

IN THE UNITED STATES  
COURT OF APPEALS FOR VETERANS CLAIMS

Ruben Villanueva, Jr.,	)	
<i>Appellant,</i>	)	
	)	
V.	)	Docket No. 21–3663
	)	
Denis McDonough,	)	
Secretary Of Veterans Affairs	)	
<i>Appellee</i>	)	

**APPELLANT’S REPLY TO APPELLEE’S RESPONSE TO THE COURT’S  
SEPTEMBER 12, 2022, ORDER**

Now comes the Appellant, through counsel, and subject to the Court's approval, who submits this reply to the Secretary's Response to the Court’s September 12, 2022, Order.

**THE SECRETARY’S RESPONSE TO THE STATUS OF APPELLANT’S MOTION  
FOR REVISION BASED ON CUE**

In its September 12, 2022, Order the Court instructed the Secretary to provide relevant information regarding the status of Appellant’s motion for revision based on Clear and Unmistakable Error (CUE). In their response, the Secretary indicated that they reviewed the Veterans Benefit Management System (VBMS) to determine that the VA Regional Office (RO) had not adjudicated the pending CUE motion. The Secretary also noted that Appellant had not requested the VA to adjudicate the CUE motion

“subsequent to the March 1, 2021, Board decision here on appeal.” Appellee’s response to Court’s September 12, 2022, Order.

**VBMS Entries for Appellant’s Motion for Revision Based on CUE**

**Prior to March 1, 2022**

It is believed that counsel for the Secretary may have misconstrued the Court’s Order regarding the information being requested. Namely, it appears that the Secretary limited their response only to those entries appearing in VBMS after the March 1, 2021, Board decision on appeal. It is counsel’s reading of the September 12, 2022, Order that the Court did not limit the request only to information appearing after the Board’s March 1, 2021, decision.

In light of this differing view, screen captures of the Appellant’s VBMS file are provided to the Court that would indicate that the RO did adjudicate the motion for revision based on CUE prior to the March 1, 2021, Board decision. The first two screen captures show an End Product (EP)<sup>1</sup> 040-Supplemental Claim Rating, with a date of claim of October 14, 2019, Status of CLD [closed], and Suspense Date of February 7, 2020. Attach. A at 1.<sup>2</sup> In the “Contention” field for the claim the sole matter listed is “Tinnitus

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<sup>1</sup> The Secretary maintains a public facing website that details the usage of End Product codes in VBMS.  
[https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000011474/Appendix-B.-End-Product-Codes-and-Work-Rate-Standards-for-Quantitative-Measurements](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000011474/Appendix-B.-End-Product-Codes-and-Work-Rate-Standards-for-Quantitative-Measurements)

<sup>2</sup> Counsel apologizes to the Court for the quality of the screen captures as the VBMS system does not allow for high quality screen captures to be exported or printed.

(tinnitus) (earlier effective date due to CUE).” *Id.* The “CaseFlow Disposition” field lists the status as “Denied”. *Id.* The corresponding Claim Notes detail that “Claim status changed from RATING\_DECISION\_COMPLETE to CLOSED” on February 7, 2020. *Id.* at 3. The only decision notice in VBMS. Dated February 10, 2020, the business day following closure of the EP-040 Supplemental Claim Rating, is the decision denying entitlement to an earlier effective date for service connection of tinnitus, which served as the basis for the Appellant’s appeal to the Board and subsequent appeal to this Court.

Counsel for the Appellant has been informed of a separate VBMS entry in conjunction with the EP-040 Supplemental Claim Rating entry. *Id.* at 5. This entry was created under EP 960-Administrative Error. Attach. B at 1. The sole contention for the claim is listed as “Revision for Tinnitus effective date due to CUE.” *Id.* The corresponding VBMS notes show that this EP was created on November 4, 2019, and assigned to the Appeal lane. *Id.* at 2. On January 31, 2020, it was “Assigned to team ‘Appeals - DROC IPC’ and team member ‘Toni Johnson’” and closed at that time. *Id.* It is noteworthy that the EP-040 Supplemental Claim Rating notes show that the EP-040 was also created on January 31, 2020, by Toni Johnson. Attach. A at 4. Thus, it would appear that the EP-960 was created to resolve incorrectly assigning the CUE motion to the Appeals Team, and the subsequently created EP-040 properly processed the CUE motion at the RO level.

Given these VBMS entries, it would appear that the RO properly coded, processed, and adjudicated the Appellant's CUE motion on February 7, 2021.<sup>3</sup>

**Wherefore**, Appellant respectfully asks that the Court finds that this information is relevant and necessary so as to fully inform the Court in response to their September 12, 2022, Order.

Respectfully submitted,  
/s/Paul Jennings  
*Attorney for Appellant*  
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Suite 101  
Lacey, WA 98516  
Tel: 253-328-7166  
Paul@milvetlaw.com

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<sup>3</sup> The Court, in their Order, only requested "the status of the veteran's motion for revision based on CUE, including whether it has been adjudicated and decided by the RO" and did not invite arguments or other pleadings from either party. Accordingly, the attached screen captures are only provided to ensure the Court is fully informed and Appellant raises no argument at this time in relation to these VBMS entries.

VBMS

Search

All Claims

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Mon Sep 19 2022 03:12:05PM

RUBEN VILLANUEVA

File #:

Veteran

Intent To File

Claims

040 - Supplemental Claim Rating

Open Claim Check

Manage Evidence

Days Pending: 117

Date of Claim: 10/14/2019

Status: CLD

Suspense Date: 02/07/2020

Ready to Recall: No

Team Assigned to: N/A

Assigned to: N/A

EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Edit in Caseflow

Documents

Export

Choose an Action...

	Contention	Alternate Contention ...	Type	Date of ...	Classification	Verified	Medical	CaseFlow Disposition	Special Issue(s)	Rated Iss...
<input type="checkbox"/> CF	Tinnitus (tinnitus) (earlier effective date due to CUE)		Supplemental	10/14/2019	Ear Disease and Other Sense Organs	Yes	Yes	Denied		

Attachment A -1

RUBEN VILLANUEVA

File #:

Veteran

Intent To File

Claims

040 - Supplemental Claim Rating

Open Claim Check

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Team Assigned to: N/A

Assigned to: N/A

EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Edit in Caseflow

Documents

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Choose an Action...

Contention ...	Type	Date of ...	Classification	Verified	Medical	CaseFlow Disposition	Special Issue(s)	Rated Iss...	Deferral(s)	Active ESR ...	Document ...
	Supplemental	10/14/2019	Ear Disease and Other Sense Organs	Yes	Yes	Denied			No	No	

VBMS

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All Claims

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Veteran

Intent To File

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RUBEN VILLANUEVA

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040 - Supplemental Claim Rating

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EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Showing 1 - 10 of 20

Show/Hide Columns

Save Preferences

Date	Created By	Note Text	Note Type	Action Taken	Actions
02/07/2020 16:01:36 EST	Background Process	Claim status changed from RATING_DECISION_COMPLETE to CLOSED outside <a href="#">Read More</a>	PERMANENT	Claim state changed to CLOSED	
02/07/2020 13:34:42 EST	Yolanda Faye Taylor - 322	Pend Auth	PERMANENT	Claim state remains RATING_DECISION_COMPLETE	
02/07/2020 11:11:18 EST	Tina M Green - 322	awd	PERMANENT	Assigned to team "POST TEAM" and team member "Yolanda Taylor"	
02/07/2020 11:04:36 EST	Tina M Green - 322	Self Assignment	PERMANENT	Assigned to team member "Tina Green" and team unassigned	
02/07/2020 11:01:28 EST	Background Process	Claim status changed from READY_FOR_DECISION to RATING_DECISION_COMPL <a href="#">Read More</a>	PERMANENT	Claim state changed to RATING_DECISION_COMPLETE	
02/07/2020 00:33:13 EST	Background Process	Assigned by Auto-assignment Job 518134	VBMS_PERMANENT	Assigned to team "RATING" and team member "James Jones"	
02/07/2020 00:28:18 EST	Background Process	Transferred the claim to RO 322	VBMS_PERMANENT	Transferred the claim to RO 322	
02/07/2020 00:28:17 EST	Background Process	Transferred by NWQ Job 518134 to RO 322	PERMANENT		
02/07/2020 00:28:15 EST	Background Process	Recalled to NWQ by Job 518134	VBMS_PERMANENT	Transferred the claim to RO 499	
02/06/2020 15:48:37 EST	Justin P Noonan - 346	RVSR	PERMANENT	Assigned to team "VSC Rating 4" and team member "Donald Boyd"	

Skip to page:

1

Go

First

Previous

1

2

Next

Last



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RUBEN VILLANUEVA

File #:

Veteran

Intent To File

Claims

040 - Supplemental Claim Rating

Days Pending: 117 | Date of Claim: 10/14/2019 | Status: CLD | Suspense Date: 02/07/2020 | Ready to Recall: No | Team Assigned to: N/A | Assigned to: N/A

Open Claim CheckManage Evidence

EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Showing 11 - 20 of 20

Show/Hide ColumnsSave Preferences

Date	Created By	Note Text	Note Type	Action Taken	Actions
02/06/2020 13:01:41 EST	Ashley Dean Colyar - 346	rfd	PERMANENT	Claim state changed to READY_FOR_DECISION.	
02/06/2020 12:58:54 EST	Ashley Dean Colyar - 346	Last tracked item was closed in VBMS but Claim 76822928 was not moved <a href="#">Read More</a>	PERMANENT		
02/06/2020 12:57:53 EST	Ashley Dean Colyar - 346	Exam review complete. Veteran is requesting an earlier effective date <a href="#">Read More</a>	PERMANENT		
02/05/2020 10:52:02 EST	Garrison J Pietrowiak Mr - 346	work	PERMANENT	Assigned to team member "Ashley Colyar"	
02/04/2020 00:35:29 EST	Background Process	Assigned by Auto-assignment Job 517473	VBMS_PERMANENT	Assigned to team "VSC Pre 2"	
02/04/2020 00:26:39 EST	Background Process	Transferred the claim to RO 346	VBMS_PERMANENT	Transferred the claim to RO 346	
02/04/2020 00:26:37 EST	Background Process	Transferred by NWQ Job 517473 to RO 346	PERMANENT		
02/03/2020 00:23:37 EST	Background Process	Transferred the claim to RO 499	VBMS_PERMANENT	Transferred the claim to RO 499	
02/03/2020 00:23:36 EST	Background Process	Recalled to NWQ by Job 517216	PERMANENT		
01/31/2020 12:20:04 EST	Toni Tomesha Johnson - 346	New claim established.	PERMANENT	New claim established	

Skip to page: 2

Go

First

Previous

1

2

Next

Last



VBMS

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PAUL JENNINGS

Mon Sep 19 2022 03:12:05PM PDT, Version 27.4-20220915-1322, ID 1275675

RUBEN VILLANUEVA

File #

Veteran

Intent To File

Claims

Documents

Rated Issues

Notes

040 - Supplemental Claim Rating

Days Pending: 117 | Date of Claim: 10/14/2019 | Status: CLD | Suspense Date: 02/07/2020 | Ready to Recall: No | Team Assigned to: N/A | Assigned to: N/A

EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Showing 1 - 10 of 20

Date	Created By	Note Text	Note Type	Action Taken
02/07/2020 16:01:36 EST	Background Process	Claim status changed from RATING_DECISION_COMPLETE to CLOSED outside <a href="#">Read More</a>	PERMANENT	Claim state
02/07/2020 13:34:42 EST	Yolanda Faye Taylor - 322	Pend Auth	PERMANENT	Claim state
02/07/2020 11:11:18 EST	Tina M Green - 322	awd	PERMANENT	Assigned to
02/07/2020 11:04:36 EST	Tina M Green - 322	Self Assignment	PERMANENT	Assigned to
02/07/2020 11:04:36 EST	Tina M Green - 322	Claim status changed from READY FOR DECISION to	PERMANENT	Assigned to

Filter Results:

Include Inactive:

Show/Hide Columns

	Date of Claim	EP Code - Claim Label	Status	Benefit Type	Payee Code
+	04/24/2020	170 - Form 9	CLD	CPL	00 - Veteran
+	10/14/2019	040 - Supplemental Claim Rating	CLD	CPL	00 - Veteran
+	10/14/2019	960 - Administrative Error	CAN	CPL	00 - Veteran
+	04/23/2019	930 - AMA Supp Rating Control	CAN	CPL	00 - Veteran
+	04/23/2019	040 - Supplemental Claim Rating	CLD	CPL	00 - Veteran

First

Previous

1

2

3

Next

Last

VBMS

Search ▾All ClaimsMy Claims

Mon Sep 19 2022 03:11:04PM

RUBEN VILLANUEVAFile #:

Veteran ▾Intent To FileClaims ▾

960 - Administrative Error

Open Claim CheckManage Evidence

Days Pending: 110 | Date of Claim: 10/14/2019 | Status: CAN | Suspense Date: 01/31/2020 | Ready to Recall: No | Team Assigned to: N/A | Assigned to: N/A

EXPAND CLAIM DETAILS

ContentionsDevelopmentTracked ItemsExamsClaim Notes

CopyDocumentsExport

Choose an Action... ▾

	Contention	Alternate Contention ...	Type	Date of ...	Classification	Verified	Medical	Special Issue(s)	Rated Iss...	Deferral(s)	Active E
<input type="checkbox"/>	Revision for Tinnitus effective date due to CUE		New	10/14/2019	Administrative Issue	Yes	Yes			No	No

VBMS

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All Claims

My Claims

Mon Sep 19 2022 04:17:29PM P

RUBEN VILLANUEVAFile #:

Veteran

Intent To File

Claims

960 - Administrative Error

Open Claim Check

Manage Evidence

Days Pending: 110 | Date of Claim: 10/14/2019 | Status: CAN | Suspense Date: 01/31/2020 | Ready to Recall: No | Team Assigned to: N/A | Assigned to: N/A

EXPAND CLAIM DETAILS

Contentions

Development

Tracked Items

Exams

Claim Notes

Showing 1 - 4 of 4

Show/Hide Columns

Save Preferences

Date	Created By	Note Text	Note Type	Action Taken	Actions
01/31/2020 12:26:17 EST	Toni Tomesha Johnson - 346	PCAND	PERMANENT	Claim state changed to CANCELLED	
01/31/2020 12:25:43 EST	Toni Tomesha Johnson - 346	Self Assignment	PERMANENT	Assigned to team "Appeals - DROC IPC" and team member "Toni Johnson"	
11/04/2019 16:14:08 EST	Jeffrey Thomas Mallory - 346	Initial assigning claim 75247787 to segmented lane: Appeals (National)	PERMANENT	Assign segmented lane	
11/04/2019 16:14:07 EST	Jeffrey Thomas Mallory - 346	New claim established.	PERMANENT	New claim established	

Skip to page:

1

Go

First

Previous

1

Next

Last