitioner submitted a motion for extraordinary relief in the nature of mandamus. Petitioner asked the Court to order the Secretary to issue a decision with respect to the appropriate rating for service-connected post-traumatic stress disorder (PTSD), entitlement to service connection for gastroesophageal reflux disease (GERD), and entitlement to a total disability rating based on individual unemployability (TDIU) that were originally subject of rating decisions in 2016 and 2017 and that were the subject of a personal hearing in February 2018.

## **SUMMARY OF PERTINENT FACTS**

On April 6, 2020, the RO issued a Statement of the Case that explains the continued denial of entitlement to service connection for GERD, found entitlement to an increased rating for service-connected PTSD from 50% to 70% effective April 28, 2015, and denied entitlement to an effective date earlier than April 28, 2015, for service connection for PTSD. (Exhibit 1). On April 28, 2020, after calculation of attorney fees, the RO issued its April 24, 2020, rating decision granting an increased rating from 50% to 70% for Appellant's service-connected PTSD effective April 28, 2015, and entitlement to TDIU effective that same date. (Exhibit 2). Also on April 28, 2020, the RO sent notice of the withholding of attorney fees due for direct payment. (Exhibit 3).

## **ARGUMENT**

Respondent suggests that Petitioner's petition should be dismissed as moot. This 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). This Court has held "[w]hen there is no case or controversy, or when a once live case or controversy becomes moot, the court lacks jurisdiction." *Bond v. Derwinski*, 2 Vet. App. 376, 377 (1992) (per curiam order)); see also *Mokal*, 1 Vet. App. at 15 (dismissing portion of petition seeking mandamus relief because controversy surrounding petition was moot).

Insofar as Petitioner asked the Court to order VA to issue a new decision with respect to matters surrounding entitlement to an increased rating for PTSD, service connection for GERD, and entitlement to TDIU, all such matters have been completed.

Because the matters that are the subject of the writ have been readjudicated, as requested, the Secretary contends that the petition is moot and should therefore be dismissed. See *Bond*, 2 Vet. App. at 377; *Mokal*, 1 Vet. App. at 15. Entitlement to service connection for GERD remains denied (Exhibit 1) and may be appealed to the Board if Appellant desires. With respect to the rating matters, Appellant's PTSD rating has been increased to 70% from the date of claim and entitlement to TDIU has been granted. (Exhibit 2). If Petitioner is not satisfied with this outcome, he may pursue appeal of these matters insofar as they are not fully favorable.

### **CONCLUSION**

For the foregoing reasons, Respondent urges that the Petition should be dismissed as moot.

Respectfully submitted,

**WILLIAM A. HUDSON, JR.,**  
Principal Deputy General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Joan E. Moriarty  
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Attorneys for the Respondent,  
Secretary of Veterans Affairs

# EXHIBIT

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## DEPARTMENT OF VETERANS AFFAIRS

April 6, 2020

MARK SAWYER  
21468 CHIMAYO RD  
APPLE VALLEY CA 92308

In reply, refer to:  
346/DROC  
File Number: [REDACTED]  
Mark Sawyer

Dear Mark Sawyer:

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

### Statement of the Case

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

### What You Need To Do

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, *Appeal to the Board of Veterans' Appeals*, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

### When You Need To Do It

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. **If we do not hear from you within this period, we will close your case.** If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, *Appeal to Board of Veterans' Appeals*.

### Hearings



You may have a hearing before we send your case to the BVA. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. VA will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may **also** have a hearing before the BVA, as noted on the enclosed VA Form 9, *Appeal to the Board of Veterans' Appeals*. **Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.**

## Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

## What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BVA will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

## 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 <a href="https://iris.custhelp.com/">https://iris.custhelp.com/</a> .
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



File Number: [REDACTED]  
SAWYER, MARK

If you	Here is what to do.
	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/>.

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

Thank you for your service,

DROC Manager

**Regional Office Director**

Enclosure(s): Where to Send Written Correspondence  
VA Form 9

cc: MARK R LIPPMAN  
13446 Poway Rd. Suite 338  
Poway, CA 92064







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### **ISSUE:**

1. Service connection for gastro-esophageal reflux disease.
2. Evaluation of post-traumatic stress disorder with anxiety and depression, which is currently 50 percent disabling.
3. Entitlement to an earlier effective date for service connection for post traumatic stress disorder.

### **EVIDENCE:**

- Rating decision dated September 8, 2015 and all the evidence referenced within
- Out-patient treatment records at the VA Medical Center in Loma Linda from January 9, 2014 to March 18, 2020
- Service treatment records from September 14, 1981 to March 12, 1984
- Personnel file from September 14, 1981 to March 12, 1984
- VA Form 21-526ez received on April 2, 2016
- Discharge papers (DD-214)
- VA psychiatric examination with opinion at QTC Medical Services dated July 15, 2016
- VAMC San Diego treatment records from July 9, 2015 to January 5, 2016
- Rating decision dated July 30, 2016, and all evidence therein
- Rating decision dated October 13, 2017, and all evidence therein
- Notice of Disagreement, received April 5, 2017
- Private Disability benefits questionnaire: PTSD, dated March 6, 2018
- Informal Hearing Transcript, dated February 13, 2018

### **ADJUDICATIVE ACTIONS:**

03/31/2016	Claim received.
07/30/2016	Claim considered based on all the evidence of record.
04/05/2017	Notice of Disagreement received.



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## **PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:**

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement of all veteran benefits.

### **§3.102 (New) - Reasonable doubt.**

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, 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. By 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. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

### **§3.103 - Procedural due process and appellate rights.**

(a) Statement of policy. Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) The right to notice:

(1) General. Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.



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(2) Advance notice and opportunity for hearing. Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) Exceptions. In lieu of advance notice and opportunity for a hearing, VA will send a written notice to the beneficiary or his or her fiduciary at the same time it takes an adverse action under the following circumstances:

(i) An adverse action based solely on factual and unambiguous information or statements as to income, net worth, or dependency or marital status that the beneficiary or his or her fiduciary provided to VA in writing or orally (under the procedures set forth in Sec. 3.217(b)), with knowledge or notice that such information would be used to calculate benefit amounts.

(ii) An adverse action based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report.

(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.

(iv) An adverse action based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see §3.106 on renouncement).

(v) An adverse action based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see §3.654 regarding active service pay).

(vi) An adverse action based upon a garnishment order issued under 42 U.S.C. 659(a).  
(Authority: 38 U.S.C. 501(a))

(4) Restoration of benefits. VA will restore retroactively benefits that were reduced, terminated, or otherwise adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.



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(c) The right to a hearing.

(1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in §20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more VA employees having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record. (Authority: 38 U.S.C. 501(a))

(d) Submission of evidence. Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) The right to representation. Subject to the provisions of §§14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) Notification of decisions. The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All



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notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this section; the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal; and the periods in which an appeal must be initiated and perfected (See part 20 of this chapter, on appeals). Further, any notice that VA has denied a benefit sought will include a summary of the evidence considered. (Authority: 38 U.S.C. 501, 1115, 1506, 5104.)

### **§3.104 (05/2001) - Finality of decisions.**

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §3.105 and §3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001]

### **§3.159 (New) - Department of Veterans Affairs assistance in developing claims.**

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a



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person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence.

(1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim. VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot pay or provide any benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. (Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. (Authority: 38 U.S.C. 5102(b), 5103A(3))

(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim.



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VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.



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(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. (Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions.

(i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured. (Authority: 38 U.S.C. 5103A(d))

(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA





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would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.  
(Authority: 38 U.S.C. 5103A(a)(2))

(e) Duty to notify claimant of inability to obtain records.

(1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA.  
(Authority: 38 U.S.C. 5103A(b)(2))



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(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a))

### **§3.2600 - Review of benefit claims decisions.**

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by an Adjudication Officer, Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under §3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure



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to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))

### §3.303 - Principles relating to service connection

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is 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 a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. 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 be legitimately 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.



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(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

(d) Postservice initial diagnosis of disease. 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. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid.

### **§3.304(a), (b), and (c) - Direct service connection; wartime and peacetime.**

(a) General. The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) Presumption of soundness. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as



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noted. (Authority: 38 U.S.C. 1111)

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to inception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record. (Authority: 10 U.S.C. 1219)

(c) Development. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

### **§3.321(a) - General rating considerations**

Use of rating schedule. The 1945 Schedule for Rating Disabilities will be used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the rating schedule will represent as far as can practicably be determined, the average impairment in earning capacity in civil occupations



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resulting from disability. (Authority: 38 U.S.C. 1155)

#### **§4.1 - Essentials of evaluative rating**

This 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. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition. Over a period of many years, a veteran's disability claim may require reratings in accordance with changes in laws, medical knowledge and his or her physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.

#### **§4.10 - Functional impairment.**

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity.

#### **§4.2 - Interpretation of examination reports**

Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described. It is the responsibility of the rating specialist to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current



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rating may accurately reflect the elements of disability present. Each disability must be considered from the point of view of the veteran working or seeking work. If a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes.

#### **§4.3 - Resolution of reasonable doubt**

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant. See §3.102 of this chapter.

#### **§4.6 - Evaluation of evidence**

The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

#### **§4.7 - Higher of two evaluations.**

Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned.

#### **§4.132 (9411X) - Schedule of ratings-mental disorders**

9411 Post-traumatic stress disorder

#### **§3.401 - Veterans.**



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Awards of pension or compensation payable to or for a veteran will be effective as follows:  
 (a) Aid and attendance and housebound benefits.

(1) Except as provided in §3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary. (Authority: 38 U.S.C. 501(a))

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established. (Authority: 38 U.S.C. 501(a); 5110(b)(1), (2))

(b) Dependent, additional compensation or pension for. Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event otherwise.

(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action. (Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran's award. (Other increases, see §3.400(o). For school attendance see §3.667.) (Authority: 38 U.S.C. 5110 (f), (n))

(c) Divorce of veteran and spouse. See §3.501(d).

(d) Institutional awards (§3.852):





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(1) Chief officer of non-Department of Veterans Affairs hospital or institution. From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

Note: If apportionment under §§3.452(c) and 3.454 is in order or payment under §3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) Director of a Department of Veterans Affairs medical center or domiciliary. From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) Retirement pay (§3.750):

(1) Election. Date of entitlement if timely filed. Subject to prior payments of retirement pay.

(2) Waiver. Day following date of discontinuance or reduction of retirement pay.

(3) Reelection. Day the reelection is received by the Department of Veterans Affairs.

(f) Service pension (§3.3(a)). Date of receipt of claim.

(g) Tuberculosis, special compensation for arrested. As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than \$67. See §3.350(g).

(h) Temporary increase "General Policy in Rating," 1945 Schedule for Rating Disabilities:

(1) Section 4.29 of this chapter. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) Section 4.30 of this chapter. Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) Increased disability pension based on attainment of age 78. First day of the month during which veteran attains age 78.



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### **38 USC Section 5107 (03/02) - Claimant responsibility; benefit of the doubt**

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

### **§19.32 - Closing of appeal for failure to respond to Statement of the Case.**

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated. (Authority: 38 U.S.C. 7105(d)(3))



### **§20.302 Rule 302. (07/08) - Time limit for filing...**

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed. (Authority: 38 U.S.C. 7105(b)(1))

(b) Substantive Appeal.

(1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will



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be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(2) Special rule in certain cases where additional evidence is submitted. Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with §19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period. (Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

(c) Response to Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal. (Authority: 38 U.S.C. 7105(d)(3))

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

### **DECISION:**

1. Service connection for gastro-esophageal reflux disease remains denied.
2. Evaluation of post-traumatic stress disorder with anxiety and depression, which is currently 50 percent disabling, is increased to 70 percent effective April 28, 2015.
3. Entitlement to an effective date earlier than April 28, 2015 for service connection for post traumatic stress disorder with anxiety and depression.

### **REASONS AND BASES:**

1. It is the determination of the decision review officer that the evidentiary record does not



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support any change in the previous determination, which is confirmed and continued. The decision is based in whole on a de novo review of the evidentiary record contained within the claims record without deference to the prior determination under authority of 38 C.F.R. 3.2600.

Rating decision dated July 30, 2016 continued the denial of service connection for gastroesophageal reflux disease. You submit a timely Notice of Disagreement, received April 5, 2017. You have not submit supporting medical evidence for your appeal for this issue.

In response, we have reviewed all the evidence in your file, including all recent VA treatment records. Unfortunately, we have not found the evidence needed to change our prior decision. In order to be service connected for this condition, please submit a private medical opinion which shows your current diagnosis is related to your excision of a leiomyoma during active duty.

We did not find a link between your medical condition and military service. The VA medical opinion found no link between your diagnosed medical condition and military service. While your service treatment records reflect complaints, treatment, or a diagnosis similar to that claimed, the medical evidence supports the conclusion that a persistent disability was not present in service.

2. It is the determination of the decision review officer that the evidentiary record supports a change in the previous determination. The decision is based in whole on a de novo review of the evidentiary record contained within the claims record without deference to the prior determination under authority of 38 C.F.R. 3.2600.

The evaluation of post-traumatic stress disorder with anxiety and depression is increased to 70 percent disabling effective April 28, 2015, your original date of claim, as you have continuously pursued your claim since that time. (38 CFR 4.1, 38 CFR 3.400)

We have assigned a 70 percent evaluation for your post-traumatic stress disorder with anxiety and depression based on:

- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Depressed mood
- Suicidal ideation
- Impairment of short- and long-term memory
- Disturbances of motivation and mood
- Difficulty in adapting to a worklike setting
- Anxiety
- Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)



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- Chronic sleep impairment
- Panic attacks more than once a week

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for posttraumatic stress disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:

- gross impairment in thought processes or communication
- persistent delusions or hallucinations
- grossly inappropriate behavior
- persistent danger of hurting self or others
- intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- disorientation to time or place
- memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38CFR 4.126, 38 CFR 4.130)

Please note, this decision is considered a partial grant of the benefit sought in your notice of disagreement pertaining to an increased evaluation for your post traumatic stress disorder. If this decision satisfies your claim, please return the enclosed statement of satisfaction.

3. It is the determination of the decision review officer that the evidentiary record does not support any change in the previous determination, which is confirmed and continued. The decision is based in whole on a de novo review of the evidentiary record contained within the claims record without deference to the prior determination under authority of 38 C.F.R. 3.2600.

Rating decision dated July 30, 2016 granted service connection for post traumatic stress disorder with an effective date of April 28, 2015. You submit a timely Notice of Disagreement, received April 5, 2017. You also submit supporting medical evidence for your appeal on March 12, 2018.

In response, we have reviewed all the evidence in your file, including all recent VA treatment records. Unfortunately, we have not found the evidence needed to change our prior decision. We have noted that your claim history with the VA extends back into the 1990s. A Rating Decision made March 11, 1994 denied service connection for adjustment disorder. You were notified of this decision March 28, 1994, and had one year from the date of notification to appeal our decision. There is no evidence in file that you appealed that decision, so it became final.

We received your request to reopen your claim for mental disorder on April 28, 2015. Therefore, this is the earliest effective date we are able to provide. The effective date for service connection for post traumatic stress disorder with anxiety and depression remains April 28, 2015. (38 CFR



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3.400)

PREPARED BY VBASEAMCMURM

APPROVED BY DROC Manager



### Where to Send Your Written Correspondence

The time it takes your response to reach VA affects how long it takes us to process your claim. We recommend responding electronically whenever possible. Only claimants or representatives can upload responses electronically currently. If you are not a claimant or representative, we recommend faxing so VA can receive your responses without wasting the time and money required to mail your documents.

The **fastest** way to respond to VA is to upload your response electronically through VA.gov.

Visit <https://www.va.gov> and under **Disability** click “Upload evidence to support your claim”

VA.gov provides one easy location to upload correspondence as well as learn about filing claims, check claim status, find out how much money you have left to pay for school or training, or refill prescriptions and communicate with your health care team among many items.

If you need to fax or mail your correspondence, identify the benefit type; then, use the corresponding fax number or mailing address below:

#### Faxing:

<b><u>Compensation Claims</u></b> Toll Free: 1-844-531-7818	<b><u>Pension &amp; Survivors Benefit Claims</u></b> Toll Free: 1-844-655-1604
<b><u>Board of Veterans’ Appeals</u></b> Toll Free: 1-844-678-8979	<b><u>Fiduciary</u></b> Toll Free: 1-888-581-6826

#### Mailing Addresses:

<b><u>Compensation Claims</u></b> Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547-4444	<b><u>Pension &amp; Survivors Benefit Claims</u></b> Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547-5365
<b><u>Board of Veterans’ Appeals</u></b> Department of Veterans Affairs Board of Veterans’ Appeals P.O. Box 27063 Washington, DC 20038	<b><u>Fiduciary</u></b> Department of Veterans Affairs Fiduciary Intake Center P.O. Box 5211 Janesville, WI 53547-5211

These addresses serve **all United States and foreign locations.**



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit [www.veteranscrisisline.net](http://www.veteranscrisisline.net)





1. NAME OF VETERAN <i>(Last Name, First Name, Middle Initial)</i>	2. CLAIM FILE NO. <i>(Include prefix)</i>	3. INSURANCE FILE NO., OR LOAN NO.
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4. I AM THE:

☐ VETERAN    ☐ VETERAN'S WIDOW/ER    ☐ VETERAN'S CHILD    ☐ VETERAN'S PARENT

☐ OTHER (*Specify*)

5. TELEPHONE NUMBERS		6. MY ADDRESS IS: <i>(Number &amp; Street or Post Office Box, City, State &amp; ZIP Code)</i>
A. HOME <i>(Include Area Code)</i>	B. WORK <i>(Include Area Code)</i>	

7. IF I AM NOT THE VETERAN, MY NAME IS:  
(Last Name, First Name, Middle Initial)

8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD: *(Be sure to read the information about this block in paragraph 6 of the attached instructions.)*

A. ☐ I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM **ONLY** APPEALING THESE ISSUES:  
*(List below.)*

B. ☐ I WANT TO APPEAL **ALL** OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.

9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: *(Be sure to read the information about this block in paragraph 6 of the attached instructions.)*

*(Continue on the back, or attach sheets of paper, if you need more space.)*

**IMPORTANT:** Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans' Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE VA REGIONAL OFFICE PERSONNEL.

A. ☐ I DO NOT WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision most quickly. If you choose, you may write down what you would say at a hearing and submit it directly to the Board.)

B. ☐ BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)

C. ☐ IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.)

☐ **AT A LOCAL VA OFFICE.\*** (Choosing this option will add **significant** delay to issuance of a Board decision.)

*\*This option is not available at the Washington, DC, or Baltimore, MD, Regional Offices.*

11. SIGNATURE OF PERSON MAKING THIS APPEAL <i>(Ink signature required)</i>	12. DATE <i>(MM/DD/YYYY)</i>	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY <i>(Not required if signed by appellant. See paragraph 6 of the instructions.) (Ink signature)</i>	14. DATE <i>(MM/DD/YYYY)</i>
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CONTINUATION SHEET FOR ITEM 9

*(Attach additional sheets, if necessary)*

We are required by law to give you the information in this box. Instructions for filling out the form follow the box.

**RESPONDENT BURDEN:** VA may not conduct or sponsor, and the respondent is not required to respond to, this collection of information unless it displays a valid Office of Management and Budget (OMB) Control Number. The information requested is approved under OMB Control Number (2900-0085). Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden to: VA Clearance Officer (005R1B), 810 Vermont Ave., NW, Washington, DC 20420. **DO NOT** send requests for benefits to this address.

**PRIVACY ACT STATEMENT:** Our authority for asking for the information you give to us when you fill out this form is 38 U.S.C. 7105(d)(3), a Federal statute that sets out the requirement for you to file a formal appeal to complete your appeal on a VA benefits determination. You use this form to present your appeal to the Board of Veterans' Appeals (Board). It is used by VA in processing your appeal and it is used by the Board in deciding your appeal. Providing this information to VA is voluntary, but if you fail to furnish this information VA will close your appeal and you may lose your right to appeal the benefit determinations you told us you disagreed with. The Privacy Act of 1974 (5 U.S.C. 552a) and VA's confidentiality statute (38 U.S.C. 5701), as implemented by 38 C.F.R. 1.526(a) and 1.576(b), require individuals to provide written consent before documents or information can be disclosed to third parties not allowed to receive records or information under any other provision of law. However, the law permits VA to disclose the information you include on this form to people outside of VA in some circumstances. Information about that is given in notices about VA's "systems of records" that are periodically published in the *Federal Register* as required by the Privacy Act of 1974. Examples of situations in which the information included in this form might be released to individuals outside of VA include release to the United States Court of Appeals for Veterans Claims, if you later appeal the Board's decision in your case to that court; disclosure to a medical expert outside of VA, should VA exercise its statutory authority under 38 U.S.C. 5109 or 7109, to ask for an expert medical opinion to help decide your case; disclosure to law enforcement personnel and security guards in order to alert them to the presence of a dangerous person; disclosure to law enforcement agencies should the information indicate that there has been a violation of law; disclosure to a congressional office in order to answer an inquiry from the congressional office made at your request; and disclosure to Federal government personnel who have the duty of inspecting VA's records to make sure that they are being properly maintained. See the *Federal Register* notices described above for further details.

## INSTRUCTIONS

**1. CONSIDER GETTING ASSISTANCE:** We have tried to give you the general information most people need to complete this form in these instructions, but the law about veterans' benefits can be complicated. If you have a representative, we encourage you to work with your representative in completing this form. If you do not have a representative, we urge you to consider getting one. Most people who appeal to the Board of Veterans' Appeals (Board) do get a representative. Veterans Service Organizations (VSOs) will represent you at no charge and most people (more than 80 percent) are represented by VSOs. You can find a listing of VSOs on the Internet at: <http://www.va.gov/vso>. Under certain circumstances, you may pay a lawyer or "agent" to represent you. Your local VA office can further assist you with questions regarding how to appoint a VSO, attorney, or agent to represent you. You can reach your local VA office toll-free at 1-800-827-1000. Your local bar association may be able to provide you with the names of attorneys who specialize in veterans' law.

**2. WHAT IS THIS FORM FOR?** You told your local VA office that you disagreed with some decision it made on your claim for VA benefits, called filing a "Notice of Disagreement." That office then mailed you a "Statement of the Case" (SOC) that told you why and how it came to the decision that it did. After you have read the SOC, you must decide if you want to go ahead and complete your appeal so that the Board will review your case. If you do, you or your representative must fill out this form and file it with VA. "Filing" means delivering the completed form to VA in person or by mailing it based on the instructions you received with your SOC. Paragraph 4 tells you how much time you have to file this form and paragraph 7 tells you where you file it.

When we refer to "your local VA office" in these instructions, we mean the VA Regional Office that sent you the SOC or, if you have moved out of the area served by that office, the VA Regional Office that now has your VA records.

**3. DO I HAVE TO FILL OUT THIS FORM AND FILE IT?** Fill out this form and file it with VA *if* you want to complete your appeal. If you do not, VA will close your appeal without sending it to the Board for a decision. If you decide that you no longer want to appeal after you have read the SOC, you don't have to do anything.

**4. HOW LONG DO I HAVE TO COMPLETE THIS FORM AND FILE IT?** Under current law, there are three different ways to calculate how much time you have to complete and file this form. The one that applies to you is the one that gives you the *most* time:

(a) You have one year from the day your local VA office mailed you the notice of the decision you are appealing.

(b) You have 60 days from the day that your local VA office mailed you the SOC.

(c) Your local VA office may have sent you an update to the SOC, called a "Supplemental Statement of the Case" (SSOC). If that SSOC was provided to you in response to evidence you or your representative submitted within the one-year period described in paragraph 4(a) of these instructions, above, and if you have not already filed this form, then you have at least 60 days from the time your local VA office mailed you the SSOC to file it even though the one-year period has already expired. See 38 C.F.R. 20.302(b)(2).

There is one special kind of case, called a "simultaneously contested claim," where you have 30 days to file this form instead of the longer time periods described above. A "simultaneously contested claim" is a case where two different people are asking for the same kind of VA benefit and one will either lose, or get less, if the other wins. If you are not sure whether this special exception applies, ask your representative or call your local VA office.

If you have *any* questions about the filing deadline in your case, ask your representative or your local VA office. **Filing on time is very important. Failing to file on time could result in you losing your right to appeal.**

**5. WHAT IF I NEED MORE TIME?** If you need more time to complete this form and file it, write to the address included on your SOC, explaining why you need more time. *You must file your request for more time before the normal time for filing this form runs out.* If you file by mail, VA will use the postmark date to decide whether you filed the form, or the request for more time to file it, on time.

**6. WHAT KIND OF INFORMATION DO I NEED TO INCLUDE WHEN I FILL OUT THE FORM?** While most of the form is easy to understand, please refer to the sections below for additional information regarding each block.

**Block 3.** If your appeal involves an insurance claim or some issue related to a VA home loan, enter your VA insurance or VA loan number here. For most kinds of cases, you will leave this block blank.

**Blocks 4-7.** These blocks are for information about the person who is filing this appeal. If you are a representative filling out this form for the person filing the appeal, fill in the information about that person, not yourself. Block 7 can be left blank if the person filing the appeal is the Veteran.

**Block 8.** This is the block where you tell us exactly *what* you are appealing. You do this by identifying the "issues" you are appealing. Your local VA office has tried to accurately identify the issues and has listed them on the SOC and any SSOC it sent you. Save what you want to tell us about *why* you are appealing for the next block (Block 9).

Check the first check box in Block 8 if you only want to continue your appeal on some of the issues listed on the SOC and any SSOC you received. List the specific issues you want to appeal in the space under the first box. While you should not use this form to file a new claim or to appeal new issues for the first time, you can also use this space to call the Board's attention to issues, if any, you told your local VA office in your Notice of Disagreement you wanted to appeal that are not included in the SOC or any SSOC. If you want to file a new claim, or appeal new issues (file a new Notice of Disagreement), do that in separate correspondence. *Do not check the second box if you check this box.*

If you think that your local VA office has correctly identified the issues you are appealing and, after reading the SOC and any SSOC you received, you still want to appeal its decisions on *all* those issues, check the second box in Block 8. *Do not check the first box if you check this box.*

**Block 9.** Use this block to tell us why you disagree with the decision made by your local VA office. Tie your arguments to the issues you identified in Block 8. Tell us what facts you think VA got wrong and/or how you think VA misapplied the law in your case. Try to be specific. If you are appealing a rating percentage your local VA office assigned for one or more of your service-connected disabilities, tell us *for each service-connected disability rating you have appealed* what rating would satisfy your appeal (The SOC, or SSOC, includes information about what disability percentages can be assigned for each disability under VA's "Rating Schedule.") You may want to refer to the specific items of evidence that you feel support your appeal, but you do not have to describe all of the evidence you have submitted. The Board will have your complete file when it considers your case. You should not attach copies of evidence you have already sent to VA.

In completing this block, please also let us know if there is any additional evidence that you feel needs to be obtained to support your appeal. You may either submit this evidence along with this response, or at a minimum notify VA of its existence so that the evidence can be obtained on your behalf.

If you need more space to complete Block 9, you can continue it on the back of the form and/or you can attach sheets of paper to the form. If you want to complete this part of the form using a computer word-processor, you may do so. Just attach the sheets from your printer to the form and write "see attachment" in Block 9.

**Block 10.** It is very important for you to check one, *and only one*, of the boxes in Block 10. This lets us know whether or not you want to appear at a Board hearing and, if so, where you want to appear. **Please keep in mind that a Board hearing is entirely optional, and it is not necessary for you to have a hearing for the Board to decide your appeal. Hearings often increase wait time for a Board decision.** *If you do not check any of the boxes, the Board will assume that you DO NOT want a Board hearing and your case will be decided taking into consideration the arguments already made, including your explanation on this form as to why you think VA decided your case incorrectly.*

If you ask for a Board hearing, you and your representative (if you have one) can tell us why you think the Board should act favorably on your appeal (present argument). You can also tell us about the facts behind your claim and you can bring others (witnesses) to the hearing who have information to give the Board about your case. At your option, you can submit more evidence at a Board hearing. If you do ask for a Board hearing, it can be very helpful to have a representative assist you at the hearing. Please note that VA *cannot* pay any expenses that you (or your representative or witnesses) incur in connection with attending any Board hearing.

The purpose of a hearing is to receive argument and testimony relevant and material to the issue or issues in your case that are on appeal. Hearings conducted by the Board are nonadversarial in nature. Parties to a hearing are permitted to ask questions, including follow-up questions, but cross-examination is not allowed. While the types of questions that may be asked are not limited by the legal rules of evidence that typically apply in an adversarial trial setting, reasonable bounds of relevancy and materiality still must be maintained.

Here is specific information about each of the check boxes in Block 10:

**Box A:** Check Box A if you decide that you *do not* want a Board hearing. It is *not* necessary for you to have a hearing for the Board to decide your appeal, and this is often the fastest option to issuance of a Board decision. If you feel that you have already sent VA everything that the Board will need to decide your case, including making all desired arguments in support of your appeal, then there is no need for a hearing to be held. In addition, a hearing is not needed if the only thing you would like to do is submit additional evidence in support of your appeal. Instead, you may submit such additional evidence, or at a minimum notify VA of its existence and request that it be obtained, without a hearing being held. If you choose, you may also write down what you would say at a hearing and submit it directly to the Board. *If you check this box, do not check any of the other boxes in Block 10.*

**Box B:** Check Box B if you want to appear at a live Board videoconference hearing. This option allows you to have a hearing by way of videoconferencing where you will be at the local VA office and the Veterans Law Judge hearing your case will be at the Board's offices in Washington, DC. Videoconferencing allows the Veterans Law Judge holding the hearing to see and hear you, your representative, and witnesses (if any). You will also be able to see and hear the Veterans Law Judge. *Please note that choosing a live videoconference hearing will delay issuance of a Board decision in your appeal due to scheduling demands. This type of hearing, however, can often be scheduled more quickly than a Board hearing where all participants (including the Veterans Law Judge) are physically present together at the local VA office.*

**Box C:** Check Box C if you want to appear for a hearing at the Board's offices in Washington, DC. Having your Board hearing by live videoconference (Box B) is usually less expensive for you, because you will not incur expenses associated with travel to Washington, DC. *Please note that choosing a Board hearing in Washington, DC, will delay issuance of a Board decision in your appeal due to scheduling demands.*

**Box D:** Check Box D if you want a Board hearing at your local VA office. If you select this option, both you and the Veterans Law Judge assigned to hear your case will be physically present together at the local VA office. *Please note that this option will **significantly** delay issuance of a Board decision in your appeal due to travel requirements and scheduling demands for Board personnel.* You can check with your local VA office for an estimate of how long it may take before your case could be scheduled for a Board hearing at that local VA office.

**HEARINGS BEFORE VA REGIONAL OFFICE PERSONNEL:** A hearing before VA regional office personnel, instead of before a Veterans Law Judge, is not a Board hearing. You can request a hearing before VA regional office personnel by writing directly to the regional office. **DO NOT** use this form to request that kind of hearing. If you do, it will delay your appeal. You should also know that requesting a hearing before VA regional office personnel does not extend the time for filing this form.

**Blocks 11 and 12.** This form can be signed and filed by *either* the person appealing the local VA decision, or by his or her representative. Sign the form in Block 11 if you are the person appealing, or if you are a guardian or other properly appointed fiduciary filing this appeal for someone else. In cases where an incompetent person has no fiduciary, or the fiduciary has not acted, that person's "next friend," such as a family member, can sign and file this form. If the representative is filing this form, Block 11 can be left blank. Regardless of who signs the form, we encourage you to have your representative check it over before it is filed. Place the date you sign in Block 12.

**Blocks 13 and 14.** If you are a representative filing this form for the appellant, sign in Block 13. Otherwise, leave Block 13 blank. If you are an accredited representative of a VSO, also insert the name of the VSO in Block 13. Note that signing this form will not serve to appoint you as the appellant's representative. Contact your local VA office if you need information on appointment. Place the date you sign in Block 14.

**7. WHERE DO I FILE THE FORM ONCE I HAVE COMPLETED IT?** When you have completed the form, signed and dated it, follow the instructions you received with your SOC of where to send the form.

**8. OTHER SOURCES OF INFORMATION:** You can find a "plain language" pamphlet that describes the VA appeals process called "How Do I Appeal" on the Internet at: [http://www.bva.va.gov/How\\_Do\\_I\\_Appeal.asp](http://www.bva.va.gov/How_Do_I_Appeal.asp). You can also find the formal rules for the VA appeals process in title 38, Code of Federal Regulations, Part 20. A complete copy of the Code of Federal Regulations is available on the Internet at: <http://www.gpoaccess.gov/cfr/index.html>. A printed copy of the Code of Federal Regulations may also be available at your local law library. More general information about VA benefit programs and eligibility can be found on the Internet at: <http://www.va.gov>.

**9. SPECIAL NOTE FOR ATTORNEYS AND VA ACCREDITED AGENTS.** There are statutory and regulatory restrictions on the payment of your fees and expenses and requirements for filing copies of your fee agreement with your client with VA. See 38 U.S.C. 5904 and 38 C.F.R. 14.636-637.

*NOTE: Please separate these instructions from the form before you file it with VA. We suggest that you keep these instructions with your other papers about your appeal for future reference.*

# EXHIBIT

2



## DEPARTMENT OF VETERANS AFFAIRS

April 28, 2020

MARK A SAWYER  
21468 CHIMAYO RD  
APPLE VALLEY, CA 92308

In Reply Refer To: 344/VSCLBS

SAWYER, Mark Allison

Dear Mr. Sawyer:

We made a decision on your Notice of Disagreement received on April 5, 2017.

This letter tells you about your entitlement amount and payment start date and 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 additional benefits, 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 Start Date

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason For Change
\$3,068.90	May 1, 2015	Original Award
3,078.11	Dec 1, 2016	Cost of Living Adjustment
3,139.67	Dec 1, 2017	Cost of Living Adjustment
3,227.58	Dec 1, 2018	Cost of Living Adjustment
3,279.22	Dec 1, 2019	Cost of Living Adjustment

We are paying you as a veteran with one dependent. Your payment includes an additional amount for your spouse. *Let us know right away if there is any change in your marital status (for example, death, divorce, annulment).*

### You Can Expect Payment

Your payment begins the first day of the month following your effective date. You will receive a payment covering the initial amount due under this award, minus any withholdings. Thereafter, payment will 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.

  
Sawyer, Mark Allison

**Your payment will be directed to the financial institution and account number that you specified. To confirm when your payment was deposited, please contact that financial institution.**

*If this account is no longer open,  
please notify us immediately.*

## What We Decided

We determined that the following service-connected condition has worsened, so we granted an increase in your assigned percentage:

Medical Description	Old Percent (%) Assigned	New Percent (%) Assigned	Effective Date
Post-traumatic stress disorder with anxiety and depression	50%	70%	Apr 28, 2015

This decision represents a partial grant of benefits sought on appeal. If you are satisfied with the grant of benefits and would like to withdraw your appeal, please let us know in writing as soon as possible. We have provided an Appeals Satisfaction Notice for your response.

We granted entitlement to the 100% rate effective April 28, 2015, because you are unable to work due to your service-connected disability/disabilities.

This decision constitutes a full grant of the benefit sought on appeal for the issue of Unemployability. The appeal is considered satisfied in full for this issue.

Basic eligibility to Dependents' Education Assistance is established from April 28, 2015.

*No examination will be scheduled in the future.*

Your overall or combined rating is 80% but we are paying you at the 100% rate, effective April 28, 2015 because you were granted entitlement to Individual Unemployability. 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.



[REDACTED]  
Sawyer, Mark Allison

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 Rating Decision and this letter constitute our decision based on your Notice of Disagreement received on April 5, 2017. It represents all claims we understood to be specifically made, implied, or inferred in that disagreement.

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?**

The Department of Education provides a program for Veterans to discharge their student loans. To be eligible, the Veteran must have a service-connected disability(ies) that is 100% disabling, or be totally disabled based on an Individual Unemployability determination. For more information concerning this benefit, please call toll-free 1-888-303-7818. Visit the website at <http://www.disabilitydischarge.com/Home/>.

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 <http://www.myhealth.va.gov/mhv-portal-web/>.

You may be eligible for 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 to the Patient Registration/Eligibility Section. If you apply by writing a letter, include your VA file number and a copy of this letter.

#### **REDUCE OR ELIMINATE YOUR MEDICAL CO-PAYMENTS**

If you receive care at a VA medical facility, **please call our Health Benefits Call Center at 1-877-222-VETS (8387) or notify your local VA medical center** of this change in your compensation benefits. This rating decision may reduce or eliminate your co-payments for your VA-provided medical care. You may also be eligible for a refund based on this rating decision. Information regarding VA health care eligibility and co-payments is available at our website <http://www.va.gov/healthbenefits/cost/>.

  
Sawyer, Mark Allison

You should contact your State office of Veteran's affairs for information on any tax, license, or fee-related benefits for which you may be eligible as a Veteran (or surviving dependent of a Veteran). State offices of Veteran's affairs are available at **<http://www.va.gov/statedva.htm>**.

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 **<http://www.rehab.va.gov/blindrehab/>**.

You may be able to receive vocational rehabilitation employment services. The enclosed VA Form 28-8890, "Important Information About Vocational Rehabilitation Benefits," explains this benefit completely. To apply for this benefit, complete and return the enclosed VA Form 28-1900, "Disabled Veterans Application for Vocational Rehabilitation."

Because of the rating action described in this letter, you may be eligible to have your government life insurance premiums waived. (This doesn't apply if you have Veterans Group Life Insurance [VGLI]). *If your answer is "yes" to all of the following questions*, you should contact the VA Insurance Center at the following toll free telephone number in order to request a "waiver of premiums" on your government life insurance policy. Call 1-800-669-8477.

- Do you have an active government life insurance policy?
- Do you currently pay premiums for your government life insurance policy?
- Are you considered to be unemployable, or are you rated 100% disabled by VA?
- Were you under age 65 when you became unable to work or 100% disabled?

Your dependents may be eligible for Dependents' Educational Assistance (Chapter 35). For more information on this program, please visit the following web site: <https://www.vets.gov/education/gi-bill/survivors-dependent-assistance/> or call 1-888-GIBILL-1 (1-888-442-4551).

Surviving spouses and children of Service Members who die in the line of duty after September 10, 2001, may also be eligible for the Fry Scholarship, which offers entitlement to the Post-9/11 GI Bill. Benefits include tuition and fee payments, a monthly housing allowance, and a books and supplies stipend. Please visit the GI Bill webpage at [www.benefits.va.gov/gibill/index.asp](http://www.benefits.va.gov/gibill/index.asp) for more information.

[REDACTED]  
Sawyer, Mark Allison

Your dependents may be eligible for benefits under CHAMPVA. CHAMPVA is a health benefits program in which the Department of Veterans Affairs (VA) shares the cost of certain healthcare and supplies with eligible beneficiaries. To be eligible for the CHAMPVA program a dependent must be the spouse or child of a veteran who is permanently and totally disabled from a service-connected disability. The Health Administration Center in Denver, Colorado administers the CHAMPVA program. You should call 1-800-733-8387 if additional information is needed.

You may be entitled to Armed Forces Commissary and Exchange privileges. Honorably discharged veterans evaluated as 100 percent disabled due to service-connected disability; or, Medal of Honor recipients; or, military retirees and their dependents may qualify for entitlement to this additional benefit.

Your combined evaluation is 30 percent or more disabling; therefore, you may be eligible for additional benefits based on dependency. We may be able to pay you retroactive benefits for your dependents if you submit your dependency claim within a year from the date of this letter. If you wish to notify us of your dependents, please do so through eBenefits, an electronic resource in a self-service environment. Use of these resources often helps us serve you faster! Just visit [www.eBenefits.va.gov](http://www.eBenefits.va.gov) to enroll and submit your dependency information.

## What You Should Do If You Disagree With Our Decision

If you do not agree with this decision, you have one year from the date of this letter to select a review option to preserve your earliest effective benefit date. The review options and their proper applications are as follows, for a(n):

- **Supplemental Claim**, complete **VA Form 20-0995**, *Decision Review Request: Supplemental Claim*.
- **Higher-Level Review**, complete **VA Form 20-0996**, *Decision Review Request: Higher-Level Review*.
- **Appeal to the Board**, complete **VA Form 10182**, *Decision Review Request: Board Appeal (Notice of Disagreement)*.

Please see the enclosed VA Form 20-0998, *Your Rights To Seek Further Review Of Our Decision*. It explains your options for an additional review. You may obtain any of the required application by down loading them from [www.va.gov/vaforms/](http://www.va.gov/vaforms/) or by contacting us. You can also learn more about the disagreement process at [www.va.gov/decision-reviews](http://www.va.gov/decision-reviews). If you would like to obtain or access evidence used in making this decision, please contact us as noted below. Some evidence may be obtained by signing in at [www.va.gov](http://www.va.gov).

[REDACTED]  
Sawyer, Mark Allison

## What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Service members, 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](http://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 <a href="https://iris.va.gov">https://iris.va.gov</a> .
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.

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>.

  
Sawyer, Mark Allison

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

Sincerely yours,

RO Director  
VA Regional

Enclosures:   Appeal Satisfaction Notice  
                  Rating Decision  
                  VA Form 21-8764  
                  VA Form 28-8890  
                  VA Form 28-1900  
                  VA Form 20-0998  
                  Where to Send your Written Correspondence

cc: MARK R. LIPPMAN  
     13446 POWAY RD  
     SUITE 338  
     POWAY, CA 92064

## **APPEALS SATISFACTION NOTICE**

I have received the recent correspondence regarding the decision to grant one or more of my issues on appeal. Based on the decision rendered, I am satisfied and wish to withdraw all remaining issues associated with this appeal. By signing and submitting this form, I am asking to withdraw all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC) and ask the regional office of jurisdiction to discontinue further development actions associated with this appeal.

Please only return this document if you no longer want to pursue the remaining items contained in your Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC).

\_\_\_\_\_  
Appellant Name or  
Accredited Representative

\_\_\_\_\_  
VA Claim number or SSN

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

When completed, please mail to the address provided in the attached decision letter.



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

**Mark Sawyer**

**VA File Number**



**Represented By:  
MARK R LIPPMAN  
Decision Review Officer Decision  
04/24/2020**

**INTRODUCTION**

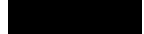
The records reflect that you are a veteran of the Peacetime. You served in the Air Force from September 14, 1981 to March 12, 1984. We received a Notice of Disagreement from you on April 5, 2017 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of post-traumatic stress disorder with anxiety and depression, which is currently 50 percent disabling, is increased to 70 percent effective April 28, 2015.
2. Basic eligibility to Dependents' Educational Assistance is established from April 28, 2015.
3. Entitlement to individual unemployability is granted effective April 28, 2015.

**EVIDENCE**





- Rating decision dated July 30, 2016, and all evidence therein
- Rating decision dated October 13, 2017, and all evidence therein
- Notice of Disagreement, received April 5, 2017
- Notice of Disagreement, received February 7, 2018
- VA Form 21-8940, Veteran's Application for Increased Compensation due to Unemployability, received June 8, 2017
- Private Disability benefits questionnaire: PTSD, dated March 6, 2018
- Informal Hearing Transcript, dated February 13, 2018
- VA Form 21-4192, Request for Employment Information, received November 13, 2018
- VAMC San Diego treatment records from July 9, 2015 to January 5, 2016
- VAMC Loma Linda treatment records from March 28, 1995 to March 18, 2020

## **REASONS FOR DECISION**

### **1. Evaluation of post-traumatic stress disorder with anxiety and depression currently evaluated as 50 percent disabling.**

It is the determination of the decision review officer that the evidentiary record supports a change in the previous determination. The decision is based in whole on a de novo review of the evidentiary record contained within the claims record without deference to the prior determination under authority of 38 C.F.R. 3.2600.

The evaluation of post-traumatic stress disorder with anxiety and depression is increased to 70 percent disabling effective April 28, 2015, your original date of claim, as you have continuously pursued your claim since that time. (38 CFR 4.1, 38 CFR 3.400)

We have assigned a 70 percent evaluation for your post-traumatic stress disorder with anxiety and depression based on:

- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Depressed mood
- Suicidal ideation
- Impairment of short- and long-term memory
- Disturbances of motivation and mood
- Difficulty in adapting to a worklike setting
- Anxiety
- Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)
- Chronic sleep impairment
- Panic attacks more than once a week

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)







A higher evaluation of 100 percent is not warranted for posttraumatic stress disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:

- gross impairment in thought processes or communication
- persistent delusions or hallucinations
- grossly inappropriate behavior
- persistent danger of hurting self or others
- intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- disorientation to time or place
- memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

Please note, this decision is considered a partial grant of the benefit sought in your notice of disagreement pertaining to an increased evaluation for your post traumatic stress disorder. If this decision satisfies your claim, please return the enclosed statement of satisfaction.

## **2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.**

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. (38 USC Ch. 35, 38 CFR 3.807)

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows you currently have a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807) Basic eligibility to Dependents' Educational Assistance is established from April 28, 2015, the date your disabilities became totally disabling by way of individual unemployability. (38 CFR 3.400)

## **3. Entitlement to individual unemployability.**

It is the determination of the decision review officer that the evidentiary record supports a change in the previous determination. The decision is based in whole on a de novo review of the evidentiary record contained within the claims record without deference to the prior determination under authority of 38 C.F.R. 3.2600.

Entitlement to individual unemployability is granted effective April 28, 2015, the earliest date your disabilities combined to 70 percent disabling, and you were not working. VAMC records also note mental symptoms that preclude employment from your original date of claim. (38 CFR 3.400)



Mark Sawyer



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Entitlement to individual unemployability is granted because you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. Your reported work history shows you have not worked since 2003 due to your service connected disabilities. (38 CFR 4.16)

This decision represents a full grant of benefits sought on appeal 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](http://www.va.gov).



## **DISABILITY COMPENSATION AWARD ATTACHMENT IMPORTANT INFORMATION**

### **WHEN WILL YOU RECEIVE YOUR FUNDS?**

Depending on whether you elect to receive your monthly compensation by check or direct deposit, you should receive your funds within 15 days. Thereafter, your payments will be made at the beginning of each month for the prior month.

### **HOW CAN YOU RECEIVE HOSPITALIZATION AND OUTPATIENT TREATMENT?**

Veterans who have one or more service-connected disabilities 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 Revenue Center at 1-877-222-8387.

### **HOW CAN YOU RECEIVE DENTAL TREATMENT?**

If you are evaluated as 100% disabled for service-connected disabilities or as 100% disabled because of Individual Unemployability, you may be eligible for VA dental treatment. For additional information, contact your nearest VA medical center or outpatient Clinic. You can find the address of your closest VA medical center or facility by going to the VA internet website <http://www.va.gov/directory>.

### **HOW CAN YOU RECEIVE ADDITIONAL COMPENSATION FOR DEPENDENTS?**

Veterans having a 30% or more service-connected evaluation may be entitled to additional compensation for a spouse, dependent parents, unmarried children under 18 (or under 23 if attending an approved school) or a child who became permanently incapable of self-support because of mental or physical defect prior to age 18. The additional benefit for a spouse is payable in a higher amount upon receipt of evidence establishing that the spouse is a patient in a nursing home or so disabled as to require the aid and attendance of another person.

### **HOW CAN YOU RECEIVE INCREASED BENEFITS BASED ON INDIVIDUAL UNEMPLOYABILITY?**

If your service-connected disabilities are seriously disabling to the extent that you are unable to secure and hold steady work/employment, you may apply to receive total disability. To apply for this benefit, you should contact the nearest VA office and complete VA Form 21-8940, "Veteran's Application for Increased Compensation Based on Unemployability," available on the VA forms website at [www.va.gov/vaforms](http://www.va.gov/vaforms).

### **HOW CAN YOU RECEIVE A CLOTHING ALLOWANCE?**

You may be eligible for a clothing allowance if, because of a service-connected disability, you wear or use a prosthetic device or orthopedic appliance which tends to wear or tear clothing. You may also be eligible if a doctor has prescribed medication for a service-connected skin condition, and the medication causes irreparable damage to your outer garments. To apply for this benefit, contact the Prosthetic and Sensory Aids Service at your nearest VA medical center or outpatient clinic. The address of your closest VA medical center or facility is available on the VA internet website <http://www.va.gov/directory>.

### **HOW CAN YOU RECEIVE EDUCATIONAL BENEFITS?**

A monthly educational assistance allowance is payable to certain veterans. Each program has unique eligibility criteria specified by law, and only one program can be used at any given time. If you need help with your VA education benefits, you can call toll-free 1-888-442-4551 or visit the VA national education website at <http://www.gibill.va.gov>.

### **HOW CAN YOU RECEIVE GOVERNMENT LIFE INSURANCE?**

If you receive a rating for a new service-connected disability (even 0%), you may be eligible for Government life insurance if you are in good health (except for service-connected conditions) and apply within two years of this notification of your new disability rating. Call our toll-free number 1-800-669-8477 or visit our website <http://www.insurance.va.gov> for further information about Service-Disabled Veterans Insurance.

### **ARE YOUR BENEFITS EXEMPT FROM CLAIMS OR CREDITORS?**

Compensation 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 OR DIRECT DEPOSIT?**

Please notify us by calling our toll-free number at 1-877-838-2778.

### **TO SEND ANY COMPLETED, SIGNED FORMS OR TO FURNISH ANY INFORMATION TO VA**

You can obtain the address to mail VA any information or completed forms by calling toll-free 1-800-827-1000 (for the hearing impaired call 1-800-829-4833). You can also locate the address of the closest VA regional office on the Internet at <http://www.va.gov/directory> or in the Government pages of your telephone book under "United States Government, Veterans."

### **HOW DO I FIND OUT ABOUT STATE OR LOCAL BENEFITS FOR SERVICE-CONNECTED VETERANS?**

You should contact your State or local office of veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible as a veteran (or surviving dependent of a veteran). State offices of veterans' affairs are available at <http://www.va.gov/statedva.htm>. You should also contact your local tax assessor's office to ask if you are entitled to any personal or property tax relief.

### **AM I ELIGIBLE FOR COMMISSARY AND EXCHANGE PRIVILEGES?**

Honorably discharged veterans evaluated as 100 percent disabled due to service-connected disability, Medal of Honor recipients or, military retirees and their dependents may qualify for Armed Forces Commissary and Exchange privileges.

### **WHAT CONDITIONS AFFECT RIGHT TO PAYMENTS?**

1. Your award of disability compensation is subject to future adjustment upon receipt of evidence showing any change in the degree of disability.
2. Your payments may also be affected by any of the following circumstances which you must promptly call to our attention.
  - a. Reentrance into active military or naval service.
  - b. Receipt of armed forces service retirement pay, unless your retirement pay has been reduced because of award of disability compensation.
  - c. Receipt of benefits from the Office of Federal Employees Compensation.
  - d. Receipt of active duty or drill pay as a reservist or member of the Federally recognized National Guard.
3. If you have a disability rating of 30% or more, you must promptly advise us of any change in the status of your dependents.
4. If your award includes special monthly compensation due to the need for aid and attendance, this additional allowance is generally subject to reduction from the first day of the second calendar month of admission to hospitalization, nursing home or domiciliary care at VA expense.
5. Benefits will be reduced upon incarceration in a Federal, State or local penal institution in excess of 60 days for conviction of a felony. The amount not payable may be apportioned to a spouse, dependent children or parents.
6. Monthly payments of your award may be stopped if you fail to furnish evidence as requested, fail to cooperate or submit to a VA examination when requested, or if you furnish VA, or cause to be furnished, any false or fraudulent evidence.
7. Information submitted is subject to verification through computer matching programs with other agencies.
8. The law provides severe penalties, which include fine, imprisonment, or both, for the fraudulent acceptance of any payment to which you are not entitled.

### **IMPORTANT**

Please notify VA *immediately* if there is a change in any condition affecting your right to continued payments. Failure to notify us of these changes immediately may result in a debt that you will have to repay.

## **IMPORTANT INFORMATION ABOUT VOCATIONAL REHABILITATION BENEFITS** (Attachment to VA Form 28-1900)

### **HOW CAN VA'S VOCATIONAL REHABILITATION PROGRAM HELP ME?**

This program can help you *prepare for, get, and keep a suitable job*. If you are seriously disabled to work, we can provide services to help you learn *to live more independently*. These benefits are in addition to any VA compensation or military retirement benefits you are entitled to receive.

### **HOW DO I FIND OUT IF I CAN RECEIVE VOCATIONAL REHABILITATION BENEFITS?**

If VA has granted you a combined service-connected disability rating of at least 10 percent, you may be able to receive vocational rehabilitation benefits. After you apply, a VA counselor will schedule an evaluation with you. This evaluation is private and confidential and requires several hours to complete.

During this evaluation of your need for vocational rehabilitation, you and your counselor will gain a better understanding of your skills, talents, and interests and how they relate to your disabilities and the job market. Your counselor will use the results of this evaluation to decide whether you meet the conditions to receive vocational rehabilitation.

### **WHAT KINDS OF HELP CAN I RECEIVE?**

**Program Planning:** If your counselor finds you need vocational rehabilitation to get or hold a job or to live more independently, both of you will develop a plan of services and assistance. This plan will lead to either employment or increased independence in daily living. Typical job-focused plans may include, among many benefits available:

- developing skills and knowledge to be competitive in the job market
- obtaining the tools and equipment you will need for work
- assisting you to find and adjust to a suitable job

**Training:** When you apply, you may not already have the needed work skills to meet the entry level requirements for a suitable job. In this case, you may need a period of training to develop these skills.

**Job Assistance:** We will help you find employment. For example, you may need help in preparing a resume, in developing interviewing skills, or in planning an effective campaign to get a job.

**Payment of Program Costs and Living Allowances:** We will pay the costs of your rehabilitation services and training. In addition, we will arrange for you to receive the medical, dental, or other special assistance you need to complete your program. If you need training, you will receive a monthly living allowance while you train.

*Continued on Reverse*

## HOW LONG CAN I RECEIVE VOCATIONAL REHABILITATION BENEFITS?

**Months of Training:** Unlike the Montgomery GI Bill, you are not entitled to a fixed number of months of benefits under the Vocational Rehabilitation Program. If your counselor determines you need training to get a suitable job, you may train up to the point you become employable, but no more than 48 months.

**Job Assistance:** You may receive up to 18 months of help in getting and keeping a job.

**Time Limit to Complete a Program:** Generally, you may receive benefits under this program during a 12-year period beginning the date VA notifies you in writing that you are entitled to at least 10 percent compensation. Under certain conditions, this period may begin at an earlier date or may be extended.

## HOW DO I RECEIVE MORE INFORMATION?

**Telephone:** To obtain more information about vocational rehabilitation and how it can help you, you should call 1-800-827-1000 or for the hearing impaired TDD 1-800-829-4833.

**Internet:** If you have access to the internet, you can also obtain program information at the following address:

**<http://www.vba.va.gov/bln/vre/index.htm>**

## HOW DO I APPLY?

You may apply in writing or over the Internet:

**In writing:** Complete VA Form 28-1900, Disabled Veterans Application for Vocational Rehabilitation, and send it to the Vocational Rehabilitation and Employment Division at the nearest VA regional office.

**Over the Internet:** Apply online at the following Internet address:

**<http://vabenefits.vba.va.gov>**

*NOTE: Sending us this form does not bind you in any way. Sending us this form will not affect your compensation, other VA education benefits, or military retirement pay.*



## Department of Veterans Affairs

**APPLICATION FOR VOCATIONAL REHABILITATION FOR CLAIMANTS  
WITH SERVICE-CONNECTED DISABILITIES  
(Chapter 31, Title 38, U.S.C.)**

**PURPOSE OF VOCATIONAL REHABILITATION:** Vocational Rehabilitation and Employment provides services that will assist certain claimants with disabilities in obtaining and maintaining suitable employment. If employment is not an option because of the severity of the claimants' disability conditions, services to assist them to achieve maximum independence in their daily living activities may also be provided.

**IMPORTANT:** To decide if you should fill out this form, please read the information on page 2 of this form.

DO NOT WRITE IN THIS SPACE  
(VA DATE STAMP)

1. FIRST, MIDDLE, LAST NAME OF CLAIMANT

2. SOCIAL SECURITY NUMBER

3. VA FILE NUMBER (If different from Item 2)

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4. DATE OF BIRTH (MM-DD-YYYY)

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5. MAILING ADDRESS (No. and street or rural route, City, State and ZIP Code, **OR** write "None," if no mailing address)

6. MAIN TELEPHONE NUMBER (Include Area Code, or write "None" if no available telephone number)

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7. E-MAIL ADDRESS OF CLAIMANT

8. CELL PHONE NUMBER (Include Area Code or write "None" if no available cell phone number.)

9. IF YOU ARE MOVING WITHIN THE **NEXT 30 DAYS**, PROVIDE YOUR NEW ADDRESS BELOW:

10. NUMBER OF YEARS OF EDUCATION

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**I HEREBY CERTIFY THAT** the information I have entered on this form is true and complete to the best of my knowledge and belief. I realize that making willful false statements concerning a material fact in a claim of vocational rehabilitation benefits is a punishable offense that may result in a fine or imprisonment, or both. (*Reference: 38 U.S.C. 3802(a)*)

11A. SIGNATURE OF CLAIMANT

\_\_\_\_\_

11B. DATE SIGNED (MM-DD-YYYY)

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# INSTRUCTIONS FOR APPLYING FOR VOCATIONAL REHABILITATION SERVICES

## TO APPLY OR RECEIVE INFORMATION AND ASSISTANCE:

- To apply, you may submit the completed application to the nearest VA office or apply online at [www.va.gov](http://www.va.gov).
- You may obtain information and assistance from any VBA office or online at <http://www.vba.va.gov/bln/vre/index.htm>.
- Local representative of claimant's service organizations and the American Red Cross also have information and forms available.
- Mailing Address: You will not be denied benefits on the basis that you do not have a mailing address under the provisions of 38 U.S.C. 5126. If you do not have a mailing address, please write "none" in response to question 5. However, you must provide an alternative means of contact if you are unable to provide an address or telephone number, so we can schedule your initial evaluation appointment.

**EVALUATION:** A combined and compensable service-connected disability rating of 10 percent or more by VA is required for you to apply for vocational rehabilitation services. Once your application is received, we will provide you a comprehensive evaluation, where a VA Vocational Rehabilitation Counselor (VRC) will work with you to determine:

1. If you meet the requirements for entitlement Chapter 31 benefits.
2. If you are within the time limit for receiving this benefit, which is generally 12 years from the date VA notified you of your compensation rating for at least a 10% service-connected disability.

**PLANNING AND COUNSELING:** After a VRC determines that you meet the entitlement requirements, your assigned VRC will assess your vocational rehabilitation and employment needs with you. Subsequently, your VRC will develop a plan of services and assistance with you to help you reach your employment goal. Counseling will be available throughout your program to help you when problems arise.

**REHABILITATION SERVICES:** Vocational rehabilitation programs do not always require training. You may only need employment services to help you get a suitable job. If your VRC determines that you need training to reach your vocational goal, he or she will also determine the number of months needed to complete your training. You may train in a vocational school, a specialized rehabilitation facility, an apprenticeship program, other on-job training position, a college, or a university.

If training is necessary, VA will provide medical and dental care treatment, assistance to get and keep suitable employment, and other services you may need. If employment is not currently feasible for you, VA may provide services and assistance to improve your ability to live independently.

**SUPPORT:** VA may pay for tuition, fees, books, equipment, tools, or other supplies you need to succeed in your rehabilitation program. During your training, you may qualify for a monthly subsistence allowance to help you with your living expenses. Payment for subsistence allowance depends on your type of training, rate of attendance, and number of dependents. You will receive this allowance in addition to any VA compensation or military retired pay that you may be receiving.

**PRIVACY ACT:** 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 38, Code of Federal Regulations 1.576 for routine uses (i.e. VA needs the information this form requests to help determine your eligibility to the benefit) as 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. Your response is required to obtain benefits (5 CFR 1320.8(b)(3)(iv)). Giving us your Social Security Number (SSN) information is mandatory. Applicants are required to provide their SSN under Title 38 USC 5101 (c) (1). The VA will not deny benefits for any individual 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.

**RESPONDENT BURDEN:** We need this information in order for claimants with compensable service-connected disabilities to apply for vocational rehabilitation under title 38, U.S.C. chapter 31. We estimate that you will need an average of 15 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](http://www.reginfo.gov/public/do/PRAMain).



## YOUR RIGHTS TO SEEK FURTHER REVIEW OF OUR DECISION

After careful and compassionate consideration of the matter(s) before VA, we have reached a decision. This document outlines your rights to seek further review of our decision on any issue with which you are dissatisfied or disagree. This document does not apply to decisions issued by the Board of Veterans' Appeals (Board), which have a separate rights notice. For **most VA benefits**, you must elect one of the review options discussed below within **one year** of the date on your decision notice letter to preserve your right to receive the maximum possible benefit. **Consult your decision notice letter for specific filing time limits.** If you are a party to a **contested claim**, you must file an appeal to the Board within **60 days** of the date on your decision notice letter in order to seek review. All parties to a contested claim will have received notice of the decision. See the section below regarding filing an appeal to the Board. You may select different review options for each issue decided by VA. The options are as follows:

Review Options	VA Benefit Claim	Parties to a Contested Claim	Insurance Claim	Fiduciary Decision
Supplemental Claim	✓	Not Available	✓	Not Available
Higher-Level Review	✓	Not Available	✓	✓
Appeal to the Board	✓	✓	✓	✓
U.S. District Court Complaint	Not Available	Not Available	✓	Not Available

*VA benefits include Compensation, Pension/Survivors Benefits, Education, Loan Guaranty, Vocational Rehabilitation & Employment, Veterans Health Administration, or National Cemetery Administration.*

You **MAY NOT** concurrently file for review of any single issue using more than one option at a time. The following is an overview of each option to help you select the most appropriate course of action. You can also find detailed information on all of the available review options and apply at [www.vets.gov](http://www.vets.gov).

### Descriptions of Review Options

Supplemental Claim	Higher-Level Review	Appeal to the Board	U. S. District Court
<p><b>Use this option when you have additional evidence that is NEW AND RELEVANT</b> to support granting the benefit(s) sought or you can identify existing relevant records that you would like VA to obtain. (<b>NEW evidence</b> means information not previously submitted to VA, and <b>RELEVANT evidence</b> means information that tends to prove or disprove a matter at issue.)</p> <p>VA will assist you in gathering new and relevant evidence to support a Supplemental Claim.</p>	<p><b>Use this option when you have NO additional evidence</b> to submit, or that you would like VA to obtain, in support of a previously decided issue.</p> <p>You <b>may not</b> request a Higher-Level Review of a Higher-Level Review decision or a Board decision.</p> <p>The designated reviewer will conduct a brand new review of the issue(s) based on the evidence that was before VA at the time of the prior decision(s). An <b>informal conference</b> is available to you and/or your representative, if you choose to exercise this option. The purpose of this telephonic contact is to point out specific errors in the case. VA will not consider any new evidence.</p>	<p><b>Use this option to appeal to the Board for consideration by a Veterans Law Judge.</b> You may appeal to the Board from a Supplemental Claim decision or a Higher-Level Review decision.</p> <p>When appealing to the Board, you may request a hearing with a Veterans Law Judge and/or the opportunity to submit additional evidence. You may also choose for the Board to review your claim without any additional evidence or a hearing, which may result in a faster decision. By selecting one of these options, the Board will place your appeal onto a list for consideration in the order it was received.</p> <p>The Board does not have a duty to assist you in obtaining additional evidence, but may review whether VA properly fulfilled its duty to assist you in the original claim process and may remand your claim on that basis.</p>	<p><b>(INSURANCE CLAIMS ONLY)</b></p> <p>You may challenge VA's decision on your insurance application or claim by filing a complaint with a United States district court in the jurisdiction in which you reside within six years from when the right of action first accrues.</p> <p>To find a district court, use the map at: <a href="http://www.uscourts.gov/court_locator.aspx">www.uscourts.gov/court_locator.aspx</a>.</p>

## How do I request review by VA of my decision?

To select a review option, you must submit the appropriate form to the appropriate office for review.

For a **Supplemental Claim**, consult your decision notice letter for the required forms and ways to submit the request.

For a **Higher-Level Review**, complete **VA Form 20-0996, Decision Review Request: Higher-Level Review** (available at [www.va.gov/vaforms/](http://www.va.gov/vaforms/)), and consult your decision notice letter for the required ways to submit the request.

To **Appeal to the Board**, complete **VA Form 10182 - Decision Review Request: Board Appeal (Notice of Disagreement)** (available at [www.va.gov/vaforms/](http://www.va.gov/vaforms/)), and send the form to:

**Board of Veterans' Appeals**  
**P.O. Box 27063**  
**Washington, DC 20038**  
**Fax: 844-678-8979**

## Can someone help me with my request for review?

Yes, VA recognizes and accredits attorneys, claims agents, and Veterans Service Organizations (VSOs) representatives to assist VA claimants with their benefits claims. VSOs and their representatives are not permitted to charge fees or accept gifts for their services. Only VA-accredited attorneys and claims agents may charge you fees for assisting in a claim for VA benefits, and only after VA has issued an initial decision on the claim and the attorney or claims agent has complied with the power-of-attorney and the fee agreement requirements. For more information on the types of representatives available, see [www.va.gov/ogc/accreditation.asp](http://www.va.gov/ogc/accreditation.asp).

If you have not already selected a representative, or if you want to change your representative, a searchable database of VA-recognized VSOs and VA-accredited attorneys, claims agents, and VSO representatives is available at [www.va.gov/ogc/apps/accreditation/index.asp](http://www.va.gov/ogc/apps/accreditation/index.asp). Contact your local VA office for assistance with appointing a representative or visit [www.ebenefits.va.gov](http://www.ebenefits.va.gov).

## What happens if I do not submit my request for review on time?

If you do not request a review option within the required time limit, you may only seek review through the following options:

- File a request for revision of the decision based on a clear and unmistakable error in the decision;
- File a Supplemental Claim along with new and relevant evidence to support your issue(s). Where a Supplemental Claim is filed after the time limit to seek review of a decision, the effective date for any resulting award of benefits generally will be tied to the date that VA receives the Supplemental Claim.

For more information on all the available review options visit: [www.va.gov](http://www.va.gov), or [www.vets.gov](http://www.vets.gov) or contact us at 1-800-827-1000.

**NOTE:** This form supersedes VA Forms 4107, 4107C, 4107VHA, 4107VRE, 4107INS for VA decisions after the publication in the Federal Register of the applicability date on which the *Veterans Appeals Improvement and Modernization Act of 2017* goes into effect.

### Where to Send Your Written Correspondence

The time it takes your response to reach VA affects how long it takes us to process your claim. We recommend responding electronically whenever possible. Only claimants or representatives can upload responses electronically currently. If you are not a claimant or representative, we recommend faxing so VA can receive your responses without wasting the time and money required to mail your documents.

The **fastest** way to respond to VA is to upload your response electronically through VA.gov.

Visit <https://www.va.gov> and under **Disability** click “Upload evidence to support your claim”

VA.gov provides one easy location to upload correspondence as well as learn about filing claims, check claim status, find out how much money you have left to pay for school or training, or refill prescriptions and communicate with your health care team among many items.

If you need to fax or mail your correspondence, identify the benefit type; then, use the corresponding fax number or mailing address below:

#### Faxing:

<b><u>Compensation Claims</u></b> Toll Free: 1-844-531-7818	<b><u>Pension &amp; Survivors Benefit Claims</u></b> Toll Free: 1-844-655-1604
<b><u>Board of Veterans’ Appeals</u></b> Toll Free: 1-844-678-8979	<b><u>Fiduciary</u></b> Toll Free: 1-888-581-6826

#### Mailing Addresses:

<b><u>Compensation Claims</u></b> Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547-4444	<b><u>Pension &amp; Survivors Benefit Claims</u></b> Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547-5365
<b><u>Board of Veterans’ Appeals</u></b> Department of Veterans Affairs Board of Veterans’ Appeals P.O. Box 27063 Washington, DC 20038	<b><u>Fiduciary</u></b> Department of Veterans Affairs Fiduciary Intake Center P.O. Box 5211 Janesville, WI 53547-5211

These addresses serve **all United States and foreign locations.**



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit [www.veteranscrisisline.net](http://www.veteranscrisisline.net)

# EXHIBIT

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## DEPARTMENT OF VETERANS AFFAIRS

April 28, 2020

MARK SAWYER  
21468 CHIMAYO RD  
APPLE VALLEY, CA 92308

In reply, refer to:  
344/VSCLBS  
File Number: [REDACTED]  
MARK SAWYER

Dear Mr. SAWYER:

### Summary of the Case

You and your appointed attorney or agent properly filed a valid direct-pay fee agreement with the Department of Veterans Affairs (VA), requesting direct payment of 20% of your award of past-due benefits to the attorney/agent.

In a Rating Decision dated April 24, 2020, benefits were awarded for the following issues: Evaluation of post-traumatic stress disorder with anxiety and depression, which is currently 50 percent disabling, is increased to 70 percent effective April 28, 2015, basic eligibility to Dependents' Educational Assistance is established from April 28, 2015, and entitlement to individual unemployability is granted effective April 28, 2015. The amount of past-due benefits, which is computed from the effective date of the award through the date of the decision, is \$116,809.71. The amount withheld for fees is \$23,361.94, which is 20% of past due benefits.

### Requirements for Direct Payment of Fees

On or after February 19, 2019, agents or attorneys may generally charge for representation provided to claimants or appellants pursuing certain reviews of decisions by agencies of original jurisdiction. These reviews may include supplemental claims, higher-level reviews, notices of disagreement (NODs), or clear and unmistakable errors. For the provisions relating to the payment of fees, see 38 U.S.C. 5904 and 38 CFR 14.636.

Before February 19, 2019, fees were only payable for representation after an NOD was filed with respect to a decision.

For NODs filed on or before June 19, 2007, agents and attorneys could charge only for services provided after both of the following additional conditions have been met:

- The Board of Veterans' Appeals (BVA) promulgated a final decision, and
- The attorney or agent was retained not later than one year following the date of that BVA decision. This condition will be met with respect to all successor attorneys or agents

File Number: [REDACTED]  
SAWYER, MARK

acting in the continuous prosecution of the same matter if the predecessor was hired within the required timeframe. However, this limitation does not apply if the agent or attorney was retained while the case was pending before a court.

If a fee agreement specifies that fees are to be paid directly by VA to an agent or attorney from past due benefits, the following requirements must be met for direct payment of fees:

- the total fee payable cannot exceed 20 percent of past-due benefits.
- the fee must be contingent on a favorable outcome, and
- the award of past-due benefits must result in a cash payment to the claimant.

## **What We Decided and Why**

All of the requirements for direct payment of fees have been met. As a result, VA will pay the attorney or agent fees of \$23,261.94. VA will deduct an assessment of \$100.00 from the fees, per 38 U.S.C 5904(a)(6).

## **What You Should Do If You Disagree With Our Decision**

If you disagree with this contested claim decision, you may file an NOD with BVA within 60 days to preserve your earliest effective benefit date.

Please see the enclosed VA Form 20-0998, *Your Rights To Seek Further Review Of Our Decision*. You may obtain any of the required applications by downloading them from [www.va.gov/vaforms](http://www.va.gov/vaforms) or by contacting us. More information about the disagreement process at [www.va.gov/decision-reviews](http://www.va.gov/decision-reviews). If you would like to obtain or access evidence used in making this decision, please contact us as noted below. Some evidence may be obtained by signing in at [www.va.gov](http://www.va.gov).

## **What is eBenefits?**

eBenefits provides electronic resources in a self-service environment to Service members, 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!

File Number: [REDACTED]  
SAWYER, MARK

Enrolling in eBenefits is easy. Just visit [www.eBenefits.va.gov](http://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.

<b>If you</b>	<b>Here is what to do.</b>
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 <a href="https://iris.custhelp.va.gov">https://iris.custhelp.va.gov</a> .
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 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 sent a copy of this letter to your representative, MARK R LIPPMAN, whom you can also contact if you have questions or need assistance.

Sincerely yours,

**Regional Office Director**

Enclosures: Where to Send Written Correspondence  
VA Form 20-0998

cc: MARK R LIPPMAN  
13446 POWAY RD

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File Number: [REDACTED]  
SAWYER, MARK

SUITE 338  
POWAY, CA 92064