

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

|                                |   |                       |
|--------------------------------|---|-----------------------|
| <b>THOMAS SMITH,</b>           | ) |                       |
|                                | ) |                       |
| Appellant,                     | ) |                       |
|                                | ) |                       |
| v.                             | ) | Vet. App. No. 18-4730 |
|                                | ) |                       |
| <b>DENIS MCDONOUGH,</b>        | ) |                       |
| Secretary of Veterans Affairs, | ) |                       |
|                                | ) |                       |
| Appellee.                      | ) |                       |

**APPELLEE’S RESPONSE TO THE COURT’S  
SEPTEMBER 7, 2022, ORDER**

Appellee, Denis McDonough, Secretary of Veterans Affairs, submits this response to the Court’s September 7, 2022, Order. In the Order, the Court directed the Secretary to “file copies of any notification letters containing instructions for continuing the appeal that were sent to Ms. Hicks or Mr. Smith’s estate after Mr. Smith’s death” within seven days after the date of the Order. The Secretary submits the following documents in response to the Court’s order:

(1) June 25, 2019, Letter to the Estate of Thomas Smith, attached as Exhibit A; (2) July 2, 2019, Letter to the Estate of Thomas Smith regarding returning payments issued after the veteran’s death and additional benefits available, attached as Exhibit B; and (3) July 2, 2019, Letter to the Estate of Thomas Smith regarding benefits available to survivors, attached as Exhibit C.

Additionally, a review of the Veterans Benefit Management System (VBMS) indicates that no application for any benefit or any form requesting a determination

as to the proposed-substitute's eligibility as an accrued benefits claimant was received in response to these letters. The Secretary notes that the only submission after the Veteran's death, per VBMS, was that movant's current counsel filed a VA Form 21-22 appointing him as the movant's representative before the agency in January 2020.

**WHEREFORE**, Appellee, Denis McDonough, Secretary of Veterans Affairs, respectfully responds to the Court's September 7, 2022, Order.

Respectfully submitted,

**CATHERINE C. MITRANO**  
Acting General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ James B. Cowden  
**JAMES B. COWDEN**  
Deputy Chief Counsel

/s/ Carson M. Garand  
**CARSON M. GARAND**  
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Office of General Counsel (027I)  
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Counsel for the Secretary  
of Veterans Affairs

# EXHIBIT A



**Department of  
Veterans Affairs**

June 25, 2019

In Reply Refer to:  
Veterans Claim # [REDACTED]

ESTATE OF THOMAS SMITH  
[REDACTED]  
[REDACTED]

To Whom It May Concern:

We have been notified of the death of THOMAS SMITH on June 25, 2019. Based on this notification, we have suspended the payment of VA benefits effective July 1, 2019.

Please notify this office immediately or call VA at 1-800-827-1000 to confirm this notice of death. If this notice of death was erroneous and the Veteran is not deceased, he or she should contact us directly so that we may resume payments. If this notice of death was correct, please notify us immediately so that we may terminate benefits and process any additional benefits that the Veteran's survivor(s) may be entitled to.

Sincerely yours,

Regional Office Director

# **EXHIBIT B**



**Department of  
Veterans Affairs**

Attention: Philadelphia Pension Center  
PO BOX 5206  
Janesville WI 53547-5206

July 2, 2019

In Reply Refer to:

Veteran's Claim # [REDACTED]

ESTATE OF THOMAS SMITH  
[REDACTED] [REDACTED]

To Whom It May Concern:

We have been notified of the death of THOMAS SMITH on May 15, 2019, and extend to you our deepest sympathy. We also wish to extend our sincere gratitude for the Veteran's service. Based on this notification, we have discontinued the payment of VA benefits effective May 1, 2019.

If the notice of death was erroneous and the Veteran is not deceased, contact us immediately so that we can resume payments. Please call 1-877-294-6380 or if a Telecommunications Device for the Deaf is used, please call 711.

**Where to Return Payments Issued after the Veteran's Death**

If any VA payments were issued in the Veteran's name after the date of death, they must be returned. If you still have any uncashed US Treasury checks made payable to the Veteran, they should be returned to Department of Treasury at the following address:

U.S. Department of Treasury  
Fiscal Service  
P.O. Box 51316  
Philadelphia, PA 19115-6316

Please be aware, only uncashed US Treasury Checks should be returned to the address above. Any personal checks or money orders sent to this address will result in lost or missing checks, or a delay in applying funds to the Veteran's account.

Do not return any funds issued by Direct Deposit. The Department of Veterans Affairs Debt Management Center (DMC) will partner with the Department of Treasury to reclaim all electronic payments that were deposited in error after the date of death.

If you wish to return funds directly to VA using a personal check or money order, send them to VA's DMC at the following address:

U.S. Department of Veterans Affairs  
Debt Management Center  
P.O. Box 11930  
St. Paul, MN 55111

Please include the Veteran's name and VA Claim Number found at the top of this letter with the personal check or money order for identification purposes.

If payments issued after the date of death are not returned, you will receive notification from VA's DMC of the amount you owe VA.

### **What Additional Benefits May Be Available**

You may be entitled to additional VA benefits. Visit this website for benefits fact sheets: <https://benefits.va.gov/BENEFITS/factsheets.asp>. You may also request a copy of the fact sheet by contacting us as outlined below.

The fact sheets provide information about the following:

- Burial benefits
- Dependency and Indemnity Compensation (DIC)
- Survivors' Pension
- Education and Training
- Home Loan Guaranty
- Health Care
- Life Insurance Proceeds
- Accrued

A person eligible to receive accrued benefits may be a substitute claimant for the Veteran or other claimant to process his or her pending claim or appeal to completion. For more information on accrued and substitution, you may visit our website at: <http://www.benefits.va.gov/BENEFITS/factsheets/general/Accrued.pdf>

If you are the surviving spouse of the Veteran, you may be entitled to the Veteran's Month of Death payment. To expedite this payment, please contact us at 1-877-294-6380. You may also submit a request to the Pension Management Center (PMC) closest to you. For a listing of which PMC services your state, please visit our website at:

<http://www.benefits.va.gov/PENSION/resources-contact.asp>

### **For More Information or Assistance**

If you have questions about this letter or would like more information about VA benefit programs and how to apply, you may visit our website at <http://www.va.gov> or call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 711. You may also write to us at the address at the top of this letter or on the Internet at <https://iris.custhelp.va.gov/>.

We hope you find this information helpful. Again, on behalf of a grateful Nation, we thank you for the Veteran's service.

Our sincere condolences,

Regional Office Director

# EXHIBIT C





**Department of  
Veterans Affairs**

PO BOX 42000  
PHILADELPHIA PA 19101

July 2, 2019

In Reply Refer to:  
Veterans Claim # [REDACTED]

ESTATE OF THOMAS SMITH  
[REDACTED] [REDACTED]

To Whom It May Concern:

We are sorry to learn about the death of THOMAS SMITH. This letter provides information regarding Department of Veterans Affairs (VA) benefits for survivors of the Veteran.

### **If There Is a Surviving Spouse**

The surviving spouse of a Veteran is generally entitled to the Veteran's benefit payment for the month in which the veteran died. **Our records do not indicate whether the Veteran was married at the time of death.** Please forward this letter to the surviving spouse (if any) or ask the surviving spouse to contact us as provided below.

To receive the Veteran's benefit for the month of death, the surviving spouse must call us with the following information or submit a signed statement that includes it. It is essential that the Veteran's name and claim number at the top of this letter be included for identification purposes.

1. Veteran's name
2. Veteran's claim number
3. Surviving spouse's name
4. Surviving spouse's Social Security number
5. Surviving spouse's date of birth
6. Surviving spouse's current address and phone number
7. How many times was the veteran married?
  - a. Dates and places of marriages (city/state or country)
  - b. To whom married
  - c. How prior marriages terminated (death/divorce)
  - d. Dates and places of termination (city/state or country)
8. How many times was the surviving spouse married?
  - a. Dates and places of marriages (city/state or country)
  - b. To whom married
  - c. How prior marriages terminated (death/divorce)
  - d. Dates and places of termination (city/state or country)

## What Additional Benefits May Be Available

Survivors may be entitled to additional VA benefits. Visit this website for a benefits fact sheet: <https://benefits.va.gov/BENEFITS/factsheets.asp>. A copy of the fact sheet can also be requested by contacting us as outlined below.

The fact sheet provides information about the following:

- Burial Benefits
- Dependency and Indemnity Compensation
- Pension
- Education and Training
- Home Loan Guaranty
- Health Care
- Life Insurance Proceeds
- Education Program Refund
- Related Benefits

If a Veteran or other claimant dies while his or her claim or appeal is pending, a person eligible to receive accrued benefits may substitute for the Veteran or other claimant to process the claim or appeal to completion. You may visit our website at:

<http://www.benefits.va.gov/BENEFITS/factsheets/general/Accrued.pdf> for more information regarding entitlement to Accrued and Substitution benefits.

## Where to Return Payments Issued After the Veteran's Death

If any VA payments were issued in the Veteran's name after the date of death, they must be returned. All VA checks not cashed by the Veteran must be returned to:

Department of Treasury  
Financial Management Service  
P.O. Box 51316  
Philadelphia, PA 19115-6316

Do not return any funds issued by Direct Deposit. The Department of Veterans Affairs Debt Management Center (DMC) will partner with the Department of Treasury to reclaim all electronic payments that were deposited in error after the date of death. If any payments issued after the Veteran's death are not returned, you will receive notification from VA's Debt Management Center in St. Paul, Minnesota of the amount of the outstanding debt. Instructions for returning the funds will be provided. Please be aware that any funds not returned may be electronically reclaimed from the veteran's account.

## For More Information or Assistance

If you have questions about this letter or would like more information about VA benefit programs and how to apply, you may visit our website at <http://www.va.gov> or call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 711. You may also write to us at the address at the top of this letter or on the Internet at <https://iris.custhelp.va.gov/>.

Sincerely yours,

Regional Office Director