

CHARLES J. LOVE, JR.,  
Petitioner,  
v.  
DENIS McDONOUGH,  
Secretary of Veterans Affairs,  
Respondent.

“When pertinent and significant authority comes to the attention of a party after the party’s brief has been filed,” U.S. Vet. App. Rule 30(b) requires that the “party shall promptly file notice with the Clerk and serve all other parties.” The notice must “set forth the citation(s) to the authority” and “refer to the page of the brief ... to which each citation pertains, and shall state without argument the reasons for the supplemental citation(s).” *Id.*

The Petitioner, Charles J. Love, Jr. (“Mr. Love”) files this Notice of Supplemental Authority regarding *Foster v. McDonough*, \_\_\_ Vet. App. \_\_\_, Vet. App. Docket No. 19-7442 (Oct. 20, 2021). *Foster* holds in pertinent part that a decrease in rating evaluation for service-connected prostate cancer pursuant to 38 C.F.R. § 4.115b, Diagnostic Code (“DC”) 7528, is a rating “reduction” only in a colloquial sense and, in the legal sense, is a rating “discontinuance.” *See Foster*, slip op. at 1 n.1, 2. *Foster* also reaffirms that “[a]ny change in evaluation based upon” a DC 7528-mandated medical examination “shall be subject to the provisions of § 3.105(e) of this chapter.” *Id.* at 4, 7 (quoting DC 7528, Note).

In this case’s Petition, Mr. Love frequently uses the nomenclature of “reduction” when describing the decrease in his DC 7528 evaluation. *See* Pet. at 1, 2, 9, 10, 11, 14, 15, 16, 17, 18, 19. He also speaks of that decrease in DC 7528 evaluation as needing to comply with, among other laws, the provisions of 38 C.F.R. § 3.105(e). *See id.* at 2, 15, 17, 18.

Mr. Love thus respectfully submits *Foster* as a pertinent and significant authority that: (1) the Petition’s references to Mr. Love’s decrease in DC 7528 evaluation as a “reduction” use that term in a colloquial sense; and (2) in the legal sense, they refer to a discontinuance that is subject to the provisions of § 3.105(e).

October 21, 2021

Respectfully submitted,

/s/ John D. Niles, Esq.

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