

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

<b>CAROLYN CLARK,</b>	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 22-1124
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
Appellee.	)	

**TABLE OF CONTENTS FOR SECRETARY'S *SOLZE* NOTICE**

Pursuant to U.S. Vet. App. Interim E-Rule 7, the Secretary hereby provides a table of contents for the attachments to his response to the Court's order.

**TABLE OF CONTENTS**

	<b>Page (.pdf page no.)</b>
Attachment 1: February 1, 2021, VA Medical Opinion .....	pdf 4-22
Attachment 2: April 1, 2021, Appellant's Request to Pause.....	pdf 23-25
Attachment 3: April 9, 2021, VA Letter and March 31, 2021, Rating Decision ..	pdf 26-49
Attachment 4: June 16, 2021, NOD / Board Appeal .....	pdf 50-51

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

**CAROLYN CLARK,**

Appellant,

v.

**DENIS MCDONOUGH,**  
Secretary of Veterans Affairs,

Appellee.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Vet. App. No. 21-1124

***SOLZE V. SHINSEKI* NOTICE TO THE COURT**

Pursuant to this Court's holding in *Solze v. Shinseki*, "[i]n 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 files this Notice in accordance with such directive.

On February 1, 2021, a VA examiner provided a medical opinion pursuant to the January 7, 2021, Board remand order. See Attachment 1. On April 1, 2021, Appellant submitted a document to VA requesting a pause in adjudicating the claim of entitlement to Dependency and Indemnity Compensation (DIC). See Attachment 2. On April 9, 2021, the VA Regional Office issued a rating decision dated March 31, 2021, that, in pertinent part, denied Appellant's claim of entitlement to "service connection for cause of death." See Attachment 3. On June 16, 2021, Appellant submitted a VA Form 10182 Decision Review

Request: Board Appeal (Notice of Disagreement) and selected the Direct Review option. See Attachment 4.

**WHEREFORE**, the Secretary respectfully notifies the Court of the above, relevant developments in the present case.

Respectfully submitted,

**RICHARD A. SAUBER**  
General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Carolyn F. Washington  
**CAROLYN F. WASHINGTON**  
Deputy Chief Counsel

/s/ Nathan Paul Kirschner  
**NATHAN PAUL KIRSCHNER**  
Senior Appellate Counsel  
Office of the General Counsel (027D/E)  
U.S. Dept. of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, DC 20420  
(202) 632-4352  
(414) 256-1891 (Telecommuting)  
nathan.kirschner2@va.gov

# ATTACHMENT 1

LOCAL TITLE: COMPENSATION AND PENSION EXAM NOTE  
STANDARD TITLE: C & P EXAMINATION NOTE  
DATE OF NOTE: FEB 01, 2021@14:19:20 ENTRY DATE: FEB 01, 2021@14:19:20  
AUTHOR: PARLER,DAVID W EXP COSIGNER:  
URGENCY: STATUS: COMPLETED

BVA Medical Opinion  
Disability Benefits Questionnaire

Name of patient/Veteran: CLARK, Rossevelt

Please utilize this form when addressing BVA requested opinions or comments.

This response is related to a specific 2507 request dated Jan 26, 2021 as it pertains to a BVA Remand (dated Jan 7, 2021) regarding the cause of death (and the relationship to any service-connected conditions which may have contributed to that death).

The Veteran served honorably on active duty in the U.S. Army from Dec 5, 1951 until Nov 19, 1953. At the time of his death, the Veteran was service connected for frostbite residuals of the right foot at 30 percent disabling, frostbite residuals of the left foot at 30 percent disabling, frostbite residuals of the right hand at 30 percent disabling, frostbite residuals of the left hand at 20 percent disabling, peripheral neuropathy of the right upper extremity at 10 percent disabling, peripheral neuropathy of the left upper extremity at 10 percent disabling, peripheral neuropathy of the right lower extremity at 10 percent disabling, and peripheral neuropathy of the left lower extremity at 10 percent disabling, for a combined evaluation of 90 percent disabled. The Veteran died of a myocardial infarction with hypertension also listed as a principal case of death on August 11, 2013, at the age of 83, and the appellant is his spouse. The spouse claims survivor's benefits based upon the cause of death being substantially and materially related to his service-connected conditions.

This author is a certified C & P examiner and has over 20 years of experience as a physician in private practice and the associate medical director of a community nursing home which involved the care of geriatric patients with heart disease. As an attending physician involved in both in-patient and out-patient medical care, I have signed death certificates and certified the cause of death in numerous patients, including those who have died with both witnessed and unwitnessed deaths in both hospital settings and nursing home environments. I have over seven years experience as a certified C & P examiner and am the Medical Director and supervisor of the C & P department at the Charlie Norwood VAMC in Augusta, GA.

This author has reviewed the veteran's electronic efolder and pertinent records in his military file, as well as CPRS and JLV. This author has specifically reviewed evidence including but not limited to the following:

1. the veteran's efolder in VBMS;
2. the veteran's medical treatment records available in CPRS and JLV;
3. the veteran's death certificate;

4. the veteran's C & P examination dated August 26, 2008 ; as well as the
5. the BVA Remand dated July 27, 2019;
6. the more recent BVA Remand dated Jan 7, 2021;
7. the Independent Medical Opinion from VES examiner from December 2019;
8. the July 2017 private opinion offered by Dr. E. A.;
9. the accompanying attorney letter from July 2017;
10. the American Heart Association article referencing obesity as a risk factor for heart disease;
11. multiple other references (many of which are listed in the REFERENCE section) relating to the demographics of heart disease, including mortality statistics, and the relative risks of genetic factors, as well as age, gender, and other risk factors including diabetes, hypertension, and obesity on mortality rates with respect to heart disease.

This examiner is asked to determine:

(A) Is it at least as likely as not (50 percent probability or more) that the Veteran's service-connected disabilities (for example, frostbite and peripheral neuropathy of the upper and/or lower extremities) caused the Veteran to become obese (for example, by decreased mobility, preventing regular exercise)?

(B) If so, is it at least as likely as not (50 percent probability or more) that the Veteran's obesity caused or contributed substantially and materially to the cause of the Veteran's death (myocardial infarction and hypertension)?

(C) Is it at least as likely as not (50 percent probability or more) that the Veteran's cause of death (myocardial infarction and hypertension) would not have occurred without the obesity caused by the service-connected disability?

Clarifications and terminology :

In the context of this response, this author uses the terms "heart disease" interchangeably to mean cardiovascular disease, ischemic heart disease; coronary artery disease; coronary heart disease, or atherosclerotic heart disease. All of these represent underlying heart disease that produces blockages in coronary arteries which leads to a Myocardial Infarction.

The term Myocardial Infarction is used interchangeably with "M. I." or "heart attack."

The term cerebrovascular accident is used interchangeably with "CVA," or "stroke" and the term "microvascular ischemic changes of the brain" is used interchangeably with a "mini-stroke," which is a more subtle and smaller-scale version of a cerebrovascular accident but represents the same underlying process.

This response will be organized from this point forward as follows:

PART I: Some Pertinent Facts of the case, enumerated as FACTS # 1-10, along with any subpoint regarding the particular RELEVANCE of that particular FACT

PART II: DISCUSSION TOPICS, enumerated as 1-9, which will discuss various

medically-related aspects of this case and will include the rationale, reasoning, and references for the opinion(s) expressed

PART III: A CONCLUSION or SUMMARY

PART IV: ANSWERS TO QUESTIONS REGARDING MEDICAL OPINIONS

PART V: REFERENCES

PART I: Some pertinent FACTS of the case:

1. VHA records available in CPRS and JLV and specifically a VHA note dated 4/1/1999 indicate that the veteran developed hypertension in 1985. In 1985 he would have been 55 years old and this would have been over 30 years after his service separation. Hypertension is known to be a major risk factor for heart disease, including myocardial infarction.

RELEVANCE: The veteran's hypertension was not service-connected. He did not develop it during military service, and it does not appear to have developed in any way as a proximate result of his other service-connected disabilities.

2. VHA records indicate that the veteran also had diabetes since 1985. MTR's dated March 12, 1990 indicate that the veteran had diabetes which was first diagnosed in 1985 {VA Examination; page 1 of 4; dated 3/12/1999; scanned in as receipt date 3/12/1999}. Again, he would have been 55 years old at the onset and this would have been over 30 years after his service separation. Diabetes is known to be a major risk factor for heart disease, including myocardial infarction.

RELEVANCE: The veteran's diabetes was not service-connected. He did not develop it during military service, and it does not appear to have developed in any way as a proximate result of his other service-connected disabilities.

3. Records from 2006 indicate he was taking Zocor (Simvastatin), a drug that is used specifically for hypercholesterolemia {VA Examination; page 1 of 4; dated 9/16/2006; scanned in as receipt date 3/12/1999}. PACT notes in April 2013 -- four months prior to his death -- indicate that he had become intolerant of the hypercholesterolemia medications and was therefore on no prescribed therapy.

RELEVANCE: Hypercholesterolemia is also an independent risk factor for heart disease (including myocardial infarction) as well as for cerebrovascular ischemic events, which this veteran also had. The fact that he was not able to take his cholesterol-lowering medication in the last few years of his life means that he was at increased risk of a heart attack (myocardial infarction) or stroke due to that factor.

4. Records from 2006 indicate that the veteran smoked ½ ppd of cigarettes for 25 years.

RELEVANCE: Smoking is an additional risk factor for heart disease (including myocardial infarction) as well as for cerebrovascular ischemic events, which this veteran also had. However, because he had only "moderate" smoking history and it had been over twenty years between the time of his smoking

cessation and his death, this author does not attribute much "additional risk" for the veteran's atherosclerotic disease from his personal smoking history. It perhaps would account for some, but not much, of the veteran's risk.

5. An examination in late 2007 noted that "the veteran's activities of daily living are not affected" by the cold injury residuals {VA Examination; page 2 of 4; dated 10/11/2007; scanned in as receipt date 10/11/2007}.

6. At neurology visit in March 2010 he stated that he had "Intermittent decreased sensation in feet and hands, no pain, no longer has parasthesias (years ago)." He was being evaluated for a "shuffling gait" with a suspicion of Parkinson's disease ... "Pt or wife report no tremor or other motor deficit besides shuffling gait."

The conclusion of the neurologist was that "Parkinson unlikely, some features of parkinsonism probably secondary to microvascular disease (on CT)" in which his head had shown changes consistent with "microvascular ischemic changes" (which are changes due to atherosclerotic blockages in small arteries) and there were also focal areas of encephalomalacia (which was consistent with old cortical infarcts, or strokes, which also would be most likely related to both his hypertension and his hypercholesterolemia). In other words, the veteran had some mobility issues related to brain injury from "mini-strokes."

This was labelled as "late effects of cerebrovascular disease" in their diagnostic classification.

RELEVANCE: The veteran had evidence of small micro-vascular changes in the brain which occurred PRIOR TO 2010. These could also be classified as small areas of cerebral infarction or "mini-strokes." Because atherosclerosis is a systemic process, and because the veteran had had both diabetes and hypertension for almost 25 years by 2010, it is not surprising to find these changes. However, there are two other significant corollaries: (1) that likely means that the veteran also had atherosclerotic blockages in the heart vessels at the same time and (2) the fact that the neurologist related his abnormal gait to these prior "mini-strokes" lends an alternative explanation to the veteran's issues related to balance, ambulation and mobility issues.

7. The veteran had evidence of imbalance in 2012 which his Primary Care physician related to "ischemic vestibulopathy" which is essentially mini-strokes that affect the vestibular system of the inner ear, which controls balance. The deficiency caused by the tiny strokes manifests itself as a type of dizziness or vertigo which in turn produces imbalance and postural instability which can affect gait and mobility {CPRS and JLV; PACT Note dated 1/19/2012}.

8. He had evidence of Non-proliferative diabetic retinopathy in 2007 {CPRS and JLV; Ophthalmology note; 10/4/2007}, which is a sign of diabetic vascular complications. He had other evidence of poor visual acuity which were related to macular degeneration and prior trauma to the eyes which likely caused choroidal rupture and subsequent choroidal neovascular membranes (or "CNVM") which contributed to his visual loss starting in his sixties, according to Ophthalmology visit note from August 30, 2012 {CPRS and JLV; Ophthalmology note; 8/30/2012}.



RELEVANCE: Diabetic retinopathy is an end-stage complication of diabetes and is thought to represent the damage that diabetes extracts on small vessel blood flow. This often has a strong correlation to other vascular complications, including both cerebrovascular disease within the brain and cardiovascular disease as it pertains to coronary artery disease. In addition, poor visual acuity (regardless of the cause) has a strong correlation with immobility as well as poor balance and risk for falls.

9. A Urology (GU) note in August 2012 noted that he had benign prostatic hypertrophy and a CT scan showed an enlarged prostate ("> 5cm") and rectal exam estimated a prostate of 50-60 grams. {CPRS records; Aug 13, 2012.} PACT notes from March 2010 indicate that he had had a "4 year history of such" and he was on medications for obstructive uropathy and his incontinence was attributed to that cause. {CPRS records; Mar 11, 2010.}

RELEVANCE: BPH (benign prostatic hypertrophy) is a benign enlargement of the prostate that tends to worsen with age in older men and can produce symptoms of "overflow incontinence," which is an issue in which the prostate gland exerts pressure on the bladder outlet and restricts urine flow UNTIL the bladder gets so "over-full" that the pressure inside the distended, over-filled bladder overcomes the external pressure of the bladder and forces urine out through the urethra in an uncontrollable fashion. This fact will become relevant in the discussion of the private medical opinion and accompanying letter by legal counsel. {See DISCUSSION TOPIC #3}

10. According to the death certificate in August 2013, the veteran was 83 years old at the time of his death.

RELEVANCE: The veteran exceeded the average life expectancy for males {REFERENCE 1}. However, at the time of his death he would have had both long-standing diabetes mellitus and hypertension for over 25 years.

## PART II: DISCUSSION TOPICS

DISCUSSION TOPIC #1 : A General Discussion of Obesity, Pertinent to this Particular Case

It is a conclusive medical fact is that obesity is the result of intake of calories above the metabolic needs of an individual which leads to storage of this excess energy (in the form of calories) as fat. The metabolic needs of an individual do vary based on extensive factors, but without consuming excess calories, obesity will not occur.

The root cause of obesity is excess caloric intake which is caused by personal choice of quantity and/or type of food. By controlling caloric intake, any person can be completely sedentary and still lose weight and completely sedentary people can avoid weight gain by not consuming excess calories. While increased exercise can allow additional calorie consumption without weight gain, exercise is not required to prevent weight gain--only moderation of dietary intake. This is supported by the simple observation that every completely bed-bound individual incapable of any form of exercise does not become obese unless they are fed an excess of calories above their basic metabolic needs.

According to the CDC website, "Obesity is a complex health issue to address. Obesity results from a combination of causes and contributing factors, including individual factors such as behavior and genetics. Behaviors can include dietary patterns, physical activity, inactivity, medication use, and other exposures. Additional contributing factors in our society include the food and physical activity environment, education and skills, and food marketing and promotion." {REFERENCES 2 and 3}

Examples are seen in everyday life of this phenomenon --i.e., completely sedentary but otherwise healthy individuals without obesity such as paraplegics or bedridden individuals who are not obese. The converse is also seen when otherwise healthy individuals are obese who exercise extensively. The fact is that the amount of calories ingested is the root cause of obesity and that is not caused or influenced by the veteran's SC conditions.

Note that:

(1) The veteran does not have an endocrine or metabolic abnormality. He has excessive intake of calories. Competent beings are capable of controlling intake of calories brought on by the type, quality, quantity of food as well as frequency of food intake. As the veteran has not been deemed incompetent, the veteran is capable of controlling caloric intake.

(2) Inactivity is not a SC condition. The "inactivity" or relative "immobility" as well as his functional limitations attributed to the SC conditions is, however considered in this opinion.

(3) Given the prevalence of obesity in the U. S. population, it has not been proven to this examiner's satisfaction by any preponderance of evidence that the veteran's frostbite was the proximate cause of his obesity; many elderly males are obese regardless of any history or absence of frostbite;

(4) It is less likely than not that the veteran's SC conditions, to include his residuals of frostbite of all four extremities, to include bilateral upper and lower extremity peripheral neuropathy, (considered both individually and together) caused the veteran to become obese in this case. He had the ability to regulate his caloric intake according to his needs.

DISCUSSION TOPIC #2 : Specific Considerations Regarding Obesity in this Particular Individual Veteran

(A) This veteran, like other immobilized patients, could have restricted his caloric intake to match his body's metabolic expenditures, even with reduced exercise or mobilization.

It is acknowledged that the veteran indeed had physical limitations on his mobility, as noted in the August 2008 VA medical exam, and summarized in the BVA Board of Appeals Remand. However, a basal metabolic rate would often expend 1200 calories per day even in a bed-ridden individual such as a geriatric nursing home resident with dementia or a spinal cord injury patient with paraplegia or quadriplegia. There is no question that dietary modification can be utilized to limit one's caloric intake to 1200 calories or less per day. It should also be noted that in terms of energy expenditure,

this veteran was capable of substantially more movement than the examples given of a bedridden individual, since it is noted that he could walk a half a block before sitting and resting and the neuropathy, tingling and numbness in his hands were intermittent. Therefore, while his functional impairment does suggest a "less than average" expenditure of calories, it does not dictate a dietary intake of calories in excess of that required for the maintenance of a normal weight.

(B) This veteran's immobility did not affect his overall life expectancy

The veteran's obesity did not preclude a natural life expectancy that exceeded the average for that of males with hypertension. Thus, it is rather speculative to suggest that his presumed immobility (at least that portion presumably caused by his frostbite) accelerated to any degree or in any fashion his hypertension or his coronary artery disease. There are many causes of obesity (primarily that of dietary intake, as noted above), and many causes of immobility in the geriatric population, particularly those over aged 80. This individual veteran, for example, had other causes of immobility that were MORE LIKELY THAN NOT to have been the predominant causes of his relative immobility as he aged, particularly after the age of 80 {See Discussion Topic #5 on other causes of his immobility}.

DISCUSSION TOPIC #3: Comments and Refutation on the Conclusions drawn by Dr. E. A. and the letter from legal counsel accompanying that medical opinion

The letter from Dr. E. A. is prefaced by and introduced with a letter from a lawyer (dated July 31, 2017) which is full of inconsistencies and it appears that he is recanting second-hand information given to him by the patient's wife. It is also not clear that Dr. E. A. had the benefit of years of the deceased veteran's medical treatment records in CPRS or JLV. Because the physician (Dr. E. A.) gives little or no rationale for his opinion, I have chosen to first refute the rationales described or put forth by the accompanying letter authored by the legal representative. For example, he states that (in reference to the veteran): "He would frequently lose his balance, and fall," {a likely consequence often gait disturbance for which he saw Neurology specialist in 2010 who attributed that to "mini-strokes" as discussed above in Fact # 6}; "as well as lose control of his bathroom functions" {a likely consequence of his prostate hypertrophy and possibly his diabetes as well, as noted above in Fact # 9}. He goes on to relay: "When they would go outside of the house, she would ensure that he was prepared for any bouts of incontinence. As a result of his conditions, Mr. Clark could not exercise and was forced to use devices for assistance when he tried to walk, such as a walker or a wheelchair." However, he fails to acknowledge that this own testimony attributes the "inability to exercise" to cerebral infarctions (most likely related to diabetes, hypertension, and hypercholesterolemia) which produced a propensity to fall related to "losing his balance" (NOT DUE to painful neuropathy); and to incontinence issues arising from prostate and other bladder issues. Note that because frostbite affects the peripheral nerves, it would have no impact whatsoever on bowel or bladder dysfunction which is regulated by nerves in the sacral region.

It is also interesting that the legal letter accompanying Dr. A. E.'s medical opinion would state that in Mr. Clark's case one "clearly sees the pattern of

obesity and limited mobility as early as April 1999." Recall that the veteran was diagnosed with hypertension (as well as diabetes) in 1985. Yet this lawyer later relates the lack of mobility and obesity as being causal in producing or resulting in the "myocardial infarction and hypertension" despite the fact that the veteran's hypertension preceded the described onset of the limited mobility. This is also crucial because both diabetes and hypertension are much greater risk factors for heart disease than is obesity {as discussed in DISCUSSION TOPIC #4}, and yet his diabetes and hypertension preceded the worsening years of his immobility by over a decade.

I would therefore disagree with his conclusions that "From the testimony of Mrs. Clark, it is clear that Mr. Clark's health conditions and cause of death are attributable to his service-connected disabilities." This statement strongly reinforces the heavy reliance he placed upon the wife's testimony to the disregard of other more established medically documented etiologies of the veteran's conditions. He then emphasizes (in bold) that "Mrs. Clark's testimony is credible and competent." This author would not argue at all with the credibility of the witness, but would point out that a lay witness is not competent to draw conclusions as to medical etiology of certain complaints: for example, as to the relationship of the micro-ischemic changes on the CT of the head to the patient's balance issues; nor with respect to the fact that bowel and bladder issues might be related to diabetes or prostate issues, but would not be etiologically related to peripheral neuropathy or other residuals of a frostbite injury. Therefore, the lay witness would be competent to describe observable features such as obesity or immobility or incontinence but would not have the medical training necessary to offer a professionally trained opinion as to the impact on cause of death or even to the relative contributing causal connection to hypertension or heart disease. It appears, moreover, that the lawyer and the hired expert retired physician relied more heavily on lay testimony from the wife and her inferences into causation that they did on medical documentation which pointed to other conclusions.

This case, therefore, would NOT be one in which, as he suggests, "medical evidence is not always or categorically required when the determinative issue involves either medical diagnoses or etiology, but rather such issue may, depending on the facts of the particular case, be established by competent and credible lay evidence."

Even his statement that the American Heart Association article "suggest that lifestyle plays a dominant role in causing obesity" discounts the huge factor that dietary intake and impulse control are the major aspects of "lifestyle" choices.

As to the actual written statement from Dr. E. A., there is little to refute. He states that he has reviewed the C-file, but does not make note of the fact that the veteran's hypertension pre-dated his worsening immobility and obesity and also discounted the huge list of alternative explanations and etiologies related to heart disease and myocardial infarction, including male gender, advanced age, long-standing diabetes and hypertension, the remote history of smoking, the history of hypercholesterolemia with intolerance to medical treatment for the same, etc. For a physician to ignore (and not even mention) diabetes in a discussion of the cause of death for heart disease is to miss the forest as a result of focusing on a single sapling. I admonish

any medical or legal mind to read the entire first page of Dr. E. A's medical opinion and at the conclusion of page 1 only try to point to any specific, concrete evidence that has been brought forth. {Quotes and paragraphs such as "Attorney ... requested that I evaluate" ... "I had the opportunity to review the claims file" and "I consulted Harrison's..." textbook and medical dictionary and a general discussion on "philosophical questions regarding the concept of causation" and another paragraph on "the concept of risk factors" as described in the Framingham heart study and a later Norwegian study; and even the latter paragraph on a review of the veteran's military experiences, service ratings, and the cause of death indicated on the death certificate ARE NOT IN DISPUTE. Seriously ... by the end of the first page, there is no substantive argument to refute!!

Now turn your attention to page 2. First sentence: He reviewed the Veteran's claims file, medical records, and medical research. No specifics are discussed or rendered, and it is not clear, for example, that these included the contemporary records of the veteran's neurological evaluation or out-patient primary care visits. Second sentence: "Based on all of the factors cited above, it is my opinion that it is at least as likely as not that the Veteran's military service and service-connected disabilities caused or contributed to the death."

I think one of the reason previous VA and contract examiners have not "clearly" or specifically addressed the points of Dr. E. A's medical opinion is because it is non-substantive and purely speculative and contains no reasoning, review of facts, or rationale. That may be why the lawyer chose to provide a several-page accompanying letter to "explain it." It is unfathomable to me that Dr. E. A.'s medical opinion is so DEVOID OF FACTS, LOGIC, RATIONALE, or JUSTIFICATION that in the entire body of his page-and-a-half medical opinion, the words "diabetes" or even "obesity" cannot be found. At all. Nor can the phrases "functional limitations" or "immobility" or "lack of exercise" which seem to be critical to the crux of this case and the lawyer's contentions. Every single time this learned physician references the factors that "obviously caused" the veteran's death (as the "accompanying lawyer note" would contend), he refers to it (you know, those actual, obvious causes) simply as his "service-connected disabilities." That's right: he manages to insist in one-and-a-half-pages that his "service connected disabilities caused or contributed to his cause of death" without ever actually mentioning a single one of those service-connected disabilities. Or discussing them. Or explaining how. Or why.

That's a difficult opinion to refute, indeed. But also a difficult one to defend, since there is no substance, rationale or specifics supplied. I would contend that it does not stand on its own merit.

DISCUSSION TOPIC #4: There Were Other More Substantial Causes of Cardiovascular Disease in this Veteran

This veteran had multiple major (and greater) risk factors for heart disease than obesity.

Among the risk factors for cardiac events such as myocardial infarctions, there are multifactorial causes and a number of risk factors: of these, both advanced age and hypertension are MUCH greater risk factors than is obesity.

Diabetes mellitus, which this veteran had since 1985, was also present, as was hypercholesterolemia.

In a study of the ranking of risk factor by relative risk {REFERENCE 4} published in the European Heart Journal and based upon a 21 year follow-up of 12,000 men and women from The Copenhagen City Heart Study, it was determined that hypertension and diabetes were greater risk factors for coronary artery disease than were physical inactivity or obesity.

The study used data from a long 21-year follow-up heart study which enrolled 12,000 individuals and used statistical methods to stratify and rank the relative risks independently of each other. After identifying ten coronary heart disease risk factors, all ten risk factors examined were dichotomized to obtain a single relative and population-attributable risk for each factor. This allowed a simple comparison or "ranking by importance" of all ten risk factors. Then, using a Cox regression analysis with ten risk factors entered simultaneously, significant relative risks for coronary heart disease in both men and women were analyzed at each age group so that age was not a factor considered. They could then say "at any given age, these are the relative rankings (in order of significance" for each of the ten factors.

The study noted the following pertinent points, quoted verbatim:

- (1) It is important to note that the observed association of coronary heart disease with each single risk factor is independent of the nine other risk factors, in models that included all ten risk factors;
- (2) Because age was used as the underlying time scale, this was automatically adjusted for in the observed associations;
- (3) In accordance with previous studies diabetes mellitus was associated with the highest relative risk for coronary heart disease in both sexes; and
- (4) Hypertension was also associated with a high relative as well as a population-attributable risk in both sexes and all age groups. The importance of hypertension has been demonstrated repeatedly.

This also correlates with this author's clinical experience as well as what he was taught in medical school, and the authors also provided several other references confirming the strong associations with diabetes {Reference 5 and 6} and hypertension {References 7 and 8}, including the Framingham Heart Study referenced and alluded to by Dr. E. A.

The statistical analysis (Table 2) in the study {REFERENCE 4} also demonstrated that the risk factor solely attributable to hypercholesterolemia (long considered a more minor risk factor) was still statistically slightly greater than that attributable solely to obesity.

DISCUSSION TOPIC # 5: Discussion of the article "American Heart Association Call to Action: Obesity as a Major Risk Factor for Coronary Artery Disease"

The "call to action" that this article and its title mention is basically resulting from the fact that for years dating back to the 1980's and early 1990's we have known that the MAJOR risk factors for atherosclerotic coronary artery disease or heart disease have been diabetes, a personal smoking history, hypertension, advanced age, male gender, and

hypercholesterolemia... and generally speaking, in that order or significance. This article is an attempt (akin to Rodney Dangerfield's "I don't get no respect") to bring obesity into the spotlight and highlight it's role on heart disease. In a sense, it is a "call" or "beckoning" to lift obesity into the same tier of modifiable risk factors that would get more attention for this potentially reversible risk factor. The authors make it clear that this "call" is a "request" (paragraph 2) and they also note that "obesity research today is in its infancy, at a stage comparable to lipid research 20 years ago." Part of this plea is based upon the fact that, from epidemiological and population-based studies, "the number of both men and women who are overweight is increasing" (paragraph 5) and "65,700,000 American adults (30 million men and 35.6 million women) exceed the healthy weight range defined by the US dietary guideline" (paragraph 6).

However, the increase in the prevalence of obesity that exists in our society -- which is the primary motivation for releasing this "call to arms" (so to speak) does not make the individual risk factor of obesity more substantial or more significantly in terms of its contribution to or impact upon a single individual, as is the veteran in this case. It notes that "the causes of obesity are complex" and indicates that "genetic factors play an important role" and "lifestyle may play the dominant role," but lifestyle choices include not only physical exercise levels but also dietary choices and over-indulgence.

The article also notes that "inactivity is only half of the lifestyle equation. Calories also count." It goes on to report that in order "to address the problem of obesity, it is vitally important that we couple the message to the public of calorie restriction with our message of lower fat consumption. In addition, we need to emphasize consuming fruits and vegetables-at least five a day-as an excellent way to help individuals restrict calories, attain a sense of satiety, and consume nutrients, such as folate, vitamin B6, and vitamin B12, that are important for overall cardiovascular health."

This article, published in June 1998, was exactly what the veteran needed to read and adhere to with respect to caloric restriction. Unfortunately, as the article also notes, demographic patterns throughout the United States (regardless of any disabilities in specific individuals) has shown a great trend in the 1990's toward poor dietary adherence to low calorie diets and an overall increase in sedentary activities both on the job and during their leisure time.

The bottom line from this article is that the veteran was likely, list many Americans, to have been obese even without any service-connected disabilities.

Nothing in the article would lead this author to conclude that obesity is a greater risk factor than long-standing diabetes or hypertension in the development of heart disease, or that it played a significant role in the development of this particular veteran's heart disease that led to his myocardial infarction.

DISCUSSION TOPIC #6: There Were Other More Substantial Causes of Immobility in this Veteran

The veteran had several separate issues that would have affected his ability or willingness to walk longer distances. As noted by the lawyer and discussed by this author in FACT # 6 and DISCUSSION TOPIC #3 above, he had balance issues that affected his gait and per a neurological evaluation in 2010 were likely related to prior mini-strokes.

The veteran also had incontinence issues most likely related to his BPH (and certainly unrelated to any of his service-connected conditions) and that made him hesitant to leave the house or go on longer walks, according to his wife's testimony and discussion with legal counsel, as relayed in the lawyer's letter from July 2017.

He was also over 80 years old during the last 3 years of his life, and it is a well-known fact that as individuals age they can become more feeble and less mobile and less independently ambulatory. In addition, poor vision likely contributed to his relative lack of long-distance ambulation. At an ophthalmology visit in August 2012, it was noted that he had both macular degeneration as well as previous trauma twenty years earlier. The ophthalmologist indicated that "He likely had a choroidal rupture and subsequent CNVM" which contributed to his visual loss starting in his sixties. The historical notes from that visit indicate that he "knows he doesn't see well, has been that way for a long time and doesn't see any need in doing anything that isn't going to help." {See FACT # 8.}

Diabetes is known to cause polyuria and more frequent urination can also be a dis-incentive to ambulate, particularly for longer distances away from the home. This would tend to deter longer walks outdoors as well as, perhaps, certain social events, recreational activities, or gym membership.

Advanced age also tends to make the prostate condition (BPH) worse since it worsens over time and with age and cerebrovascular accidents or ischemic changes to the brain can also be cumulative in their nature and effect on function.

This tendency to have excessive urination AND the inability to control urination was likely compounded by the fact that medication lists for the last decade of his life show the chronic daily use of diuretics (Lasix, or Furosamide) to control symptoms of fluid retention.

The veteran also had intractable pain on the plantar surface of both feet from intractable plantar keratosis.

Records from 2006 indicated that "He denies numbness or tingling in his hands or feet now. He does have it intermittently, however, in the hands and feet. He denies any cold sensitivity. He has frequent insomnia because of tingling in the feet that keeps him up at night. He also carries the diagnosis of intractable plantar keratosis. He states that her has pain with ambulation over the plantar aspect of his feet. He can walk two blocks before his feet start to ache and then he has to stop and rest. He can stand up for only one-half hour at a time before he has to stop and rest because of pain in the feet."

It is not clear from the above passage from medical records in 2006 that the



pain that limits mobility is completely due to the cold injury sequelae; it appears that some of the pain on the plantar surface of the foot is more likely that not related to his intractable plantar keratosis.

Note also, as mentioned in Fact # 5 that an examination in late 2007 noted that "the veteran's activities of daily living are not affected" by the cold injury residuals {VA Examination; page 2 of 4; dated 10/11/2007; scanned in as receipt date 10/11/2007}.

Furthermore, the letter from the lawyer and the testimony of the wife which accompanied the medical opinion from Dr. A. E. alluded to the fact that incontinence issues may have also limited his physical activity and willingness to walk greater distances.

Finally, a PACT Primary Care note from January 19, 2012 indicated veteran also suffered from "ischemic vestibulopathy; NOT WELL CONT plan; resume meds and recheck." {CPRS and JLV; PACT Note dated 1/19/2012}. This is a type of vertigo or imbalance that can occur from micro-ischemic vascular changes involving the bloodflow to the labyrinthine mechanism that controls equilibrium and balance issues within the inner ear.

We should suffice it to say that there were a lot of reasons he may not have walked or ambulated great distances during the last decade of his life ... not simply his service-connected conditions. One then cannot blame any "obesity" solely or even primarily on his residuals or frostbite, to include the peripheral neuropathy attributed to that condition.

DISCUSSION TOPIC # 7: This Veteran's Pattern of Weight Gain Did Not Correspond to that Which Would Suggest a Cause from Immobility related to Worsening Severity of his Service-connected Conditions

There was no consistent pattern identified which showed that in this particular veteran, the times of his greatest functional deficits and alleged "limited mobility" corresponded to times of appreciable weight gain. Specifically, he actually gained more weight prior to the increase in his service connection disabilities than he did in the three to four years immediately after the increase in the service connection that was granted in 2008.

This author reviewed the veteran's pattern of weight gain throughout frequent measurements of weight recorded in the CPORS and JLV records. A brief synopsis is listed below.

Date Note	Weight	Source
4/8/2004	198.7	JLV
8/13/2004	205.2	
12/1/2004	206.5	
4/8/2005	205	
10/24/2005	211.2	
1/26/2006	214	
4/5/2006	212	
1/5/2007	236	
2/2/2007	233.8	

5/31/2007	238.4		
8/2/2007	244		
9/27/2007	241.5		
11/9/2007	242	JLV	
2/21/2008	250 lbs	JLV	gained 44# in
3 yrs			
5/20/2008	252.1	JLV	
8/7/2008	241	VA Exam	
4/16/2009	258	JLV	
9/3/2009	250		
3/11/2010	252.6		
9/13/2010	248		
7/20/2011	253.4		
1/19/2012	250.2		wt stable for 4 years
4/27/2012	258.4		
8/6/2012	261.2		
4/5/2013	262		
4/13/2013	258		

Note two things:

- (1) from 12/1/2004 until 2/21/2008 gained 44 lbs. (from 206 to 250 lbs) in just over 3 yrs;
- (2) from 2/21/2008 until 1/19/2012 the veteran's weight was stable for almost 4 years (at or around 250 lbs)

An August 26, 2008 C & P exam noted that he had had chronically progressive peripheral neuropathy of both upper and lower extremities which has been getting worse "for the LAST SEVERAL MONTHS." {emphasis/ capitalization added by this author.} Yet from May to August 2008 he LOST from 252 lbs to 241 lbs. This would also seem to indicate that his service-connected conditions were "not as bad" prior to that time, which would include the period of 2004 through early 2008 ... a time during which his weight increased considerably.

Moreover, despite the fact that his service-connected disabilities and ratings were increasing or worsening during that time in mid-2008, and were at times characterized as "chronic" and "progressive," he was actually stable with his weight from the 2/21/2008 (or using the May 2008 weight) time frame until 2012, with a weight of around 250 lbs. as noted above.

In a April 2013 PACT visit note with Primary Care -- four months prior to his death -- an assessment was that:

"IMPRESSION/PLAN:

1. frostbite injury with secondary peripheral neuropathy - intermittent pain, paresthesias of the hands/feet - stable  
plan; cont obs"

Typically, in Primary Care, when a provider indicates that a condition is "stable," they are referring to "stable over the past year" or stable since their prior encounter. Yet the above records indicate that the veteran had achieved a 109 lb weight gain during the preceding year, after four years of a stable weight pattern, after which his recent frostbite injury with secondary peripheral neuropathy was described as "stable."

This author would conclude from the preponderance of evidence that there was

little or no correlation between the veteran's worsening status of his service-connected injuries and related residual disabilities and that of his weight gain.

DISCUSSION TOPIC # 8: Myocardial Infarction Specifically and Coronary Artery Disease Generally are the most common causes of death in men over 80 years of age and in fact is such a common cause of death in that age group that, in the absence of developing a cancerous condition, the veteran was likely to die of that anyway, regardless of other service-connected conditions.

This author would invite you to utilize a very helpful website listed as Reference 1:

<https://www.worldlifeexpectancy.com/usa-cause-of-death-by-age-and-gender>

Among men over 75 years of age, Heart Disease ranks as the most likely cause of death among all individuals, regardless of their race or weight (BMI) and actually is as likely as the second, third and fifth causes (lung diseases, lung cancers, and stroke) COMBINED. These population-based statistics apply across all demographics to the general population and are therefore devoid of service-connected conditions that may or may not produce immobility. In fact, if you exclude cancers of all types and Alzheimer's Disease, which of course are unrelated to this particular veteran and any of his service-connected conditions, you would find that Heart Disease eclipses the COMBINED TOTAL of DEATHS from many other causes. Furthermore, when you consider that this veteran had both long-standing hypertension and diabetes, also on the list of prominent causes of death, and take into consideration that this veteran did NOT have any type of known cancer or Alzheimer's disease, it is relatively easy to conclude that the OVERWHELMING most likely cause of death in this individual - frostbite injury or not - would be coronary heart disease.

{NOTE: For readers using this interactive website, be sure to first select "MALE" and then age of "75+" in the far right column in order to see the appropriate statistics.}

DISCUSSION TOPIC # 9: The Pronouncing Physician named Myocardial Infarction and Hypertension as the Causes of Death and DID NOT relate either to Obesity, even as a Secondary Cause or Contributing Factor

In this author's professional medical opinion, based upon experience in the field of medicine in clinical private practice, and having signed numerous death certificates for geriatric patients, I would state the following:

- (1) that it is likely and certainly implied that the pronouncing physician's opinion was that the veteran's co-morbid HYPERTENSION was the proximate or major contributing cause of his coronary artery event (myocardial infarction), which was the literal and acute cause of death. That is why hypertension is listed along with myocardial infarction on the death certificate as a contributing cause. However, in the examining/treating physician's analysis, obesity was not considered to be a major contributing factor as it was not listed.
- (2) Even under the section of the death certificate listed as "Other significant conditions" contributing to the death, "none" or "N/A" was listed, indicating that the pronouncing physician did not feel that obesity was a significant contributing cause

(3) with myocardial infarction and heart disease itself consistently being one of the top two leading causes of death among men over the age of 80, there is a great likelihood that he would have had significant heart disease with or without the presence of obesity.

#### PART III: SUMMARY and CONCLUSION

In conclusion, it is this author's professional medical opinion that the veteran's service-connected disabilities at the time of his death, to include:

frostbite residuals of the right foot at 30 percent disabling;  
frostbite residuals of the left foot at 30 percent disabling;  
frostbite residuals of the right hand at 30 percent disabling;  
frostbite residuals of the left hand at 20 percent disabling;  
peripheral neuropathy of the right upper extremity at 10 percent disabling;  
peripheral neuropathy of the left upper extremity at 10 percent disabling;  
peripheral neuropathy of the right lower extremity at 10 percent disabling;  
and  
peripheral neuropathy of the left lower extremity at 10 percent disabling  
-- for a combined evaluation of 90 percent disabled --

did NOT substantially or materially cause or contribute to his death, even considering the extent of his personal functional limitations related to those disabilities, and their impact on his mobility and any indirect relationship that that might have on his weight.

#### PART IV: ANSWERS TO SPECIFIC QUESTIONS

##### ANSWERS TO QUESTIONS REGARDING MEDICAL OPINIONS:

(A) Is it at least as likely as not (50 percent probability or more) that the Veteran's service-connected disabilities (to include his bilateral upper and lower extremity frostbite and peripheral neuropathy) caused the Veteran to become obese (for example, by decreased mobility, preventing regular exercise)?

No. See Rationale in above discussion. Neither frostbite nor peripheral neuropathy "cause" obesity and while immobility in any individual will reduce caloric expenditure, there are other ways to compensate in order to prevent obesity. Paraplegics in wheelchairs who do not walk may exercise more with their hands or reduce caloric consumption. As noted, there are an abundance of examples to the contrary in which limited mobility does not produce the outcome of obesity unless one also chooses to consume more calories than they expend, which is a decision that competent individuals can make for themselves.

(B) If so, is it at least as likely as not (50 percent probability or more) that the Veteran's obesity caused or contributed substantially and materially to the cause of the Veteran's death (myocardial infarction and hypertension)?

The answer to the first question was "no," as noted above. However, independent of that decision, obesity in this case was NOT a major contributing factor to the veteran's death from a myocardial infarction. His

long-standing hypertension (for over 25 years); his long-standing diabetes mellitus (for more than 25 years); his elevated cholesterol (for which he was intolerant of medication and was not taking at the time of his death); and his advanced age (over 83 years at the time of his death) were each singularly and all taken together vastly greater risk factors such that the veteran's obesity did not substantially and materially contribute to the cause of the Veteran's death from a myocardial infarction.

(C) Is it at least as likely as not (50 percent probability or more) that the Veteran's cause of death (myocardial infarction and hypertension) would not have occurred without the obesity caused by the service-connected disability?

No. (Beware of the double-negative here as I attempt to answer the question verbatim as posed.) No, it is NOT likely that the myocardial infarction would NOT have occurred without the obesity. In other words, it would have occurred in any event -- with or without his obesity -- due to his advanced age and other significant risk factors. I will repeat the rationale: his long-standing hypertension (for over 25 years); his long-standing diabetes mellitus (for more than 25 years); his elevated cholesterol (for which he was intolerant of medication and was not taking at the time of his death); and his advanced age (over 83 years at the time of his death) were each singularly greater risk factors -- and all taken together VASTLY GREATER risk factors such that the veteran's obesity did not substantially and materially contribute to the cause of the Veteran's death from a myocardial infarction.

It is more likely than not that at age 83 with long-standing hypertension and advanced age, the Veteran would have succumbed to a myocardial infarction with or without obesity; with or without relative immobility and with or without his frostbite and peripheral neuropathy. Empiric evidence of this fact is found in the knowledge that among non-obese male octogenarians without obesity, frostbite, or peripheral neuropathy, death from myocardial infarction is the leading cause of death {REFERENCE 1}.

#### PART V: REFERENCES

##### REFERENCES:

1. Deaths by Age and Gender. CDC OFFICIAL FINAL DEATHS: Released February 2020. Accessed on Jan 29, 2021 from:  
<https://www.worldlifeexpectancy.com/usa-cause-of-death-by-age-and-gender>  
{Note: this is an interactive website. Click on "male" and then "Age 75+" in the far right column.}
2. The Center for Disease Control and Prevention (CDC). Adult Obesity Causes & Consequences Accessed from:  
<https://www.cdc.gov/obesity/adult/causes.html>
3. Harris, M.; Taylor, G.; and Jackson, D. Clinical Evidence Made Easy: The Basics of Evidence-Based Medicine. (ISBN-13: 978-1907904202)
4. Schnohr1. P.; Jensen, J. S.; Scharling, H.; and Nordestgaard1, B. G. Coronary heart disease risk factors ranked by importance for the individual and community: A 21 year follow-up of 12000 men and women from The Copenhagen

City Heart Study.

European Heart Journal (2022) 23, 620-626 doi:10.1053/eurhj.2001.2842

Accessed from <https://academic.oup.com/eurheartj/article/23/8/620/419659>

{Note: a PDF version of the complete text is available from this web address by selecting on the PDF icon.}

5. Barrett-Connor EL, Cohn BA, Wingard DL, Edelstein SH. Why is diabetes mellitus a stronger risk factor for fatal ischemic heart disease in women than in men? JAMA 1991; 265: 627-31.

6. Nyboe J, Jensen G, Appleyard M, Schnohr P. Smoking and the risk of first acute myocardial infarction. Am Heart J 1991; 122: 438-47.

7. Kannel WB, Schwartz MJ, McNamara PM. Blood pressure and risk of coronary heart disease: The Framingham Study. Dis Chest 1969; 56: 43-52.

8. MacMahon S, Peto R, Cutler J et al. Blood pressure, stroke, and coronary heart disease. Part 1, prolonged differences in blood pressure: prospective observational studies corrected for the regression dilution bias. Lancet 1990; 335: 765-74.

/es/ DAVID W PARLER MD

STAFF PHYSICIAN

Signed: 02/01/2021 14:19

# ATTACHMENT 2



Kenneth M. Carpenter, Esq., Chief Executive Officer  
Glenda S. Herl, Chief Operating Officer  
Kenny Dojaquez, Esq.  
John D. Niles, Esq.  
Sara N. Huerter, Esq.  
Shannon K. Holstein, Esq.

April 1, 2021

**SENT VIA VA DIRECT UPLOAD**

Department of Veterans Affairs  
Evidence Intake Center  
PO Box 4444  
Janesville, WI 53547-4444

Re: Clark, Carolyn  
C-File #: [REDACTED]  
SSN #: [REDACTED]

**DEMAND FOR PAUSE IN ADJUDICATION OF BOARD'S REMAND**

Dear Sir/Ma'am:

The Board remanded Mrs. Clark's claim for DIC for a new exam and to correct an error with the duty to assist. However, the Board overlooked a waiver of the duty to assist. Earlier this month, the CAVC issued a panel decision in *Groves v. McDonough*, Docket 17-3084. In that case, the Court confirmed that the VA must pause adjudication of a claim where the claimant explicitly requests a pause, and also demonstrates prejudice in proceeding.

Here, Mrs. Clark explicitly requests that the RO pause adjudication of her claim for DIC despite the Board's remand. Mrs. Clark has appealed the Board's denial of her waiver to the Court and awaits a decision there. Further adjudication of this claim will prejudice Mrs. Clark because the VA has developed evidence without any legal authority to do so. This evidence is harmful to her claim, and any decision that incorporates this evidence cannot be undone.

P.O. Box 2099  
1525 SW Topeka Blvd., Ste D  
Topeka, KS 66601  
Phone: 785-357-5251 Fax: 785-357-4902



April 1, 2021

Page 2

RE: Clark, Carolyn

C-File #: [REDACTED]

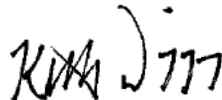
SSN #: [REDACTED]

What is more, Mrs. Clark's appeal to the Veterans Court is an event of jurisdictional significance. That is, her Court appeal deprives the RO of jurisdiction to proceed further with this claim. Here even more than in *Groves*, then, the RO must refrain from acting. For so long as the judicial proceedings on appeal of the Board's decision continue, the RO lacks not only the authority but also the jurisdiction to proceed further with the claim.

Given the time sensitive nature of this issue, if we don't receive a response in 10 (ten) days, or any further action is taken on the remand, we will assume this request has been denied and will proceed immediately to the Court for injunctive relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'KHD' followed by a stylized flourish or 'JH'.

Kenneth H. Dojaquez

KHD:mb

cc: Carolyn Clark

# ATTACHMENT 3



## DEPARTMENT OF VETERANS AFFAIRS

April 9, 2021

In Reply Refer To: 330/22APP/CJG

CAROLYN CLARK  
[REDACTED]

[REDACTED]  
CLARK, R

Dear Mrs. Clark:

We are writing to you about your entitlement to Dependency and Indemnity Compensation (DIC) benefits.

### What We Decided

Service connection for cause of death remains denied.

### Dependent's Educational Assistance (Chapter 35)

Basic eligibility to Dependent's Educational Assistance is established. For additional information please see *Survivors' and Dependents' Educational Assistance Program -Factsheet* at <https://www.benefits.va.gov/BENEFITS/factsheets/survivors/CH35.pdf>. To make a claim, just complete the enclosed VA Form 22-5490, *Dependents' Application for VA Education Benefits*, and return it to the address listed in the instructions for this form.

### How We Made Our Decision

We have enclosed a copy of our Rating Decision for your review. It provides a detailed explanation about our decision. You can find the evidence we considered in the section titled "*Evidence*." The reasons for our decision can be found in the portion of the rating titled "*Reasons for Decision*" or "*Reasons and Bases*".

Please refer to the enclosed VA Form 21P-10197, "*Legal Summary - Dependency and Indemnity Compensation*," for the laws used in deciding your claim.

██████████  
Clark, R

## What You Should Do If You Disagree With Our Decision

If you do not agree with this decision, you have one year from the date of this letter to select a review option to preserve your earliest effective benefit date. The review options and their proper applications are as follows, for a(n):

- **Supplemental Claim**, complete **VA Form 20-0995**, *Decision Review Request: Supplemental Claim*
- **Higher-Level Review**, complete **VA Form 20-0996**, *Decision Review Request: Higher-Level Review*
- **Appeal to the Board**, complete **VA Form 10182**, *Decision Review Request: Board Appeal (Notice of Disagreement)*

Please see the enclosed VA Form 20-0998, *Your Rights to Seek Further Review of Our Decision*. It explains your options for an additional review. You may obtain any of the required applications by downloading them from [www.va.gov/vaforms/](http://www.va.gov/vaforms/) or by contacting us. You can also learn more about the disagreement process at [www.va.gov/decision-reviews](http://www.va.gov/decision-reviews). If you would like to obtain or access evidence used in making this decision, please contact us as noted below. Some evidence may be obtained by signing in at [www.va.gov](http://www.va.gov).

## Where to Send Your Written Correspondence

VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please send all correspondence to the appropriate location listed on the attached *Where to Send Your Written Correspondence*.

## Do You Have Questions Or Need Assistance?

If you have any questions, call us toll-free by dialing 1-800-827-1000. Our TDD number for the hearing impaired is 711. Our TDD number for international callers is 1-800-829-4833. *If you call, please have this letter with you.*

[REDACTED]

Clark, R

We sent a copy of this letter to Kenneth Dojaquez, your attorney. You appointed that individual to represent you. We will continue to send copies of all correspondence to that individual.

Sincerely yours,

Regional Office  
Director

Contact us at: <https://iris.custhelp.va.gov>

Enclosure(s): Rating Decision  
VA Form 22-5490  
VA Form 20-0998  
VA Form 21P-10197  
Where to Send Your Written Correspondence

cc: Kenneth Dojaquez  
Carpenter Chartered  
P.O. Box 2099  
1525 SW Topeka Blvd. Suite D  
Topeka, KS 66601





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

**ROOSEVELT CLARK**

**VA File Number**



**Represented By:  
KENNETH H DOJAQUEZ  
Rating Decision  
03/31/2021**

**INTRODUCTION**

The records reflect that ROOSEVELT CLARK was a Veteran of the Korean Conflict Era. The Veteran served in the Army from December 5, 1951 to November 19, 1953. The Board of Veterans Appeals remanded the case to our office on January 7, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

Pursuant to 38 U.S.C. § 5103 (previously known as Veterans Claims Assistance Act (VCAA) of 2000), the Department of Veterans Affairs' (VA) is required to notify the claimant and the claimant's representative, if any, of any information and any medical or lay evidence, not previously provided to VA, that is necessary to substantiate the claim. VA must also advise a claimant which evidence the claimant must supply and which evidence VA will obtain on his behalf. VA is also required to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim for a VA benefit unless no reasonable possibility exists that such assistance would aid in substantiating the claim.

When considering the circumstances of the current claim as discussed below, VA has satisfied the notification and duty to assist provisions of the law, and no further actions need to be undertaken by VA on the claimant's behalf.



### **DECISION**

1. Basic eligibility to Dependents' Educational Assistance is established.
2. Service connection for cause of death remains denied.

### **EVIDENCE**

- Death certificate, received August 20, 2013
- VA Form 21-530, Application for Burial Benefits, received August 20, 2013
- VA Form 21-534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child, received September 7, 2013
- Notification letter, dated October 9, 2013
- Development letter, dated June 27, 2014
- Rating Decision, dated September 21, 2014
- Notification letter, dated September 24, 2014
- VA Form 21-0958, Notice of Disagreement, received October 6, 2014
- VA letter, dated March 25, 2015
- VA Form 21-22a, Appointment of Individual as Claimant's Representative, received April 21, 2015, and February 27, 2018
- VA Form 21-0820, Report of General Information, dated April 27, 2015
- Treatment records, Augusta VAMC and East Orange VAMC, from January 2007 to July 2013
- Hearing transcript, dated April 27, 2015
- Statement in support of claim, received September 25, 2015
- Medical literature regarding obesity as a risk factor for heart disease, received September 25, 2015
- VA medical opinion, dated February 11, 2016
- Notification letter, dated March 4, 2016
- Statement of the Case, dated March 7, 2016
- VA Form 9, Appeal to Board of Veterans' Appeals, received April 7, 2016
- Statements in support of claim, received July 30, 2017, and July 31, 2017
- Private medical opinion, Dr. Einar W. Anderson, received July 31, 2017
- Board of Veterans' Appeals Remand, dated January 10, 2019
- Development letter, dated April 4, 2019
- VA medical opinion, dated May 10, 2019
- Supplemental Statement of the Case, dated May 13, 2019
- Board of Veterans' Appeals Decision, dated July 25, 2019
- VA medical opinion, dated December 6, 2019
- Supplemental Statement of the Case, dated December 12, 2019
- VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), received January 10, 2020
- VA letter, dated January 17, 2020
- Board of Veterans' Appeals remand, dated January 7, 2021
- VA medical opinion, dated February 1, 2021





- Service treatment records, for the period of 12/05/51 to 11/19/53

## **REASONS FOR DECISION**

### **1. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.**

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. (38 USC Ch. 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is granted as the evidence shows the Veteran at the time of death had a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807)

### **2. Service connection for the cause of death.**

The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the primary or contributory cause of death.

Our letter dated April 4, 2019, informed you of what we still need from you, what the evidence must show to establish entitlement, what is the status of your claim, and how you can help your claim. You were furnished with authorization forms to complete and return if you wished the VA to obtain private medical records on your behalf. You were specifically informed that if there is any other evidence or information that you think will support your claim, you were to let us know.

During the veteran's lifetime, service connection was established for frostbite residuals of the right foot at 30 percent disabling, frostbite residuals of the left foot at 30 percent disabling, frostbite residuals of the right hand at 30 percent disabling, frostbite residuals of the left hand at 20 percent disabling, peripheral neuropathy of the right upper extremity at 10 percent disabling, peripheral neuropathy of the left upper extremity at 10 percent disabling, peripheral neuropathy of the right lower extremity at 10 percent disabling, and peripheral neuropathy of the left lower extremity at 10 percent disabling, for a combined evaluation of 90 percent disabled.

The August 2013 death certificate indicates that the principal causes of the veteran's death were myocardial infarction and hypertension.

Available service treatment records contain no documentation of complaints, treatment, or



diagnosis directly related to the condition resulting in death. The veteran's complete service treatment records are not available for review. All efforts to locate complete records have been unsuccessful. If additional records are located in the future, we will review them, and notify you of any additional information or evidence required at that time.

You submitted medical literature identifying obesity as a risk factor for coronary artery disease. Generic medical literature which does not apply medical principles regarding causation or etiology to the facts of an individual case does not provide competent evidence to establish a nexus. *Libertine v. Brown*, 9 Vet. App. 521, 523 (1996). There is no supporting medical evidence that the general principles cited in the articles relate to the specific situation of the Veteran in this case. *Mattern v. West*, 12 Vet. App. 222, 228 (1999). Thus, the articles are not determinative as to whether the veteran's service connected conditions resulted in obesity which contributed to his death.

The veteran's medical treatment records are absent for competent medical evidence to suggest the veteran's death was related to military service or his service-connected conditions. In addition, there is no evidence of hypertension or myocardial infarction manifest to a compensable degree within the one-year period following the veteran's discharge from active duty for consideration on a presumptive basis.

You provided a private medical opinion from Dr. Einar W. Anderson dated July 26, 2017. Dr. Anderson opined that it is at least as likely as not that the veteran's military service and service connected conditions caused or contributed to his death. However, Dr. Anderson did not provide direct reasons/bases or medical literature to support his assertion. He simply discussed the definition of what a risk factor is without ever directly stating any specific nexus between the veteran's service connected conditions and his subsequent death.

Several VA medical opinions have been obtained in support of your claim since the initial receipt of your claim (on February 11, 2016, May 10, 2019, December 11, 2019, and February 1, 2021). All these examiners opined that it is less likely than not that the veteran's service connected conditions caused the veteran to become obese. The examiners provided rationale indicating that despite the restrictions the veteran's service connected disabilities imposed on his mobility, there are other ways to compensate in order to prevent obesity. The examiners also opined it is less likely as not that the veteran's cause of death would not have occurred without obesity caused by service connected disability. The examiner provided rationale indicating that at age 83 with long-standing hypertension and advanced age, the veteran would have succumbed to a myocardial infarction with or without obesity; with or without relative immobility and with or without his frostbite and peripheral neuropathy. Empiric evidence of this fact is found in the knowledge that among non-obese male octogenarians without obesity, frostbite, or peripheral neuropathy, death from myocardial infarction is the leading cause of death.

The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the primary or contributory cause of death. Service connection for the cause of death is denied because there is no evidence that the cause of death was related to military service or the veteran's service connected conditions.



ROOSEVELT CLARK



5 of 5

38 CFR 3.303, 3.304, 3.307, 3.309, 3.312

**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](http://www.va.gov).







## 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](http://www.vets.gov).

### Descriptions of Review Options

Supplemental Claim	Higher-Level Review	Appeal to the Board	U. S. District Court
<p><b>Use this option when you have additional evidence that is NEW AND RELEVANT</b> to support granting the benefit(s) sought or you can identify existing relevant records that you would like VA to obtain. (<b>NEW evidence</b> means information not previously submitted to VA, and <b>RELEVANT evidence</b> 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><b>Use this option when you have NO additional evidence</b> to submit, or that you would like VA to obtain, in support of a previously decided issue.</p> <p>You <b>may not</b> 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 <b>informal conference</b> 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><b>Use this option to appeal to the Board for consideration by a Veterans Law Judge.</b> 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><b>(INSURANCE CLAIMS ONLY)</b></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: <a href="http://www.uscourts.gov/court_locator.aspx">www.uscourts.gov/court_locator.aspx</a>.</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/](http://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/](http://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](http://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](http://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](http://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](http://www.va.gov), or [www.vets.gov](http://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.




**LEGAL SUMMARY**  
**Dependency and Indemnity Compensation**

UNITED STATES CODE (U.S.C.)	38 CFR §	TITLE
38 U.S.C. §§ 501, 103, 105, 512, 5110, 101	3.1	Definitions
38 U.S.C. § 1310	3.5	Dependency and indemnity compensation
38 U.S.C. § § 101, 106	3.6	Duty periods
38 U.S.C. § § 5303, 1152, 1504, 106	3.7	Individuals and groups considered to have performed active military, naval, or air service
38 U.S.C. § § 501, 1311, 1314, 1321	3.10	Dependency and indemnity compensation rate for a surviving spouse
38 U.S.C. § § 5303, 501	3.12	Character of discharge
38 U.S.C. § 501	3.12a	Minimum active-duty service requirement
38 U.S.C. § 5310, 5111	3.20	Surviving spouse's benefit for month of veteran's death
38 U.S.C. § § 1318, 501	3.22	DIC benefits for survivors of certain veterans rated totally disabled at time of death
38 U.S.C. § 501	3.50	Spouse and surviving spouse
38 U.S.C. § 103(a)	3.52	Marriages deemed valid
38 U.S.C. § 501	3.53	Continuous Cohabitation
38 U.S.C. § § 1532, 1534, 1536, 1541, 103(b)	3.54	Marriage dates
38 U.S.C. § 103	3.55	Reinstatement of benefits eligibility based upon terminated marital relationships
38 U.S.C. § § 101, 104, 501, 1541	3.57	Child
38 U.S.C. § 1521(h)(2)	3.60	Definition of "living with"
38 U.S.C. § § 501(a), 501, 1506, 5104	3.103	Procedural due process and other rights
38 U.S.C. § 501	3.109	Time limit
38 U.S.C. § § 501, 5101	3.152	Claims for death benefits
38 U.S.C. § 501	3.155	How to file a claim
38 U.S.C. § § 5103, 5103A	3.159	Department of Veterans Affairs assistance in developing claims
38 U.S.C. § 501	3.160	Status of claims
38 U.S.C. § 501	3.205	Marriage
38 U.S.C. § 501	3.211	Death
38 U.S.C. § 501	3.309	Diseases subject to presumptive service connection
38 U.S.C. § § 1502(b), 1541	3.351	Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings
38 U.S.C. § 1151	3.361	Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training an rehabilitation services, or compensated work therapy program
38 U.S.C. § § 5110, 501, 5101	3.400	General
38 U.S.C. § § 501, 5110	3.402	Surviving spouse
38 U.S.C. § § 501(a), 5313, 5313B	3.665	Incarcerated beneficiaries and fugitive felons - compensation
38 U.S.C. § Chapter 35	3.807	Dependents' educational assistance; certification







Department of Veterans Affairs

**VA DATE STAMP**

(For VA Use Only)

## DEPENDENTS' APPLICATION FOR VA EDUCATION BENEFITS

(Under Provisions of chapters 33 and 35, of title 38, U.S.C.)

INTERNET VERSION AVAILABLE - You may complete and submit your application online at: [www.benefits.va.gov/gibill](http://www.benefits.va.gov/gibill).

### PART I - APPLICANT INFORMATION

1. SOCIAL SECURITY NUMBER		2. SEX OF APPLICANT <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		3. DATE OF BIRTH	
4. NAME (First name, middle initial, last name)					
5. CURRENT MAILING ADDRESS (Number and street or rural route, city or P.O., State and ZIP Code)					
6. TELEPHONE NUMBER(S) (Including Area Code)					
HOME			CELL		
7. E-MAIL ADDRESS (If applicable)					
8. DIRECT DEPOSIT (Attach a voided personal check <u>or</u> deposit slip to match the information entered below. See Instructions for additional information.)					
ROUTING OR TRANSIT NUMBER		ACCOUNT TYPE		ACCOUNT NUMBER	
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS		<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
9. PLEASE PROVIDE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF SOMEONE WHO WILL ALWAYS KNOW WHERE YOU CAN BE REACHED					
A. NAME		B. ADDRESS		C. TELEPHONE NUMBER (Include Area Code)	

### PART II - QUALIFYING INDIVIDUAL INFORMATION

10. NAME OF QUALIFYING INDIVIDUAL (PARENT OR SPOUSE) ON WHOSE ACCOUNT BENEFITS ARE BEING CLAIMED (First name, middle initial, last name)			
11. SOCIAL SECURITY NUMBER OR VA FILE NUMBER		12. BRANCH OF SERVICE	13. DATE OF BIRTH
14A. DID PARENT OR SPOUSE DIE WHILE SERVING ON ACTIVE DUTY? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," is checked complete Item 14B) (If "No," is checked then you <b>do not</b> qualify for the Fry Scholarship)		14B. DATE OF DEATH	14C. DATE LISTED AS MISSING IN ACTION OR P.O.W.
15. IS QUALIFYING INDIVIDUAL (PARENT OR SPOUSE) ON ACTIVE DUTY? <input type="checkbox"/> YES <input type="checkbox"/> NO			
16. DO YOU (APPLICANT) OR THE QUALIFYING INDIVIDUAL (PARENT OR SPOUSE) HAVE AN OUTSTANDING FELONY AND/OR WARRANT? <input type="checkbox"/> YES <input type="checkbox"/> NO			

### PART III - RELATIONSHIP AND BENEFIT INFORMATION

17. YOUR RELATIONSHIP TO QUALIFYING INDIVIDUAL (Check only one) <input type="checkbox"/> SPOUSE/SURVIVING SPOUSE (Please complete only Section I on page 2, and then proceed to Part V) <input type="checkbox"/> CHILD/STEPCHILD/ADOPTED CHILD (Please complete only Section II on page 2, and then proceed to Part V)	
SECTION I - SPOUSE/SURVIVING SPOUSE	
18. IS A DIVORCE OR ANNULMENT PENDING TO THE QUALIFYING INDIVIDUAL? <input type="checkbox"/> YES <input type="checkbox"/> NO	19. IF YOU ARE THE SURVIVING SPOUSE, HAVE YOU REMARRIED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," please provide date of remarriage) _____

**SECTION I - SPOUSE/SURVIVING SPOUSE (Continued)**

20. SPOUSE/SURVIVING SPOUSE SELECT THE BENEFIT THAT YOU ARE APPLYING FOR BELOW:

**IMPORTANT ▶**

PLEASE CAREFULLY READ THE INFORMATION AND INSTRUCTIONS ON PAGE 5, ITEM 20 BEFORE SELECTING BOX "A" OR "B" BELOW REGARDING THE BENEFIT YOU ARE APPLYING FOR. THE INFORMATION AND INSTRUCTIONS ON PAGE 5 ALSO PROVIDE LINKS TO VA WEBSITES WHERE YOU WILL BE ABLE TO COMPARE "DEA" AND "FRY" BENEFITS. YOU WILL ALSO FIND OTHER ELIGIBILITY RELATED INFORMATION THERE.

- ☐ **A.** AS A SPOUSE OR SURVIVING SPOUSE BASED ON 100% PERMANENT AND TOTAL DISABILITY, SERVICE CONNECTED OR LINE OF DUTY DEATH, I AM APPLYING FOR CHAPTER 35 - DEA BENEFITS.

- ☐ **B.** AS A SURVIVING SPOUSE BASED ON LINE OF DUTY DEATH AFTER SEPTEMBER 10, 2001, I AM APPLYING FOR CHAPTER 33 - FRY SCHOLARSHIP BENEFITS.

**NOTE** - BY CHECKING THIS BOX I ACKNOWLEDGE THAT I UNDERSTAND THIS ELECTION IS **IRREVOCABLE** AND MAY NOT BE CHANGED.

**NOTE** - BY CHECKING THIS BOX I ACKNOWLEDGE THAT I UNDERSTAND THIS ELECTION IS **IRREVOCABLE** AND MAY NOT BE CHANGED.

**SECTION II - CHILD/STEPCHILD/ADOPTED CHILD**

21. CHILD/STEPCHILD/ADOPTED CHILD SELECT THE BENEFIT THAT YOU ARE APPLYING FOR BELOW:

**IMPORTANT ▶**

PLEASE CAREFULLY READ THE INFORMATION AND INSTRUCTIONS ON PAGE 6, ITEM 21 BEFORE SELECTING BOX "A" OR "B" BELOW REGARDING THE BENEFIT YOU ARE APPLYING FOR. THE INFORMATION AND INSTRUCTIONS ON PAGE 5 ALSO PROVIDE LINKS TO VA WEBSITES WHERE YOU WILL BE ABLE TO COMPARE "DEA" AND "FRY" BENEFITS. YOU WILL ALSO FIND OTHER ELIGIBILITY RELATED INFORMATION THERE.

- ☐ **A.** I AM APPLYING FOR CHAPTER 35 - DEA BENEFITS.

- ☐ **B.** I AM APPLYING FOR CHAPTER 33 - FRY SCHOLARSHIP BENEFITS.

**NOTE** - BY CHECKING THIS BOX I ACKNOWLEDGE THAT I UNDERSTAND THIS ELECTION IS **IRREVOCABLE** AND MAY NOT BE CHANGED.

**NOTE** - BY CHECKING THIS BOX I ACKNOWLEDGE THAT I UNDERSTAND THIS ELECTION IS **IRREVOCABLE** AND MAY NOT BE CHANGED.

**Important** - If your parent died in the line of duty prior to August 1, 2011, you may apply for **both** DEA and Fry Scholarship benefits. If you are eligible for both Chapter 35 (DEA) and Chapter 33 (Fry Scholarship) benefits and you would like to use the Chapter 35 benefit first, check the box below.

**Important** - If your parent died in the line of duty prior to August 1, 2011, you may apply for **both** DEA and Fry Scholarship benefits. If you are eligible for both Chapter 35 (DEA) and Chapter 33 (Fry Scholarship) benefits and you would like to use the Chapter 33 benefit first, check the box below.

☐ CHAPTER 35 - DEA

☐ CHAPTER 33 - FRY SCHOLARSHIP

**IMPORTANT:** If you are over the age of 18 once you receive either the DEA or FRY SCHOLARSHIP benefits, you will no longer receive payments of Dependency and Indemnity Compensation (DIC) or Pension and you may no longer be claimed as a dependent in a Compensation claim. If you are under the age of 18, on your 18th birthday you will lose eligibility for DIC or Pension payments and you will no longer be claimed as a dependent in a Compensation claim.

**CAREFULLY READ THE INFORMATION AND INSTRUCTIONS ON PAGE 6, ITEM 22 BEFORE COMPLETING THE ELECTION BOX BELOW. YOU ARE STRONGLY ENCOURAGED TO DISCUSS YOUR ELECTION WITH A VA COUNSELOR.**

22. I CERTIFY THAT I UNDERSTAND THE EFFECTS THAT THIS ELECTION TO RECEIVE DEA OR FRY SCHOLARSHIP BENEFITS WILL HAVE ON MY ELIGIBILITY TO RECEIVE **DIC OR PENSION** BENEFITS (*Please read Information and Instructions Page 6 for additional information*)

☐ YES ☐ NO

**PART IV - BENEFIT AND TYPE OF EDUCATION OR TRAINING INFORMATION**23A. DATE YOU WILL BEGIN SCHOOL OR TRAINING (*MM/DD/YYYY*)23B. TYPE OF EDUCATION OR TRAINING (*Check ONE box*)

- ☐ COLLEGE OR OTHER SCHOOL
- ☐ FARM COOPERATIVE
- ☐ LICENSING OR CERTIFICATION TEST
- ☐ APPRENTICESHIP OR OTHER ON-THE-JOB TRAINING
- ☐ NATIONAL ADMISSION EXAMS OR NATIONAL EXAMS FOR CREDIT
- ☐ CORRESPONDENCE COURSE
- ☐ FLIGHT TRAINING (*Fry Scholarship only*)

23C. [**DEA ONLY**] DO YOU HAVE A MENTAL OR PHYSICAL DISABILITY FOR WHICH YOU ARE SEEKING SPECIAL RESTORATIVE TRAINING? (*See Information and Instructions, Page 6, for details regarding restorative training*)

☐ YES

☐ NO

23D. [**DEA ONLY**] DO YOU HAVE A MENTAL OR PHYSICAL DISABILITY FOR WHICH YOU ARE SEEKING SPECIAL VOCATIONAL TRAINING? (*See Information and Instructions, Page 6, for details regarding special vocational training*)

☐ YES

☐ NO

24. NAME AND ADDRESS OF SCHOOL OR TRAINING FACILITY (Number and street or rural route, city or P.O., State and ZIP Code)

25. SPECIFY YOUR EDUCATION OR CAREER OBJECTIVE, IF KNOWN (e.g., Bachelor of Arts in Accounting, Welding Certificate, Police Officer)

26. WOULD YOU LIKE TO RECEIVE VOCATIONAL AND EDUCATIONAL COUNSELING? (See Information and Instructions, Item 26 for more information regarding vocational and educational counseling)

☐ YES ☐ NO**PART V - APPLICATION HISTORY**

27. PRIOR TO THIS APPLICATION, HAVE YOU EVER APPLIED FOR OR RECEIVED ANY OF THE FOLLOWING VA BENEFITS? (Check all appropriate boxes)

A. ☐ DISABILITY COMPENSATION OR PENSIONB. ☐ DEPENDENTS' INDEMNITY COMPENSATION (DIC)C. ☐ VOCATIONAL REHABILITATION AND EMPLOYMENT BENEFITS (Chapter 31)D. ☐ VETERANS EDUCATION ASSISTANCE BASED ON YOUR OWN SERVICE (Specify benefit(s): \_\_\_\_\_)E. ☐ VETERANS EDUCATION ASSISTANCE BASED ON SOMEONE ELSE'S SERVICE  
SPECIFY BENEFIT(S) BY CHECKING APPLICABLE BOX BELOW AND COMPLETE ITEMS 28 AND 29☐ TRANSFERRED ENTITLEMENT☐ CHAPTER 35 - SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM (DEA)☐ CHAPTER 33 - POST-9/11 GI BILL MARINE GUNNERY SERGEANT DAVID FRY SCHOLARSHIPF. ☐ NONEG. ☐ OTHER (Specify benefit(s): \_\_\_\_\_)**IMPORTANT:** Complete Items 28 and 29 *only* if you checked the box for Item 27E above.

28. NAME OF INDIVIDUAL ON WHOSE ACCOUNT YOU PREVIOUSLY CLAIMED BENEFITS (First, Middle, Last)

29. SOCIAL SECURITY NUMBER OF INDIVIDUAL ON WHOSE ACCOUNT YOU PREVIOUSLY CLAIMED BENEFITS

**PART VI - APPLICANT'S MILITARY SERVICE INFORMATION****(NOTE: Chapter 35 benefits are not payable while an eligible person is on active duty)**

30. HAVE YOU EVER SERVED ON ACTIVE DUTY IN THE ARMED FORCES? (If "No," skip to Part VII)

☐ YES ☐ NO

31. INFORMATION ABOUT YOUR PERIOD(S) OF ACTIVE DUTY (If you need additional space use Item 37, Remarks)

A. DATE ENTERED ACTIVE DUTY	B. DATE SEPARATED FROM ACTIVE DUTY	C. BRANCH OF SERVICE OR RESERVE OR GUARD COMPONENT	D. CHARACTER OF DISCHARGE

**PART VII - EDUCATION, TRAINING AND EMPLOYMENT****SECTION I - EDUCATION & TRAINING**

32. CHECK THE APPROPRIATE BOX AND ENTER THE DATE IN ITEM 33

☐ GRADUATED FROM HIGH SCHOOL☐ DISCONTINUED HIGH SCHOOL☐ NEVER ATTENDED HIGH SCHOOL☐ EXPECT TO GRADUATE FROM HIGH SCHOOL☐ AWARDED GED

33. DATE

34A. TYPE OF SCHOOL	34B. NAME AND LOCATION OF SCHOOL (City and State)	34C. DATES OF TRAINING		34D. NUMBER OF SEMESTER, QUARTER, OR CLOCK HOURS COMPLETED	34E. DEGREE, DIPLOMA OR CERTIFICATE RECEIVED	34F. MAJOR FIELD OR COURSE OF STUDY
		FROM	TO			
HIGH SCHOOL						
COLLEGE						
VOCATIONAL OR TRADE						
OTHER (Specify)						
_____						
_____						
_____						





**INFORMATION AND INSTRUCTIONS FOR COMPLETING THE  
DEPENDENTS' APPLICATION FOR VA EDUCATION BENEFITS  
(VA FORM 22-5490)**

Do **not** use this form to apply for Veterans' education assistance based on your own service (chapters 30, 32, 33, or 1606) or Vocational Rehabilitation and Employment benefits (chapter 31). To apply for veterans' education assistance based on your own service, use VA Form 22-1990. To apply for Vocational Rehabilitation and Employment benefits, use VA Form 28-1900. VA forms are available at [www.va.gov/vaforms](http://www.va.gov/vaforms).

**INTERNET VERSION AVAILABLE** - You may complete and submit this application on-line at [www.benefits.va.gov/gibill](http://www.benefits.va.gov/gibill). Click on "GI Bill: Apply for Benefits."

**NOTE:** The numbers on these Information and Instructions pages match the item numbers on this application. Items not mentioned are self-explanatory.

**ITEM 8.** The Department of the Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. To enroll in direct deposit, please attach a voided personal check **or** deposit slip, **and** provide the information requested in Item 8. If you **do not** have a bank account, please visit <https://www.benefits.va.gov/benefits/banking.asp>. This website provides information about the Veterans Benefits Banking Program (VBBP), and a link to banks and credit unions that may fit your needs. You may also call 1-800-827-1000. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of the Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.

**ITEM 16.** You will not be eligible to receive benefits for any period for which you or the qualifying individual on whose account you are claiming benefits has an outstanding felony warrant. Any benefits paid to you for such period will result in an overpayment and be subject to collection.

**ITEM 17.** If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits) (38 U.S.C. § 103(3)). Additional guidance on when VA recognizes marriages is available at <http://www.va.gov/opa/marriage/>.

**ITEM 20. IMPORTANT - PLEASE READ THE INFORMATION BELOW BEFORE MAKING YOUR SELECTION IN ITEM 20A OR 20B REGARDING THE BENEFIT YOU ARE APPLYING FOR.**

- To qualify for the Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship, you must be the surviving spouse of an individual who died in the line of duty while serving on active duty as a member of the Armed Forces after September 10, 2001.
- To qualify for Survivor's and Dependents' Educational Assistance (DEA) you must be either:
  - (1) The spouse of a veteran who is permanently and totally disabled as a result of a service-connected disability, **OR**
  - (2) The spouse of an individual on active duty who has been listed as missing in action, captured in the line of duty by hostile force, forcibly detained or interned in the line of duty by hostile force, or forcibly detained or interned in the line of duty by a foreign government or power for more than 90 days, **OR**
  - (3) The surviving spouse **or** child of a veteran who died of a service-connected disability or who dies while a service-connected disability was rated permanent and total in nature, **OR**
  - (4) The surviving spouse of an individual on active duty for which the evidence shows that the individual is hospitalized for receiving outpatient medical care services or treatment; has a total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service; and the service person is likely to be discharged or released from such service for such disability.

**NOTE: If you are eligible for both Chapter 35 Survivors' and Dependents' Educational Assistance Program (DEA) and Chapter 33 Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) benefits, you must relinquish/give up entitlement to one or the other benefit for which you are eligible, **even if entitlement arises from separate events**.** In other words, you must forfeit eligibility to the other benefit even if your eligibility is due to:

- A separate Period of Service (POS) other than the one for which the death of the spouse is associated; **OR**
- A separate POS other than the one for which your spouse has a total disability permanent in nature resulting from a service-connected disability; **OR**
- A separate POS based on any other criteria as listed in 38 U.S.C. § 3501(a)(1); **OR**
- Death of any other individual identified in Item 10 of this application.

**IMPORTANT:** You cannot retain eligibility for both programs simultaneously. Therefore, by checking either box "A" or box "B" in Item 20, you agree and understand that you are making an **irrevocable** election to receive the selected benefit and your election may not be changed.

**IMPORTANT:** Eligibility for (DEA) will be terminated in the event that VA determines that the individual on whose account benefits are claimed is no longer totally disabled or VA is notified that the individual is no longer listed as captured, missing in action, or forcibly detained.

**Note:** Before making your election selection, you can compare the differences between (DEA) and (FRY), and the benefits each provide in order to help you make the best choice that suits your needs. This benefit comparison information can be found on the VA website at: [https://www.benefits.va.gov/gibill/docs/factsheets/fry\\_scholarship.pdf](https://www.benefits.va.gov/gibill/docs/factsheets/fry_scholarship.pdf). You can also find additional information about each program by visiting the GI Bill website at: <https://benefits.va.gov/gibill/> and using the comparison tool.

## INFORMATION AND INSTRUCTIONS (*Continued*)

### ITEM 21. IMPORTANT - PLEASE READ THE INFORMATION BELOW BEFORE MAKING YOUR SELECTION IN ITEM 21A OR 21B REGARDING THE BENEFIT YOU ARE APPLYING FOR.

- To qualify for the Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship, you must be the dependent child of an individual who died in the line of duty while serving on active duty as a member of the Armed Forces after September 10, 2001.
- To qualify for Survivor's and Dependents' Educational Assistance (DEA) you must be either:
  - (1) The child of a veteran who is permanently and totally disabled as a result of a service-connected disability; **OR**
  - (2) The child of an individual on active duty who has been listed as missing in action, captured in the line of duty by hostile force, forcibly detained or interned in the line of duty by hostile force, or forcibly detained or interned in the line of duty by a foreign government or power for more than 90 days, **OR**
  - (3) The child of a veteran who died of a service-connected disability or who dies while a service-connected disability was rated permanent and total in nature, **OR**
  - (4) The child of an individual on active duty for which the evidence shows that the individual is hospitalized for receiving outpatient medical care services or treatment; has a total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service; and the service person is likely to be discharged or released from such service for such disability.

#### **PARENT'S DEATH PRIOR TO AUGUST 1, 2011 -**

- The election you choose in Item 21 **does not** eliminate your eligibility for the alternate education benefit (either Survivor's and Dependents' Educational Assistance (DEA) and the Chapter 33 Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship)) based on the same event (i.e., your parent's line of duty death that occurred prior to August 1, 2011).

#### **PARENT'S DEATH ON OR AFTER AUGUST 1, 2011 -**

- The election you choose in Item 21 **does** eliminate your eligibility for the alternate education benefit (either Survivors' and Dependents' Educational Assistance Program (DEA) and the Chapter 33 Post-9/11 GI Bill Marine Sergeant John David Fry Scholarship (Fry Scholarship)), based on the same event (i.e., your parent's line of duty death that occurred on or after August 1, 2011). Therefore, you must relinquish/give up eligibility entitlement to the benefit that you are **not** applying for **but only with regard to the entitlement arising from the same event** (i.e., your parent's line of duty death that occurred on or after August 1, 2011). By checking either box "A" or box "B" in Item 21, you agree and understand that you are making an **irrevocable** election to receive the selected benefit and your election may not be changed.

**IMPORTANT:** Unlike spouses, children may be able to retain eligibility for both programs simultaneously if they qualify under different events and individuals (i.e., a separate parent's line of duty death that occurred on or after August 1, 2011).

**IMPORTANT:** Eligibility for (DEA) will be terminated in the event that VA determines that the individual on whose account benefits are claimed is no longer totally disabled or VA is notified that the individual is no longer listed as captured, missing in action, or forcibly detained.

**NOTE:** Before making your election selection, you can compare the differences between (DEA) and (FRY), and the benefits each provide in order to help you make the best choice that suits your needs. This benefit comparison information can be found on the VA website at: [https://www.benefits.va.gov/gibill/docs/factsheets/fry\\_scholarship.pdf](https://www.benefits.va.gov/gibill/docs/factsheets/fry_scholarship.pdf). You can also find additional information about each program by visiting the GI Bill website at <https://benefits.va.gov/gibill/> and using the comparison tool.

**ITEM 22.** Your election to receive Survivors' and Dependents' Education Assistance (DEA) or Chapter 33 Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) in lieu of payments of compensation, pension, and Dependents' Indemnity Compensation (DIC) is final and cannot be changed. This means that if you are 18 years old, payments of compensation, pension, and Dependents' Indemnity Compensation (DIC) will be terminated upon issuance of a DEA or Fry Scholarship benefit payment. If you are under the age of 18, these benefits will be terminated on your 18th birthday. If you are planning to pursue a program of education for more than 36 months, you should consider deferring receipt of DEA or Fry Scholarship benefits. We strongly recommend that you discuss your education or training plans with a VA counselor before making a decision.

**ITEM 23B.** Types of education or training programs are self-explanatory, except for the following:

**"Licensing or Certification Test"** - A "licensing test" is a test offered by a state, local, or federal agency that is required by law to practice an occupation. A "certification test" is a test designed to provide affirmation of an individual's qualifications in a specific occupation.

**"National Admission Exams or National Exams for Credit"** - You may be reimbursed for the cost of approved tests for admission to or credit at institutions of higher learning.

**"Correspondence Course"** - You may receive benefits for correspondence training. Payments for correspondence courses are made quarterly after VA receives a certification showing the number of lessons completed. For more information on correspondence courses, you can go to the VA website at: [https://www.benefits.va.gov/gibill/correspondence\\_training.asp](https://www.benefits.va.gov/gibill/correspondence_training.asp).

**"Flight Training"** - You must already have a private pilot's license. If you are taking an Airline Transport Pilot course, you must have a valid first-class medical certificate on the date that you enter training. For all other flight courses, you must have a valid second-class medical certificate on the date that you enter training.

**ITEMS 23C AND 23D** - Any individual eligible under the Survivors' and Dependents' Educational Assistance program may receive Special Restorative Training or Specialized Vocational Training if a VA counselor determines that a specialized program is needed to overcome the effects of a physical or mental handicap. To be eligible for receipt of specialized training, the disability must prevent you from pursuing an educational program. Examples of Special Restorative Training include speech and voice correction, language retraining, lip reading, and Braille reading and writing. Specialized Vocational Training consists of specialized courses leading to a suitable vocational objective.

**ITEM 26 - VA VOCATIONAL AND EDUCATIONAL COUNSELING HELP AVAILABLE:** VA offers a wide range of services to assist you in planning your educational and/or career goals. Services include educational and vocational guidance and testing to develop a greater understanding of your skills, talents and interests. For more information on VA counseling, call VA toll-free at 1-888-GIBILL-1 (1-888-442-4551) or if you use the Telecommunications Device for the Deaf (TDD), the Federal Relay number is 711.

## HOW TO FILE YOUR CLAIM

You may complete and submit your application online at [www.benefits.va.gov/gibill](http://www.benefits.va.gov/gibill) or be sure to do the following:

**(A) If you have selected a school or training establishment:**

**Step 1:** Mail the completed application to the VA Regional Processing Office for the region of that school's physical address. See page 8 for addresses of the VA Regional Processing Offices.

**Step 2:** Tell the veterans certifying official at your school or training establishment that you have applied for VA education benefits. Ask him or her to submit your enrollment information using VA Form 22-1999, Enrollment Certification, or its electronic version.

**Step 3:** Wait for VA to process your application and notify you of its decision concerning your eligibility for education benefits.

**(B) If you have not selected a school or training establishment:**

**Step 1:** Mail the completed application to the VA Regional Processing Office for the region of your home address. Check page 8 for addresses of the VA Regional Processing Offices.

**Step 2:** Wait for VA to process your application and notify you of its decision concerning your eligibility for education benefits.

## ADDITIONAL HELP COMPLETING APPLICATION

If you need additional help completing this application or you want information about the work-study program, call VA toll-free at 1-888-GIBILL-1 (1-888-442-4551). If you use the Telecommunications Device for the Deaf (TDD), the Federal Relay number is 711. You can also get more information about education assistance from our education Internet site at [www.benefits.va.gov/gibill](http://www.benefits.va.gov/gibill).

## CONTACT VA FROM OVERSEAS

Students and School Certifying Officials calling from outside the United States can contact VA by phone at: 001-918-781-5678 during business hours, 7 a.m. - 6 p.m. CST, Monday - Friday. This is not a toll-free number but the caller will be routed to the next available customer service representative. Non-overseas customers should call the toll-free number shown in "Additional Help Completing Application".

<b>Eastern Region:</b> <b>VA Regional Office</b> <b>P.O. Box 4616</b> <b>Buffalo, NY 14240-4616</b>									
SERVES THE FOLLOWING STATES									
CO	CT	DC	DE	IA	IL	IN	KS	KY	MA
MD	ME	MI	MN	MO	MT	NC	ND	NE	NH
NJ	NY	OH	PA	RI	SD	TN	VA	VT	WI
WV	WY	APO / FPO AA		FOREIGN SCHOOLS			US VIRGIN ISLANDS		

<b>Western Region:</b> <b>VA Regional Office</b> <b>P.O. Box 8888</b> <b>Muskogee, OK 74402-8888</b>									
SERVES THE FOLLOWING STATES									
AK	AL	AR	AZ	CA	FL	GA	HI	ID	LA
MS	NM	NV	OK	OR	PR	SC	TX	UT	WA
APO / FPO AP			GUAM			PHILIPPINES			

### REQUEST TO OPT OUT OF INFORMATION SHARING WITH EDUCATIONAL INSTITUTIONS

The Harry W. Colmery Veterans Educational Assistance Act of 2017 (Public Law 115-48), also known as the "Forever GI Bill," requires the Department of Veterans Affairs (VA) to make available to educational institutions information about the amount of educational assistance to which a veteran or other eligible individual is entitled. If you are eligible for the Post-9/11 GI Bill (Chapter 33), Montgomery GI Bill-Active Duty (Chapter 30), Montgomery GI Bill - Selected Reserve (Chapter 1606), or the Survivors' and Dependents Educational Assistance Program (DEA) (Chapter 35), you may elect to "opt-out" of these disclosures and have VA withhold this information instead. To request an opt-out, or for information about how to opt-out, please refer to our website at [va.gov](http://va.gov), or click <https://www.va.gov/find-forms/> to complete the VA Form 22-0993, *Request to Opt-Out of Information Sharing with Educational Institutions*.

**PRIVACY ACT INFORMATION:** VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., awards of benefits) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain education benefits. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine the maximum benefits allowable under the law. While you do not have to respond, VA cannot process your claim for benefits unless the information is furnished as required by existing law (38 U.S.C. 3513). The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

**RESPONDENT BURDEN:** We need this information to determine your eligibility for education benefits (38 U.S.C. 3513). Title 38 U.S.C. allows us to ask for this information. We estimate that you will need an average of 45 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at <http://www.reginfo.gov/public/do/PRAMain>. If desired, you can call 1-888-GI-BILL-1 (1-888-442-4551) to get information on where to send comments or suggestions about this form.



## 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 to minimize the time we spend waiting for mail. Only claimants or representatives can upload responses electronically right now. If you are not a claimant or representative, we recommend faxing so VA can receive your responses immediately.

The **fastest** way to respond to VA is to upload your correspondence electronically through VA.gov.

Visit <https://www.va.gov>. Under **Disability** click “Upload Evidence to support your claim”.

If you cannot upload your correspondence, fax or mail it to the applicable address below. These addresses serve **all United States and foreign locations**.

To determine where to send your correspondence, identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the applicable fax number or mailing address.

<b>Compensation Claims</b>	<b>Veterans Pension and Survivor Benefit Claims</b>
Fax Toll Free: 844-531-7818 <b>Or mail to:</b> Department of Veterans Affairs Evidence Intake Center <b>P.O. Box 4444</b> Janesville, WI, 53547-4444	Fax Toll Free: 844-655-1604 <b>Or mail to:</b> Department of Veterans Affairs Pension Intake Center <b>P.O. Box 5365</b> Janesville, WI 53547-5365



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](http://www.veteranscrisisline.net)

# ATTACHMENT 4

Department of Veterans Affairs		DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)	
<b>PART I - PERSONAL INFORMATION</b>			
1. VETERAN'S NAME <i>(First, middle initial, last)</i> Roosevelt Clark			
2. VETERAN'S SOCIAL SECURITY NUMBER [REDACTED]	3. VETERAN'S VA FILE NUMBER <i>(if different than their SSN)</i> [REDACTED]		4. VETERAN'S DATE OF BIRTH
5. IF I AM NOT THE VETERAN, MY NAME IS <i>(First, middle initial, last)</i> Carolyn S. Clark			6. MY DATE OF BIRTH <i>(If I am not the Veteran)</i>
7. MY PREFERRED MAILING ADDRESS <i>(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)</i> <input type="checkbox"/> I AM HOMELESS [REDACTED]			
8. MY PREFERRED TELEPHONE NUMBER <i>(Include Area Code)</i> [REDACTED]	9. MY PREFERRED E-MAIL ADDRESS		10. MY REPRESENTATIVE'S NAME Kenneth H. Dojaquez, Esq.
<b>PART II - BOARD REVIEW OPTION <i>(Check only one)</i></b>			
11. A Veterans Law Judge will consider your appeal in the order in which it is received, depending on which of the following review options you select. <i>(For additional explanation of your options, please see the attached information and instructions.)</i>			
<input checked="" type="checkbox"/> 11A. Direct Review by a Veterans Law Judge: I do not want a Board hearing, and will not submit any additional evidence in support of my appeal. <i>(Choosing this option often results in the Board issuing its decision most quickly.)</i>			
<input type="checkbox"/> 11B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will provide within the next 90 days, but I do not want a Board hearing. <i>(Choosing this option may add delay to issuance of a Board decision.)</i>			
<input type="checkbox"/> 11C. Hearing with a Veterans Law Judge: I want a Board hearing and the opportunity to submit additional evidence in support of my appeal that I will provide within 90 days after my hearing. <i>(Choosing this option may add delay to issuance of a Board decision.)</i>			
<b>PART III - SPECIFIC ISSUE(S) TO BE APPEALED TO A VETERANS LAW JUDGE AT THE BOARD</b>			
12. Please list each issue decided by VA that you would like to appeal. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision and the area of disagreement.			
<input type="checkbox"/> Check here if you attached additional sheets. Include the Veteran's last name and last 4-digits of the Social Security number.			
Check the SOC/SSOC Opt in box if any issue listed below is being withdrawn from the legacy appeals process. <input type="checkbox"/> Opt In from SOC/SSOC			
<b>A. Specific Issue(s)</b>		<b>B. Date of Decision</b>	
Implicit denial of our request to pause adjudication of the remand.		April 9, 2021	
AOJ's lack of jurisdiction to adjudicate the claim.		April 9, 2021	
Service connection for cause of death and entitlement to DIC/DEA.		April 9, 2021	
<b>PART IV - CERTIFICATION AND SIGNATURE</b>			
I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.			
13. SIGNATURE <i>(Appellant or appointed representative) (Ink signature)</i> [Signature]			14. DATE SIGNED 06/16/2021