

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

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

**PROPOSED SUBSTITUTE APPELLANT’S
SUPPLEMENTAL SUBMISSION OF DOCUMENTS
AND DISCUSSION OF RELEVANT AUTHORITY
FOR RECORD ON APPEAL**

Proposed Substitute Appellant Karen Hicks respectfully submits the attached documents to supplement the Record on Appeal in response to the Court’s Order of September 7, 2022.

- I. Documents Requested During Oral Argument and in This Court’s August 22, 2022, Order**
 - A. Probate Court Appointment, Dated October 20, 2021, of Karen Hicks as Personal Representative of Estate, Exhibit 1**

The attached Exhibit 1 shows that the D.C. Superior Court Probate Division appointed Ms. Hicks as the representative of the estate of her father, Thomas Smith.

B. Submission of Form 21-22a Dated January 22, 2020, Notifying Department of Veterans Affairs That Karen Hicks Appeared as the Claimant, Exhibit 2

The veteran passed away on May 15, 2019. Six months after his death, in an Order dated November 18, 2019, the Department of Veterans Affairs (VA) was asked by the Court whether it objected to the proposed substitution of Ms. Hicks as the representative of her father's estate. On January 16, 2020, the VA responded by saying it opposed the substitution, arguing (1) that there was no pending motion to substitute; (2) the inapplicability of 38 U.S.C. §§ 5121A and 5121(a)(6) to claims for entitlement to Specially Adapted Housing (SAH) benefits; (3) the inapplicability of nunc pro tunc relief because the case was not "submitted" through the reply brief stage; and (4) the substitute's lack of standing for a non-accrued benefit. One of the VA's objections was resolved when the Appellant filed a motion to substitute on January 22, 2020. The same day, Ms. Hicks sent the attached Form 21-22a (Ex. 2) to the VA to put it on notice that she intended to be a substitute on his claim. The VA never responded to the filing of Form 21-22a nor declared it insufficient to establish Ms. Hicks' eligibility to be substituted on her father's claim.

II. Additional Documents and Authority To Address Questions Presented at Oral Argument and in the Court's August 22, 2022, Order

Proposed Substitute Appellant also respectfully submits additional relevant documents and arguments that bear upon the issues in this appeal. This is done to help ensure that there is a complete documentary record before the Court as it

determines the standard for substitution for a non-accrued, one-time reimbursement claim.

A. Should the 2008 Rating Decision Be Treated as Final and Not Subject to Review Because an Appeal to the Board of Veterans' Appeals Was Not Taken Within One Year?

This question was presented both in the Court's August 22, 2022, Order and raised during the oral argument on September 6, 2022. The relevant documents are the attached Regional Office decisions: June 23, 2008, rating decision (Ex. 3); February 1, 2011, Regional Office letter (Ex. 4); January 12, 2012, Regional Office letter (Ex. 5); March 10, 2012, rating decision (Ex. 6); February 7, 2014, Statement of the Case (Ex. 7); and March 11, 2015, Supplemental Statement of the Case (Ex. 8). In none of the decisions after the June 23, 2008, rating decision did the Board reject the veteran's claim on the ground that the 2008 decision was final and not subject to review because an appeal was not taken.¹ After the June 23, 2008, decision, as is shown in Exhibits 4-8, Mr. Smith's claim evolved and was supplemented many times during the next seven years. The most recent 2015 decision, the final one that is the subject of this appeal, expressly stated that the veteran's claim was "considered reopened" but still denied. (*See* Ex. 5, Supplemental Statement of the Case, at 3.) Neither the Board of Veterans' Appeals

¹ The June 23, 2008, rating decision addressed only a 10 percent disability for "epididymitis left scrotum" and did not explain why Mr. Smith failed to prove his eligibility for a SAH grant.

decision of July 29, 2015, nor the Board of Veterans' Appeals' May 9, 2018, Ruling on Motion for Reconsideration considered the fact that the Regional Office elected, on multiple occasions, to "reopen" and decide the claim as if it were a newly filed claim. Moreover, in none of the five Regional Office decisions issued after the June 23, 2008, decision did the VA suggest that the veteran's submissions were untimely, futile, or otherwise not appropriate for building a record on which to challenge the failure to award a SAH grant before the Board of Veterans' Appeals.

B. Did the VA Fulfill its Obligation To Assist the Veteran in Developing His Claim?

This question was presented during oral argument on September 6, 2022. The short answer is "no." At no time during the claim process before the VA did it ever explain (in accordance with the decision in *Jensen v. Shulkin*, 29 Vet. App. 141 (2021)) what sort of loss of use in both legs could establish his eligibility for a SAH grant. Nor did it ever advise Mr. Smith that (in accordance with the prevailing law at the time the spa was built) reimbursement for a therapeutic spa could be available even if he had not sought preapproval for a grant before constructing it.

Then, in the year after Mr. Smith's death, the VA did not put Ms. Hicks on notice of the procedures to be followed to prosecute a claim for SAH benefits. Attached to the VA's September 8, 2022, filing in this Court (and also attached here for convenient reference as Exhibits 9 and 10) are the two notices sent to his estate after his death: a June 25, 2019, VA letter addressed to Estate of Thomas Smith

advising the estate that payment of benefits would be suspended effective July 1, 2019 (Ex. 9), and a July 2, 2019, letter addressed to Estate of Thomas Smith stating that benefit payments were discontinued as of May 1, 2019 (Ex. 10). Neither letter said anything about the process for having his estate prosecute his non-accrued pending claim for reimbursement of SAH benefits – even though that claim had been the subject of VA proceedings for the previous 12 years.

The procedure that the VA claimed Ms. Hicks should have followed was not explained until a telephone call and email exchange that occurred after the one-year period allegedly applicable to a claim for substitution in proceedings before the VA had passed. Those communications are described in the attached Exhibit 11 and also were made to this Court in the December 3, 2020, Response to the Court’s October 5, 2020, Order Regarding Appellant’s Motion to Substitute. In the email, counsel for the VA stated “that an accrued benefits claim had not been submitted following the death of Mr. Smith. As to the underlying issue of substitution in the case, we will have to allow the Court to make a determination on the complex legal issues on this matter.” The VA had not previously mentioned the alleged requirement for filing a claim with the VA while the motion to substitute was pending. And the VA never explained why the filing requirements of 38 U.S.C. §§ 5121 and 5121A would apply to a claim for non-accrued benefits when the VA argued in this Court that a SAH grant was not an accrued benefit.

Taking a step back to look at the big picture, one must wonder why the VA would want to encourage a substitute claimant to start over by filing a new claim with the VA when the case was already pending in this Court. Here the Regional Office rejected that claim six times, and the Board of Veterans' Appeals rejected it twice – each time overlooking critical evidence and misapplying the governing law. A return to the VA would not have led to a different outcome, only a return to this Court at a much later date.

C. What Is the Legal Standard That Governs the Estate's Right To Be Substituted in This Appeal?

This question was presented in both the Court's August 22, 2022, Order and in the September 6, 2022, oral argument. At argument, counsel for Proposed Substitute Appellant referred the Court to its October 7, 2021, filing, which identified three legal grounds for substitution,² and to other relevant court decisions. To expand upon the analysis presented to the Court, we wish to call attention to the language used in *Reeves v. Shinseki*, 682 F.3d 985, 995 (Fed. Cir. 2012), which

² These are: (1) recognition that the right to SAH payments is authorized by statute 38 U.S.C. § 2101(a)(2)(A)(i) and by regulations 38 C.F.R. §§ 3.1000 and 36.440(c), along with satisfaction of the injury-in-fact standing standard; (2) application of the nunc pro tunc test without the discredited fully submitted briefing requirement; or (3) a finding that Ms. Hicks has constructively complied with the regulations set forth in 38 U.S.C. §§ 5121 and 5121A even though those are written in a way to expressly apply only to accrued benefit claims. We argued that one way to interpret these provisions is to treat the cost of building a therapeutic spa as a cost of Mr. Smith's "last sickness" because he was still using the spa and awaiting payment for the construction costs at the time of his death.

explained that “the government’s argument that Mrs. Reeves must file a motion for accrued benefits with the VA before the court can allow her to substitute is an attempt to superimpose the VA’s claim processing requirements upon the court’s rules for substitution. The VA, quite clearly, has no authority to dictate to the court the procedures that must be followed when allowing a claimant to substitute on a pending appeal.” Similarly, addressing the option to proceed either before the VA or before this Court, *Breedlove v. Shinseki*, 24 Vet. App. 7 (2010), explained that “an accrued benefits claimant has two options. One option is to request substitution and thus to carry on the appeal of the deceased veteran through the judicial process – and now without the ‘zone of no substitution.’ The other is, by not requesting substitution, to permit the Board decision on a deceased veteran’s claim to be vacated, and to pursue the accrued-benefits claim anew.” 24 Vet. App. at 20.³ The first option is the one chosen by Ms. Hicks.

The VA has relied upon other cases, *Suguitan v. McDonald*, 27 Vet. App. 114 (2014), and *Pekular v. Mansfield*, 22 Vet. App. 7 (2007), which should not be followed because they would place Ms. Hicks in the now discredited “zone of no

³ The Court further explained that “this ‘zone of no substitution’ between the issuance of the Board decision and submission of the case would be based on no rational distinction because, as Congress indicated in enacting Section 5121A, the veteran’s disability benefits claim does not die with the veteran, and the accrued benefits claim by a survivor no longer represents a separate interest that must be separately pursued apart from the veteran’s underlying claim for benefits.” 24 Vet. App. at 20-21.

substitution” for nunc pro tunc relief.⁴ *See Demery v. Wilke*, 30 Vet. App. 430, 435-36 (2019) (discussing *Breedlove* and *Reeves* in context of substitution in an accrued benefits claim before the Court of Appeals for Veterans Claims and finding that a claimant only must have both a statutory basis for a claim and constitutional standing to prosecute an appeal in this Court). The *Breedlove*, *Reeves*, and *Demery* line of cases holds that the outcome for substitution (at least in the context of accrued benefit cases, and as should be applicable in non-accrued benefit cases as well) no longer depends on whether the full briefing cycle has been completed in this Court. Consequently, the logical and equitable reason for payment of either a non-accrued one-time SAH grant or an accrued periodic benefit is to return to his estate funds

⁴ The *Suguitan* decision cited by the VA is distinguishable because the Court there found that only the veteran’s wife, but not the son, was within the class of beneficiaries recognized by the Filipino Veterans Equity Compensation Fund statute authorizing a one-time payment to survivors of a deceased veteran. The son therefore clearly lacked standing to be substituted for his father. *Suguitan v. McDonald*, 27 Vet. App. 114 (2014). Both *Pekular v. Mansfield*, 22 Vet. App. 7 (2007), and *Pagett v. Nicholson*, 473 F.3d 1364 (Fed. Cir. 2007), are similarly inapposite, having been issued prior to enactment of 38 U.S.C. §§ 5121 and 5121A, which eliminated the “zone of no substitution” situation in which the nunc pro tunc doctrine mandated dismissal of a claim if the veteran died before reply briefs were filed. *Merritt v. Wilkie*, 965 F.3d 1357 (Fed. Cir. 2020), does not compel a different result. It involves a straightforward application of the claim preservation procedure of 38 U.S.C. § 5112(b)(1) for accrued benefits (specifically, continuing disability payments). Given the VA’s refusal to consider SAH grants as accrued benefits, either the claim preservation procedure of § 5112(b)(1) is inapplicable to SAH grants, or Ms. Hicks’ notification to the VA of her intent to serve as her father’s substitute, based on the existing record of documented disabilities and spa expenses, should qualify as constructive compliance with the substitution process set forth in 38 U.S.C. §§ 5121(c), 5121, and 5121A and 38 C.F.R. § 36.4406(c).

that should have been paid to the veteran during his life. The outcome in either case should not depend on whether the claim is accrued or non-accrued or when in the appellate briefing cycle the veteran unfortunately passes away.

D. Are Equities Relevant to the Standards for Substitution?

Depending on the standard for substitution that this Court elects to apply, the Court may choose to weigh relevant equitable considerations. In this regard, we attach affidavits of Thomas Smith (Exs. 12-14) and Karen Hicks (Ex. 15). The facts described in these affidavits have not been disputed by the VA. Nor can the VA deny that if anyone has legal standing to continue Mr. Smith's benefit claim, Ms. Hicks – the veteran's eldest daughter who bore some of his funeral expenses, who made mortgage payments that covered the ongoing cost of the therapeutic spa in question, an heir and beneficiary of his estate, and the appointed representative of his estate – would be the most appropriate person to be granted constitutional, injury-in-fact standing.

The VA's unfair treatment of Ms. Hicks is another equitable factor that the Court could consider. The VA attempted to put Ms. Hicks in an untenable legal position: belatedly arguing on the one hand that Ms. Hicks should be faulted for failing to submit a claim for accrued benefits with the Regional Office within one year of her father's death while arguing on the other hand that the claim for SAH payments is not a claim for accrued benefits. Given the timing of the VA's

announcement that Ms. Hicks waited too long to seek substitution in a new proceeding before the VA, it is as if the VA waited for the clock to run out before telling Ms. Hicks that the game was over. That unfair tactic essentially is a gotcha game of “heads we win, tails you lose.” Granting Ms. Hicks’ motion for substitution is the only way to restore fairness to this process.

Respectfully submitted,

Dated: September 14, 2022

/s/ Jeffrey N. Martin

Jeffrey N. Martin

Hunton Andrews Kurth LLP

2200 Pennsylvania Avenue, NW

Washington, DC 20037

202-955-1552

jmartin@huntonAK.com

*Counsel for Proposed Substitute
Appellant*

Table of Exhibits

Exhibit No.	
1	October 20, 2021, D.C. Superior Court Probate Division Abbreviated Probate Order appointing Karen Hicks personal representative of estate
2	January 22, 2020, Form 21-22a notifying Department of Veterans Affairs that Karen Hicks appeared as the claimant
3	June 23, 2008, rating decision
4	February 1, 2011, Regional Office letter
5	January 12, 2012, Regional Office letter
6	March 10, 2012, rating decision
7	February 7, 2014, Statement of the Case
8	March 11, 2015, Supplemental Statement of the Case
9	June 25, 2019, VA letter addressed to Estate of Thomas Smith advising that payment of benefits would be suspended effective July 1, 2019
10	July 2, 2019, VA letter addressed to Estate of Thomas Smith stating that benefit payments were discontinued as of May 1, 2019
11	June 11, 2020, email exchange between counsel for Appellant and counsel for Appellee
12	February 23, 2010, Affidavit of Thomas Smith, Sr.
13	April 9, 2015, Affidavit of Thomas Smith, Sr. in Support of Appeal
14	June 13, 2017, Affidavit of Thomas Smith, Sr. in Support of Appeal
15	January 22, 2020, Affidavit of Karen Hicks

Exhibit 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
PROBATE DIVISION

2021 ADM 001320
(Linked to WIL)

Estate of
THOMAS SMITH, SR. Age 81
Deceased

Abbreviated Probate Order

(For estates of decedents dying on or after July 1, 1995)

Upon consideration of the petition for (~~supervised~~) (unsupervised) abbreviated probate, acceptance and consent of each personal representative, a power of attorney of each non-resident, and a bond, if applicable, in the amount of \$ nil all having been filed herein, it is by the Court this 20th day of October, 2021,

ORDERED, that administration of this estate is

☒ (unsupervised)

☐ (~~supervised~~) for the following reasons:

☐ ~~Decedent's will directs supervision.~~

☐ ~~Decedent's will directs unsupervised administration but supervised administration is required for the following reasons:~~

☐ Other

and it is further,

ORDERED, that

Karen Hicks

(is) (~~are~~) appointed personal representative(s) of the estate of Thomas Smith, Sr., deceased, and it is further,

ORDERED, that

☒ The Court finds that the decedent died intestate.

☐ The will dated _____ and codicil(s) dated _____ accompanying

the petition (is) (are) admitted to probate and record as the last will and testament of the aforesaid decedent, and as an international will where applicable.

☐ Bond heretofore filed in the amount of \$ _____ is approved.

☒ Bond is not required.

- ☐ The personal representative(s) shall file an additional bond in an amount to be fixed by the Court before accepting assets in excess of the stated amount.
- ☐ The sum of \$10,000 is allowed from the personal estate of _____ as surviving spouse and/or custodian of decedent's minor child(ren) in accordance with law (for estates before April 27, 2001 only).
- ☐ Subject to D.C. Code, sec. 20-906, a homestead allowance in the sum of \$15,000 is authorized from the real or personal estate to _____ as the surviving spouse/domestic partner and, if none, to _____ as a custodian of a surviving minor child and to _____ as a dependent child, to be divided equally between each of the children.
- ☐ Subject to the homestead allowance and as provided in D.C. Code, sec. 20-906, a family allowance in a reasonable sum not to exceed \$15,000 is authorized from the personal estate to _____ as surviving spouse /domestic partner and decedent's minor child(ren) whom the decedent was obligated to support and children who were in fact being supported by the decedent, in accordance with law.
- ☒ After payment of the homestead and the family allowance and as provided in D.C. Code, sec. 20-906, tangible personalty or other personalty not exceeding the value of \$10,000 is allowed to the surviving spouse/domestic partner and if none, to the decedent's surviving children jointly as exempt property.
- ☒ Subject to any limitation of the will (if decedent died testate), D.C. Code Title 20, or by an order of Court, the personal representative(s) may, in addition to any power or authority contained in the will and to any other common law or statutory power, properly exercise those general powers as enumerated in D.C. Code, sec. 20-741, ~~subject to the following limitations which, if the administration is supervised, shall be endorsed on the letters of administration~~
- ☐ Sale, transfer, or encumbrance of estate realty is restricted and shall not occur without prior Court order.
- ☐ _____
- ☐ Because the petition for probate includes interested persons whose names and/or addresses are unknown, the personal representative shall file the missing names and/or addresses or a report regarding efforts to identify and locate those persons within 60 days of the date of this order.
- ☐ There shall be no further proceedings under the Small Estate Act in case number _____ SEB _____.
- ☐ The appointment of the Special Administrator is terminated, and the special administrator shall file a final account within _____ days of this order.

Randa Reid Wind
JUDGE

cc:
(Include attorney of record and personal representative.)

April 2013 - 101 10.v2

Karen Harts
2600 Truller Lane, Unit 8
Jacksonville, FL 32211

Jeffrey Martin Esq
2200 Pennsylvania Ave NW
WDC 20037

Exhibit 2

OMB Control No. 2900-0321
Respondent Burden: 5 Minutes
Expiration Date: 02/28/2022



APPOINTMENT OF INDIVIDUAL AS CLAIMANT'S REPRESENTATIVE

DATE (STAMP) (DO NOT WRITE IN THIS SPACE)

JAN 24 2020

Roanoke Regional Benefit Office

IMPORTANT: Please read the Privacy Act and Respondent Burden on Page 2 before completing the form.

NOTE: If you prefer to have a veterans service organization assist you with your claim instead of an individual please complete VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative. When completed you can mail or fax this form to the appropriate intake center address shown on page 3. VA forms are available at www.va.gov/vaforms.

SECTION I: VETERAN'S INFORMATION

NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.

1. VETERAN'S NAME (First, Middle Initial, Last)

Thomas Smith

2. VETERAN'S SOCIAL SECURITY NUMBER (SSN)

[REDACTED]

3. VA FILE NUMBER (If applicable)

[REDACTED]

4. VETERAN'S DATE OF BIRTH

Month Day Year
[REDACTED]

5. VETERAN'S SERVICE NUMBER (If applicable)

[REDACTED]

6. BRANCH OF SERVICE

☐ ARMY ☐ NAVY ☒ AIR FORCE ☐ MARINE CORPS ☐ COAST GUARD
☐ OTHER (Specify)

Street or rural route, city or P.O., State and ZIP Code

No. & Street
Apt./Unit Number City
State/Province Country ZIP Code/Postal Code

8. VETERAN'S TELEPHONE NUMBER (Include Area Code)

9. VETERAN'S EMAIL ADDRESS (Optional)

SECTION II: CLAIMANT'S INFORMATION (if other than veteran)

10. CLAIMANT'S NAME (First, Middle Initial, Last)

Karen Hicks

11. CLAIMANT'S MAILING ADDRESS (Number and street or rural route, city or P.O., State and ZIP Code)

No. & Street
Apt./Unit Number City
State/Province Country ZIP Code/Postal Code

12. CLAIMANT'S TELEPHONE NUMBER (Include Area Code)

904-755-7217

13. CLAIMANT'S EMAIL ADDRESS (Optional)

khicks3@gmail.com

14. RELATIONSHIP TO VETERAN

daughter

SECTION III: SERVICE ORGANIZATION INFORMATION

15A. NAME OF INDIVIDUAL APPOINTED AS REPRESENTATIVE

Jeffrey N. Martin

15B. INDIVIDUAL IS (check appropriate box)

☒ ATTORNEY ☐ AGENT ☐ INDIVIDUAL PROVIDING REPRESENTATION UNDER SECTION 14.630 (*See required statement below. Signatures are required in Items 16A and 17A) ☐ SERVICE ORGANIZATION REPRESENTATIVE (Specify organization below)

***INDIVIDUALS PROVIDING REPRESENTATION UNDER SECTION 14.630**

(Skip to Item 18, if the box for "Individual Providing Representation Under Section 14.630" was not checked in Item 15B)

The appointment of the individual named in Item 15A (the representative) authorizes that person to represent the individual named in Item 1 or 10 for a particular claim pursuant to the provisions of 38 CFR 14.630. By our signatures below, we, the representative and the veteran/claimant, attest that no compensation will be charged by or paid to the individual named in Item 15A.

16A. SIGNATURE OF REPRESENTATIVE NAMED IN ITEM 15A

[Signature]

16B. DATE OF SIGNATURE (MM/DD/YYYY)

1/22/20

17A. SIGNATURE OF INDIVIDUAL NAMED IN ITEM 1 OR 10

[Signature]

17B. DATE OF SIGNATURE (MM/DD/YYYY)

1/22/2020

18. ADDRESS OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE (Number and street or rural route, city or P.O., State, and ZIP code)

Huntor Andrews Kurth LLP, 2200 Pennsylvania Avenue, NW, Washington, DC 20037

VETERAN'S SOCIAL SECURITY NO. [REDACTED]

SECTION IV: AUTHORIZATION INFORMATION

19. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C. -

Unless I check the box below, I do not authorize VA to disclose to the individual named in Item 15A any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

- ☒ I authorize the VA facility having custody of my VA claimant records to disclose to the individual named in Item 15A all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 15A, either by explicit revocation or the appointment of another representative.

20. LIMITATION OF CONSENT. My consent in Item 19 for the disclosure of records relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia is limited as follows:
None.

21. AUTHORIZATION FOR REPRESENTATIVE TO ACT ON CLAIMANT'S BEHALF TO CHANGE CLAIMANT'S ADDRESS -

Unless I check the box below, I do not authorize the individual named in Item 15A to act on my behalf to change my address in my VA records.

- ☒ I authorize the individual named in Item 15A to act on my behalf to change my address in my VA records. This authorization does not extend to any other individual without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 15A, either by explicit revocation or the appointment of another representative.

CONDITIONS OF APPOINTMENT

I, the person named in Item 1 or 10, hereby appoint the individual named in Item 15A as my representative to prepare, present, and prosecute my claims for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 1. If the individual named in Item 15A is an accredited agent or attorney, the scope of representation provided before VA may be limited by the agent or attorney as indicated below in Item 23. If the individual indicated in Item 15A is providing representation under 14.630, such representation is limited to a particular claim only. I authorize VA to release any and all of my records (other than as provided in Items 19 and 20) to that individual appointed as my representative, and if the individual in Item 15A is an accredited agent or attorney, this authorization includes the following individually named administrative employees of my representative:

Signed and accepted subject to the foregoing conditions.

22A. SIGNATURE OF CLAIMANT (Do Not Print)

[Signature]

22B. DATE OF SIGNATURE (MM/DD/YYYY)

01/22/2020

23. LIMITATIONS ON REPRESENTATION - AGENTS OR ATTORNEYS ONLY (Unless limited by an agent or attorney, this power of attorney revokes all previously existing powers of attorney)

None.

24A. SIGNATURE OF REPRESENTATIVE

[Signature]

24B. DATE OF SIGNATURE (MM/DD/YYYY)

11/22/20

FEES: Section 5904, Title 38, United States Code, contains provisions regarding fees that may be charged, allowed, or paid for services of agents or attorneys in connection with a proceeding before the Department of Veterans Affairs with respect to benefits under laws administered by the Department.

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement of a material fact, knowing it to be false or for the fraudulent acceptance of any payment to which you are not entitled.

PRIVACY ACT NOTICE: 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., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) 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 voluntary. However, failure to respond provide the requested information could impede the recognition of your representative and/or identification of disclosable records. Except for information protected by 38 U.S.C. 7332, your representative is not prohibited from redisclosing records. 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 recognize the individuals appointed by claimants to act on their behalf in the preparation, presentation, and prosecution of claims for VA benefits (38 U.S.C. 5902, 5903, and 5904) and for those individuals to accept appointment. We will also use the information to verify consent for disclosure of VA records to the appointed representative (38 U.S.C. 5701(b) and 7332) Title 38, United States Code, allows us to ask for this information. We estimate that claimants and individuals appointed for purposes of representation will each need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a representation will each need an average of 5 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. A valid OMB control number can be located on the OMB Internet Page at www.reginfo.gov/public/init/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

RECEIVED
Dept of Veterans Affairs
JAN 24 2020
Roanoke Regional Benefit Office
314

01312020 - VA Claims Intake Center, Janesville WI
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**HUNTON
ANDREWS KURTH**

Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

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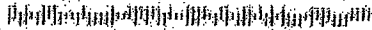
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Roanoke Regional Benefit Office
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Department of Veterans Affairs Regional Office in
Roanoke, Virginia
210 Franklin Road, SW
Roanoke, VA 24011

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24011-220089





PRIORITY[®]
MAIL

UNITED STATES POSTAL SERVICE

For Domestic
and International Use



From VETERANS ADMINISTRATION
REGIONAL OFFICE
116 N JEFFERSON ST
ROANOKE VA 24016-1928

TO

Department of Veterans Affairs
Claims Intake Center
PO Box 5235
Janesville, WI 53547-5235

Exhibit 3



DEPARTMENT OF VETERANS AFFAIRS

VA Regional Office
1722 I St., N.W.
Washington DC 20421

JUN 23 2008

THOMAS SMITH
5432 CALL PLACE SE
WASHINGTON DC 20019

In Reply Refer To: 314/211post
CSS 577 50 1514
SMITH, Thomas

Dear Mr. Smith:

We made a decision on your claim for an increase in your service connected compensation received on May 8, 2007.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What Did We Decide?

We determined that the following service connected condition(s) hasn't/haven't changed:

Medical Description	Percent (%) Assigned
epididymitis left scrotum	10%

The claim for service connection for cervical condition remains denied because the evidence submitted is not new and material.

Entitlement to special home adaptation is not established.

Entitlement to specially adapted housing is not established.

Your compensation payment will continue unchanged.



CSS 577 50 1514
Smith, Thomas

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered, and the reasons for our decision. Your Rating Decision and this letter constitute our decision based on your claim received on May 8, 2007. It represents all claims we understood to be specifically made, implied, or inferred in that claim.

What Is New and Material Evidence?

New evidence, including written or oral statements, is evidence we haven't considered before. Information that supports the same point as earlier evidence is not considered new.

Material means the evidence applies to the specific issue you are claiming.

What You Should Do If You Disagree With Our Decision.

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed *VA Form 4107, "Your Rights to Appeal Our Decision,"* explains your right to appeal.

Do You Have Questions Or Need Assistance?

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to your VA file number 577 50 1514.

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

Exhibit 4

DEPARTMENT OF VETERANS AFFAIRS

Regional Office
210 Franklin Road S.W.
Roanoke VA 24011-2204



February 01, 2011

MR. THOMAS SMITH
5432 CALL PL SE
WASHINGTON DC 20019-6343

In reply, refer to:
314/211PRE/EBB
File Number: 577 50 1514
Thomas Smith

IMPORTANT -- reply needed

Dear Mr. Smith:

We are working on your claim for:

- chronic lumbar strain
- left side hernia surgery
- upper back condition
- radiculopathy of the right lower extremity
- urinary condition due to surgery
- radiculopathy of the left lower extremity
- loss of use of a creative organ

This letter tells you what we will do with your claim and what you can do to help us. Please read the enclosure to this letter entitled, "Veteran Claims Assistance Act (VCAA)." The enclosure explains how we obtain evidence related to your claim and the legal requirements for supporting your claim.

What Do We Still Need from You?

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*

- If you have anything else you would like to report to us or if anything in this letter is incorrect, please tell us on the enclosed VA Form 21-4138, Statement in Support of Claim and return it to the address at the top of this letter.
- We need evidence showing that the following condition(s) existed from military service to the present time:

chronic lumbar strain, radiculopathy of the right lower extremity, radiculopathy of the left lower extremity, left side hernia surgery, urinary condition due to surgery, loss of use of a creative organ, upper back condition

- If service connection is granted for chronic lumbar strain, we will need medical evidence concerning your current radiculopathy, bilateral lower extremities and upper back condition,

File Number: 577 50 1514
Thomas Smith

as well as evidence showing a connection between your radiculopathy, bilateral lower extremities and upper back condition your service connected chronic lumbar strain condition.

Note: Temporary or intermittent flare ups of a condition are not considered aggravation, unless the underlying condition, as contrasted by symptoms, has gotten worse.

- Send us any treatment records related to your claimed condition(s). This includes reports or statements from doctors, hospitals, laboratories, medical facilities, mental health clinics, x-rays, physical therapy records, surgical reports, etc. These should include the dates of treatment, findings, and diagnoses. If you want us to try to obtain any doctor, hospital or medical reports on your behalf, please complete and return the attached *VA Form 21-4142, Authorization and Consent to Release Information*.
- If you have received treatment at a Department of Veterans Affairs (VA) facility or treatment authorized by VA, please tell us the dates and places of treatment. We will then obtain the necessary records if you give us enough information to locate them.
- You may also send us your own statement, or statements from people who have witnessed how your claimed disabilities affect you. All statements submitted on your behalf should conclude with the following certification: "I hereby certify that the information I have given is true to the best of my knowledge and belief."
- **We have enclosed a "VCAA Notice Response." We encourage you to return this document, as it may expedite a decision on your claim.**

Where Should You Send What We Need?

Please send what we need to this address:

Department of Veterans Affairs
Regional Office
210 Franklin Road S.W.
Roanoke VA 24011-2204

How Soon Should You Send What We Need?

We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you, we may make a decision on your claim after 30 days. However, you have up to one year from the date of this letter to submit the information and evidence necessary to support your claim. If we decide your claim before one year from the date of this letter, you will still have the remainder of the one-year period to submit additional information or evidence necessary to support your claim.

File Number: 577 50 1514
Thomas Smith

What Have We Received?

- Your claim for benefits, which we received on November 15, 2010.
- Your Compensation and Pension examination report dated December 10, 2010.

What Have We Done?

- Requested military hospital records from DeWitt Army Hospital.

How Can You Contact Us?

If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov>. Otherwise, you can contact us in several ways. Please give us your VA file number, **577 50 1514**, when you do contact us.

- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
- Send us an inquiry using the Internet at <https://iris.va.gov>.
- Write to us at the address at the top of this letter.

We look forward to resolving your claim in a fair and timely manner.

Sincerely yours,

D. Svirsky

D. Svirsky
Veterans Service Center Manager

Enclosures: VA Form 21-4142 (2)
 VA Form 21-4138
 Veterans Claims Assistance Act (VCAA)
 What the Evidence Must Show - Secondary S/C
 What the Evidence Must Show - Service connected comp
 VCAA Notice Response

cc: DISABLED AMERICAN VETERANS

Veterans Claims Assistance Act (VCAA)

What the Evidence Must Show for Secondary Service Connection

In order to support your claim for compensation based upon an additional disability that was caused or aggravated by a service-connected disability, the evidence must show:

1. You currently have a physical or mental disability shown by medical evidence, in addition to your service-connected disability
AND
2. Your service-connected disability either caused or aggravated your additional disability. Medical records or medical opinions are required to establish this relationship. However, VA may presume service-connection for cardiovascular disease developing in a claimant with a certain service-connected amputation(s) of one or both lower extremities.

What the Evidence Must Show for Service Connection

To support your claim for service-connection, the evidence must show:

1. You had an injury in military service, or a disease that began in or was made permanently worse during military service, or there was an event in service that caused an injury or disease; **AND**
2. You have a current physical or mental disability. This may be shown by medical evidence or by lay evidence of persistent and recurrent symptoms of disability that are visible or observable; **AND**
3. A relationship exists between your current disability and an injury, disease, or event in military service. Medical records or medical opinions are generally required to establish this relationship. However, under certain circumstances, VA may presume that certain current disabilities were caused by service, even if there is no specific evidence proving this in your particular claim. The cause of a disability is presumed for the following veterans who have certain diseases:
 - Former prisoners of war;
 - Veterans who have certain chronic or tropical diseases that become evident within a specific period of time after discharge from service;
 - Veterans who were exposed to ionizing radiation, mustard gas, or Lewisite while in service;
 - Veterans who were exposed to certain herbicides, such as by serving in Vietnam; or
 - Veterans who served in the Southwest Asia theater of operations during the Gulf War.

VA is Responsible for Getting the Following Evidence:

- Relevant records that you adequately identify and authorize VA to obtain from any Federal agency. These may include records from the military, VA medical centers (including private facilities where VA authorized treatment), or the Social Security Administration.

File Number: 577 50 1514
Thomas Smith

- VA will provide a medical examination for you, or get a medical opinion, if we determine it is necessary to decide your compensation claim.

On Your Behalf, VA Will Make Reasonable Efforts to Get the Following Evidence:

Relevant records not held by a Federal agency that you adequately identify and authorize VA to obtain. These may include records from State or local governments, private doctors and hospitals, or current or former employers.

How Can You Help: If you have any information or evidence that you have not previously told us about or given to us, please tell us or give us that evidence now. If the evidence is not in your possession, you must give us enough information about the evidence so that we can request it from the person or agency that has it. If the holder of the evidence declines to give it to us, asks for a fee to provide it, or VA otherwise cannot get the evidence, we will notify you. *It is your responsibility to make sure we receive all requested records that are not in the possession of a Federal department or agency.*

How VA Determines the Disability Rating: When we find disabilities to be service connected, we assign a disability rating. That rating can be changed if there are changes in your condition. Depending on the disability involved, we will assign a rating from 0 percent to as much as 100 percent. VA uses a schedule for evaluating disabilities that is published as title 38, Code of Federal Regulations, Part 4. In rare cases, we can assign a disability level other than the levels found in the schedule for a specific condition if your impairment is not adequately covered by the schedule.

We consider evidence of the following in determining the disability rating:

- Nature and symptoms of the condition;
- Severity and duration of the symptoms; and
- Impact of the condition and symptoms on employment.

Examples of evidence that you should tell us about or give to us that may affect how we assign a disability evaluation include the following:

- Information about on-going treatment records, including VA or other Federal treatment records, you have not previously told us about;
- Recent Social Security determinations;
- Statements from employers as to job performance, lost time, or other information regarding how your condition(s) affect your ability to work; or
- Statements discussing your disability symptoms from people who have witnessed how they affect you.

How VA Determines the Effective Date: If we grant your claim, the beginning date of your entitlement or increased entitlement to benefits will generally be based on the following factors:

- When we received your claim; or

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File Number: 577 50 1514
Thomas Smith

- When the evidence shows a level of disability that supports a certain rating under the rating schedule or other applicable standards.

If VA received your claim within one year of your separation from the military, entitlement will be from the day following the date of your separation.

Examples of evidence that are relevant to determining the effective date of any benefits we award include the following:

- Information about continuous treatment or when treatment began;
- Service treatment records in your possession that you may not have sent us; or
- Reports of treatment for your condition while attending training in the Guard or Reserve.

Exhibit 5

DEPARTMENT OF VETERANS AFFAIRS

Regional Office
116 N Jefferson Street
Roanoke VA 24016



January 12, 2012

THOMAS SMITH
5432 CALL PL SE
WASHINGTON DC 20019-6343

In reply, refer to:
314/211AUT/hyc195
File Number: 577 50 1514
Thomas Smith

IMPORTANT -- reply needed

Dear Mr. Smith:

We are continuing to work on your claimed issues as noted in our previous letters dated December 1, 2010 and February 1, 2011. Please refer to those letters for the information and evidence necessary to substantiate your claim for those (**or enter claimed issues**) issues.

We are now working on your claim for:

- special monthly compensation
- compensation for worsening of chronic lumbar strain under 38 U.S.C. 1151
- healed herniorraphy scar
- earlier effective date
- epididymitis, left scrotum
- special adaptive housing and/or special home adaptation grant

This letter tells you what we will do with your claim and what you can do to help us. Please read the enclosure to this letter entitled, "Veteran Claims Assistance Act (VCAA)." The enclosure explains how we obtain evidence related to your claim and the legal requirements for supporting your claim.

What Do We Still Need from You?

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*

- As we consider your claim, you may submit evidence showing that your service-connected epididymitis, left scrotum, and healed herniorraphy scar have increased in severity.

File Number: 577 50 1514

Thomas Smith

- **38 U.S.C. 1151 Claim for Compensation.** Entitlement to compensation may be established under 38 U.S.C. 1151 when it is determined that there is additional disability or death resulting from a disease or injury, or an aggravation of an existing disease or injury, suffered as a result of VA training, hospitalization, medical or surgical treatment, or examination. Compensation is not payable for the necessary consequences of medical or surgical treatment or examination. In order to support your claim for compensation under 38 U.S.C. 1151, the evidence must show:

- that, as a result of VA hospitalization, medical or surgical treatment, examination, or training, you have an additional disability or disabilities or an aggravation of an existing injury or disease and
- the disability was the direct result of VA fault such as carelessness, negligence, lack of proper skill, or error in judgment, and not a reasonably expected result or complication of the VA care or treatment, or the direct result of participation in a VA Vocational Rehabilitation and Employment or compensated work therapy program.

We need the following information from you to support your claim for compensation under 38 U.S.C. 1151:

- the name of the program, agency or company who has records that you think will help us decide your claim;
 - the address of this person, agency or company;
 - the approximate timeframe covered by the records; and
 - the condition for which you were treated.
-
- You were previously denied service connection for cervical condition (now claimed as upper back condition). You were notified of the decision on October 22, 1999. The appeal period for that decision has expired and the decision is now final. In order for us to reopen your claim, we need new and material evidence. Your claim was previously denied because there is no record of treatment in service for cervical condition. Therefore, the evidence you submit must be new and relate to this fact.
-
- Please submit medical evidence on your current urinary condition as well as evidence showing a connection between your urinary condition and your service connected healed herniorrhaphy scar. We will consider service connection for your urinary condition as secondary to your service connected healed herniorrhaphy scar. Note: Temporary or intermittent flare ups of a condition are not considered aggravation, unless the underlying condition, as contrasted by symptoms, has gotten worse.

File Number: 577 50 1514

Thomas Smith

- In support of your claim for special monthly compensation, we need medical evidence showing at least one of the following due to service connected conditions: you need the aid and attendance of another person in performing your activities of daily living; are severely visually impaired; are permanently housebound; or have loss (or loss of use) of certain body parts.
- Send us any treatment records related to your claimed condition(s). This includes reports or statements from doctors, hospitals, laboratories, medical facilities, mental health clinics, x-rays, physical therapy records, surgical reports, etc. These should include the dates of treatment, findings, and diagnoses. If you want us to try to obtain any doctor, hospital or medical reports on your behalf, please complete and return the attached *VA Form 21-4142, Authorization and Consent to Release Information*.
- If you have received treatment at a Department of Veterans Affairs (VA) facility or treatment authorized by VA, please tell us the dates and places of treatment. We will then obtain the necessary records if you give us enough information to locate them. Also, please tell us your dates of treatment at Dewitt Army Community Hospital.
- If you have anything else you would like to report to us or if anything in this letter is incorrect, please tell us on the enclosed *VA Form 21-4138, Statement in Support of Claim* and return it to the address at the top of this letter.
- You may also send us your own statement, or statements from people who have witnessed how your claimed disabilities affect you. All statements submitted on your behalf should conclude with the following certification: "I hereby certify that the information I have given is true to the best of my knowledge and belief."
- **We have enclosed a "VCAA Notice Response." We encourage you to return this document, as it may expedite a decision on your claim.**

Where Should You Send What We Need?

Please send what we need to this address:

Department of Veterans Affairs
Regional Office
116 N Jefferson Street
Roanoke VA 24016

File Number: 577 50 1514

Thomas Smith

How Soon Should You Send What We Need?

We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you, we may make a decision on your claim after 30 days. However, you have up to one year from the date of this letter to submit the information and evidence necessary to support your claim. If we decide your claim before one year from the date of this letter, you will still have the remainder of the one-year period to submit additional information or evidence necessary to support your claim.

What Have We Received?

- Your claim for benefits, which we received on November 15, 2010.

What Have We Done?

- Requested VA Exam, Genitourinary.
- Requested VA Exam, Digestive.
- Requested VA Exam, Skin, Scars.

Important Information

We asked the VA medical facility nearest you to schedule you for an examination in connection with your claim. They will notify you of the date, time, and place of the examination. If you can't keep the appointment or want to be re-scheduled, contact the medical facility on the appointment notice as soon as possible.

When a claimant, without good cause, fails to report for an examination or reexamination, the claim shall be rated based on the evidence of record, or even denied. Examples of good cause include, but are not limited to, illness or hospitalization, death of a family member, etc.

How Can You Contact Us?

If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov>. Otherwise, you can contact us in several ways. Please give us your VA file number, **577 50 1514**, when you do contact us.

- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
- Send us an inquiry using the Internet at <https://iris.va.gov>.
- Write to us at the address at the top of this letter.

Page 5

File Number: 577 50 1514

Thomas Smith

We look forward to resolving your claim in a fair and timely manner.

Sincerely yours,

D. Svirsky

D. Svirsky

Veterans Service Center Manager

Enclosures: VA Form 21-4142 (2)
 VA Form 21-4138
 Veterans Claims Assistance Act (VCAA)
 What the Evidence Must Show - Compensation due to 1151
 What the Evidence Must Show - Effective Date
 What the Evidence Must Show - Housing benefit
 What the Evidence Must Show - New and Material Evidence
 What the Evidence Must Show - Secondary S/C
 What the Evidence Must Show - Service connected comp AA or HB
 VCAA Notice Response
 What the Evidence Must Show - Claim For Increase

cc: DISABLED AMERICAN VETERANS

File Number: 577 50 1514

Thomas Smith

Veterans Claims Assistance Act (VCAA)

What the Evidence Must Show for Compensation under 38 U.S.C. 1151

In order to support your claim for compensation under 38 U.S.C. 1151, the evidence must show:

- that, as a result of VA hospitalization, medical or surgical treatment, examination, or training, you have:
 - ⇒ an additional disability or disabilities
 - OR**
 - ⇒ an aggravation of an existing injury or disease

AND

- the disability was:
 - ⇒ the direct result of VA fault such as carelessness, negligence, lack of proper skill, or error in judgment
 - OR**
 - ⇒ not a reasonably expected result or complication of the VA care or treatment
 - OR**
 - ⇒ the direct result of participation in a VA Vocational Rehabilitation and Employment or compensated work therapy program.

What the Evidence Must Show to Support Your Claim for an Earlier Effective Date

In order to support your claim for an earlier effective date, the evidence must show that the starting date for your grant of benefits should be before the date we previously determined.

What the Evidence Must Show for Specially Adapted Housing or Special Home Adaptation

To support your claim for specially adapted housing or special home adaptation, the evidence must show you have a service-connected disability that results in:

- the loss, or permanent loss of use, of *both lower extremities*, that requires the use of braces, crutches, canes, or a wheelchair in order to move from place to place
- OR**
- blindness in *both eyes* so that you can see only light, together with the loss, or loss of use, of *one lower extremity*
- OR**
- the loss, or permanent loss of use, of *one lower extremity*, together with a *disease or injury* that affects your balance or ability to move forward, and requires the use of braces, crutches, canes, or a wheelchair in order to move from place to place
- OR**

File Number: 577 50 1514
Thomas Smith

- the loss, or permanent loss of use, of *one lower extremity* together with the loss, or permanent loss of use, of *one upper extremity* that affects your balance or ability to move forward and requires the use of braces, crutches, canes, or a wheelchair in order to move from place to place.

You may be entitled to *only* special home adaptation if the evidence shows that you have vision of 5/200 or less in both eyes; or, the loss, or permanent loss of use, of *both* hands.

What Is New and Material Evidence

In order to reopen your claim, we need new and material evidence. New and material evidence must raise a reasonable possibility of substantiating your claim. The evidence cannot simply be repetitive or cumulative of the evidence we had when we previously decided your claim. VA will make reasonable efforts to help you obtain currently existing evidence. However, we cannot provide a medical examination or obtain a medical opinion until your claim is successfully reopened.

- To qualify as new, the evidence must currently exist and be submitted to VA for the first time.
- In order to be considered material, the additional existing evidence must pertain to the reason your claim was previously denied.

What the Evidence Must Show for Secondary Service Connection

In order to support your claim for compensation based upon an additional disability that was caused or aggravated by a service-connected disability, the evidence must show:

1. You currently have a physical or mental disability shown by medical evidence, in addition to your service-connected disability
AND
2. Your service-connected disability either caused or aggravated your additional disability. Medical records or medical opinions are required to establish this relationship. However, VA may presume service-connection for cardiovascular disease developing in a claimant with a certain service-connected amputation(s) of one or both lower extremities.

What the Evidence Must Show for Increased Benefits based on the Need for A&A and/or Housebound Status

In order to support your claim for increased benefits based on the need for aid and attendance, the evidence must show that, due to your service-connected disability or disabilities:

- you require the aid of another person in order to perform personal functions required in everyday living, such as bathing, feeding, dressing yourself, attending to the wants of nature, adjusting prosthetic devices, or protecting yourself from the hazards of your daily

File Number: 577 50 1514

Thomas Smith

environment (38 Code of Federal Regulation 3.352(a))

OR

- you are bedridden, in that your disability or disabilities requires that you remain in bed apart from any prescribed course of convalescence or treatment. (38 Code of Federal Regulation 3.352(a))

In order to support your claim for increased benefits based on an additional disability or being housebound, the evidence must show:

- you have a single service-connected disability evaluated as 100 percent disabling **AND** an additional service-connected disability, or disabilities, evaluated as 60 percent or more disabling

OR

- you have a single service-connected disability evaluated as 100 percent disabling **AND**, due solely to your service-connected disability or disabilities, you are permanently and substantially confined to your immediate premises.

What the Evidence Must Show for an Increased Evaluation

To support your claim for an increased evaluation of your service-connected disability, medical or lay evidence must show a worsening or increase in severity and the effect that worsening or increase has on your employment and daily life.

VA is Responsible for Getting the Following Evidence:

- Relevant records that you adequately identify and authorize VA to obtain from any Federal agency. These may include records from the military, VA medical centers (including private facilities where VA authorized treatment), or the Social Security Administration.
- VA will provide a medical examination for you, or get a medical opinion, if we determine it is necessary to decide your compensation claim.

On Your Behalf, VA Will Make Reasonable Efforts to Get the Following Evidence:

Relevant records not held by a Federal agency that you adequately identify and authorize VA to obtain. These may include records from State or local governments, private doctors and hospitals, or current or former employers.

How Can You Help: If you have any information or evidence that you have not previously told us about or given to us, please tell us or give us that evidence now. If the evidence is not in your possession, you must give us enough information about the evidence so that we can request it from the person or agency that has it. If the holder of the evidence declines to give it to us, asks for a fee to provide it, or VA otherwise cannot get the evidence, we will notify you. *It is your responsibility to make sure we receive all requested records that are not in the possession of a Federal department or agency.*

How VA Determines the Disability Rating: When we find disabilities to be service

File Number: 577 50 1514

Thomas Smith

connected, we assign a disability rating. That rating can be changed if there are changes in your condition. Depending on the disability involved, we will assign a rating from 0 percent to as much as 100 percent. VA uses a schedule for evaluating disabilities that is published as title 38, Code of Federal Regulations, Part 4. In rare cases, we can assign a disability level other than the levels found in the schedule for a specific condition if your impairment is not adequately covered by the schedule.

We consider evidence of the following in determining the disability rating:

- Nature and symptoms of the condition;
- Severity and duration of the symptoms; and
- Impact of the condition and symptoms on employment.

Examples of evidence that you should tell us about or give to us that may affect how we assign a disability evaluation include the following:

- Information about on-going treatment records, including VA or other Federal treatment records, you have not previously told us about;
- Recent Social Security determinations;
- Statements from employers as to job performance, lost time, or other information regarding how your condition(s) affect your ability to work; or
- Statements discussing your disability symptoms from people who have witnessed how they affect you.

How VA Determines the Effective Date: If we grant your claim, the beginning date of your entitlement or increased entitlement to benefits will generally be based on the following factors:

- When we received your claim; or
- When the evidence shows a level of disability that supports a certain rating under the rating schedule or other applicable standards.

If VA received your claim within one year of your separation from the military, entitlement will be from the day following the date of your separation.

Examples of evidence that are relevant to determining the effective date of any benefits we award include the following:

- Information about continuous treatment or when treatment began;
- Service treatment records in your possession that you may not have sent us; or
- Reports of treatment for your condition while attending training in the Guard or Reserve.

Exhibit 6



**DEPARTMENT OF VETERANS AFFAIRS
Roanoke Regional Office
116 N. Jefferson Street
Roanoke, VA 24016**

Thomas Smith

**VA File Number
577 50 1514**

**Represented by:
DISABLED AMERICAN VETERANS**

**Rating Decision
March 10, 2012**

DECISION

1 . Evaluation of degenerative disease of the lumbar spine, previously evaluated as chronic lumbar strain, which is currently 60 percent disabling, is continued. Entitlement to compensation under 38 U.S.C. 1151 for needle left in body/spine causing additional disability is denied.

2 . The claim for entitlement to a special home adaptation and/or special adaptive housing grant remains denied.

EVIDENCE

- Service treatment records from August 1957 through April 1978
- VA Form 21-4138, Statement In Support Of Claim received November 15, 2010
- Our VCAA (Veterans Claims Assistance Act) letter to you dated December 1, 2010
- VA examination, Washington VA Medical Center, dated December 10, 2010

- Statement in support of claim, received November 23, 2010
- Our VCAA (Veterans Claims Assistance Act) letter to you dated February 1, 2011
- VCAA (Veterans Claims Assistance Act) Notice Response indicating you have no other information or evidence to give to VA to substantiate your claim received February 14, 2011
- Evidence/letter from Dr William Albert, dated November 9, 2006
- Treatment reports, Dewitt Army Community Hospital, from May 2003 through September 2010
- VCAA (Veterans Claims Assistance Act) Notice Response indicating you have no other information or evidence to give to VA to substantiate your claim received March 29, 2011
- VA Form 21-4138, Statement In Support Of Claim received December 7, 2011
- VA Form 21-4138, Statement In Support Of Claim with receipts for expenditures for home spa and evidence/letter from Dr. William Albert dated April 28, 2000; received February 16, 2011
- Statement in support of claim, received September 21, 2011
- Treatment reports, Washington VA Medical Center, from November 2010 through November 2011
- Our VCAA (Veterans Claims Assistance Act) letter to you dated January 12, 2012
- VCAA (Veterans Claims Assistance Act) Notice Response indicating you have no other information or evidence to give to VA to substantiate your claim received January 27, 2012
- VA examination, Washington VA Medical Center, dated January 24, 2012
- Treatment reports, Washington VA Medical Center, from July 2000 through August 2009

REASONS FOR DECISION

1. Evaluation of healed herniorraphy scar with pain, status post inguinal hernia (left) currently evaluated as 0 percent disabling.

The law allows additional compensation based on scars, which are painful or unstable even if compensable based on other factors. An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.

We have granted a 10 percent evaluation based on one painful scar.

A higher evaluation of 20 percent is not warranted unless there are three or four painful or unstable scars; or one or two painful or unstable scars with at least one scar being both painful and unstable.

2. Evaluation of degenerative disease of the lumbar spine, previously evaluated as chronic lumbar strain, currently evaluated as 60 percent disabling. Entitlement to compensation under 38 U.S.C. 1151 for needle left in body/spine causing additional disability.

Compensation is payable for any disability which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. The evidence must show that the veteran's additional disability is actually the result of the VA care. Specifically, carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination must be shown; or the proximate cause of disability must be an event not reasonably foreseeable. For training and rehabilitation services or compensated work therapy program, it must be shown that the veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the disability. Merely showing that a veteran has additional disability is not sufficient to establish causation.

You claimed entitlement benefits under 38 USC 1151(a) for disability due to hospital care at Washington VA Medical Center indicating a needle was left in your lumbar spine following a procedure. A letter from Dr. William Albert dated November 9, 2006 included an opinion that you suffered low back pain as a result of a needle being left in your lower back. Although Dr. Albert mentioned old VA x-ray records in his letter, no objective clinical evidence was received in support of the opinion. Review of your VA treatment records showed a July 8, 2000 x-ray report including the notation, "There is a very small metallic density overlying L4 which could represent a broken needle." A subsequent March 2004 lumbar spine x-ray report notes the "x-ray in 2000 a ? needle projecting over L4" and the x-ray finding in 2004 indicates a change in the previous radiographic report from July 2000 as there was "no metallic foreign bodies identified" at that time. No objective clinical evidence is of record showing a confirmed finding of a needle in your lumbar spine.

Your lumbar spine VA examination report shows examination revealed no thoracolumbar spine ankylosis. Thoracolumbar sacrospinalis exam revealed no spasm, no atrophy, no guarding, tenderness or weakness. There was objective evidence of pain with motion. Thoracolumbar spine range of motion was limited on flexion to 60 degrees (90 degrees is normal); extension was limited to 15 degrees (30 is normal); left and right lateral flexion were limited to 25 degrees (30 degrees is normal); and left and right lateral rotation was 20 degrees (30 degrees is normal). The examiner noted there was no additional limitation of motion with repetitive motion. Lumbar spine x-ray testing showed degenerative osteoarthritic changes L5-S1. Based on your examination and x-ray findings, the VA examiner provided a change in the previous diagnosis of chronic lumbar sprain to degenerative disease of the lumbar spine.

Service connection has already been established for your lumbar spine condition and this condition was previously rated according to disability evaluation criteria which are no longer in effect. Such changes in evaluation criteria cannot be used as grounds for reduction unless medical evidence establishes that the disability to be evaluated has actually improved. This disability has undergone no such improvement and is therefore protected under this provision of the law.

There was a change in the rating schedule in 2003 for evaluation of disabilities of the spine. You were assigned a 60 percent evaluation under the old criteria prior to the law change. Due to the law change, we are no longer able to consider the previous criteria for increased evaluation, but must use the new criteria effective in the law change. The current criteria, effective after the law change of September 26, 2003, for rating diseases and injuries of the spine apply with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. An evaluation of 50 percent is granted for unfavorable ankylosis of the entire thoracolumbar spine. A higher evaluation of 100 percent is not warranted unless there is unfavorable ankylosis of the entire spine. The evidence reviewed does not warrant an increased evaluation under the revised criteria, therefore we have continued the 60 percent evaluation for degenerative disease of the lumbar spine, previously evaluated as chronic lumbar strain.

Evaluation of degenerative disease of the lumbar spine, previously evaluated as chronic lumbar strain, is continued as 60 percent disabling because the evidence of record does not show this condition has increased in severity to warrant a higher evaluation.

Although the records show treatment at the Washington VA Medical Center, no evidence has been received as of this date, showing there was any carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing hospital care, medical or surgical treatment, or examination which proximately caused you any additional disability. As there is no objective evidence of a confirmed finding of a needle being left in your spine and/or any additional disability caused by VA treatment, entitlement to compensation under 38 U.S.C. 1151 is denied.

3. Entitlement to a special home adaptation and/or special adaptive housing grant.

The claim for entitlement to a special home adaptation and/or special adaptive housing grant, also claimed as purchase and installation of home spa, remains denied.

SPECIAL HOME ADAPTATION GRANT:

A certificate of eligibility for assistance in acquiring necessary special home adaptations may be issued when a veteran has a service-connected condition which is either due to

blindness in both eyes with 5/200 visual acuity or less, or includes the anatomical loss or loss of use of both hands.

Our letter mailed to you on January 12, 2012 explained the evidence needed to substantiate your claim for eligibility to the special home adaptation benefit. As of this date, we have not received evidence showing you have the required conditions to meet the criteria as described in the preceding paragraph, therefore entitlement to special home adaptation grant is not established.

Entitlement to a special home adaptation grant was previously denied by Rating Decision dated June 23, 2008. The evidence received in support of your request to reopen your claim does not support a change in our prior decision. Therefore, we are confirming the previous denial of your claim for entitlement to a special home adaptation grant.

SPECIAL ADAPTIVE HOUSING GRANT:

A certificate of eligibility for assistance in acquiring specially adapted housing may be extended when the veteran is permanently disabled from one of the following conditions which is the result of injury or disease incurred in or aggravated during active military service: the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity; the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or the loss or loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair. Since none of these conditions was met, entitlement to special housing assistance is not established. {38 CFR 3.809}

Our letter mailed to you on January 12, 2012 explained the evidence needed to substantiate your claim for entitlement to the specially adapted housing benefit. As of this date, we have not received evidence showing you have conditions that meet the criteria as described in the preceding paragraph, therefore entitlement to specially adapted housing is not established.

Entitlement to specially adapted housing benefit was previously denied by Rating Decision dated June 23, 2008. The evidence received in support of your request to reopen your claim does not support a change in our prior decision. Therefore, we are confirming the previous denial of your claim for entitlement to a specially adapted housing grant.



ADDITIONAL INFORMATION FOR VETERANS WITH SERVICE-CONNECTED PERMANENT AND TOTAL DISABILITY

Information concerning these and other Department of Veterans Affairs (VA), Federal, State, or local benefits may be obtained from your nearest VA office or any national service organization representative. You may call VA toll-free at 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833) or contact VA by Internet at <http://iris.va.gov>.

BENEFITS FOR VETERANS

SPECIALLY ADAPTED HOUSING

Veterans who have a permanent and total service-connected disability due to

- ▶ the loss or loss of use of both lower extremities, which prevents locomotion without the aid of braces, crutches, canes, or a wheelchair, *or*
- ▶ blindness in both eyes, having light perception only, combined with the loss or loss of use of one lower extremity, *or*
- ▶ the loss or loss of use of one lower extremity, together with residuals of organic disease or injury or the loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to prevent locomotion without the aid of braces, crutches, canes, or a wheelchair, *or*
- ▶ loss or loss of use of both upper extremities, which prevents use of the arms at or above the elbows

may be entitled to a VA grant of not more than 50 percent, or up to a maximum of \$50,000, to pay part of the cost of building, buying or remodeling a specially adapted house or to pay indebtedness on such a home already acquired. You may contact VA as shown above for additional information or an application.

SPECIAL HOME ADAPTATION GRANT

Veterans who have a permanent and total service-connected disability due to

- ▶ blindness in both eyes with 5/200 visual acuity or less, *or*
- ▶ the loss or loss of use of both hands

may be entitled to a VA grant of not more than \$10,000 to pay the cost of remodeling a house in which they reside. You may contact VA as shown above for additional information or an application.

AUTOMOBILE AND ADAPTIVE EQUIPMENT BENEFITS

Veterans who have a permanent and total service-connected disability due to

- ▶ loss or permanent loss of use of one or both feet, *or*
- ▶ loss or permanent loss of use of one or both hands, *or*
- ▶ permanent impairment of vision in both eyes with a central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field has an angular distance no greater than 20 degrees in the better eye

may be entitled to financial assistance in purchasing a conveyance and adaptive equipment for automobiles and similar vehicles. You may contact VA as shown above for additional information or an application.

DENTAL TREATMENT

Veterans who have a permanent and total, service-connected disability may be entitled to free dental treatment. You may contact the nearest VA medical center for assistance.

SOCIAL SECURITY BENEFITS

The Social Security Administration (SSA) administers several benefit programs, including Social Security retirement and disability benefits and Medicare. Veterans may be entitled to Social Security work credits for active service performed after September 15, 1940. For more information about Social Security benefits and credits, call SSA toll-free at 1-800-772-1213 (Hearing Impaired TTY line 1-800-325-0778). You may also contact SSA by Internet at <http://www.ssa.gov/>.

COMMISSARY AND EXCHANGE PRIVILEGES

Honorably discharged veterans with 100 percent service-connected disability, and their dependents and unmarried surviving spouses, are entitled to unlimited exchange and commissary store privileges. Certification of total disability and DD Form 1172, Application for Uniformed Services Identification Card - DEERS Enrollment, will be provided by VA. You may contact the nearest VA regional office for assistance.

BENEFITS FOR DEPENDENTS

DEPENDENTS' EDUCATIONAL ASSISTANCE (DEA)

Generally, the veteran's spouse and the veteran's children between 18 and 26 years old are entitled to DEA when the veteran has a permanent and total service-connected disability. DEA is also payable to the surviving spouse and children of a veteran who died as a result of service-connected disability or had a permanent and total service-connected disability at the time of death. You may obtain additional information or an application by visiting our website at <http://www.gibill.va.gov>, contacting the VA regional office where your records are located, or calling 1-888-GI BILL-1 (Hearing Impaired TDD line 1-888-442-4551).

CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS (CHAMPVA)

CHAMPVA provides medical care coverage for the spouse or child of a veteran who has permanent and total service-connected disability, and the surviving spouse or child of a veteran who has died of a service-connected disability, had a permanent and total service-connected disability at the time of death, or who died on active duty, if the spouse or child does not have entitlement to care under the Department of Defense's TRICARE Program. Application for this benefit may be made to the VA Health Administration Center, CHAMPVA Eligibility, P.O. Box 469028, Denver, CO 80246-9028. For more information on CHAMPVA, please access our website at <http://www.va.gov/hac/> or call the Health Administration Center at 1-800-733-8387.

JOB COUNSELING AND EMPLOYMENT SERVICES

A job and job training counseling service program, employment placement program, and job training placement service program are available to a spouse of any veteran who has a permanent and total service-connected disability or had a permanent and total service-connected disability at the time of death.



Department of Veterans Affairs

DECLARATION OF STATUS OF DEPENDENTS

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., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation Records - VA, and published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. Giving us your and your dependents' SSN account information is mandatory. Applicants are required to provide their SSN and the SSN of any dependents for whom benefits are claimed under Title 38 USC 5101 (c)(1). The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. Information that you furnish may be utilized in computer matching programs with other Federal or state agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs.

RESPONDENT BURDEN: We need this information to determine marital status and eligibility for an additional allowance for dependents under 38 U.S.C. 1115. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 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 unless a valid OMB 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 www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

INSTRUCTIONS: Print all answers clearly. Make sure you sign and date this form (Items 17 and 18). Note: Unless the claimant is the veteran's surviving spouse, the veteran must sign in Item 17. When you have completed this form, mail it or take it to a VA regional office.

1A. FIRST - MIDDLE - LAST NAME OF VETERAN Thomas Smith	2A. NAME OF CLAIMANT (If other than veteran)	3. FILE NUMBER C- XXX-XX-1514
1B. VETERAN'S SOCIAL SECURITY NUMBER	2B. CLAIMANT'S SOCIAL SECURITY NUMBER	
4A. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)		
4B. E-MAIL ADDRESS OF CLAIMANT (If applicable)		
5A. MARITAL STATUS (Check one) <input type="checkbox"/> MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> NEVER MARRIED "(If checked, skip to Item 14)" <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED		5B. IF MARRIED, SPOUSE'S DATE OF BIRTH _____ month day year

NOTE: You must furnish complete information about all your and your current spouse's previous marriages. If you or your spouse have been married more than three times, list additional marriages in Item 17, "Remarks," or attach a separate sheet.

SECTION I - VETERAN'S MARRIAGES

6. HOW MANY TIMES HAVE YOU BEEN MARRIED? (Including current marriage)				
7A. DATE AND PLACE OF MARRIAGE (City, State or Country)	7B. TO WHOM MARRIED (First, middle, last name)	7C. SOCIAL SECURITY NUMBER	7D. HOW MARRIAGE TERMINATED (Death, Divorce)	7E. DATE AND PLACE TERMINATED (City, State or Country)
_____ month day year Place:				
_____ month day year Place:				_____ month day year Place:
_____ month day year Place:				_____ month day year Place:

SECTION II - SPOUSE'S PREVIOUS MARRIAGES

8. HOW MANY TIMES HAS THE VETERAN'S CURRENT SPOUSE OR SURVIVING SPOUSE BEEN MARRIED? (Including current marriage)			
9A. DATE AND PLACE OF MARRIAGE	9B. TO WHOM MARRIED (First, middle, last name)	9C. HOW MARRIAGE TERMINATED (Death, Divorce)	9D. DATE AND PLACE TERMINATED
_____ month day year Place:			_____ month day year Place:
_____ month day year Place:			_____ month day year Place:
_____ month day year Place:			_____ month day year Place:

10A. IS YOUR SPOUSE ALSO A VETERAN? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If "Yes," answer Item 10B also. If "No," skip to Item 11.)</i>	10B. WHAT IS YOUR SPOUSE'S VA FILE NUMBER <i>(If any)?</i>							
11. DO YOU LIVE WITH YOUR SPOUSE? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If "Yes," skip to Item 14A. If "No," answer Items 12 and 13 also.)</i>	12. WHAT IS YOUR SPOUSE'S ADDRESS?							
13. HOW MUCH DO YOU CONTRIBUTE MONTHLY TO YOUR SPOUSE'S SUPPORT? \$								
SECTION III - VETERAN'S UNMARRIED CHILDREN								
<i>NOTE: If any child is claimed as "seriously disabled" (Item 14H), it must be shown that the child became permanently unable to support him/herself before reaching age 18. Furnish a statement from an attending physician or other medical evidence which shows the nature and extent of the physical or mental impairment.</i>								
<i>Note: In Items 14A through 14I, check all boxes that apply.</i>								
14A. NAME OF CHILD <i>(first, middle initial, last)</i>	14B. DATE AND PLACE OF BIRTH <i>(city, state or country)</i>	14C. SOCIAL SECURITY NUMBER	14D. BIO - LOGICAL	14E. ADOPT - ED	14F. STEP - CHILD	14G. 18-23 YRS. OLD AND IN SCHOOL	14H. SERIOUSLY DISABLED	14I. CHILD PREVIOUSLY MARRIED
	_____ <i>mo day yr</i> PLACE:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	_____ <i>mo day yr</i> PLACE:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	_____ <i>mo day yr</i> PLACE:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: If any of the children listed above don't live with you, complete Items 15A through 15C.</i>								
15A. NAME OF CHILD <i>(First, middle initial, last)</i>	15B. CHILD'S COMPLETE ADDRESS				15C. NAME OF PERSON THE CHILD LIVES WITH <i>(If applicable)</i>			
16. REMARKS								
I HEREBY CERTIFY THAT the information I have given above is true and correct to the best of my knowledge and belief.								
17. SIGNATURE OF CLAIMANT	18. DATE	19. TELEPHONE NUMBER (S) <i>(Include Area Code)</i>						
		A. DAYTIME			B. NIGHTTIME			
PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled.								



Department of Veterans Affairs

REQUEST FOR APPROVAL OF SCHOOL ATTENDANCE

1. ADDRESS OF VA OFFICE

VA Regional Office
210 Franklin Rd., S.W.
Roanoke VA 24011

IMPORTANT - Be sure to read the Instructions on the reverse of Copy 1 before completing this form. The form should be completed in duplicate and signed in Part III.

PART I - TO BE COMPLETED BY CLAIMANT (Also sign certification in Part III)

2A. FIRST NAME-MIDDLE INITIAL-LAST NAME OF VETERAN (Type or Print) Thomas Smith		2B. E-Mail ADDRESS OF VETERAN (If applicable)	3. VA FILE NUMBER C/CSS XXX-XX-1514
4A. FIRST NAME-MIDDLE INITIAL-LAST NAME OF STUDENT (Veteran's child attending school) (Type or print)		4B. STUDENT'S SOCIAL SECURITY NUMBER	
5A. DATE OF BIRTH	5B. HAS STUDENT EVER MARRIED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Item 5C)		5C. DATE OF MARRIAGE
6. ADDRESS OF STUDENT (Number and street or rural route, city or P.O., State and Zip Code)		7A. IS TUITION AND/OR ALLOWANCE FOR STUDENT'S EDUCATION OR TRAINING BEING PAID BY VA DEPENDENTS EDUCATIONAL ASSISTANCE (DEA), THE FEDERAL EMPLOYEE'S COMPENSATION ACT OR ANY OTHER AGENCY OR PROGRAM OF THE UNITED STATES GOVERNMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 7B and 7C. If "No," skip to Item 8A)	
7B. AGENCY NAME		7C. DATE PAYMENTS BEGAN (Month, day, year)	
8A. NAME AND ADDRESS OF SCHOOL FOR WHICH APPROVAL IS REQUESTED		8B. NAME OR TYPE OF COURSE OF EDUCATION OR TRAINING	
9A. OFFICIAL BEGINNING DATE OF REGULAR TERM OR COURSE (Month, day, year)		9B. DATE STUDENT STARTED OR EXPECTS TO START COURSE (Month, day, year)	9C. EXPECTED DATE OF GRADUATION (Month, day, year)
10A. IS STUDENT ENROLLED IN A FULL-TIME HIGH SCHOOL OR COLLEGE COURSE? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "No," complete Items 10B, 10C and 10D)	10B. SUBJECT FOR WHICH STUDENT IS ENROLLED (If other than full-time high school or college course)	10C. NUMBER OF SESSIONS PER WEEK	10D. HOURS PER WEEK
11A. WAS STUDENT ATTENDING ANY SCHOOL AT END OF LAST SCHOOL TERM? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 11B thru 11F)		11B. NAME AND ADDRESS OF SCHOOL ATTENDED LAST TERM	
11C. NO. OF SESSIONS PER WEEK	11D. HOURS PER WEEK	11E. BEGINNING DATE OF LAST TERM	11F. ENDING DATE OF LAST TERM

PART II - STUDENT'S INCOME AND NET WORTH (See instructions on reverse for when required)

12. REPORT OF INCOME BY CALENDAR YEAR (IMPORTANT - Do NOT report VA benefits)			13. VALUE OF ESTATE	
A. SOURCE	B. RECEIVED (REPORT FOR YEAR IN WHICH SCHOOL TERM BEGINS-SEE ITEM 9 ABOVE)	C. EXPECTED (Report for year following that shown in Column B)	A. SAVINGS (Including cash)	\$
EARNINGS FROM ALL EMPLOYMENT			B. SECURITIES, BONDS, ETC.	
ANNUAL SOCIAL SECURITY			C. REAL ESTATE (Not your home)	
OTHER ANNUITIES			D. ALL OTHER ASSETS	
ALL OTHER INCOME (Interest, dividends, etc.)			E. TOTAL OF ABOVE	\$
14. REMARKS				

PART III - CERTIFICATION AND AGREEMENT TO BE SIGNED BY CLAIMANT

NOTE: This part will be completed by the student only if he or she has attained majority and is claiming benefits in his or her own right. Otherwise, the veteran, surviving spouse, guardian or custodian will sign and also enter his or her relationship to the student.

Receipt by the student of VA Dependents Educational Assistance (DEA), the Federal Employee's Compensation Act, or benefit from another Federal Agency (U.S. Service Academy, U.S. Merchant Marine Academy, Bureau of Indian Affairs, etc.) with additional compensation payments based on the student's school attendance is considered a duplication of benefits and is prohibited.

I CERTIFY THAT the information given above is true and correct to the best of my knowledge and belief and request approval of the course of education or training shown above.

I AGREE to notify the Department of Veterans Affairs immediately of any changes in this course of education, transfer to another school, discontinuance of school attendance, receipt of Dependents Educational Assistance, or marriage prior to completion of the course. I understand that continued entitlement to school attendance may be based on information I have furnished on this form. Any benefits allowed due to this certification will be discontinued if the student marries, receives VA Dependents Educational Assistance (DEA) benefits, leaves school, or passes away.

15A. SIGNATURE	15B. DAYTIME PHONE NO. (Include Area Code)	15C. EVENING PHONE NO. (Include Area Code)	16. RELATIONSHIP TO STUDENT	17. DATE
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PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

INSTRUCTIONS

NOTE: Read the instructions carefully before completing this form.

How do I complete VA Form 21-674?

VA Form 21-674 should be completed by the person receiving or claiming benefits for a veteran's child who is at least 18 but under 23 and attending school. The veteran's child should complete the form *only if* he or she has reached the age of majority and is or will be entitled to receive direct payment of VA benefits. **NOTE:** The age of majority is determined by State law; it is age 18 in most states.

Print all answers clearly. For additional space, attach a separate sheet, indicating the item number to which the answers apply. Make sure to write the veteran's name and VA claim number on any attachments to this form.

Submit the original copy (VA File Copy 1) of the completed form to the VA office shown in Item 1. If no address is shown, mail or take it to the nearest VA regional office. Keep Claimant's Copy 2 for your own records and use the reverse, School Attendance Report, to report to VA any change in the child's status, such as termination of school attendance or marriage.

PART I

All claimants must complete this part. Answer "Yes" to Item 7A *only if* Federal Employee's Compensation, VA Dependents Educational Assistance (DEA), or another Federal Agency (U.S. Service Academy, U.S. Merchant Marine Academy, Bureau of Indian Affairs, etc.) is paying the student's tuition. Do not answer "Yes" simply because Social Security benefits have been awarded based on the student's continuing school attendance.

PART II

Complete this part *only if* the benefit being claimed or received is disability pension or death pension. Each income block must be completed. If you do not receive income from a particular source, write "0" or "none" in the space provided. Do not leave the space blank. Report the gross amounts before you take out deductions for taxes, insurance, etc.

Section 306 or Old Law Pension (entitlement to pension established before January 1, 1979): Complete this part *only if* the VA benefit payable will be death pension, *and* there is no surviving spouse entitled to death pension. Do not complete if the student is a dependent on a veteran's or surviving spouse's award.

Improved Pension: Complete this part showing the student's income. Educational or vocational rehabilitation expenses are amounts paid by the student for his or her course of post-secondary education or vocational rehabilitation, including tuition, fees, and materials. If any of these expenses are paid by the student, the expenses may be deducted from the earned income of the student. Report the total amount(s) paid and dates of payment in Item 14, "Remarks."

PART III

This part will be completed by the student only if he or she has reached the age of majority and is claiming benefits in his or her right. Otherwise, the veteran, surviving spouse, guardian or custodian will sign and also enter his or her relationship to the student in Item 16.

Privacy Act Notice: 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., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22, Compensation, Pension, Education, and Rehabilitation Records - VA, and published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. The requested information is considered relevant and necessary to determine maximum benefits under the law. Giving us your and your dependents' SSN account information is mandatory. Applicants are required to provide their SSN and the SSN of any dependents for whom benefits are claimed under Title 38 U.S.C. 5101(c)(1). 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 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 entitlement to benefits for a veteran's child who is between age 18 and 23 and attending school (38 U.S.C. 104(a)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 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 www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.



Department of Veterans Affairs

SCHOOL ATTENDANCE REPORT

(Unscheduled Termination or Change)

INSTRUCTIONS: The appropriate items below should be completed and the form returned to the Department of Veterans Affairs if the student whose enrollment is recorded on the face of this form discontinues the approved course of education or training, receives VA Dependents' Educational Assistance (DEA) benefits, enters an educational institution entirely supported by the Federal Government or marries prior to completion of the course.

PART I - NOTICE OF TERMINATION OF SCHOOL ATTENDANCE

1A. DATE SCHOOL ATTENDANCE TERMINATED <i>(Month, day, year)</i> 	1B. IS THIS THE OFFICIAL ENDING DATE OF REGULAR TERM FOR SUCH COURSE? <input type="checkbox"/> YES <i>(If "Yes," complete Item 2A)</i> <input type="checkbox"/> NO <i>(If "No," complete Item 2B)</i>
2A. BEGINNING DATE OF THE NEXT REGULAR TERM FOLLOWING THE DATE STUDENT DISCONTINUED SCHOOL <i>(Month, day, year)</i> 	2B. OFFICIAL ENDING DATE OF REGULAR TERM <i>(Month, day, year)</i>
3. REASON FOR TERMINATION OF ATTENDANCE <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> A. FAILURE TO START COURSE OF TRAINING </div> <div style="width: 50%;"> <input type="checkbox"/> E. OTHER <i>(Please explain)</i> </div> <div style="width: 50%;"> <input type="checkbox"/> B. FAILURE TO RESUME COURSE </div> <div style="width: 50%;"> <input type="checkbox"/> C. COMPLETION OF COURSE </div> <div style="width: 50%;"> <input type="checkbox"/> D. TRANSFER TO ANOTHER INSTITUTION <i>(Specify name and address of other institution, if known)</i> </div> </div>	
4. REASON FOR TERMINATION DUE TO CHANGE IN STATUS <input type="checkbox"/> A. RECEIPT OF VA DEPENDENT'S EDUCATIONAL ASSISTANCE (DEA) BENEFITS <input type="checkbox"/> B. RECEIPT OF FEDERAL EMPLOYEES' COMPENSATION ACT (FECA) <input type="checkbox"/> C. RECEIPT OF OTHER FEDERAL BENEFITS <i>(Such as U.S. Service Academy, U.S. Merchant Marine Academy, Bureau of Indian Affairs, Job Corp, etc.)</i>	
4D. DATE OTHER FEDERAL BENEFITS BEGAN <i>(Month, day, year)</i> 	

PART II - NOTICE THAT STUDENT MARRIED

5A. DATE OF MARRIAGE	5B. MARRIED NAME <i>(If female student)</i>	5C. ADDRESS OF STUDENT <i>(No. and street or rural route, city or P.O., State and ZIP Code)</i>
6. REMARKS		
I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.		
7. NAME OF SCHOOL		
8. DATE	9. SIGNATURE OF CLAIMANT, GUARDIAN OR CUSTODIAN	

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statements or evidence of a material fact, knowing it to be false.



Department of Veterans Affairs

DISABLED VETERANS APPLICATION FOR VOCATIONAL REHABILITATION
(Chapter 31, Title 38, U.S.C.)

PURPOSE OF VOCATIONAL REHABILITATION: Vocational Rehabilitation provides services and assistance to certain veterans with disabilities to get and keep a suitable job. If employment is not reasonably feasible, vocational rehabilitation may be able to provide services to support veterans with disabilities to achieve maximum independence in their daily living activities.

IMPORTANT: To see if you should fill out this form, please read the information on back.

1. FIRST, MIDDLE, LAST NAME OF VETERAN Thomas Smith		2. SOCIAL SECURITY NO. 	3. VA FILE NO. (If different, from Item 2) XXX-XX-1514	4. DATE OF BIRTH (Month, Day, Year)												
5A. MAILING ADDRESS (No. and street or rural route, City, State and ZIP Code)		6. DAYTIME TELEPHONE NO. (Include Area Code)		8. VA OFFICE WHERE RECORDS ARE LOCATED												
5B. E-MAIL ADDRESS OF VETERAN (If, available)		7. EVENING TELEPHONE NO. (Include Area Code)		9. NUMBER OF YEARS OF EDUCATION												
10. IF YOU ARE MOVING WITHIN THE NEXT 30 DAYS, GIVE US YOUR NEW ADDRESS		11. LIST ANY PREVIOUS VOCATIONAL REHABILITATION PROGRAMS YOU HAVE BEEN IN AND GIVE THE DATES (Include both VA and non-VA programs)		DO NOT WRITE IN THIS SPACE (VA DATE STAMP)												
		<table border="1"> <thead> <tr> <th>PROGRAM</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>			PROGRAM	DATE										
PROGRAM	DATE															

12. SERVICE INFORMATION (Enter the following information for each period of active duty. Show ALL active duty)

SERVICE NUMBER (Prefix and suffix) (A)	BRANCH OF SERVICE (B)	DATE ENTERED ACTIVE DUTY (C)	DATE LEFT ACTIVE DUTY (D)	TYPE OF SEPARATION OR DISCHARGE (E)

13. IF YOU ARE NOW WORKING (Enter the following information for your current job)

A. NAME AND ADDRESS OF EMPLOYER	B. DUTIES OF YOUR JOB	C. MONTHLY SALARY OR WAGES

14. IF YOU ARE NOW HOSPITALIZED, WHAT IS THE NAME AND ADDRESS OF YOUR HOSPITAL?

15A. WHAT IS YOUR DISABILITY RATING?

15B. WHAT IS THE NATURE OF YOUR DISABILITY (DISABILITIES)?

16. DID YOU SERVE IN: (Check appropriate box(es))

- ☐ WORLD WAR II
☐ POST WORLD WAR II ERA
☐ KOREAN CONFLICT

- ☐ POST KOREAN CONFLICT
☐ VIETNAM
☐ POST VIETNAM

- ☐ GULF WAR
☐ OPERATION ENDURING FREEDOM
☐ OPERATION IRAQI FREEDOM

17. DTAP?

☐ YES ☐ NO

I HEREBY CERTIFY THAT the information I have entered on this form is true and complete to the best of my knowledge and belief. I realize that making willful false statements concerning a material fact in a claim of vocational rehabilitation benefits is a punishable offense that may result in fine or imprisonment or both.

18A. SIGNATURE OF APPLICANT (Do not print) (Sign in ink)

18B. DATE SIGNED

VOCATIONAL REHABILITATION FOR SERVICE-DISABLED VETERANS

TO APPLY OR RECEIVE INFORMATION AND ASSISTANCE:

- To apply, submit this completed application to the nearest VA office.
- You may obtain information and assistance from any VA office or on line at <http://www.vba.va.gov/bln/vre/index.htm>.
- Local representative of veteran's service organizations and the American Red Cross also have information and forms available.

EVALUATION : If you have a VA combined service-connected disability rating of 10 percent or more and you apply for vocational rehabilitation, we will provide you a comprehensive evaluation. During this evaluation, a VA counselor will work with you to answer a variety of questions. Such as:

1. Do you meet the basic entitlement requirements?
2. Are you within the time limit for receiving this benefit? (This is generally 12 years from the date VA notified you that you had at least a 10% service-connected disability.)

PLANNING AND COUNSELING: Your counselor must first determine that you meet the entitlement requirements and an employment or independent living goal is reasonably feasible. Then your counselor will help you develop a plan of services and assistance to assist you to reach your employment goal. Counseling will be available throughout your program to help you with problems that may arise.

REHABILITATION SERVICES: Not all vocational rehabilitation programs involve training. You may only need employment services to help you get a suitable job. If a VA counselor determines that you need training to reach your vocational goal, your VA counselor will also determine the number of months of training you need. You may train in a vocational school, a special rehabilitation facility, an apprenticeship program, other on-job training position, a college, or a university.

If training is appropriate, VA will provide medical and dental care treatment, employment assistance to get and keep a suitable job, and other services you may need. If a vocational goal is not currently feasible for you, VA may provide services and assistance to improve your capacity for living independently.

SUPPORT: VA may pay for tuition, fees, books, equipment, tools, or other supplies you need to succeed in your program. During your program, you may qualify for a monthly subsistence allowance to help you meet your living expenses. The allowance you receive depends on your type of training, rate of attendance, and number of dependents. You will receive this allowance in addition to any VA compensation or military retired pay you may receive.

PRIVACY ACT: The 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. VA needs the information this form requests to help determine your eligibility to the benefit) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records, published in the Federal Register. Your obligation to respond is required to obtain benefits. Giving us your Social Security Number (SSN) information is mandatory. Applicants are required to provide their SSN under Title 38 USC 5101 (c) (1). The 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.

RESPONDENT BURDEN: We need this information in order for veterans with compensable service-connected disabilities to apply for vocational rehabilitation under title 38, U.S.C. chapter 31. We estimate that you will need an average of 15 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 1-800-827-1000 to get information on where to send comments or suggestions about this form.

IMPORTANT INFORMATION ABOUT VOCATIONAL REHABILITATION BENEFITS
(Attachment to VA Form 28-1900)**HOW CAN VA'S VOCATIONAL REHABILITATION PROGRAM HELP ME?**

This program can help you *prepare for, get, and keep a suitable job*. If you are seriously disabled to work, we can provide services to help you learn *to live more independently*. These benefits are in addition to any VA compensation or military retirement benefits you are entitled to receive.

HOW DO I FIND OUT IF I CAN RECEIVE VOCATIONAL REHABILITATION BENEFITS?

If VA has granted you a combined service-connected disability rating of at least 10 percent, you may be able to receive vocational rehabilitation benefits. After you apply, a VA counselor will schedule an evaluation with you. This evaluation is private and confidential and requires several hours to complete.

During this evaluation of your need for vocational rehabilitation, you and your counselor will gain a better understanding of your skills, talents, and interests and how they relate to your disabilities and the job market. Your counselor will use the results of this evaluation to decide whether you meet the conditions to receive vocational rehabilitation.

WHAT KINDS OF HELP CAN I RECEIVE?

Program Planning: If your counselor finds you need vocational rehabilitation to get or hold a job or to live more independently, both of you will develop a plan of services and assistance. This plan will lead to either employment or increased independence in daily living. Typical job-focused plans may include, among many benefits available:

- developing skills and knowledge to be competitive in the job market
- obtaining the tools and equipment you will need for work
- assisting you to find and adjust to a suitable job

Training: When you apply, you may not already have the needed work skills to meet the entry level requirements for a suitable job. In this case, you may need a period of training to develop these skills.

Job Assistance: We will help you find employment. For example, you may need help in preparing a resume, in developing interviewing skills, or in planning an effective campaign to get a job.

Payment of Program Costs and Living Allowances: We will pay the costs of your rehabilitation services and training. In addition, we will arrange for you to receive the medical, dental, or other special assistance you need to complete your program. If you need training, you will receive a monthly living allowance while you train.

Continued on Reverse

HOW LONG CAN I RECEIVE VOCATIONAL REHABILITATION BENEFITS?

Months of Training: Unlike the Montgomery GI Bill, you are not entitled to a fixed number of months of benefits under the Vocational Rehabilitation Program. If your counselor determines you need training to get a suitable job, you may train up to the point you become employable, but no more than 48 months.

Job Assistance: You may receive up to 18 months of help in getting and keeping a job.

Time Limit to Complete a Program: Generally, you may receive benefits under this program during a 12-year period beginning the date VA notifies you in writing that you are entitled to at least 10 percent compensation. Under certain conditions, this period may begin at an earlier date or may be extended.

HOW DO I RECEIVE MORE INFORMATION?

Telephone: To obtain more information about vocational rehabilitation and how it can help you, you should call 1-800-827-1000 or for the hearing impaired TDD 1-800-829-4833.

Internet: If you have access to the internet, you can also obtain program information at the following address:

<http://www.vba.va.gov/bln/vre/index.htm>

HOW DO I APPLY?

You may apply in writing or over the Internet:

In writing: Complete VA Form 28-1900, Disabled Veterans Application for Vocational Rehabilitation, and send it to the Vocational Rehabilitation and Employment Division at the nearest VA regional office.

Over the Internet: Apply online at the following Internet address:

<http://vabenefits.vba.va.gov>

NOTE: Sending us this form does not bind you in any way. Sending us this form will not affect your compensation, other VA education benefits, or military retirement pay.

SOCIAL SECURITY NUMBER OF APPLICANT --

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

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

21. DATE YOU WILL BEGIN SCHOOL OR TRAINING

MONTH DAY YEAR
 PART IV - DEA APPLICANT AND ELECTION INFORMATION
(Fry Scholarship Applicants, Skip to Part V)**SECTION I - APPLICANT INFORMATION**

22. IF YOU ARE THE SPOUSE OF A DISABLED VETERAN, IS A DIVORCE OR ANNULMENT PENDING?

☐ YES ☐ NO

23. ARE YOU A HANDICAPPED CHILD (14 YEARS OR OLDER), SPOUSE, OR SURVIVING SPOUSE SEEKING SPECIAL RESTORATIVE TRAINING?

☐ YES ☐ NO

24. ARE YOU A HANDICAPPED CHILD, SPOUSE, OR SURVIVING SPOUSE SEEKING SPECIALIZED VOCATIONAL TRAINING?

☐ YES ☐ NO

25. IF YOU ARE THE SURVIVING SPOUSE OF A DECEASED VETERAN, HAVE YOU REMARRIED SINCE HIS OR HER DEATH?

☐ YES ☐ NO (If "Yes," please provide date of remarriage) MONTH DAY YEAR
 SECTION II - ELECTION (CHILD APPLICANTS ONLY)

IMPORTANT: You may not receive payments of Dependency and Indemnity Compensation (DIC) or Pension and you may not be claimed as a dependent in a compensation claim while receiving Survivors' and Dependents' Educational Assistance (DEA). CAREFULLY READ THE INSTRUCTIONS BEFORE COMPLETING THIS ELECTION BLOCK. YOU ARE STRONGLY ENCOURAGED TO DISCUSS YOUR ELECTION WITH A VA COUNSELOR.

26. I CERTIFY that I understand the effects of an election to receive DEA benefits and I elect to receive such benefits on the following date:

MONTH DAY YEAR
 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 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☐ CHAPTER 35 - SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM (DEA)☐ CHAPTER 33 - POST-9/11 GI BILL MARINE GUNNERY SERGEANT DAVID FRY SCHOLARSHIP☐ TRANSFERRED ENTITLEMENTF. ☐ NONEG. ☐ OTHER (Specify benefit(s)) _____**IMPORTANT:** Complete Items 28 and 29 **only** if you checked block "E" in Item 27

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**

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

SOCIAL SECURITY NUMBER OF APPLICANT

 - -
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
☐ EXPECT TO GRADUATE FROM HIGH SCHOOL ☐ AWARDED GED
☐ NEVER ATTENDED HIGH SCHOOL

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)						

SECTION II - EMPLOYMENT

35. CURRENT AND PAST EMPLOYMENT

A. EMPLOYER	B. JOB TITLE	C. NUMBER OF MONTHS EMPLOYED	D. LICENSE OR RATING

NOTE: Complete Item 36 **only** if you are a civilian employee of the U.S. Government

36A. DO YOU EXPECT TO RECEIVE FUNDS FROM YOUR AGENCY OR DEPARTMENT FOR THE SAME COURSES FOR WHICH YOU EXPECT TO RECEIVE VA EDUCATIONAL ASSISTANCE? (If "Yes," complete Item 36B)

☐ YES ☐ NO

36B. SOURCE OF EDUCATIONAL ASSISTANCE FROM GOVERNMENT EMPLOYMENT

PART VIII - REMARKS, REMINDERS AND VA EDUCATION BENEFITS PAMPHLET**SECTION I - REMARKS**

37. REMARKS (If more space is needed, please attach a separate sheet of paper. Be sure to include name and social security number on each sheet)

SECTION II - REMINDERS**DID YOU REMEMBER TO:**

- WRITE YOUR SOCIAL SECURITY NUMBER ON EACH PAGE
- WRITE YOUR COMPLETE MAILING ADDRESS
- ATTACH SUPPORTING DOCUMENTS (e.g., birth certificate, marriage license, DD214, etc.)

SECTION III - VA EDUCATION BENEFITS PAMPHLET

38. THE MOST CURRENT INFORMATION ON VA EDUCATION BENEFITS IS AVAILABLE ONLINE AT www.gibill.va.gov IF YOU WOULD LIKE A COPY OF THE VA EDUCATION BENEFITS PAMPHLET PLEASE CHECK THE BOX. ☐

PART IX - CERTIFICATION AND SIGNATURE OF APPLICANT**I CERTIFY THAT** all statements in my application are true and correct to the best of my knowledge and belief.

39A. SIGNATURE OF APPLICANT (DO NOT PRINT)

SIGN HERE
IN INK ©

39B. DATE SIGNED

PENALTY: Willfully false statements as to a material fact in a claim for education benefits is a punishable offense and may result in the forfeiture of these or other benefits and in criminal penalties.

(Please detach at perforation and retain this information for future reference)

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

Use this form to apply for educational assistance under the following benefit programs:

- Survivors' and Dependents' Educational Assistance Program (DEA) (chapter 35 of title 38, U.S. Code)
- Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) (chapter 33 of title 38, U.S. Code)

Do not use this form to apply for Veterans' education assistance based on your own service (chapters 30, 32, 33, 1606, or 1607) or vocational rehabilitation benefits (chapter 31). To apply for veterans' education assistance based on your own service, use VA Form 22-1990. To apply for vocational rehabilitation benefits, use VA Form 28-1900.

INTERNET VERSION AVAILABLE - You may complete and submit this application on-line at www.gibill.va.gov. Click on "GI Bill: Apply for Benefits."

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 TDD at 1-800-829-4833.

NOTE: The number on the instructions match the item numbers on this application. Items not mentioned are self-explanatory.

ITEM 17. 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 18.

18A. Select the benefit for which you are applying.

To qualify for Survivors' and Dependents' Educational Assistance (DEA) you must be either -

- (1) The spouse or child of a veteran who is permanently and totally disabled as a result of a service-connected disability.
- (2) The spouse or child of an individual on active duty who has been listed as missing in action, captured in line of duty by hostile force, forcibly detained or interned in line of duty by hostile force, or forcibly detained or interned in line of duty by foreign government or power for more than 90 days.
- (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.
- (4) The spouse or 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 serviceperson is likely to be discharged or released from such service for such disability.

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.

18B. To qualify for the Fry Scholarship, you must be the child of an individual who after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces.

18A. & 18B. 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 Exam or National Exam for Credit." Individuals eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may be reimbursed for the cost of approved tests for admission to or credit at institutions of higher learning.

"Correspondence." Only spouses and surviving spouses eligible for the Survivors' and Dependents' Educational Assistance program 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, please visit our website at www.gibill.va.gov.

INFORMATION AND INSTRUCTIONS (Continued)

ITEMS 23 and 24. 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. Your election to receive Survivors' and Dependents' Educational Assistance (DEA) is final and cannot be changed. This means that payments of compensation, pension, and Dependents' Indemnity Compensation (DIC) will be terminated upon issuance of a DEA benefit payment. If you are planning to pursue a program of education for more than 45 months, you should consider deferring receipt of DEA benefits. We strongly recommend that you discuss your education or training plans with a VA counselor before making a decision. If you decide to elect benefits under DEA, indicate the date from which you wish your DEA payments to begin.

HOW TO FILE YOUR CLAIM

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 reverse for the addresses of these 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 reverse for the post office box address for these 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 our work-study program, call VA toll-free at 1-888-GIBILL-1 (1-888-442-4551). If you are hearing impaired, call us toll-free at 1-800-829-4833. You can also get more information about education assistance from our education Internet site at www.gibill.va.gov.

Eastern Region: VA Regional Office P. O. Box 4616 Buffalo, NY 14240-4616			
SERVES THE FOLLOWING STATES			
CT	DE	DC	ME
MD	MA	NH	NJ
NY	OH	PA	RI
VT	VA	WV	Foreign Schools

Western Region: VA Regional Office P. O. Box 8888 Muskogee, OK 74402-8888			
SERVES THE FOLLOWING STATES			
AK	AR	AZ	CA
HI	ID	LA	NM
NV	OK	OR	Philippines
TX	UT	WA	GUAM
APO/FPO AP			

Central Region: VA Regional Office P. O. Box 66830 St. Louis, MO 63166-6830			
SERVES THE FOLLOWING STATES			
CO	IA	IL	IN
KS	KY	MI	MN
MO	MT	NE	ND
SD	TN	WY	WI

Southern Region: VA Regional Office P. O. Box 100022 Decatur, GA 30031-7022			
SERVES THE FOLLOWING STATES			
AL	FL	GA	MS
NC	PR	SC	US Virgin Islands
APO/FPO AA			

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 30 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 www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. 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.



YOUR RIGHTS TO APPEAL OUR DECISION

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- appeal to the Board of Veterans' Appeals (the Board) by telling us you disagree with our decision
- give us evidence we do not already have that may lead us to change our decision

This form will tell you how to appeal to the Board and how to send us more evidence. You can do either one or both of these things.

NOTE: Please direct all new evidence to the address at the top of our letter. Do not send evidence directly to the Board until you receive written notice from the Board that they received your appeal.

WHAT IS AN APPEAL TO THE BOARD OF VETERANS' APPEALS?

An appeal is your formal request that the Board review the evidence in your VA file and review the law that applies to your appeal. The Board can either agree with our decision or change it. The Board can also send your file back to us for more processing before the Board makes its decision.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, write us a letter telling us you disagree with our decision. This letter is called your "Notice of Disagreement." If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in your letter which claims you are appealing. *Send your Notice of Disagreement to the address at the top of our letter.*

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. You must complete this VA Form 9 and return it to us if you want to continue your appeal.

How long do I have to start my appeal? You have one year to appeal our decision. *Your* letter saying that you disagree with our decision must be postmarked (or received by us) within one year from the date of *our* letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- show that we were clearly wrong to deny the benefit *or*
- send us new evidence that relates to the reason we denied your claim

Can I get a hearing with the Board? Yes. If you decide to appeal, the Board will give you a hearing if you want one. The VA Form 9 we will send you with the Statement of the Case has complete information about the kinds of hearings the Board offers and convenient check boxes for requesting a Board hearing. The Board does not require you to have a hearing. It is your choice.

Where can I find out more about appealing to the Board?

- You can find a "plain language" booklet called "How Do I Appeal," on the Internet at: <http://www.va.gov/vbs/bva/pamphlet.htm>. The booklet also may be requested by writing to: Mail Processing Section (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.
- You can find the formal rules for appealing to the Board in the Board's Rules of Practice at title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.gpoaccess.gov/cfr/index.html>. A printed copy of the Code of Federal Regulations may be available at your local law library.

Can I get someone to help me with my appeal to the Board? Yes. You can have a veterans' service organization representative, an attorney-at-law, or an "agent" help you with your appeal. But you are not required to have someone represent you. It is your choice.

- Representatives who work for accredited veterans' service organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso>.
- A private attorney or an "agent" can also represent you. If applicable, your local bar association may be able to refer you to an attorney with experience in veterans' law. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal to the Board? It depends on who helps you. The following explains the differences.

- Veterans' service organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal to the Board is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. *See* 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address at the top of our letter. *See* 38 C.F.R. 14.636(h)(4).

CAN I GIVE VA ADDITIONAL EVIDENCE?

Yes. You can send us more evidence to support a claim whether or not you appeal to the Board. **If you want to appeal, though, do not forget the one-year time limit!**

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing.

In writing. To support your claim, you may send documents and written statements to us at the address on the top of our letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a local hearing with us at any time. This hearing is separate from any Board hearing you might ask for later if you appeal. We do not require you to have one. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a hearing, send us a letter asking for a hearing. Use the address at the top of our letter. We will then:

- arrange a time and place for the hearing
- provide a room for the hearing
- assign someone to hear your evidence
- make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review the record of the hearing and other new evidence, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you appeal, we will send the new evidence and the record of any local hearing to the Board.

Exhibit 7



DEPARTMENT OF VETERANS AFFAIRS
Roanoke Regional Office
116 North Jefferson St.
Roanoke VA 24016

February 7, 2014

THOMAS SMITH
5432 CALL PLACE SE
WASHINGTON DC 20019

In Reply Refer To:
211A
577 50 1514
Thomas Smith

Dear Mr. Smith:

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

We have attached duplicate records which were previously considered.

Statement of the Case

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

What You Need To Do

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, Appeal to the Board of Veterans' Appeals, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

When You Need To Do It

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. **If we do not hear from you within this period, we will close your case.** If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, Appeal to Board of Veterans' Appeals.

Hearings

You may have a hearing before we send your case to the BVA. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. VA will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may **also** have a hearing before the BVA, as noted on the enclosed VA Form 9, Appeal to the Board of Veterans' Appeals. **Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.**

Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BVA will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

Sincerely yours,

Dave Svirskey

Dave Svirskey
Service Center Manager

Enclosure(s): VA Form 9

CC: Jeffrey Martin

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ISSUE:

Entitlement to a special home adaptation and/or special adaptive housing grant (claimed as purchase and installation of home spa)

EVIDENCE:

- VA Form 21-4138, Statement In Support Of Claim received December 7, 2011
- VA Form 21-4138, Statement In Support Of Claim with receipts for expenditures for home spa and evidence/letter from Dr. William Albert dated April 28, 2000; received February 16, 2011
- Statement in support of claim, received September 21, 2011
- Treatment reports, Washington VA Medical Center, from November 2010 through November 2011
- Our VCAA (Veterans Claims Assistance Act) letter to you dated January 12, 2012
- Treatment reports, Washington VA Medical Center, from July 2000 through November 2011
- Treatment reports, Dewitt Army Community Hospital, from May 2003 through September 2010

ADJUDICATIVE ACTIONS:

Military Service: 10/06/1957 to 07/31/1978 Honorable

12-07-2011	Claim received.
03-10-2012	Claim considered based on all the evidence of record.
03-16-2012	Claimant notified of decision.
08-21-2012	Notice of Disagreement received.
10-18-2012	Appeal Election Letter sent to the appellant.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

38 USC Section 5107 (03/02) Claimant responsibility; benefit of the doubt

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(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

§19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated. (Authority: 38 U.S.C. 7105(d)(3))

§20.302 Rule 302. (07/08) Time limit for filing...

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed. (Authority: 38 U.S.C. 7105(b)(1))

(b) Substantive Appeal.

(1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

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(2) Special rule in certain cases where additional evidence is submitted. Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with §19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period. (Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

(c) Response to Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal. (Authority: 38 U.S.C. 7105(d)(3))

§3.102 (New) Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

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§3.104 (05/2001) Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §3.105 and §3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001]

§3.109 Time limit.

(a) Notice of time limit for filing evidence.

(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If the evidence is not received within 1 year from the date of such notification, pension, compensation, or dependency and indemnity compensation may not be paid by reason of that application (38 U.S.C. 5103(a)). Information concerning the whereabouts of a person who has filed claim is not considered evidence.

(2) The provisions of this paragraph are applicable to original applications, formal or informal, and to applications for increased benefits by reason of increased disability, age, or the existence of a dependent and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.

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(b) Extension of time limit. Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues. (Authority: 38 U.S.C. 501(a))

§3.110 Computation of time limit.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) "The first day of the specified period" referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see §§20.302 and 20.305 of this chapter. (Authority: 38 U.S.C. 501(a))

§3.159 (05/08) Department of Veterans Affairs assistance in developing claims.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

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(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence. (1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim (hereafter in this paragraph referred to as the "notice"). In the notice VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. If the claimant has not responded to the notice within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the notice, VA must readjudicate the claim.

(Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information.

(Authority: 38 U.S.C. 5102(b), 5103A(3))

(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:

(i) Upon receipt of a Notice of Disagreement; or

(ii) When, as a matter of law, entitlement to the benefit claimed cannot be established.

(Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

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(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

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(Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions. (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured.

(Authority: 38 U.S.C. 5103A(d))

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(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A(a)(2))

(e) Duty to notify claimant of inability to obtain records. (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA.

(Authority: 38 U.S.C. 5103A(b)(2))

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(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.

(Authority: 38 U.S.C. 5102(b), 5103(a))

(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations.

(Authority: 38 U.S.C. 5103A(g))

§3.809 (09/2010) Specially adapted housing under 38 U.S.C. 2101(a).

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) or 2101A(a) may be extended to a veteran or a member of the Armed Forces serving on active duty if the following requirements are met:

(a) Eligibility. A veteran must have had active military, naval, or air service after April 20, 1898. Benefits are not restricted to veterans with wartime service. On or after December 16, 2003, the benefit under this section is also available to a member of the Armed Forces serving on active duty.

(b) Disability. A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must be due to:

(1) The loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(2) Blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity, or

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(4) The loss or loss of use of one lower extremity together with the loss or loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

Statement of the Case		<i>Department of Veterans Affairs</i> <i>Roanoke Regional Office</i>		Page 11 02/07/2014
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(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

(c) "Preclude locomotion." This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible.

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A)

§3.809a (09/2010) Special home adaptation grants under 38 U.S.C. 2101(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations, or, on or after October 28, 1986, for assistance in acquiring a residence already adapted with necessary special features, under 38 U.S.C. 2101(b) or 2101A(a) may be issued to a veteran who served after April 20, 1898, or to a member of the Armed Forces serving on active duty who is eligible for the benefit under this section on or after December 16, 2003, if the following requirements are met:

(a) The member of the Armed Forces serving on active duty or veteran is not entitled to a certificate of eligibility for assistance in acquiring specially adapted housing under §3.809 nor had the member of the Armed Forces serving on active duty or veteran previously received assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a). A member of the Armed Forces serving on active duty or veteran who first establishes entitlement under this section and who later becomes eligible for a certificate of eligibility under §3.809 may be issued a certificate of eligibility under §3.809.

(b) A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must:

(1) Include the anatomical loss or loss of use of both hands, or

(2) Be due to:

(i) Blindness in both eyes with 5/200 visual acuity or less, or

(ii) Deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or

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(iii) Full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or

(iv) Residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A, 2104)

§4.23 Attitude of rating officers

It is to be remembered that the majority of applicants are disabled persons who are seeking benefits of law to which they believe themselves entitled. In the exercise of his or her functions, rating officers must not allow their personal feelings to intrude; an antagonistic, critical, or even abusive attitude on the part of a claimant should not in any instance influence the officers in the handling of the case. Fairness and courtesy must at all times be shown to applicants by all employees whose duties bring them in contact, directly or indirectly, with the Department's claimants.

§4.6 Evaluation of evidence

The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

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DECISION:

Entitlement to a special home adaptation and/or special adaptive housing grant (claimed as purchase and installation of home spa) remains denied.

REASONS AND BASES:

The claim for entitlement to a special home adaptation and/or special adaptive housing grant, claimed as purchase and installation of home spa, is considered reopened but remains denied. VA does not reimburse for medical expenses associated with service connected disabilities. All cited evidence has been reviewed and considered.

SPECIAL HOME ADAPTATION GRANT:

A certificate of eligibility for assistance in acquiring necessary special home adaptations may be issued when a veteran has a service-connected condition which is either due to blindness in both eyes with 5/200 visual acuity or less, or includes the anatomical loss or loss of use of both hands.

Our letter mailed to you on January 12, 2012 explained the evidence needed to substantiate your claim for eligibility to the special home adaptation benefit. As of this date, we have not received evidence showing you have the required conditions to meet the criteria as described in the preceding paragraph, therefore entitlement to special home adaptation grant is not established.

SPECIAL ADAPTIVE HOUSING GRANT:

A certificate of eligibility for assistance in acquiring specially adapted housing may be extended when the veteran is permanently disabled from one of the following conditions which is the result of injury or disease incurred in or aggravated during active military service: the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity; the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or the loss or loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair. Since none of these conditions was met, entitlement to special housing assistance is not established. {38 CFR 3.809}

Our letter mailed to you on January 12, 2012 explained the evidence needed to substantiate your claim for entitlement to the specially adapted housing benefit. As of this date, we have not received evidence showing you have conditions that meet the criteria as described in the preceding paragraph, therefore entitlement to specially adapted housing is not established.

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Exhibit 8



DEPARTMENT OF VETERANS AFFAIRS
EVIDENCE INTAKE CENTER
PO BOX 4444
NEWNAN, GA 30271-0020

March 11, 2015

THOMAS SMITH
5432 CALL PL SE
WASHINGTON, DC 20019

In Reply Refer To:
Appeals
577 50 1514
Thomas Smith

Dear Mr. Smith:

Enclosed is a "Supplemental Statement of the Case" (SSOC), which is an update to the "Statement of the Case" (SOC) that we previously sent to you. The following information will help you decide how to respond. We encourage you to discuss this with your representative, if you have one.

Select one of the following two sets of instructions, based on whether or not you wish to have your appeal considered by the Board of Veterans' Appeals.

Please note, when we refer to a "**formal appeal**" in this letter, we mean a completed and signed VA Form 9, "Appeal to Board of Veterans' Appeals," like the one we enclosed with your SOC. You may also put the same information in a letter to us, but we recommend that you use the form to make sure you include everything needed to perfect your appeal. By "**filing**" your formal appeal, we mean bringing your appeal to this office and giving it to us, or mailing it to us.

1. I wish to continue my appeal to the Board of Veterans' Appeals.

a. *I already filed a formal appeal.* If you already filed a formal appeal with us, and still wish to continue your appeal, your response to this SSOC is optional.

If you wish to respond, you have 30 days from the date of this letter to respond. There is no special form to use. You can simply write to us and tell us in your own words what you disagree with in this SSOC and why. If you do not wish to respond, and you do not want us to wait for the full 30 days to expire, you can write to us and let us know that.

b. *I have not filed my formal appeal yet. What do I need to do?* If you have not filed your formal appeal with us and you wish to continue your appeal after reading this SSOC, please complete a formal appeal (explained above) and file it with us as soon as possible. You can include with your formal appeal any response that you may have to this SSOC or prior SOC. Please read the instructions that come with the VA Form 9 carefully, particularly the information about how long you have to file the form. **Please note that you can lose your right to appeal if you do not file your formal appeal on time.**

As a reminder, you may always send us more evidence about the claim you are appealing, but you should not delay filing your formal appeal just because you sent us more evidence, as this will not necessarily extend your time to file a formal appeal.

2. I DO NOT wish to continue my appeal to the Board of Veterans' Appeals.

a. *I have already filed a formal appeal. What do I need to do?* If you already filed a formal appeal, but changed your mind about appealing, please write to us as soon as possible and let us know that you are withdrawing your appeal.

b. *I have not filed my formal appeal yet. What do I need to do?* If you have not filed a formal appeal, and do not wish to continue your appeal, you do not need to do anything. We will close your appeal when the time limit for filing a formal appeal runs out.

We hope that the above information is helpful.

Sincerely yours,

RO Director

Enclosure(s): SSOC Waiver Form

CC: Jeffrey N. Martin

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NAME OF VETERAN Thomas Smith		VA FILE NUMBER 577 50 1514	SOCIAL SECURITY NR 577 50 1514	POA Jeffrey N. Martin

Where to Send Your Written Correspondence			
Location of Residence		Address to Send all Written Correspondence	
Alabama	Ohio	<p>Department Of Veterans Affairs Evidence Intake Center PO BOX 4444 Newnan, GA 30271-0020</p> <p>Or fax your information to:</p> <p>Toll Free: 844-531-7818 Local: 248-524-4260</p>	
Connecticut	Pennsylvania		
Delaware	Rhode Island		
District of Columbia	South Carolina		
Florida	Tennessee		
Georgia	Vermont		
Indiana	Virginia		
Kentucky	West Virginia		
Maine	Puerto Rico		
Maryland			
Massachusetts	Europe		
Michigan	Asia		
Mississippi	Australia		
New Hampshire	Africa		
New Jersey	Palau		
New York	Marshall Islands		
North Carolina	Federated States of Micronesia		
Alaska	South Dakota		<p>Department Of Veterans Affairs Evidence Intake Center PO BOX 4444 Janesville WI 53547-4444</p> <p>Or fax your information to:</p> <p>Toll Free: 844-822-5246 Local: 608-373-6690</p>
Arizona	Texas		
Arkansas	Utah		
California	Washington		
Colorado	Wisconsin		
Louisiana	Wyoming		
Hawaii			
Idaho	Canada		
Illinois	Mexico		
Iowa	Central America		
Kansas	South America		
Oklahoma	The Caribbean		
Oregon	The U.S. Virgin Islands		
Minnesota	The Philippines		
Missouri	American Samoa		
Montana	Guam		
Nebraska	Northern Mariana Islands		
Nevada	U.S. Virgin Islands		
New Mexico			
North Dakota			

Supplemental Statement of the Case		Department of Veterans Affairs Regional Office		Page 2 03/11/2015
NAME OF VETERAN Thomas Smith	VA FILE NUMBER 577 50 1514	SOCIAL SECURITY NR 577 50 1514	POA Jeffrey N. Martin	

ISSUE:

Entitlement to special home adaptation and/or special adaptive housing grant (claimed as purchase and installation of home spa).

EVIDENCE:

- Statement of the Case dated February 7, 2014 and all evidence cited therein
- VA form 9, Appeal to Board of Veterans' Appeals, received on April 7, 2014
- Multiple duplicate documents received on April 7, 2014. This included service treatment records and post service treatment records from private and federal facilities.
- Statement in support of your appeal from your representative received on April 7, 2014
- Additional treatment records from the Washington DC VA Medical Center for the period of October 2012 to February 2015
- A review of your entire VA claims file

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

ADJUDICATIVE ACTIONS:

02-07-2014 The veteran was furnished a Statement of the Case outlining actions taken on the claim.

04-07-2014 Substantive Appeal Received.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

All pertinent laws, regulations and rating schedule provisions were provided in prior documents.

DECISION:

Entitlement to special home adaptation and/or special adaptive housing grant (claimed as purchase and installation of home spa) remains denied.

REASONS AND BASES:

This is a Supplemental Statement of the Case (SSOC) that contains changes or additions to our original Statement of the Case (SOC) previously sent to you. Therefore, it does not repeat all information and evidence from our original SOC.

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The claim for entitlement to a special home adaptation and/or special adaptive housing grant, claimed as purchase and installation of home spa, is considered reopened. VA does not reimburse for medical expenses associated with service connected disabilities.

We received your representative's lay statement in support of your claim. A credible lay statement may establish what was seen, heard, and directly experienced. The lay evidence was found not to be competent or credible evidence of the symptoms of your claimed condition. Your representative noted that you are service-connection for a back and neck condition, however, a review of your VA claims file only shows that you are service-connected for a back condition.

SPECIAL HOME ADAPTATION GRANT:

A certificate of eligibility for assistance in acquiring necessary special home adaptations may be issued when a veteran has a service-connected condition which is either due to blindness in both eyes with 5/200 visual acuity or less, or includes the anatomical loss or loss of use of both hands.

As of this date, we have not received evidence showing you have the required conditions to meet the criteria as described in the preceding paragraph, therefore entitlement to special home adaptation grant is not established.

SPECIAL ADAPTIVE HOUSING GRANT:

A certificate of eligibility for assistance in acquiring specially adapted housing may be extended when the veteran is permanently disabled from one of the following conditions which is the result of injury or disease incurred in or aggravated during active military service: the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity; the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or the loss or loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair. Since none of these conditions was met, entitlement to special housing assistance is not established. {38 CFR 3.809}

As of this date, we have not received evidence showing you have conditions that meet the criteria as described in the preceding paragraph, therefore entitlement to specially adapted housing is not established.

VETERAN'S REQUEST FOR EXPEDITED PROCESSING
Waiver of AOJ Consideration of Additional Evidence &
Waiver of the 30 Day Waiting Period

Please forward my case to the Board of Veterans' Appeals immediately.

I have received and reviewed my Supplemental Statement of the Case (SSOC). I do not currently have any additional evidence to submit regarding my appeal. In order to expedite processing, I am submitting this waiver and requesting that my case be immediately certified to the Board of Veterans' Appeals (BVA).

Without this waiver, the Department of Veterans Affairs (VA) will wait at least 30 days before certifying my appeal to BVA. Any additional evidence I submit will be considered by my Regional Office (RO), which is the Agency of Original Jurisdiction. If I submit additional evidence and my appeal has been certified to BVA, the appeal will be remanded (sent back) to my RO for consideration of this new evidence.

By signing this waiver, I understand that I waive two procedural rights in connection with my appeal:

1. I waive my right to have VA wait a minimum of 30 days before certifying my appeal to BVA. I request that my RO forward my case to BVA immediately.
2. I waive my right to submit additional evidence for consideration by my RO. This means that if I locate and/or wish to submit additional evidence after today's date, I waive my right to have this case remanded (sent back) to my RO and request that BVA consider any new evidence during their adjudication of my appeal.

Appellant Name

Claim number

Signature

Date

Waiver

Exhibit 9



**Department of
Veterans Affairs**

210 FRANKLIN RD SW
ROANOKE VA 24011

June 25, 2019

In Reply Refer to:
Veterans Claim # [REDACTED]

ESTATE OF THOMAS SMITH
5432 CALL PL SE
WASHINGTON DC 20019

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 10



**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
5432 CALL PL SE
WASHINGTON DC 20019

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 11

Martin, Jeff

From: McHugh, Timothy L.
Sent: Thursday, June 11, 2020 10:19 AM
To: King-Holland, Kristen (OGC)
Cc: Martin, Jeff
Subject: RE: Smith v. Wilkie - No. 18-4730 - Secretary's motion for extension

Kristen,

Thank you for the update.

Best regards,

Tim

From: King-Holland, Kristen (OGC) <Kristen.King-Holland@va.gov>
Sent: Thursday, June 11, 2020 8:56 AM
To: McHugh, Timothy L. <TMcHugh@hunton.com>
Cc: Martin, Jeff <jmartin@hunton.com>
Subject: RE: Smith v. Wilkie - No. 18-4730 - Secretary's motion for extension

Good morning, Tim,

Thank you for the prompt response. I am hopeful that we will not need an extension, and upon approval of my response from my deputy, I will be able to file a response to the Court's order today. As to whether Ms. Hicks filed a claim for accrued benefits following her father's death, I apologize if there was a misunderstanding in our conversation. Generally, as a courtesy to the claimant's counsel in substitution matters, I call to discuss whether an accrued benefits claim has been filed below, and if not, whether the claimant's counsel plans on filing such a claim with the RO. From a procedural standpoint, I wanted to touch base with you as to whether an accrued benefits claim had been filed with the RO following Mr. Smith's death or if you planned on filing such a claim. Yesterday, the RO confirmed that an accrued benefits claim had not been submitted following the death of Mr. Smith. As to the underlying issue of substitution in this case, we will have to allow the Court to make a determination on the complex legal issues in this matter.

Best regards,

Kristen

Kristen D. King-Holland
Appellate Attorney
Office of General Counsel (027K)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-6945

ATTORNEY CONFIDENTIALITY NOTICE—FOR OFFICIAL USE ONLY.

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From: McHugh, Timothy L. <TMcHugh@hunton.com>
Sent: Tuesday, June 9, 2020 10:55 AM
To: King-Holland, Kristen (OGC) <Kristen.King-Holland@va.gov>
Cc: Martin, Jeff <jmartin@hunton.com>
Subject: [EXTERNAL] Smith v. Wilkie - No. 18-4730 - Secretary's motion for extension

Kristen,

Thank you for your call yesterday regarding a motion for an extension. Generally speaking, we are not opposed to an extension if the Secretary requires more time to respond to the Court's questions in its March 13, 2020 order. We do not, however, think that any extension is necessary to allow time for us to file with the VA any additional paperwork.

You requested for the first time on our call yesterday that we submit a VA Form 21P-534 (note: I wrote down that you said Form 21O-534, but we can find no such form and based on our conversation I assume you meant the former ... please let me know if that is incorrect). This and similar VA forms we reviewed on the VA's website all appear to be for new accrued benefits claims or substitutions in claims still pending before a VA Regional Office or the BVA. The current posture of this case, however, is a motion for substitution pending before the Veterans Court. It would appear to be settled law that the VA's internal claims processing rules are not dispositive to the legal question of substitution in an appeal before a court. *Reeves v. Shinseki*, 682 F.3d 988, 995 (Fed. Cir. 2012) (rejecting government's argument that an application for accrued benefits to the VA is necessary before deciding motion for substitution in court). Instead, "an appropriate accrued-benefits claimant" may "be substituted for a veteran who dies while his appeal is pending before" a court. *Id.* at 997.

We do not yet know whether the Secretary will dispute that Ms. Hicks is "an appropriate accrued-benefits claimant" given the nature of the benefits involved here. And we hope that is not the case. If we are mistaken or because the Secretary's position on that legal question is unclear at this time, we respectfully suggest that the Secretary explain his rationale in response to the Court's second question in its March 13, 2020, which applies regardless of whether we file or the VA has adjudicated any formal or informal claim for accrued benefits. Unless there is a legal rationale that remains valid subsequent to the *Reeves* decision, that requires us to file a protective claim for accrued benefits or substitution claims paperwork with the VA itself when seeking substitution in a court proceeding (and, if so, please direct us to it), our position is that the motion for substitution, filings incorporated by reference therein, and supporting affidavit provide all the information the Secretary needs to respond to the Court's order. The Court is well-equipped to decide what, if any, other information or proceedings it might require from the parties after that.

Best regards,

Tim



Timothy L. McHugh
Associate
TMcHugh@HuntonAK.com

p 804.788.8239
bio | vCard

Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

HuntonAK.com

Exhibit 12

Affidavit of Thomas Smith, Sr.

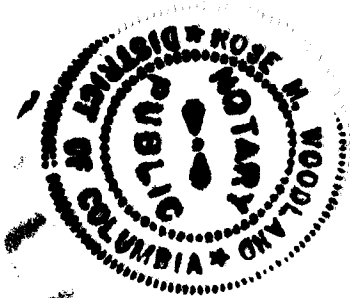
I, Thomas Smith, Sr., do hereby swear and affirm as follows:

1. My full name is Thomas Smith, Senior. My current address is 5432 Call Place, S.E., Washington, D.C. 20009.
2. I served in the United States Air Force from October 9, 1957, until receiving my honorable discharge on July 31, 1978. A copy of the discharge is attached as Exhibit 1.
3. During my time in the military, I was stationed in Etienne, France. While on K-9 patrol in Etienne, France, in 1963, I fell and injured my back. I was taken to a hospital and treated as an outpatient. The fall injured my spine, and led to the degenerative condition for which I have received hydrotherapy treatments.
4. Since leaving the Air Force, the doctors I have visited for treatment of this disability have confirmed to me that the injury originated from my military service.
5. My back condition was further aggravated by a needle that broke off and remained in my spine following an anesthesiology procedure at a Veterans Administration hospital.
6. I have attached true and correct copies of records of medical visits I have made for diagnosis and treatment of my condition.
7. The doctors I have seen prescribed hydrotherapy spa treatments, and observed that these treatments have been the most effective way to manage my degenerative spine condition.
8. The spa construction was completed in June of 2007, and I have received treatments 3 to 4 time per week since that date. All of my treatments have been in accordance with instructions at the Veterans Administration hospital.

9. I have maintained accurate records of the costs incurred to construct and operate the therapeutic spa at my home. Copies of these records are attached to this affidavit. To date, the total spa construction and operation costs for which I have receipts is \$34,609.27.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23 day of February, 2010.



Thomas Smith Sr.

Thomas Smith, Sr.

Subscribed to and sworn before me this 23rd day of February, 2010.

Notary Public:

Rose M. Woodland

My Commission expires:

**Rose M. Woodland
Notary Public, District of Columbia
My Commission Expires 3/31/2011**

Exhibit 13

**AFFIDAVIT OF THOMAS SMITH, SR.
In Support of Appeal**

**Board of Veterans' Appeals
Expedited Hearing Requested**

VA File Number: 577-50-1514
SSN: 577-50-1514

I, Thomas Smith, Sr., hereby submit this affidavit in further support of my appeal to the Board of Veterans' Appeals and my request for expedited hearing.

1. I am currently 77 years old. My birth date is December 25, 1937.
2. I have been diagnosed with prostate cancer, and have received chemotherapy treatments. Documents confirming this diagnosis are attached to this Affidavit. My prognosis is uncertain, and my general health is in decline.
3. Expedited hearing of my appeal is essential if I am to receive the benefits and compensation to which I believe I am entitled while I am still living.
4. I am appealing for the denial of benefits sought in connection with a service-related disability for a back injury sustained from a fall while on active duty in Etienne, France, on or about 1963.
5. The fall resulted in a permanent injury necessitating treatment prescribed by physicians at the Washington, DC VA Medical Center, and the installation of a home therapeutic spa.
6. The treatments were prescribed in 2007, and have continued regularly through the date of this affidavit, and have been prescribed to continue for the foreseeable future.
7. The spa construction and treatment costs represent home improvements necessary for the continuation of treatments, given the logistical and physical difficulties associated with regular

travel to obtain treatments at the Washington, DC VA Medical Center or other treatment facilities in the Washington, DC area.

8. The total spa construction and operation costs documented to date are \$34,609.27. The therapeutic home treatment costs have been taken in lieu of time consuming and costly treatments that otherwise would have been obtained at the Washington, DC VA Medical Center or other treatment facilities in the Washington, DC area.

9. I have attached to this Affidavit true and correct copies of additional documents which may not be part of the existing record and which further support my claim for reimbursement of home spa therapy expenses.

Executed this 9th day of April, 2015.

Thomas Smith Sr.

Thomas Smith SR.

Subscribed to and sworn before me this 9th day of April, 2015.

Notary Public: Rhonda M. McDonald

My commission expires: _____

**RHONDA M. McDONALD
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2017**



Exhibit 14

**AFFIDAVIT OF THOMAS SMITH, SR.
In Support of Appeal**

Board of Veterans' Appeals

VA File Number: 577-50-1514
SSN: 577-50-1514

1. I, Thomas Smith, Sr., hereby submit this affidavit in further support of an appeal of the ruling denying my petition for reimbursement of the documented expenses incurred for home therapeutic spa treatments.
2. The Honorable Anne E. Jaeger heard an appeal from the initial denial of my application for reimbursement on May 26, 2015.
3. I only recently received notice of the July 29, 2015, ruling issued by Judge Jaeger and respectfully wish to advise the Board of Veterans' Appeals of the following in support of my appeal from that ruling:
 - a. I continue to receive home spa treatments in accordance with the direction of my physicians.
 - b. Neither before my appeal nor in the months since that appeal have I received any reimbursement from any federal, state, local, or charitable organization for the cost of constructing, maintaining, and operating the spa. I have spent my own money for all of these expenses.
 - c. I am now 79 years old. I have prostate cancer, ongoing back and muscle aches, and increasing difficulty walking.
 - d. I have not been employed for many years and continue to have significant financial needs.

- e. I have been rated to have a 100 percent disability.
- f. The disability resulted from a fall sustained while serving active duty in Etienne, France, in or about 1963.
- g. I have required the aid of crutches, canes and walkers for locomotion since I was advised in 2000 by Veterans Affairs hospital doctors to obtain spa treatments for my lower extremities. That was true in 2000, and also was true when the spa was constructed in June of 2007.
- h. The total cost of constructing the spa was \$34,609.27. I believe that this amount is significantly less than the costs that would have been incurred for spa treatments at a Veterans Administration hospital over the course of the past 10 years.
- i. I was never advised that I was expected to seek a certificate authorizing reimbursement for constructing a therapeutic spa before I retained a contractor to build the spa.
- j. I was never advised by the Veterans Administration or ever given any reason to believe that the use of a therapeutic spa was not necessary for my service-related disability. To the contrary, I was advised that spa treatment was necessary.
- k. I have enclosed photos of the therapeutic spa in connection with my claims for reimbursement and was never advised that the location or design of the spa was not appropriate or reasonable.
- l. I was never advised by the Veterans Administration that I should consider whether I might qualify for a Specially Adapted Housing Grant before I retained a contractor to construct the spa.

m. The spa was constructed in good faith to follow the directions I received from doctors at the Veterans Administration. I had received treatments at the Veterans Administration hospital, but those treatments were interrupted when the hospital spa was closed. I was advised by Doctor Patricia Wright and Doctor William Abbott to continue the treatments. With knowledge of Veterans Administration doctors, I constructed a therapeutic spa at my home. These doctors counseled me to continue my treatments at home.

n. I was never advised by anyone from the Veteran's Administration that the cost of constructing the home spa was unreasonable or excessive.

o. In June of 2014, the Veterans Administration recognized my disability and difficulty with locomotion and agreed to pay for the installation of a stair lift system in my home so I could travel up and down the stairs. The total cost of this was \$4,490. The Veterans Administration at that time never indicated that I could not also receive other benefits to aid my locomotion, such as reimbursement for the cost of my therapeutic spa.

p. I needed and used assistance of a walker when I attended my hearing in May of 2015. That was apparent to the presiding judge.

q. Since the date of the hearing, I have continued to use the home spa for treatments.

r. Since 2007, the home spa treatments continue to be necessary to treat the loss of effective use of my legs without the use of canes for locomotive assistance.

4. I hereby affirm that the foregoing statements are true and correct.

Executed this 13 day of June, 2017.

Thomas Smith Jr.

Thomas Smith

Subscribed to and sworn before me this 13 day of June, 2017.

Notary Public: Rhonda M. McDonald

My commission expires: _____

RHONDA M. MCDONALD
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2017

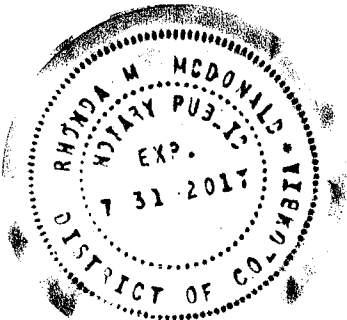


Exhibit 15

Affidavit of Karen Hicks

I, Karen Hicks, do hereby state the following in support of the claim asserted by my father Thomas Smith for reimbursement from the Veterans Administration of expenses incurred to construct a therapeutic spa:

1. I am the daughter of Thomas Smith. I have the consent of my siblings to be substituted as the claimant in the appeal he has filed in the United States Court of Appeals for Veterans Claims, Vet. App. No. 18-4730.
2. My father passed away leaving no will.
3. I and my siblings are currently involved in the probate process, and have been reimbursing the costs certain of his liabilities, including the second mortgage on his primary residence, the location of the therapeutic spa he constructed in 2007.
4. The payments we are making on the second mortgage are being applied to cover, among other items, the cost of the therapeutic spa.
5. Amounts recovered from the Veterans Administration for the claim asserted on behalf of my father may be applied to reduce the second mortgage expenses that now are being paid to cover, among other things, the cost of the therapeutic spa.

I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Executed this 22 day of Jan, 2020.



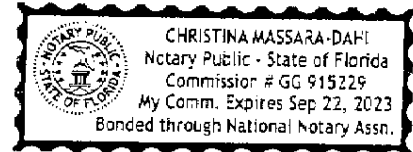
Karen Hicks

City: Jacksonville

Subscribed and sworn to before me this 22 day of Jan, 2020.


Notary Public

My Commission Expires: 9-22-2023



CERTIFICATE OF SERVICE

I certify that on September 14, 2022, a true and correct copy of Proposed Substitute Appellant's Supplemental Submission of Documents and Discussion of Relevant Authority for Record on Appeal was filed through the Court's ECF system, and thereby served on all counsel of record.

/s/ Jeffrey N. Martin
Jeffrey N. Martin

*Counsel for Proposed Substitute
Appellant*