

**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.

As noted in the Secretary's May 4, 2020, *Solze* Notice, Appellant has initiated an appeal as to the effective date assigned for the award of service connection for right thigh hematoma residuals before the Agency of Original Jurisdiction (AOJ). At the time of the May 4, 2020, *Solze* Notice, the AOJ had issued a statement of the case.

On June 9, 2020, Counsel for the Appellant notified the undersigned that a VA Form 9, substantive appeal, was filed with the AOJ on June 8, 2020, thus, transferring the appeal to the Board of Veterans' Appeals (Board). See Exhibit A.

As such, it appears that both the Court and Board now have jurisdiction over the claim as to the effective date of the award of service connection for right thigh hematoma residuals. 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/ Megan C. Kral
MEGAN C. KRAL
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/s/ Melissa A. Timbers
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Exhibit A



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) DALLMAN, Donald A.		2. CLAIM FILE NO. (Include prefix) [REDACTED]	3. INSURANCE FILE NO., OR LOAN NO.
4. I AM THE: <input checked="" type="checkbox"/> VETERAN <input type="checkbox"/> VETERAN'S WIDOW/ER <input type="checkbox"/> VETERAN'S CHILD <input type="checkbox"/> VETERAN'S PARENT <input type="checkbox"/> OTHER (Specify)			
5. TELEPHONE NUMBERS A. HOME (Include Area Code) [REDACTED] B. WORK (Include Area Code) [REDACTED]		6. MY ADDRESS IS: (Number & Street or Post Office Box, City, State & ZIP Code) [REDACTED] [REDACTED]	
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. <input type="checkbox"/> 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. <input checked="" type="checkbox"/> 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.) I am writing in response to the Statement of the Case (SOC) issued April 10, 2020, which denied: (1) an initial evaluation in excess of 0 percent for resolved right thigh hematoma; and (2) an effective date prior to December 22, 2010, for the grant of service connection for resolved right thigh hematoma. I wish to appeal to the Board of Veterans' Appeals (Board). As argued in our notice of disagreement (NOD), Mr. Dallman is entitled to an effective date no later than April 20, 1999, the date of his initial claim. The veteran's service connection claim for a right thigh hematoma was initially denied in a December 1999 rating decision and he submitted an informal notice of disagreement in January 2000. The VA did not issue a SOC on this claim; therefore it has remained pending since April 1999. [CONTINUED ON NEXT PAGE...]			
(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. <input checked="" type="checkbox"/> 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. <input type="checkbox"/> BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.) C. <input type="checkbox"/> IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.) D. <input type="checkbox"/> 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) June 8, 2020

DALLMAN, Donald A.

[...CONTINUED FROM PREVIOUS PAGE...]

The April 2020 SOC concluded that the veteran did not state he disagreed with the denial of service connection of an infected hematoma within his January 2000 correspondence. Rather, the RO interpreted the letter as additional information for the veteran's pending appeal for an increased rating for the service-connected right knee condition. We disagree with this finding.

The notice letter associated with the April 1999 rating decision instructed Mr. Dallman that, in any reply, he should refer to: "317/Team 70/JLU." In the January 2000 letter, the veteran wrote, "This is a reply and appeal of the letter 317/Team 70/JLU." The veteran's January 2000 letter explicitly stated a desire to appeal the rating decision, and therefore constituted an informal notice of disagreement. See *Jarvis v. West*, 12 Vet.App. 559, 561 (1999) (the language of a potential notice of disagreement must be sympathetically construed within its context). As such, an earlier effective date no later than April 20, 1999, is warranted for service connection for the right thigh hematoma.

The evidence of record indicates the right thigh hematoma is unstable. A November 2001 treatment record noted a calcified hematoma containing some pus. The veteran further advises that the hematoma is painful. He reports that if the area hits anything, such as a table, he feels a sharp pain. This occurs 3-4 times a week. See Attachment A. Therefore, his disability warrants a rating of at least 10 percent.