

In reply refer to: **027F**

May 13, 2020

Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004

Re: **Ronald V. Garner v. Robert L. Wilkie, Vet. App. No 18-5865**

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), Respondent, Robert L. Wilkie, Secretary of Veterans Affairs, hereby advises the Court of additional pertinent and significant authority that has come to the attention of the undersigned counsel since the Secretary filed his brief in the above referenced case. This is submitted in advance of the oral argument scheduled for May 21, 2020, at 10:00 a.m.

Respondent informs the Court of *Walsh v. Wilkie*, __ Vet.App. __, No. 18-0495, 2020 U.S. App. Vet. Claims LEXIS 295 (Vet. App. Feb. 24, 2020), in which the Court held that obesity may constitute an intermediate step in demonstrating service connection on a secondary basis for another condition in situations in which the service-connected disability causes or aggravates obesity. The Court determined that, in accordance with 38 C.F.R. § 3.310(b), the Board must consider aggravation in the context of obesity as an intermediate step “when the theory is explicitly raised by the veteran or reasonably raised by the record.” *Walsh*, 2020 U.S. App. Vet. Claims LEXIS 295, at *14. This supplemental authority is submitted in furtherance of the argument presented on pages 12 through 15 of the Brief of the Appellee asserting that obesity was not raised as an intermediate step, so the Board was not required to address it.

Respectfully submitted,

/s/ Jacqueline Kerin

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