

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

TERRY G. WATSON,)	
Petitioner,)	
)	
v.)	Vet. App. No. 20-1898
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
Respondent.)	

**SECRETARY’S RESPONSE TO PETITION
FOR EXTRAORDINARY RELIEF**

Pursuant to U.S. Vet. App. R. 21(b), and the Court’s April 21, 2020, Order, Respondent, Robert L. Wilkie, Secretary of Veterans Affairs (Secretary), hereby answers the petition for extraordinary relief filed on March 9, 2020. For the reasons set forth below, the Court should dismiss the petition.

RELEVANT FACTS

On October 31, 2019, Petitioner submitted a VA Form 26-4555, *Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant*, and a VA Form 21-4502, *Application for Automobile or Other Conveyance and Adaptive Equipment*. On December 20, 2019, VA issued a decision denying Petitioner entitlement to specially adapted housing and denying entitlement to special home adaptation. On December 31, 2019, VA issued a rating decision, ruling that entitlement to automobile or other conveyance and adaptive equipment or adaptive equipment only is not established. On February 21, 2020, Petitioner filed a notice of disagreement (NOD) with respect to the December 20,

and December 31, 2019, rating decisions, and asked VA to grant him entitlement to special adapted housing, special home adaptation, and automobile allowance. Petitioner contends that he submitted a statement in support of his claim with additional evidence and asserts that VA responded that the submissions would not be accepted because it was not on the correct form. Petitioner now asks the Court to order VA to accept his February 21, 2020, Notice of Disagreement (NOD), along with his additional evidence, and to grant him entitlement to specially adapted housing and automobile allowance. See Petition.

RESPONSE TO PETITION

The Court has the authority to issue writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). See *Ramsey v. Nicholson*, 20 Vet.App. 16, 21 (2006); see also *Cox v. West*, 149 F.3d 1360 (Fed. Cir. 1998). However, “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976). The Court should not issue a writ unless: (1) the petitioner has no other adequate means to attain the relief he desires; (2) the petitioner can demonstrate a clear and indisputable right to the issuance of the writ; and (3) the court is convinced that the circumstances warrant issuance of the writ. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004). In addition, this Court has adopted the case-or-controversy jurisdictional requirements imposed by Article III of the U.S. Constitution. *Aronson v. Brown*, 7 Vet.App. 153, 155 (1994). Where the particular relief sought by a petitioner has been afforded, the petition is moot. See *Chandler v.*

Brown, 10 Vet.App. 175, 177 (1997) (citing *Mokal v. Derwinski*, 1 Vet.App. 12 (1990)).

On April 27, 2020, Gary Moore, the Veterans Service Center Manager for the St. Louis, Missouri, VA Regional Office (RO) provided a synopsis of the actions taken in Petitioner's case. On December 30, 2019, VA notified Petitioner that VA was unable to grant his claims submitted on October 31, 2019. Exhibit 1. The December 30, 2019, notification letter included information on submitting a Supplemental Claim, on requesting a Higher-Level Review, and on appealing directly to the Board of Veterans' Appeals if Petitioner did not agree with the decision. Exhibit 1, 2. On January 21, 2020, VA received Petitioner's VA Form 20-0996, *Decision Review Request for Higher Level Review*, as to all three of his claims, and VA then established a Higher-Level Review, which is currently pending under the jurisdiction of the Decision Review Operations Center (DROC). Exhibit 1, 3.

Petitioner's February 21, 2020, NOD, submitted on VA Form 21-0958, is obsolete and is not a valid claim form. Exhibit 1. A NOD with de novo review is not an option for further review for any decision made after February 19, 2019, and VA cannot accept it as a valid claim. *Id.*; see 38 U.S.C. § 5014C. Because VA cannot accept a NOD and request for de novo review, the petitioner's claim has remained in the Higher-Level Review lane, as he requested on January 21, 2020. Exhibit 1.

In the December 30, 2019, notification letter, VA provided Petitioner with VA Form 20-0998, *Your Rights to Seek Further Review of Our Decision*, which states in the descriptions of review options under Higher-Level Review, to use this option only when one has no additional evidence to submit or evidence one would like VA to obtain, in support of a previously decided issue. Exhibit 2 at 11 (“**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.”) (emphasis original); see Exhibit 1. Mr. Moore explained that new evidence will not be considered as part of the Higher-Level Review; however, new evidence will be considered in the Supplemental Claim Lane. *Id.* Upon completion of the Higher-Level Review, if the reviewer notes additional evidence that should be considered, the reviewer will not make a new decision in Petitioner’s case and will remove the claim from the Higher-Level Review lane to the Supplemental Claim Lane. *Id.* Petitioner is free to submit additional evidence at any time and the claim will be returned to the Supplemental Claim lane for review of all additional evidence prior to a decision being made. *Id.*

Because Petitioner’s claims are currently pending under the jurisdiction of the DROC, and because Petitioner has not provided information showing that VA is refusing to act in his case, the issuance of an extraordinary writ is not warranted, and the Court should deny the petition.

WHEREFORE, the Secretary responds to the petition for extraordinary relief and the Court's Order, and for the foregoing reasons, respectfully requests that the Court dismiss the petition.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Selket N. Cottle
SELKET N. COTTLE
Deputy Chief Counsel (027I)

/s/ Matthew Gaw
MATTHEW GAW
Paralegal Specialist
Department of Veterans Affairs
Office of General Counsel
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-5997 (office)
matthew.gaw@va.gov

For the Secretary of Veterans Affairs

CERTIFICATE OF SERVICE

I certify under possible penalty of perjury under the laws of the United States of America, that, on this May 5, 2020, a copy of the foregoing was mailed, postage prepaid, to:

Terry G. Watson
8B-124 Veterans Wing NECC
13698 Airport Road
Apt 8B 124
Bowling Green, MO 63334

/s/ Matthew Gaw
MATTHEW GAW
Paralegal Specialist

EXHIBIT 1



**Department of Veterans Affairs
St. Louis VA Regional Office
9700 Page Avenue
St. Louis, MO 63132**

DECLARATION OF GARY MOORE

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

- I. I am the **Veterans Service Center Manager for the St. Louis VA Regional Office**. This declaration is in response to the U.S. Court of Appeals for Veterans Claims, Order, in the matter of Terry G. Watson, Petitioner, No. 20-1898. In the Order, the Court directed the Secretary to respond to Petitioner's petition. The facts attested to herein are based on my personal knowledge.
- II. At issue is the status of the petitioner's claim, including whether the petitioner's Notice of Disagreement has been processed, whether the petitioner has been provided with correct forms, and whether any additional evidence has been or will be submitted in regard to entitlement to specially adaptive housing and automobile allowance.
- III. **Below is a timeline of actions taken by the VA Regional Offices in connection with the Veteran's claim received October 31, 2019:**
 - a. On October 31, 2019, Mr. Watson submitted a VA Form 26-4555, *Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant*.
 - b. On December 30, 2019, VA notified Mr. Watson we were unable to grant his claim. Our notification letter included actions Mr. Watson could take if he did not agree with our decision. Our notification letter to Mr. Watson explained he could submit a Supplemental Claim, request a Higher-Level Review, or appeal directly to the Board of Veterans' Appeals.
 - c. The Petitioner has an unrelated appeal pending at the New Orleans VA Regional office for a disability rating in excess of 70 percent for chronic adjustment disorder with mixed anxiety and depression and entitlement to increased benefits based on individual unemployability.

Watson, 20-1898

- d. On January 21, 2020, VA received Mr. Watson's VA Form 20-0996, *Decision Review Request: Higher Level Review*. VA established a Higher-Level Review which is currently pending. The claim is under the jurisdiction of the Decision Review Operations Center (DROC).
- e. On February 21, 2020, Mr. Watson submitted a VA Form 21-0958, *Notice of Disagreement*, with our decision to deny entitlement to special adaptive housing and automobile allowance. This is not a valid claim as the VA Form 21-0958 is obsolete.

On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act), creating a review system for claims and appeals. The new appeals system took effect on February 19, 2019 and provides choices for seeking review of VA claim decisions. A Notice of Disagreement with de novo review is not an option for further review for any decision made after February 19, 2019. Therefore, VA will not accept it as a valid claim.

- f. In the *Petition in Mandus*, the petitioner states in the reasons for the Writ, he had written a statement in support of his claim and attached evidence in support of the appeal. The petitioner notes on February 25, 2020, he received notice from the Secretary, in violation of law, that VA requires all claims be submitted on standardized form. Furthermore, the petitioner states the Secretary has decided he will not accept the evidence submitted in support of the claim.
- g. As indicated above, VA cannot legally accept a Notice of Disagreement and request for de novo review; therefore, the petitioner's claim has remained in the Higher-Level Review lane, as he requested on January 21, 2020.
- h. VA included in the December 30, 2019, notification letter a VA Form 20-0998, *Your Rights to Seek Further Review of Our Decision*, which explains in greater detail the options for further review of a denied claim. The VA Form 20-0998 states in the descriptions of review options under Higher-Level Review, which was the lane selected by the petitioner, to use this option only when one has no additional evidence to submit, or evidence one would like VA to obtain, in support of a previously decided issue. VA very clearly notifies potential claimants' new evidence is not considered under a request for a Higher-Level Review.
- i. However, new evidence will be considered in the Supplemental Claim Lane. Upon completion of the Higher-Level Review, if the reviewer notes additional evidence that should be considered, the reviewer will not make a new decision and will remove the claim from the Higher-Level Review lane to the Supplemental Claim Lane. In the Supplemental Claim Lane, any new and relevant evidence will be considered by the reviewer and a new decision will be made.

Watson, 20-1898

- j. The Veteran may submit any new and relevant evidence at any time. However, VA will not establish a Notice of Disagreement for review of this evidence and the new evidence will not be considered as part of the Higher-Level Review. The claim will be returned to the Supplemental Claim lane for review of all additional evidence prior to a decision being made.

Executed on **April 27, 2020**

Gary J. Moore 210249

Digitally signed by Gary J. Moore
210249
Date: 2020.04.27 12:39:59 -05'00'

Gary Moore, Veterans Service Center Manager
Department of Veterans Affairs
St. Louis VA Regional Office

EXHIBIT 2



December 30, 2019

TERRY GENE WATSON
5765 DEWITT DR
HARTSHORN MO 65479-6708

We made a decision on your VA benefits.

Dear Terry Watson:

This letter will guide you through the information you should know and steps you may take now that VA has made a decision about your benefits.

Your Benefit Information:

- Entitlement to special home adaptation is not established.
- Entitlement to specially adapted housing is not established.

See **Rating Decision** to find out why we made this decision.

Your monthly entitlement amount is shown below:

Total VA Benefit	Amount Withheld	Amount Paid	Payment Start Date	Reason
\$184.00	\$0.00	\$184.00	Dec 1, 1998	Cost of Living Adjustment, Rating Effective Date for Conversion
\$188.00	\$0.00	\$188.00	Dec 1, 1999	Cost of Living Adjustment
\$194.00	\$0.00	\$194.00	Dec 1, 2000	Cost of Living Adjustment
\$199.00	\$0.00	\$199.00	Dec 1, 2001	Cost of Living Adjustment
\$201.00	\$0.00	\$201.00	Dec 1,	Cost of Living

We have included with this letter:

1. Explanation of Payment
2. Additional Benefits
3. Where to Send Written Correspondence
4. VA Form 20-0998
5. Rating Decision

Contact information:

Web: www.vets.gov
Phone: 1-800-827-1000
TDD: 711
To send questions online: visit <https://iris.custhelp.com/>

Social Media:

Twitter: @VAVetBenefits
Facebook: www.facebook.com/VeteransBenefits

Your representative:

You appointed DISABLED AMERICAN VETERANS as your accredited representative. They have also received a copy of this letter.

They can help you with any questions you have about your claim.

If you or someone you know is in crisis, call the *Veterans Crisis Line* at 1-800-273-8255 and press 1.



Total VA Benefit	Amount Withheld	Amount Paid	Payment Start Date	Reason
			2002	Adjustment
\$205.00	\$0.00	\$205.00	Dec 1, 2003	Cost of Living Adjustment
\$210.00	\$0.00	\$210.00	Dec 1, 2004	Cost of Living Adjustment
\$218.00	\$0.00	\$218.00	Dec 1, 2005	Cost of Living Adjustment
\$225.00	\$0.00	\$225.00	Dec 1, 2006	Cost of Living Adjustment
\$230.00	\$0.00	\$230.00	Dec 1, 2007	Cost of Living Adjustment
\$912.00	\$0.00	\$912.00	Mar 1, 2008	Change in Spouse Status, Compensation Rating Adjustment
\$965.00	\$0.00	\$965.00	Dec 1, 2008	Cost of Living Adjustment
\$1,208.00	\$0.00	\$1,208.00	Jan 1, 2009	Compensation Rating Adjustment
\$1,333.00	\$0.00	\$1,333.00	Jun 1, 2010	School Child Adjustment, Compensation Rating Adjustment
\$1,547.00	\$0.00	\$1,547.00	Aug 1, 2010	Compensation Rating Adjustment
\$3,143.00	\$0.00	\$3,143.00	Sep 1, 2010	Compensation Rating Adjustment, Special Monthly Compensation Adjustment
\$3,255.00	\$0.00	\$3,255.00	Dec 1, 2011	Cost of Living Adjustment
\$3,255.00	\$0.00	\$3,255.00	Jun 27, 2012	Incarceration Adjustment, Allotment Adjustment
\$3,309.00	\$0.00	\$3,309.00	Dec 1, 2012	Cost of Living Adjustment, Allotment Adjustment
\$3,358.64	\$0.00	\$3,358.64	Dec 1, 2013	Cost of Living Adjustment, Allotment Adjustment
\$3,358.64	\$0.00	\$3,358.64	Jan 1, 2014	Cost of Living Adjustment
\$3,415.74	\$0.00	\$3,415.74	Dec 1, 2014	Cost of Living Adjustment, Allotment Adjustment



Total VA Benefit	Amount Withheld	Amount Paid	Payment Start Date	Reason
\$3,425.99	\$0.00	\$3,425.99	Dec 1, 2016	Cost of Living Adjustment, Allotment Adjustment
\$3,494.51	\$0.00	\$3,494.51	Dec 1, 2017	Cost of Living Adjustment, Allotment Adjustment
\$3,592.35	\$0.00	\$3,592.35	Dec 1, 2018	Cost of Living Adjustment, Allotment Adjustment
\$3,649.83	\$55.24	\$3,594.59	Dec 1, 2019	Cost of Living Adjustment

We are currently paying you as a Veteran with one dependent. *Let us know right away if there is any change in the status of your dependents.*

If payments are due, you should receive your first payment, if not already in receipt of payments, within 7-10 days of this notice.

See **Explanation of Payment** for more details about your payment.

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

If this account is no longer open,

please notify us immediately.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you have one year from the date of this letter to select a review option in order to protect your initial filing date for effective date purposes. You must file your request on the required application form for the review option desired. The table below represents the review options and their respective required application form.

Review Option	Required Application Form
Supplemental Claim	VA Form 20-0995, <i>Decision Review Request: Supplemental Claim</i>
Higher-Level Review	VA Form 20-0996, <i>Decision Review Request: Higher-Level Review</i>



Review Option	Required Application Form
Appeal to the Board of Veterans' Appeals	VA Form 10182, <i>Decision Review Request: Board Appeal (Notice of Disagreement)</i>

Please note: You may not request a higher-level review of a higher-level review decision issued by VA.

The enclosed VA Form 20-0998, *Your Rights To Seek Further Review Of Our Decision*, explains your options in greater detail and provides instructions on how to request further review. You may download a copy of any of the required application forms noted above by visiting www.va.gov/vaforms/ or you may contact us by telephone at 1-800-827-1000 and we will mail you any form you need.

You can visit www.va.gov/decision-reviews to learn more about how the disagreement process works.

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

Thank you for your service,

Regional Office Director

cc: DISABLED AMERICAN VETERANS



Explanation of Payment

Your monthly entitlement amount includes payment for the following dependent(s):

Payment Start Date	Award Dependent(s)
Dec 1, 1998	None
Dec 1, 1999	None
Dec 1, 2000	None
Dec 1, 2001	None
Dec 1, 2002	None
Dec 1, 2003	None
Dec 1, 2004	None
Dec 1, 2005	None
Dec 1, 2006	None
Dec 1, 2007	Katrina
Mar 1, 2008	Katrina, Gina
Dec 1, 2008	Katrina, Gina
Jan 1, 2009	Katrina, Gina
Jun 1, 2010	Gina
Aug 1, 2010	Gina
Sep 1, 2010	Gina
Dec 1, 2011	Gina
Jun 27, 2012	Gina
Dec 1, 2012	Gina
Dec 1, 2013	Gina
Jan 1, 2014	Gina
Dec 1, 2014	Gina
Dec 1, 2016	Gina
Dec 1, 2017	Gina
Dec 1, 2018	Gina



Payment Start Date	Award Dependent(s)
Dec 1, 2019	Gina

Let us know right away if there is any change in the status of your dependent(s).

Please Take Action: What Things Affect Your Right to Payment?

Please notify VA *immediately* if there is a change in any condition affecting your right to continued payments. If you don't notify us of these changes immediately, you may have to return any overpayments. Those changes include:

Evidence received shows a change is warranted.
<p>Military Pay or Worker's Compensation: Your payments may be affected by the following, which you must bring to our attention:</p> <ul style="list-style-type: none"> • Reentrance into active military or naval service. • Receipt of armed forces service retirement pay, unless your retirement pay has already been reduced because of award of disability compensation. • Receipt of benefits from the Office of Federal Employees Compensation. • Receipt of active duty or drill pay as a reservist or member of the National Guard.
<p>Dependents: If you have a disability rating of 30 percent or more, you must advise VA of any change with your spouse or children.</p>
<p>Hospitalization: If your award includes Aid and Attendance benefits, we may reduce this additional allowance if you are admitted to a hospital, nursing home, or domiciliary care at VA expense.</p>
<p>Incarceration: Benefits will be reduced if you are incarcerated in a federal, state, or local penal institution for more than 60 days for conviction of a felony.</p>
<p>Lack of Cooperation: We may stop monthly payments if you:</p> <ul style="list-style-type: none"> • fail to submit evidence we requested, • fail to attend a VA examination when requested, or • Submit false or fraudulent evidence to VA, or cause false or fraudulent evidence to be submitted to VA.
<p>Fraud/Lying to Government: The law provides severe penalties, which include fines, imprisonment, or both, for the fraudulent acceptance of any payment to which you are not entitled. We may verify information you submit through computer-matching programs with other agencies.</p>

Additional Benefits



Education, Training, and Student Loans:

- Education loans: For more information, please call 1-888-GIBILL-1 (1-888-442-4551) or visit www.vets.gov/education.
- Veterans with student loans: For more information, please call 1-888-303-7818 or visit www.disabilitydischarge.com/.

Medical Care and Treatment:

- Mental Health Counseling: For more information, please visit www.myhealth.va.gov/mhv-portal-web/.
- Blind Rehabilitation: For more information, please visit www.va.gov/blindrehab/.

Home Adaptations/Loans, Automobile Benefits, and Life Insurance:

- Loans: For more information, please visit www.benefits.va.gov/homeloans/.
- Funding Fee Refund: If you paid a funding fee at the closing of a VA guaranteed home loan and your VA compensation award provides an effective rating date that was prior to your loan closing date, then you may be eligible for a funding fee refund. Please contact either your current mortgage servicer or a VA Regional Loan Center at (877) 827-3702 to begin the refund process.

Armed Forces Commissary and Exchange:

- Armed Forces Commissary and Exchange: For more information, please visit www.ebenefits.va.gov to locate your Regional Benefit Office, please visit www.vets.gov/facility-locator/.



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:

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

Mailing Addresses:

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

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



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

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 may not 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.



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

TERRY WATSON

**Represented By:
DISABLED AMERICAN VETERANS
Rating Decision
12/20/2019**

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era and Peacetime. You served in the Army from October 13, 1988 to April 12, 1993. You filed a new claim for benefits that was received on October 31, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Entitlement to specially adapted housing is not established.
2. Entitlement to special home adaptation is not established.

EVIDENCE

- VA Form 21-4555, Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, received October 31, 2019
- VA Rating Decision, dated March 24, 2016



- Section (§) 5103 Notice, dated November 18, 2019
- VCAA Notice Response, received November 29, 2019
- VAMC (Veterans Affairs Medical Center) treatment records, VAMC St. Louis, from December 20, 2004 through December 14, 2019

REASONS FOR DECISION

1. Entitlement to specially adapted housing.

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) may be extended when the veteran is permanently disabled from one of the following conditions which is the result of injury or disease incurred in or aggravated during active military service, or for which the veteran is entitled to receive compensation under 38 U.S.C. 1151: the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity; the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; the loss or loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; the loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow; or full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk. Entitlement to special housing assistance is not established because a qualifying disability is not found.

38 C.F.R. §3.1 Definitions.

38 C.F.R. §3.102 Reasonable doubt.

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

38 C.F.R. §3.809 Specially adapted housing under 38 U.S.C. 2101(a)(2)(A)(i).

Favorable Findings:

None

2. Entitlement to a special home adaptation grant.

A certificate of eligibility for assistance in acquiring necessary special home adaptations may be issued when the veteran has a service-connected condition which is either due to blindness in both eyes with 20/200 visual acuity or less, or includes the anatomical loss or loss of use of both hands, or there are deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or there are full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or there are residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease). Entitlement



TERRY WATSON

3 of 3

to special home adaptation grant is not established because none of the required conditions are shown.

38 C.F.R. §3.1 Definitions.

38 C.F.R. §3.102 Reasonable doubt.

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

38 C.F.R. §3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

Favorable Findings:

None

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.



EXHIBIT 3

OMB Control No. 2900-0062
Respondent Burden: 15 minutes
Expiration Date: 2-28-2022

Department of Veterans Affairs		VA DATE STAMP DO NOT WRITE IN THIS SPACE
DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW		
INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 1 BEFORE COMPLETING THIS FORM.		
PART I - CLAIMANT'S IDENTIFYING INFORMATION		
NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.		
1. VETERAN'S NAME (First, Middle Initial, Last) <div style="border: 1px solid black; padding: 2px;"> T E R R Y G W A T S O N </div>		
2. VETERAN'S SOCIAL SECURITY NUMBER <div style="border: 1px solid black; height: 20px;"></div>	3. VA FILE NUMBER (If applicable) <div style="border: 1px solid black; height: 20px;"></div>	4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY) <div style="border: 1px solid black; padding: 2px;"> Month: 1 0 Day: 2 4 Year: 1 9 6 9 </div>
5. VETERAN'S SERVICE NUMBER (If applicable) <div style="border: 1px solid black; height: 20px;"></div>	6. INSURANCE POLICY NUMBER (If applicable) <div style="border: 1px solid black; height: 20px;"></div>	
7. CLAIMANT'S NAME (First, Middle Initial, Last) (If other than veteran) <div style="border: 1px solid black; height: 20px;"></div>		
8. CLAIMANT TYPE: <input checked="" type="checkbox"/> VETERAN <input type="checkbox"/> VETERAN'S SPOUSE <input type="checkbox"/> VETERAN'S CHILD <input type="checkbox"/> VETERAN'S PARENT <input type="checkbox"/> OTHER (Specify)		
9. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country) No. & Street: <div style="border: 1px solid black; padding: 2px;">N E C C V E T W I N G 1 3 6 9 8 A I R P O R T R D</div> Apt./Unit Number: <div style="border: 1px solid black; padding: 2px;">8 B 1 2 4</div> City: <div style="border: 1px solid black; padding: 2px;">B O W L I N G G R E E N</div> State/Province: <div style="border: 1px solid black; padding: 2px;">M O</div> Country: <div style="border: 1px solid black; padding: 2px;"></div> ZIP Code/Postal Code: <div style="border: 1px solid black; padding: 2px;">6 3 3 3 4 -</div>		
10. TELEPHONE NUMBER (Include Area Code) CELL 636-633-6869; HOME 417-932-1208		11. E-MAIL ADDRESS (Optional) WATSONT0548@SBCGLOBAL.NET
12. BENEFIT TYPE: PLEASE CHECK ONLY ONE (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.) <input checked="" type="checkbox"/> COMPENSATION <input type="checkbox"/> PENSION/SURVIVORS BENEFITS <input type="checkbox"/> FIDUCIARY <input type="checkbox"/> EDUCATION <input type="checkbox"/> VETERANS HEALTH ADMINISTRATION <input type="checkbox"/> VOCATIONAL REHABILITATION AND EMPLOYMENT <input type="checkbox"/> LOAN GUARANTY <input type="checkbox"/> INSURANCE <input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION		
PART II - HIGHER-LEVEL REVIEW OPTIONS		
13. IF YOU WOULD LIKE THE SAME OFFICE THAT ISSUED YOUR PRIOR DECISION TO CONDUCT THE REVIEW, YOU CAN MAKE THAT REQUEST BY CHECKING THE BOX BELOW. IF YOU DO NOT CHECK THE BOX, VA WILL TAKE THAT AS A REQUEST TO HAVE A DIFFERENT OFFICE CONDUCT THE REVIEW. (Please note VA may be unable to grant your request.) <input type="checkbox"/> If available, I would like HIGHER-LEVEL REVIEW conducted at the same office within the agency of original jurisdiction.		
14. IN ADDITION, YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER. (This is a telephonic communication with the higher level reviewer for the sole purpose of pointing out errors of fact or law in the prior decision. VA will only conduct one informal conference associated with this request for higher-level review. Check the box below to request an informal conference.) <input checked="" type="checkbox"/> I, or my representative, would like an informal conference . (VA will make up to two attempts to call you between 8:00a.m. and 4:30p.m. Eastern Standard Time at the telephone number and time period you select below to schedule your informal conference. Please select up to two time periods you are available to receive a phone call.) <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> 8:00a.m. - 10:00a.m. <input type="checkbox"/> 10:00a.m. - 12:30p.m. <input type="checkbox"/> 12:30p.m. - 2:00p.m. <input type="checkbox"/> 2:00p.m. - 4:30p.m. </div> <div style="margin-top: 10px;"> If you would like for VA to contact your representative, please provide your representative's name and telephone number where he or she can be reached at the above checked time. <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-left: 20px;"> GINA M. WATSON 636-633-6869; 417-932-1208 </div> </div>		

15. YOU MUST INDICATE BELOW EACH ISSUE DECIDED BY VA FOR WHICH YOU ARE REQUESTING A HIGHER-LEVEL REVIEW. Please refer to your decision notices for a list of adjudicated issues. For each issue, please identify the date of VA's decision. You may attach additional sheets, if necessary. Please include your name and file number on each additional sheet.

Check this box if any issue listed below is being withdrawn from the legacy appeals process. ☐ OPT-IN from SOC/SSOC

15A. SPECIFIC ISSUE(S)	15B. DATE OF VA DECISION NOTICE
AUTOMOBILE ALLOWANCE	UNKNOWN
ENTITLEMENT TO SPECIALLY ADAPTED HOUSING	12/20/19
ENTITLEMENT TO SPECIAL HOUSING ADAPTATION	12/20/19

PART IV - CERTIFICATION AND SIGNATURE

NOTE: This section is **MANDATORY** and completion is required to process your claim; any omission may delay claim processing time.

VA AUTHORIZED REPRESENTATIVES ONLY: I certify that the claimant has authorized the undersigned representative to file this higher-level review on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A power of attorney's (POA's) signature will not be accepted unless at the time of submission of this request a valid VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, or VA Form 21-22a, Appointment of Individual As Claimant's Representative, indicating the appropriate POA is of record with VA.

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

16A. SIGNATURE OF VETERAN OR CLAIMANT OR VA AUTHORIZED REPRESENTATIVE (Sign in ink)

16B. DATE SIGNED

01/14/20

16C. NAME OF VA AUTHORIZED REPRESENTATIVE (Please Print)

ALTERNATE SIGNER CERTIFICATION AND SIGNATURE

17. I CERTIFY THAT by signing on behalf of the claimant, that I am a court-appointed representative; OR, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; OR, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; OR, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; AND, that the claimant is under the age of 18; OR, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; OR, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

17A. SIGNATURE OF ALTERNATE SIGNER (Sign in ink)

17B. DATE SIGNED

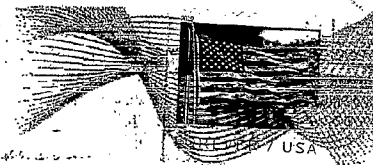
17C. NAME OF ALTERNATE SIGNER (Please Print)

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.

BEST COPY

TERRY G. WATSON 12370000
8B-124 VETERAN'S WING
NORTHEAST CORRECTIONAL CENTER
13698 AIRPORT ROAD
BOWLING GREEN, MO 63334

SAINT LOUIS MO 630
15 JAN 2020, PM 2L



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information about the offender, please visit our website at
www.doc.mo.gov.

DEPARTEMENT OF VETERANS AFFAIRS
EVIDENCE INTAKE CENTER
P.O. BOX 4444
JANESVILLE, WI 53547-4444

HIPAA PROTECTED LEAGL MAIL 01/14/20

53547-4444

