

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

| | | |
|--------------------------------|---|-----------------------|
| DONALD A. DALLMAN, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 18-4075 |
| |) | |
| ROBERT L. WILKIE, |) | |
| Secretary of Veterans Affairs, |) | |
| |) | |
| Appellee. |) | |

SOLZE V. SHINSEKI NOTICE TO THE COURT

Pursuant to this Court’s holding in *Solze v. Shinseki*, “In all cases before this Court, the parties are under a duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision.” 26 Vet. App. 299, 301 (2013). The Secretary of Veterans Affairs (VA), Robert L. Wilkie, files this Notice in accordance with such directive.

The underlying appeal arises from an April 4, 2018, Board of Veterans’ Appeals (Board) decision that reopened and remanded a claim of entitlement to service connection for right thigh hematoma residuals. Before the Court, Appellant argued the Court has jurisdiction to hear argument as to this claim, even though it was remanded to the Agency of Original Jurisdiction (AOJ), and service connection was subsequently awarded by a rating decision issued on January 29, 2019. See Appellant’s Brief (App. Br.) at 13-14; Appendix. The Secretary argued, amongst other arguments related to this claim, that the Court did not have jurisdiction. See Secretary’s Brief (Sec. Br.) at 17-20.

In a December 13, 2019, Memorandum Decision, the Court held “that it lacks jurisdiction to hear the appellant’s right thigh hematoma residuals argument” because the Board’s decision remanded the issue. (Mem. Dec. at 1,

9). The Court advised that “any disagreement the appellant has with the effective date assigned can be appealed from [the January 29, 2019 rating] decision to the Board and subsequently to this Court.” *Id.* at 9. Appellant filed a Motion for Reconsideration in January 2020.

Since the issuance of the January 29, 2019, rating decision, and the December 13, 2019, Memorandum Decision, Appellant filed multiple Notices of Disagreement (NOD) with the effective date assigned for the award of service connection for right thigh hematoma residuals. Exhibit A. Additionally, on April 9, 2020, a Statement of the Case (SOC) was issued, maintaining the assigned effective date. Exhibit B.

If Appellant seeks to continue his appeal to the Board, a substantive appeal or VA Form 9 is required to be filed at the AOJ by June 8, 2020. If a substantive appeal is filed, then both the Court and Board will have jurisdiction over the claim. This Court has explicitly rejected the concept of the Court and the Board maintaining concurrent jurisdiction over a claim. See *Cerullo v. Derwinski*, 1 Vet.App. 195, 197 (1991) (noting that “concurrent or dual plenary jurisdiction is impermissible”).

WHEREFORE, the Secretary submits this information for the Court’s review and any action deemed appropriate.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Edward V. Cassidy, Jr.
EDWARD V. CASSIDY, JR.
Deputy Chief Counsel

/s/ Megan C. Kral

MEGAN C. KRAL

Deputy Chief Counsel

Office of the General Counsel (027B)

U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

(202) 632-6908

Counsel for the Secretary

Exhibit A

USE THIS COVER SHEET TO SEND CLAIM MATERIALS TO THE VA CLAIMS INTAKE CENTER
****** EFFECTIVE JANUARY 2017 – PLEASE DO NOT USE PREVIOUS VERSIONS******



Centralized Intake Coversheet

To: Department of Veterans Affairs Claims Intake Center

PO BOX 4444, Janesville, WI 53547-4444

Fax: 844-531-7818

- **Claimant Last Name:** DALLMAN
- **Claimant First Name:** Donald
- **Claimant C-File #:** [REDACTED]
- **Claimant Zip Code:** 28214
- **VSO Contact Email:**
- **Fax Date (MM/DD/YYYY – if applicable):** February 4, 2020
- **# of Pages to Include Coversheet:** 9

- **Emergent Claim Categories (if applicable)**

- | | | |
|--|--|---|
| <input type="checkbox"/> "TERM" Terminally ill claimants | <input type="checkbox"/> "FPOW" Former prisoners of war and their survivors | <input type="checkbox"/> "AGE" Greater than 85 years of age |
| <input type="checkbox"/> "SERW" Veterans seriously injured in service but not in receipt of benefits | <input type="checkbox"/> "HOME" Homeless Veterans | <input type="checkbox"/> "HONR" Awarded the Medal of Honor |
| <input type="checkbox"/> "FINH" Claimants suffering from extreme financial hardship | <input type="checkbox"/> "SUIC" Suicidal claimants | <input type="checkbox"/> Visually Impaired Veteran |
| | <input type="checkbox"/> "ALS" Diagnose with Amyotrophic Lateral Sclerosis (ALS) or Lou Gehrig's Disease | |

- **List Forms Included:**

- | | |
|--|---|
| <input type="checkbox"/> 00381 VA 21-0781 Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) | <input type="checkbox"/> 00142 VA 21-674 Request for Approval of School Attendance |
| <input type="checkbox"/> 00295 VA 21-22 Appointment of Veterans Serv. Org. | <input type="checkbox"/> 00148 VA 21-686c Declaration of Status of Dependents |
| <input type="checkbox"/> 00111 VA 21-2680 Request for Aid and Attendance / Housebound Status | <input type="checkbox"/> 00158 VA 21-8940 Veteran's Application for Increased Compensation Based of Unemployability |
| <input type="checkbox"/> 00115 VA 21-4138 Statement In Support of Claim | <input type="checkbox"/> 00173 VA 572 Request for Change of Address / Cancellation |
| <input type="checkbox"/> 00386 VA 21-4140-1 Employment Questionnaire | <input type="checkbox"/> 00420 DD 214 Certified Original - Certificate of Release |
| <input type="checkbox"/> 00131 VA 21-526 Veterans Application for Compensation | <input type="checkbox"/> 00025 Birth Certificate |
| <input type="checkbox"/> 00532 VA 21-526b, Veteran Supplemental Claim | <input type="checkbox"/> 00091 Divorce Decree |
| <input type="checkbox"/> 00533 VA 21-526EZ, Fully Developed Claim (Compensation) | <input type="checkbox"/> 00061 Marriage Certificate / License |

- Other:** Notice of Disagreement to 02/07/2019 Rating Decision, with attachments.
 By certified mail no. 7019 1120 0001 4453 1580

IMPORTANT: Verify on Fax Confirmation Sheet the Claims Evidence is sent to
844-531-7818

Disclaimer: VA Directive 6609, "Mailing of Sensitive Personal Information," dated May 20, 2011 states that access to Veterans' records is limited to authorized persons only. Information may not be disclosed from this file unless permitted by all applicable legal authorities, enforced by 38 C.F.R. §§ 1.460 – 1.599 and 45 C.F.R. Parts 160 and 164. The Privacy Act contains provisions for criminal penalties for knowingly and willfully disclosing information from the Veterans' file unless properly authorized to do so.

VETERAN'S SSN [REDACTED]

SECTION 5 - SPECIFIC ISSUES OF DISAGREEMENT

11. NOTIFICATION/DECISION LETTER DATE

02/07/2019

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

| A. Specific Issue of Disagreement | B. Area of Disagreement | C. Percentage (%) Evaluation Sought (If known) |
|-----------------------------------|---|--|
| right thigh hematoma | <input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input checked="" type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |

13A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

The veteran advises that his right thigh hematoma, currently evaluated at 0 percent, is at times painful. He reports that if the area hits anything, such as a table, he feels a sharp pain. This occurs about 3-4 times a week. As such, his disability warrants a rating of at least 10 percent under DC 7802. The February 2019 rating decision alleges that Mr. Dallman's claim was received on December 22, 2010; however, the veteran initially filed his claim on April 20, 1999. Service connection was denied in a December 30, 1999, rating decision and Mr. Dallman filed an informal NOD on January 3, 2000 (see Attachment A). The VA did not act on this appeal, nor issue a decision until the veteran filed a new claim in December 2010. Nevertheless, his claim has been pending since April 1999 and the grant for service connection for the right thigh hematoma is warranted no later than April 20, 1999.

13B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

YES NO (If so, how many?)

SECTION 6 - CERTIFICATION AND SIGNATURE

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

14A. SIGNATURE (Sign in ink)

[Handwritten Signature]

14B. DATE SIGNED

Feb 4, 2020

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.



DEPARTMENT OF VETERANS AFFAIRS

February 25, 2020

DONALD DALLMAN
4004 LA CREMA DR
CHARLOTTE, NC 28214

In reply, refer to:
377/RBA
File Number: [REDACTED]
DONALD DALLMAN

Dear Mr. DALLMAN:

We received your *VA Form 21-0958, Notice of Disagreement* on February 04, 2020 however, the form was incomplete. Your Notice of Disagreement (NOD) was incomplete because:

- **You did not sign the VA Form 21-0958, Notice of Disagreement.**

A review of the last VA Form 21-22a, Appointment of Individual as Claimant's Representative shows the power of attorney (POA) was limited to the issue of service connection for the right thigh hematoma. The NOD is for evaluation and effective date for the right thigh hematoma. There is no authority for the POA to represent the Veteran for the evaluation and effective date. The NOD is considered incomplete. You will have 60 days to sign the incomplete NOD as we cannot accept the POA's signature.

What Should You Do?

In order for us to begin processing your Notice of Disagreement, you must complete, sign, and return VA Form 21-0958, *Notice of Disagreement*, within one year of the date of the decision notice we sent you on the decision(s) you are intending to appeal, or **within 60 days from the date of this notice, whichever is later.**

We will take no further action until we receive your completed VA Form 21-0958. We've attached the incomplete VA Form 21-0958 that you previously submitted. Please complete the form and send it to the address listed in the *Where to Send Written Correspondence* enclosure.

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

Page 2

File Number: [REDACTED]
DALLMAN, DONALD

- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

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

If You Have Questions or Need Assistance

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

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

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

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

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

Sincerely yours,

Regional Office Director

Page 3

File Number: [REDACTED]
DALLMAN, DONALD

Enclosures: Where to Send Written Correspondence
VA Form 21-0958

USE THIS COVER SHEET TO SEND CLAIM MATERIALS TO THE VA CLAIMS INTAKE CENTER
***** EFFECTIVE JANUARY 2017 - PLEASE DO NOT USE PREVIOUS VERSIONS*****



Centralized Intake Coversheet

To: Department of Veterans Affairs Claims Intake Center
 PO BOX 4444, Janesville, WI 53547-4444
 Fax: 844-531-7818

- Claimant Last Name: DALLMAN
- Claimant First Name: Donald
- Claimant C-File #: CS [REDACTED]
- Claimant Zip Code: 28214
- VSO Contact Email: _____
- Fax Date (MM/DD/YYYY - if applicable): 03/20/2020
- # of Pages to Include Coversheet: 8

- Emergent Claim Categories (if applicable)

- | | | |
|--|--|---|
| <input type="checkbox"/> "TERM" Terminally ill claimants | <input type="checkbox"/> "FPOW" Former prisoners of war and their survivors | <input type="checkbox"/> "AGE" Greater than 85 years of age |
| <input type="checkbox"/> "SERV" Veterans seriously injured in service but not in receipt of benefits | <input type="checkbox"/> "HOME" Homeless Veterans | <input type="checkbox"/> "HONR" Awarded the Medal of Honor |
| <input type="checkbox"/> "FINH" Claimants suffering from extreme financial hardship | <input type="checkbox"/> "SUIC" Suicidal claimants | <input type="checkbox"/> Visually Impaired Veteran |
| | <input type="checkbox"/> "ALS" Diagnose with Amyotrophic Lateral Sclerosis (ALS) or Lou Gehrig's Disease | |

- List Forms Included:

- | | |
|--|---|
| <input type="checkbox"/> 00381 VA 21-0781 Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) | <input type="checkbox"/> 00142 VA 21-674 Request for Approval of School Attendance |
| <input type="checkbox"/> 00295 VA 21-22 Appointment of Veterans Serv. Org. | <input type="checkbox"/> 00148 VA 21-686c Declaration of Status of Dependents |
| <input type="checkbox"/> 00111 VA 21-2680 Request for Aid and Attendance / Housebound Status | <input type="checkbox"/> 00158 VA 21-8940 Veteran's Application for Increased Compensation Based of Unemployability |
| <input type="checkbox"/> 00115 VA 21-4138 Statement In Support of Claim | <input type="checkbox"/> 00173 VA 572 Request for Change of Address / Cancellation |
| <input type="checkbox"/> 00386 VA 21-4140-1 Employment Questionnaire | <input type="checkbox"/> 00420 DD 214 Certified Original - Certificate of Release |
| <input type="checkbox"/> 00131 VA 21-526 Veterans Application for Compensation | <input type="checkbox"/> 00025 Birth Certificate |
| <input type="checkbox"/> 00532 VA 21-526b, Veteran Supplemental Claim | <input type="checkbox"/> 00091 Divorce Decree |
| <input type="checkbox"/> 00533 VA 21-526EZ, Fully Developed Claim (Compensation) | <input type="checkbox"/> 00061 Marriage Certificate / License |

- Other: Response to 2/25/2020 VA letter with NOD (21-0958) and updated Legal Representation Agreement and 21-22a. Also sent via USPS certified mail: 7019 1120 0001 4453 3164.

IMPORTANT: Verify on Fax Confirmation Sheet the Claims Evidence is sent to
844-531-7818

Disclaimer: VA Directive 6609, "Mailing of Sensitive Personal Information," dated May 20, 2011 states that access to Veterans' records is limited to authorized persons only. Information may not be disclosed from this file unless permitted by all applicable legal authorities, enforced by 38 C.F.R. §§ 1.460 - 1.599 and 45 C.F.R. Parts 160 and 164. The Privacy Act contains provisions for criminal penalties for knowingly and willfully disclosing information from the Veterans' file unless properly authorized to do so.

LIEBERMAN & MARK, PLLC

ATTORNEYS AT LAW

818 Connecticut Avenue, N. W., Suite 502
Washington, D.C. 20006

Telephone No.: (202) 393-3020

Fax Number: (202) 499-5680

Toll Free Number: 1-866-HELP-VET

March 19, 2020

KATHY A. LIEBERMAN
Admitted in VA & DC

JEANY MARK
Admitted in MD & DC

VIA FACSIMILE: 1-844-531-7818

Department of Veterans Affairs

Evidence Intake Center

P.O. Box 4444

Janesville, WI 53547

Re: 377/RBA
CSS [REDACTED]
DALLMAN, Donald

To Whom It May Concern:

I am writing in response to the February 25, 2020, VA letter, which informed Mr. Dallman that his VA Form 21-0958, Notice of Disagreement (NOD) was incomplete. I do not concede that the original NOD was incomplete, or that our original representation agreement did not encompass the instant appeal. Nonetheless, I have enclosed a NOD signed by the veteran.

Also enclosed is an updated representation agreement and VA Form 21-22a, which encompasses all VA disability benefits for: (1) coronary artery disease; (2) painful scars; (3) surgical scars; (4) presumed embolization/migration of a brachytherapy seed to the left lower lung; (5) radiation proctitis with fecal urgency, GERD with Barrett's esophagus; (6) right total knee replacement; (7) a left knee condition; (8) residuals adenocarcinoma of the prostate; (9) erectile dysfunction; (10) left hip degenerative joint disease; (11) right hip degenerative joint disease; (12) resolved right thigh hematoma; (13) a left heel spur; (14) a right heel condition; (15) a low back condition; (16) special monthly compensation based on housebound criteria; and (17) Individual Unemployability.

Thank you for your attention to this matter.

Very truly yours,


Jeany Mark

JCM/kt

Enclosures

cc: Donald Dallman

Department of Veterans Affairs

(VA DATE STAMP)

NOTICE OF DISAGREEMENT

INSTRUCTIONS: A claimant or his or her duly appointed representative may file notice expressing their dissatisfaction or disagreement with an adjudicative determination by the VA regional office. A desire to contest the result will constitute a notice of disagreement (NOD). While special wording is not required, the NOD must be in terms that can be reasonably construed as disagreement with the determination and a desire for appellate review. (Authority 38 U.S.C. 7105) To file a valid NOD, there is a time limit of one year from the date VA mailed the notification of the decision to the claimant. For contested claims, including claims of apportionment, the time limit is 60 days from the date VA mailed the notification of the decision to the claimant.

NOTE: You can either complete the form online or by hand. Please print information using blue or black ink, neatly, and legibly to help process the form.

SECTION I - VETERAN'S IDENTIFICATION INFORMATION

1. VETERAN'S NAME (First, Middle Initial, Last)

D O N A L D A D A I L M A N

2. VETERAN'S SOCIAL SECURITY NUMBER

[Redacted Social Security Number]

3. VA FILE NUMBER

[Redacted VA File Number]

4. VETERAN'S DATE OF BIRTH

Month: 07, Day: 06, Year: 1946

SECTION II - CLAIMANT'S INFORMATION (If other than veteran)

5. CLAIMANT'S NAME (First, Middle Initial, Last)

[Redacted Claimant Name]

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

No. & Street: 4004 L a C r e m a D r i v e

Apt./Unit Number: [Redacted] City: C h a r l o t t e

State/Province: N C Country: V A ZIP Code/Postal Code: 28214

7. TELEPHONE NUMBER (Include Area Code)

(954) 260-8012

8. E-MAIL ADDRESS (Optional)

SECTION III - TELEPHONE CONTACT

9. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

YES NO

(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

8:00 a.m. - 10:00 a.m. 10:00 a.m. - 12:30 p.m. 12:30 p.m. - 2:00 p.m. 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time:

SECTION IV - APPEAL PROCESS ELECTION

10. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See Specific Instructions, Page 2, Section IV for additional information)

Decision Review Officer (DRO) Review Process

Traditional Appellate Review Process

VETERAN'S SSN [REDACTED]

SECTION V - SPECIFIC ISSUES OF DISAGREEMENT

11. NOTIFICATION/DECISION LETTER DATE

02/07/2019

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

| A. Specific Issue of Disagreement | B. Area of Disagreement | C. Percentage (%) Evaluation Sought (If known) |
|-----------------------------------|---|--|
| right thigh hematoma | <input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input checked="" type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |
| | <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify below) | |

13A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

13B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

YES NO (If so, how many?)

SECTION VI - CERTIFICATION AND SIGNATURE

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

14A. SIGNATURE (Sign in ink)

x 

14B. DATE SIGNED

x 3/14/2020

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.

Exhibit B



DEPARTMENT OF VETERANS AFFAIRS

April 10, 2020

DONALD A DALLMAN
4004 LA CREMA DR
CHARLOTTE NC 28214

In reply, refer to:
318/Appeals/CDW
File Number: [REDACTED]
Donald Dallman

Dear DONALD DALLMAN:

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



File Number: [REDACTED]
DALLMAN, DONALD A

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 https://iris.custhelp.com/ . |
| Write | VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate |



File Number: [REDACTED]
DALLMAN, DONALD A

| 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 JEANY MARK because you appointed them as your representative. If you have questions or need assistance, you can also contact them.

Thank you for your service,

Regional Office Director

Regional Office Director

Enclosure(s): VA Form 20-0998
Where to Send Written Correspondence
VA Form 9
SOC-SSOC Opt-In Fact Sheet

cc: JEANY MARK
818 CONNECTICUT AVE NW, STE 502
WASHINGTON, DC 20006

On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act), creating a modernized review system for claims and appeals. The modernized appeals system took effect on February 19, 2019 and provides streamlined choices for seeking review of your VA claim decision. You are eligible to opt-in to this new process based on your receipt of this Statement of the Case or Supplemental Statement of the Case. If you continue to disagree with our decision, please refer to the enclosed fact sheet for a more thorough explanation



File Number: [REDACTED]
DALLMAN, DONALD A

of your decision review options and submission deadlines should you decide to opt-in. If you wish to remain in the legacy process, please follow the instructions above regarding actions required to request further review of your appeal.



| | | | |
|-------------------------------------|---------------------------------------|----------------------------------|-----------------------------|
| Statement of the Case | Department of Veterans Affairs | | Page 1 04/09/2020 |
| NAME OF VETERAN Donald A Dallman | VA FILE NUMBER [REDACTED] | SOCIAL SECURITY NR [REDACTED] | POA JEANY MARK |

ISSUE:

1. Entitlement to an initial evaluation in excess of 0 percent for resolved right thigh hematoma.
2. Entitlement to an effective date prior to December 22, 2010 for the grant of service connection for resolved right thigh hematoma.

EVIDENCE:

- Board of Veterans' Appeal decision April 4, 2018 and all evidence contained therein
- Board of Veterans' Appeal decision January 17, 2019 and all evidence contained therein
- VA examination conducted by VAMC Salisbury on January 23, 2019
- Copy of your statement dated January 3, 2000, received February 4, 2020
- Treatment records from VAMC Salisbury from September 17, 2018 to January 30, 2020

ADJUDICATIVE ACTIONS:

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| 01/17/2019 | Board of Veterans' Appeals decision granted service connection for right thigh hematoma. |
| 01/29/2019 | Claim considered based on all the evidence of record. |
| 02/07/2019 | Claimant notified of decision. |
| 02/04/2020 | Notice of Disagreement received. |
| 02/04/2020 | Traditional appeal process election letter received from appellant. |
| 04/09/2020 | Claim considered based on all the evidence of record. |

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.

§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



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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 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))

§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.



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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))

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.

§3.159 (05/08) - 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 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.



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(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 (hereafter in this paragraph referred to as the notice). In the notice 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. The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. If the claimant has not responded to the notice 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 notice, 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))

(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:

- (i) Upon receipt of a Notice of Disagreement; or
- (ii) When, as a matter of law, entitlement to the benefit claimed cannot be established.

(Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

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



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(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.



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(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 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.



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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))

(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))

(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations.

(Authority: 38 U.S.C. 5103A(g))

§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.



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(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.

(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



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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.

(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



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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 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.)

§3.321 - General rating considerations.

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

(b) Exceptional cases:

(1) Compensation. Ratings shall be based as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Secretary shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice, therefore, to the exceptional case where the schedular evaluations are found to be inadequate, the Chief Benefits Director or the Director, Compensation and Pension Service, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these



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exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.

§3.400 - General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (Authority: 38 U.S.C. 5110(a))

(2) Disability compensation:

(i) Direct service connection (§3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(o) Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-71, 89 Stat. 395; §§3.109, 3.156, 3.157):

(1) General. Except as provided in paragraph (o)(2) of this section and §3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) Disability compensation. Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.

§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



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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.

§4.2 - 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 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.

§4.7 - 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.

§4.118 (7805) (effective 10-08) - Schedule of ratings - skin



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7805 Scars, other (including linear scars) and other effects of scars evaluated under diagnostic codes 7800, 7801, 7802, and 7804:
Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800-04 under an appropriate diagnostic code.

§4.118 (7802) (effective 10-08) - Schedule of ratings - skin

7802 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear:

Area or areas of 144 square inches (929 sq. cm.) or greater 10

Note (1): A superficial scar is one not associated with underlying soft tissue damage.

Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under § 4.25. Qualifying scars are scars that are nonlinear, superficial, and are not located on the head, face, or neck.

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. Entitlement to an initial evaluation in excess of 0 percent for resolved right thigh hematoma is denied.
2. Entitlement to an effective date prior to December 22, 2010 for the grant of service connection for resolved right thigh hematoma is denied.



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REASONS AND BASES:

1. The evidence of record does not show an increased evaluation is warranted.

A noncompensable evaluation is warranted under the historical rating schedule criteria that was in effect on December 22, 2010, the date service connection was established.

#1, located on your right lower extremity, measures 7.1 in² (46.0 cm²) and is superficial and linear.

The scar is neither painful nor unstable.

We have assigned a noncompensable evaluation based on one or more linear scars.

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation is not warranted unless scars are considered disabling because of limitation of function of the affected part.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable.

The rating schedule criteria for evaluating scars changed on August 13, 2018. A noncompensable evaluation is warranted under the current rating schedule criteria.

We have assigned a 0 percent evaluation for your resolved right thigh hematoma based on:

- Right lower extremity: area or areas less than 144 square inches (929 sq. cm.) (Not associated with underlying soft tissue damage)

Additional symptom(s) include:

- Scar 1 Location: Right lower extremity
- Scar 1 type: scar

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}



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Your first scar/area has a length of 23 cm and a width of 2 cm for a total area of 46 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (right lower extremity) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck that are associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.). (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

2. In your notice of disagreement, you state the date of service connection should be April 20, 1999, the date of your initial claim, because you submitted a notice of disagreement on January 3, 2000.

Review of your claims file revealed your initial claim for an infected hematoma was denied in rating decision dated December 21, 1999 with notification letter dated December 30, 1999. The correspondence received on January 3, 2000 did not state you disagreed with the denial of service connection of an infected hematoma. The correspondence noted the notification letter stated it made a decision for increased compensation solely on your operation for an infected hematoma. You stated the operation for the infected hematoma was only additional information for your appeal for increased compensation. You had an active appeal pending for an increased evaluation of your service-connected right knee at the time of receipt of the correspondence.

You did not file a notice of disagreement within one year of the December 1999 notification letter and the decision is final. Your request to reopen the claim was received on December 22, 2010. The Board of Veterans' Appeals decision dated April 4, 2018 notes service connection for residuals of right thigh hematoma was previously denied by the regional office in a December 1999 rating decision and states you did not timely appeal this determination or submit new and material evidence within one year of the rating decision notification. Entitlement to an earlier effective date is not warranted.



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PREPARED BY eSign: certified by VSCDCWILS318, DRO

APPROVED BY null





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.

Descriptions of Review Options

| Supplemental Claim | Higher-Level Review | Appeal to the Board | U. S. District Court |
|--|---|--|--|
| <p>Use this option when you have additional evidence that is NEW AND RELEVANT to support granting the benefit(s) sought or you can identify existing relevant records that you would like VA to obtain. (NEW evidence means information not previously submitted to VA, and RELEVANT evidence 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>Use this option when you have NO additional evidence to submit, or that you would like VA to obtain, in support of a previously decided issue.</p> <p>You <i>may not</i> 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 informal conference 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>Use this option to appeal to the Board for consideration by a Veterans Law Judge. 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>(INSURANCE CLAIMS ONLY)</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: www.uscourts.gov/court_locator.aspx.</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/), 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/), 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.

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. Contact your local VA office for assistance with appointing a representative or visit 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, or 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:

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

Mailing Addresses:

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

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



Department of Veterans Affairs

APPEAL TO BOARD OF VETERANS' APPEALS

IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

| | | |
|--|------------------------------------|------------------------------------|
| 1. NAME OF VETERAN (Last Name, First Name, Middle Initial) | 2. CLAIM FILE NO. (Include prefix) | 3. INSURANCE FILE NO., OR LOAN NO. |
|--|------------------------------------|------------------------------------|

4. I AM THE:

VETERAN VETERAN'S WIDOWER VETERAN'S CHILD VETERAN'S PARENT

OTHER (Specify)

| | | |
|-----------------------------|-----------------------------|---|
| 5. TELEPHONE NUMBERS | | 6. MY ADDRESS IS: (Number & Street or Post Office Box, City, State & ZIP Code) |
| A. HOME (Include Area Code) | B. WORK (Include Area Code) | |

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.)

10. **OPTIONAL BOARD HEARING**

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.** Check one (and only one) of the following boxes:

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.)

I WANT AN OPTIONAL BOARD HEARING:

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.)

D. 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 (Ink signature required) | 12. DATE (MM/DD/YYYY) | 13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if signed by appellant. See paragraph 6 of the instructions.) (Ink signature) | 14. DATE (MM/DD/YYYY) |
|--|--------------------------|--|--------------------------|

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.

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. 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.