

CHISHOLM CHISHOLM & KILPATRICK LLP
321 S Main St. #200
Providence, Rhode Island 02903
(401) 331-6300
(401) 421-3185 FAX



July 17, 2020

Gregory O. Block, Clerk of the Court
U.S. Court of Appeals for Veterans Claims
Suite 900
625 Indiana Ave., N.W.
Washington, DC 20004

Re: *Bailey v. Wilkie*, No. 19-2661

Dear Sir:

In accordance with the duty to keep the Court informed of any developments which could deprive the Court of jurisdiction or “otherwise affect its decision,” *see Solze v. Shinseki*, 26 Vet.App. 299, 301 (2013) (citations omitted), counsel for Mr. Bailey wishes to notify the Court that he has filed a supplemental claim in response to the July 20, 2019 Rating Decision that granted service connection for lymphedema of the bilateral lower extremities with evaluations of 10 percent effective January 30, 2019, and to the September 12, 2019 Rating Decision that granted entitlement to individual unemployability effective January 30, 2019. *See* Attachment.

Respectfully submitted,

/s/ Dvora Louria
Counsel for Appellant

VIA CM/ECF SYSTEM

Herman O. Bailey

Herman O. Bailey

June 25, 2020

- Reference:**
- a. Letter, Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), Regional Office (RO); July 23, 2019, with Rating Decision dated *07/20/2019* attached re: "*.....we have made the following decision(s) on your claim*", effective *January 30, 2019*
 - b. Letter, Department of Veterans Affairs, Veterans Benefits Administration, Regional Office (RO); September 16, 2019, with Rating Decision dated *09/12/2019* attached re: "*.....we have made the following decision(s) on your claim*", effective *January 30, 2019*".
 - c. Department of Veterans Affairs, St. Petersburg Regional Office, St. Petersburg, FL; Rating Decision dated *12/19/2015* re: the reduction of my 100 percent rating for *prostate cancer* to 60 percent; effective date *March 1, 2016*; *note* this claim remain open, and is pending action before the U.S. Court of Appeals for Veterans Claims (USCAVC).

Department of Veterans Affairs
Evidence Intake Center
P. O. Box 4444
Janesville, WI 53547-4444

Dear Madame/Sir, and/or
Responsible Regional Director
St. Petersburg, FL

Attached hereto is my *Decision Review Request – Supplemental Claim*; VA Form 20-0995 [*Notice of Disagreement*], whereby I am requesting that an earlier effective date be made to the claims that VA RO have made decision on; rating decisions dated *07/20/2019* and *09/12/2019* respectively; believe that information published, and available at:

https://www.bva.va.gov/docs/VLR_VOL2/Copy5--JohnFussellandJonathanHager.pdf.

Letters, references *a*, and *b* are letters that I received from VA RO informing me that it made decisions on the claim(s).

Herman O. Bailey

1) "Rating Decision dated March 10, 2016 confirming and continuing the 60 percent which should not have been promulgated since this issue was on APPEAL",

2) Rating Decision dated 12/19/2015 informed me that the "Evaluation of prostate cancer, which is currently evaluated 100 percent disabling is decreased to 60 percent effective March 1, 2016" should not have been promulgated since this issue was on APPEAL; and remain so today.

My claim and issues named therein are scheduled for oral argument(s) on Monday, July 27, 2020, at 10:00 a.m., United States Court of Appeals for Veterans Claims (USCAVC).

Hopefully, a resolution and a change in the effective dates for the awarding of benefits can be made without the aforementioned oral arguments scheduled takes place; the information published in the article titled; "The Evolution of the Pending Claim Doctrine"; appears to support my request that an earlier effective date be authorized and granted my claim(s); *see*: <https://www.pcf.org/about-prostate-cancer/prostate-cancer-side-effects/radiation-side-effects/>;

I noted that there appears to have been some concern regarding my suffering with bouts of chronic diarrhea; please be advised that this issue is something that for the most part, and because of my age, I've chosen to avoid prescription medications to control this issue; for the most part, I buy over the counter (OTC) medication (Pepto Bismol) or some such; and that recommended by my primary care physician.

And while although I may not have submitted a formal application for the secondary service-connection medical issue of concern to me, i.e., chronic diarrhea, secondary to my prostate cancer; an issue that continues to plague me, even today. It is my understanding that VA law, regulations and court decisions provide that "*It is symptoms and not treatment that must be considered when rendering an opinion as to current and events in service*".

Also, I've learned to increase my intake of fluids and electrolytes, i.e., plenty of water, clear juices, and clear broths. Thus, and unless I'm suffering a serious bout of diarrhea, this is not an issue I deem necessary to discuss during wellness appointments.

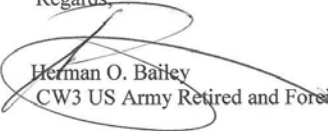
Feds send stimulus checks to 1 million deceased; and for this reason and passed experience having employed high school students as interns some years ago to file documents into official personnel files of employees of the Foreign Agricultural Services (FAS), U.S. Department of Agriculture (USDA), only, managerial / supervisory instinct, decided to conduct follow-up, by doing so; I discovered that [*some – who specifically; person not known*]" the youngsters were not filling the documentation as they should have; discovered documents in the "round file's", trash receptacles. Needless-to-say, since no one person would take ownership, terminated the employment of the lot.

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Herman O. Bailey

As such, and *hopefully* to assist and save the responsible *Reviewing Officer* time, s/he having to *locate* such documentation to confirm or verify statements that I have made re: the issues that are of concern to me; I've identified or have provided to you copies of documents that I believe should be of some assistance in regards to the resolving of issues of concern to the both of us.

Regards,



Herman O. Bailey

CW3 US Army Retired and Foreign Service (Diplomat) Officer Retired

Attachments

See list of same hereto

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Department of Veterans Affairs

DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM

INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.

VA DATE STAMP
DO NOT WRITE IN THIS SPACE

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)

HERMAN O BAILEY

2. VETERAN'S SOCIAL SECURITY NUMBER

- -

3. VA FILE NUMBER (If applicable)

4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)

Month Day Year

5. VETERAN'S SERVICE NUMBER (If applicable)

6. INSURANCE POLICY NUMBER (If applicable)

7. CLAIMANT'S NAME (First, Middle Initial, Last) (If other than veteran)

8. CLAIMANT TYPE:

☒ VETERAN ☐ VETERAN'S SPOUSE ☐ VETERAN'S CHILD ☐ VETERAN'S PARENT ☐ OTHER (Specify)

10. TELEPHONE NUMBER (Include Area Code)

11. E-MAIL ADDRESS (Optional)

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.)

☒ COMPENSATION ☐ PENSION/SURVIVORS BENEFITS ☐ FIDUCIARY ☐ INSURANCE ☐ VETERANS HEALTH ADMINISTRATION
☐ VOCATIONAL REHABILITATION AND EMPLOYMENT ☐ LOAN GUARANTY ☐ EDUCATION ☐ NATIONAL CEMETERY ADMINISTRATION

PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM

13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR SUPPLEMENTAL CLAIM. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. 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

13A. SPECIFIC ISSUE(S)

13B. DATE OF VA DECISION NOTICE

*Reduction of 100% disability rating for prostate cancer to 60%

12/24/2015*

Entitlement earlier effective date lymphedema bilateral extremities

07/20/2019

Entitlement earlier effective date TDIU.

09/12/2019

PART III - NEW AND RELEVANT EVIDENCE

14. To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your supplemental claim. If you have records in your possession, please attach the records to this form. Please list your name and file number on each page. If you would like VA to obtain non-federal records, please review your decision notification letter for the appropriate authorization forms to complete and submit those forms to VA with this request form.

15. DO YOU WANT VA TO GET FEDERAL RECORDS?

LIST BELOW ANY VA MEDICAL CENTER(S) (VAMC), VA TREATMENT FACILITIES, OR FEDERAL DEPARTMENTS OR AGENCIES THAT HAVE NEW AND RELEVANT EVIDENCE THAT YOU ARE AUTHORIZING VA TO OBTAIN IN SUPPORT OF YOUR SUPPLEMENTAL CLAIM. You may attach additional sheets of paper, if necessary. Please list your name and file number on each additional sheet.

15A. NAME AND LOCATION	15B. DATE(S) OF RECORDS
Transcript of video hearing; Board of Veterans' Appeals, 810 Vermont Ave., NW, Washington, DC 20420	01/30/2019
VA Outpatient Clinic, 551 National Health Care Dr., Daytona Beach, FL 32114 (386) 323-7500	09/15/2015 - De

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 supplemental claim 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 POA's signature *will not* be accepted unless at the time of submission of this claim 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.

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

COMPENSATION BENEFIT CLAIMS ONLY:

☒ 5103 NOTICE Acknowledgment - I certify I have received the notice to this application titled, *Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits* as provided at <https://www.va.gov/disability/how-to-file-claim/evidence-needed>. If the box is not checked, VA will send you this information through an electronic communication or written correspondence sent to the address on file with VA if your application is being submitted more than one year after VA provided notice of our decision for any issue listed in item 13.

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

16B. DATE SIGNED

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

6/25/2020

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 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.

Herman O. Bailey

ATTACHMENTS

1. VA Form 0995 / DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM [Notice of Disagreement] / Compensation; entitlement to earlier effective date(s) claims listed Part II – Issue(s) for Supplemental Claim a) *lymphedema bilateral extremities (left and right)*; b) *TDIU*; [DVA VBA, Fast Letter 13-13, June 17, 2013 / *contents not being published for Veterans edification*];
1. Page 5 thru 6 VA Form 20-0995; Opening Statement, et.al.
2. *Notice of Disagreement (NOD), February 9, 2016, received by VA on February 15, 2016; copy in CFile, VA RO re: Decision made on *12/19/2015* with Transmittal Letter dated *12/24/2015*, claim remain open, pending oral argument, USCAVC, July 27, 2020,
3. My narrative re *Note: “It is a bit difficult to prepare a Notice of Disagreement [Decision Review Request]”* / Freedom of Information Act / Privacy Act Request, *September 17, 2019*; request for copy of C&P Examinations that I was scheduled (kept) to undergo during the month of *May 2019*. And, copy of my letter *March 19, 2019* to *BVA*, requesting that I be provided a copy of the Hearing Transcript and/or Video Recording of the Video Conference Hearing that was held on *January 30, 2019* (VA RO St. Pete).
4. General Docket Information Veterans (my) appeal pending action before USCAVC; Chief Judge Margaret Bartley presiding,
5. Cover Letter, Chisholm Chisholm & Kilpatrick, January 24, 2020 with copy of page 13 & 14 CONCLUSIONS, attached thereto,
6. Letter Chisholm Chisholm & Kilpatrick dated *April 16, 2019* with copy of *Attorney-Client Agreement* attached, and
7. Copy of letter, DVA, March 16, 2016, considered by me to have been notice of reduction of my 100% disability rating for prostate cancer to 60%; however, VA RO, SOC dated 09/17/2017 *STATES “ letter SHOULD NOT have been PROMULGATED since this issue was on APPEAL”*, question in need of an answer, *should NOT Rating Decision dated 12/19/2015 (cover letter dated 12/24/2015) been PROMULGATED since claim was on APPEAL*, and *remains so to date*;
8. My letter *July 26, 2016* addressed to *Jackie Graham, National Services Officer (NSO)*, *DAV* re: *possible resolution of my disagreement through the Post-Decision Review Process*;
9. Copy of Doctor’s / Office Notes: Dane K. Hermansen, M.D., Urologist re: *“He has had trouble with DIARRHEA ever since his radiation therapy”*,

Herman O. Bailey

ATTACHMENTS

10. My Letter addressed to BVA, Washington, DC, March 19, 2010. This letter was written more than a year ago; I requested that I be provided a copy of the transcript of the video hearing, and/or a copy of the Video itself. Date of video hearing January 30, 2019, at 10:00 a.m., VA RO St. Pete. FL. FYI, just spoke with Customer Services, VA whereby I was told that a request has been processed requesting that action be taken ASAP, my request.