

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

KAREN R. SHORETTE,)	
)	
Petitioner,)	
)	
)	
v.)	Vet. App. No. 22-4698
)	
DENIS McDONOUGH)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

**SECRETARY’S RESPONSE TO THE COURT ORDER
DATED JANUARY 18, 2023**

Pursuant to the Order of this Court, dated January 18, 2023, Respondent Denis McDonough, Secretary of Veterans Affairs (Secretary), hereby provides a response to the questions posed by the Court in its Order. Based on these responses, the Secretary continues to urge the Court to dismiss or, in the alternative, deny the construed writ petition (Petition).

**1. The Petition is Best Construed as
Related to a Desire for Restoration of the Former Fiduciary**

First, the Court asks whether the matter at issue is better characterized as an attempt by Petitioner, as the Veteran’s legal guardian, to appeal VA’s November 2018 decision to appoint a new fiduciary, or VA’s refusal to appoint Petitioner as a successor fiduciary. The Secretary notes that Petitioner wears two hats in these proceedings – she may speak for the Veteran as his legal guardian; alternatively, she may speak for herself as the former VA fiduciary who was dealing with ongoing review of matters

relating to a potential misuse of funds while serving as VA fiduciary. It is not always clear in which capacity Petitioner speaks when she has communicated with the Court. In each role, Petitioner has different rights.

The Secretary responds that the pleadings point to the latter interpretation, that this matter is better characterized as Petitioner's attempt to have herself reinstated as VA fiduciary. The email that was construed by the Court as a writ does not mention the agency's November 2018 decision whatsoever. It also does not express that she is speaking on behalf of the Veteran. Rather, it states she received what she characterized as a "partial decision" from the agency in March 2021. (See item docketed as Petition for Extraordinary Relief). That decision determined that "as representative payee" she did not misuse the Veteran's VA benefits funds. In this context, Petitioner appears to be speaking for herself as the former VA fiduciary. She then notes that this decision regarding misuse of funds "did not state whether or not they would reinstate me as payee." *Id.* She then expressed that she is "appealing their decision not to reinstate me as representative payee. . . ." *Id.* Again, Petitioner appears to be speaking in her role as the former VA fiduciary, rather than as guardian for the Veteran.

Even if these statements were construed as coming from the Veteran via his guardian, they still make no complaint about the agency's November 2018 decision to appoint a VA fiduciary. These statements were exclusively about the March 2021 misuse determination. The Secretary notes that the March 2021 decision was fully favorable to Petitioner in her role as the former VA fiduciary. That decision would have been appealable to the Board of Veterans' Appeals by the Veteran, see 38 C.F.R. § 13.600, had the Veteran (presumably speaking through his

guardian) believed there had been misuse. No communication from Petitioner, whoever she may be speaking for, expresses disagreement with the agency's March 2021 finding that there was no misuse. Accordingly, as there is no disagreement with the agency's findings, there is no basis or expressed desire for an appeal of what the agency did in that decision, which was find no misuse of the Veteran's VA disability benefits. Insofar as Petitioner may have desired restoration of her status as fiduciary, she points to no basis in law that a misuse determination must do anything other than adjudicate the question of misuse.

In Petitioner's February 7, 2023, response to the Court's January 18, 2023, Order, Petitioner contends that the matter is best characterized as the Veteran seeking to appeal a decision to appoint a fiduciary. (Petitioner's Response (PR) at 5-6). In doing so, Petitioner does not mention the date of the decision the Veteran wished to appeal and does not point to a Notice of Disagreement (NOD) having been filed. Rather, Petitioner baldly claims "that is what Mr. Shorette has done here." (PR at 6). Petitioner contends that her "actions in this matter are . . . completely within her legal authority" as the Veteran's guardian. (PR at 8). The Secretary does not contest that Petitioner has authority to act on behalf of the Veteran and has said so in previous pleadings in this case. (See Secretary's October 18, 2022, Response to Petition and Court Order of September 20, 2022). However, what Petitioner has not done here is initiate an appeal to the Board via a submission of an NOD, a necessary step for agency and, ultimately Court, appellate review. See 38 U.S.C. § 7105(a) ("Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary."). Petitioner's pleading fails to point to an NOD that has been filed with the agency and,

thus, her characterization of the matter as an appeal of the November 2018 decision falls flat.

2. A Guardian May Initiate an Appeal of the Appointment of a Fiduciary

This leads to the second question put by the Court of whether, if the Petition does relate to an attempt to appeal VA's November 2018 fiduciary appointment decision, the Veteran's legal guardian has standing to initiate an appeal. The Veteran has such a right. See *Freeman v. Shinseki*, 24 Vet.App. 404, 414 (2011); 38 C.F.R. § 13.600. As the Veteran's guardian, the guardian may exercise that right on behalf of the Veteran. The statute relating to NODs explicitly states an NOD "may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian." 38 U.S.C. § 7105(b)(2)(A). This is not in dispute.

However, that has not happened here. To initiate the appellate process and exercise that right, an NOD must be filed. 38 U.S.C. § 7105. None has been filed in this case. Petitioner does not assert otherwise. If Petitioner does file an NOD with respect to the November 2018 fiduciary appointment decision on the Veteran's behalf, the agency would be required to determine whether the NOD was timely filed and act accordingly¹. Whatever the agency's decision on that question, it would be

¹ The Secretary notes that, in his October 18, 2022, response to the writ petition and the Court's September 20, 2022, Order, the Secretary stated "the successor fiduciary was appointed in November 2018. The agency properly notified the Veteran and his representative of this change, and provided appellate rights." (page 4, citing Exhibit D). The Secretary continued that "Petitioner fails to assert any notice problems with this determination . . . and, although Petitioner, as the Veteran's guardian, was

appealable to the Board and, ultimately, to the Court. Thus, there is no frustration of the Court's potential jurisdiction in this case. If the Veteran, through his guardian, files an NOD that is deemed timely, an appeal to the Board would proceed and the Board's decision, if unfavorable, could be appealed to this Court. 38 U.S.C. § 7266(a). If the NOD is not deemed timely, that issue, too, may be appealed to the Board and the Court, so that any issues of proper mailing, tolling, and timeliness of appeal would also be ripe for Board review and, ultimately, appeal to the Court. See 38 C.F.R. § 19.28. *Marsh v. Nicholson*, 19 Vet.App. 381, 384 (2005) (timeliness is an issue appealable to the Board, who has the authority to assess its own jurisdiction, and to the Court).

2.a. A Guardian Should Receive Notice at Address Requested

The Court next asked whether, if a legal guardian has the right to initiate an appeal on behalf of the Veteran, she has the same notice and other due process requirements as the Veteran. The Secretary agrees that she has a right to receive notice. In a case where a guardian speaks for a Veteran, the guardian would be responsible to inform VA both of her appointment as guardian and of the appropriate address to serve the Veteran with decisions and appellate rights. The agency should use the

able to appeal the November 2018, determination, see 38 C.F.R. § 13.600(a), no appeal was taken from this decision." *Id.*

The Secretary notes, on further review, that the November 2018 notice to the Veteran, along with appellate rights, was sent to the Veteran at his domiciliary address, rather than to the address of his guardian. Whether this service was therefore inadequate and whether any inadequacy tolled the time for filing an appeal would be matters for the agency to consider when determining the timeliness of an NOD if Petitioner, on behalf of the Veteran, does at some point file an NOD with the November 2018 decision.

guardian-provided address to send the Veteran's copy of such documents so that the guardian will be properly informed.²

As far as whether this answer should change when the legal guardian is accused of misusing VA funds, the Secretary is unaware of any provision that allows VA to deliver the Veteran's copy of decisional documents to any address other than that provided for that purpose by a court-appointed guardian.

2.b. No VA Action or Inaction Has Frustrated the Court's Future or Potential Jurisdiction

With respect to whether VA's action or inaction has frustrated this Court's future or potential jurisdiction, the Secretary contends that it has not. Petitioner has not filed an NOD with respect to the November 2018 decision. Petitioner's February 7, 2023, response to the Court's Order does not contend otherwise. Accordingly, there has been no delay or inaction in adjudicating an appeal that has not been filed and, potentially,

² As noted, insofar as the agency may not have correctly mailed the Veteran's copy of the November 2018 or March 2021 decisions, any such error may impact whether an NOD with respect to either decision, if one is filed, has been timely filed.

The Secretary notes that the agency has received a claim filed by Petitioner on behalf of the Veteran (Exhibit A (February 2010 Application for Automobile Adaptive Equipment, signed "Charles R. Shorette, by Karen R. Shorette, guardian")), sent notice of the need for additional evidence to her address (Exhibit B (May 2010 letter)), accepted her response on his behalf (Exhibit C (June 2010 "VCAA Notice Response," signed "Karen R. Shorette, guardian")), and mailed to the Veteran at Petitioner's address a decision denying the claim and providing appeal rights (Exhibit D (July 2010 denial of claim)). That matter was not appealed. Thus, though the agency may not have correctly mailed the November 2018 decision to an address provided by Petitioner, it is also clear that the agency has accepted previous actions by her on behalf of the Veteran and that she was aware generally of the appellate process within the agency.

can be subsequently appealed to the Court. Given that the March 2021 decision found that Petitioner, in her role as the former fiduciary, did not misuse funds, it does not appear that Petitioner would desire to appeal that decision on behalf of the Veteran. Thus, in both instances, the Veteran has a right to appeal to the Board via submission of an NOD. There is no indication that Petitioner has, on behalf of the Veteran, filed an NOD to either decision. The timeliness of such a request, if one were to be made, would itself be an appealable matter. See *Marsh*, 19 Vet.App. at 384. Absent such a request, all decisions become final. 38 U.S.C. § 7105(c). As such, the Court's potential jurisdiction has not been frustrated.

**3. Appointment of a Fiduciary May Be Appealed;
Whether to Consider a Change in Fiduciary is
Within the Discretion of the Secretary and is Not Appealable**

Finally, the Court asked, if the Petition relates to an appeal of VA's refusal to appoint Petitioner as a successor fiduciary, whether such an action is subject to judicial review. No, this would not be subject to judicial review. See 38 C.F.R. § 13.600. Insofar as the Petition is read as containing such a request, it would ask for something that Petitioner has not established as an appealable right – the ability to force VA, when a VA fiduciary is already in place, to make a decision about a desire, at any given moment, to have a particular person be appointed as VA fiduciary. Non-action in this regard is not appealable. *Id.* The Secretary does, however, agree with Petitioner insofar as she states that “[a] decision regarding appointment of *any* individual as a VA ‘fiduciary’ is subject to judicial review,” (PR at 14 (header) (emphasis in original)) and that an appointment of a replacement fiduciary can be challenged not because they are a replacement, but because they are appointed by VA as the VA

fiduciary. (PR at 15); see 38 C.F.R. § 13.600(a). To be clear, the Secretary agrees that an agency action to appoint a fiduciary, whether an initial fiduciary or a successor fiduciary, is appealable to the Board and to the Court. As the Court has held, a Veteran may challenge the appointment of a fiduciary. *Freeman*, 24 Vet.App. at 414. Subsequent regulation has codified that right, stating:

A beneficiary may appeal to the Board of Veterans' Appeals the following decisions:

- (1) The Hub Manager's appointment of a fiduciary under § 13.100;
- (2) The Hub Manager's removal of a fiduciary under § 13.500;
- (3) The Hub Manager's misuse determination under § 13.400;
- (4) The VA Regional Office Director's final decision upon reconsideration of a misuse determination under § 13.400(d); and
- (5) The Director of the Pension and Fiduciary Service's negligence determination for purposes of reissuance of benefits under § 13.410.

38 C.F.R. § 13.600(a).

The most recent appealable action relating to parts (1) or (2) above was the November 2018 action to appoint a new fiduciary. The most recent appealable action relating to parts (3) or (4) above was the March 2021 action. As discussed, an appeal to the Board has not yet been initiated in either case. Those decisions are either final or, if the timing for appeal has been tolled due to any notice deficiencies, potentially subject to an appeal that has not yet been filed. 38 U.S.C. § 7105(c), *but see generally Baxter v. Principi*, 17 Vet.App. 407, 410 (2004) (when the presumption of regularity is rebutted, the burden shifts to the Secretary to establish mailing of notice; if the Secretary cannot satisfy this burden, the

case remains pending until the defect is cured); *Woods v. Gober*, 14 Vet.App. 214, 221 (2000) (if a claimant actually received notice, he or she has been properly notified of that decision).

The regulation makes clear that, except for the areas listed above, “VA decisions regarding fiduciary matters are committed to the Secretary of Veterans Affairs’ discretion by law, as delegated to subordinate officials under this part, and cannot be appealed to the Board of Veterans’ Appeals or any court.” 38 C.F.R. § 13.600. As explained in detail in the Secretary’s October 18, 2022, Response to the Petition and the Court’s September 20, 2022, Order (pages 3-4), Petitioner may request that a replacement be made under circumstances listed in regulation. See 38 C.F.R. § 13.30(b)(9). However, such matters do not necessarily lead to an appealable decision by VA. Rather, only VA’s decisions to appoint or remove a VA fiduciary are appealable matters. See 38 C.F.R. § 13.600(a).

Conclusion

Pursuant to the Court’s January 18, 2023, Order, the Secretary provides the above responses to the questions posed in that order. For the reasons presented in the Secretary’s October 18, 2022, response and consistent with the answers above, the Secretary contends that the Petition should be dismissed. Administrative remedies exist but have not been exercised. The appointment of a fiduciary is appealable but has not yet been appealed. The timeliness of any appeal is itself appealable, so the Court’s potential jurisdiction cannot be frustrated. Any non-action in response to an expressed desire to have a particular person be appointed as a replacement for a currently serving fiduciary is not an appealable matter. The action VA has taken – to appoint a VA fiduciary – is

appealable but, to date, has not been appealed. Accordingly, the Petition should be dismissed.

Respectfully submitted,

RICHARD J. HIPOLIT
Deputy General Counsel
for Veterans Programs

MARY ANN FLYNN
Chief Counsel

/s/ Dustin P. Elias
DUSTIN P. ELIAS
Deputy Chief Counsel

/s/ Mark M. McNabb
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Washington, DC 20420
(202) 632-7109

Attorneys for the Respondent,
Secretary of Veterans Affairs

EXHIBIT

1



Department of Veterans Affairs

1A. VA FILE NUMBER

**APPLICATION FOR AUTOMOBILE OR OTHER CONVEYANCE
AND ADAPTIVE EQUIPMENT (UNDER 38 U.S.C. 3901-3904)**

1B. VETERAN'S SOCIAL SECURITY NUMBER

NOTE: Please read the "Information and Instructions" on the reverse before you fill out this form.

SECTION I - APPLICATION (To be completed by veteran or serviceperson)

NOTE: A serviceperson planning early release should give both present military address and planned address following release from active duty, in Item 3

2 FIRST NAME - MIDDLE NAME - LAST NAME

CHARLES ROBERT SHORETTE

3. ADDRESS (No. and Street or rural route, City or P.O., State and Zip Code)

1516 WESLOW COURT
ANDERSON, IN 46011

4 BRANCH OF SERVICE

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

5. ARE YOU ON ACTIVE DUTY?

☐ YES ☒ NO

6A. PLACE OF ENTRY INTO ACTIVE DUTY

6B. DATE

6C. PLACE OF RELEASE FROM ACTIVE DUTY (If applicable)

6D. DATE

7A. HAVE YOU APPLIED FOR VA DISABILITY COMPENSATION? (If "Yes," give place)

☒ YES ☐ NO 100% SERVICE-CONNECTED

7B. DATE

8 LOCATION OF VA OFFICE WHICH NOW HAS YOUR FILE (If known)

INDIANAPOLIS

9 TYPE OF CONVEYANCE APPLIED FOR (Check one)

☐ AUTOMOBILE ☐ STATION WAGON ☒ VAN ☐ TRUCK ☐ OTHER (Specify)

10. HAVE YOU PREVIOUSLY APPLIED FOR AN AUTOMOBILE OR OTHER CONVEYANCE? (This is a once-per-lifetime grant)

☐ YES ☒ NO (If "Yes," give date and place)

I hereby apply for the conveyance checked in Item 9 above and the equipment required because of my disability. I agree that before operating the vehicle I shall hereafter apply to the proper authority for the necessary license to operate it. If I am unable to qualify for a license, I certify that a person licensed to operate a similar vehicle in the state of my residence will operate the vehicle for me. I further certify that VA has not previously paid an automobile grant on my behalf.

11. SIGNATURE OF VETERAN OR SERVICEPERSON

Charles R Shorette, by
Karen R Shorette, guardian

12 DATE SIGNED

1-22-2010

13 TELEPHONE NUMBERS (Include Area Code)

A DAYTIME 850-445-9115
EVENING 850-445-9115

SECTION II - CERTIFICATE OF ELIGIBILITY (To be completed by VA)

QUALIFYING DISABILITIES (Check appropriate box(es))

14A. LOSS OF FOOT

☐ RIGHT ☐ LEFT ☐ BOTH

14B. LOSS OF HAND

☐ RIGHT ☐ LEFT ☐ BOTH

14C. PERMANENT LOSS OF USE OF FOOT

☐ RIGHT ☐ LEFT ☐ BOTH

14D. PERMANENT LOSS OF USE OF HAND

☐ RIGHT ☐ LEFT ☐ BOTH

15. PERMANENT IMPAIRMENT OF VISION

☐ CENTRAL VISUAL ACUITY 20/200 OR LESS IN THE BETTER EYE WITH CORRECTIVE GLASSES

☐ CONTRACTION OF THE PERIPHERAL FIELD OF VISION TO 20 DEGREES OR LESS IN THE BETTER EYE

16. **Authorization for Allowance for Automobile or Other Conveyance:** The above-named applicant is eligible under 38 U.S.C. 3901-3904 to purchase the automobile or conveyance shown in Item 9, subject to certain payment limitations. VA cannot pay more than the rate in effect when VA receives the claim for payment from the seller. The allowance includes applicable taxes when included in the purchase price. The allowance does not include payment for any adaptive equipment specified for the qualifying disabilities.

Adaptive Equipment: The cost of adaptive equipment and its installation may be reimbursed. Adaptive equipment is not provided if the claimant is blind, requires a driver, or doesn't have a valid State driver's license or learner's permit. See the attached list for the adaptive equipment that is authorized for the qualifying disabilities shown above. All additional add-on equipment must be approved by VA.

☐ I CERTIFY THAT the veteran has not previously received an allowance for automobile or other conveyance under 38 U.S.C. 3901-3904

17. NAME AND LOCATION OF VA OFFICE

18. SIGNATURE AND TITLE OF CERTIFYING OFFICIAL

19 DATE SIGNED

SECTION III - RECEIPT FOR AUTOMOBILE OR OTHER CONVEYANCE AND ADAPTIVE EQUIPMENT (To be completed by veteran or serviceperson)

20. MAKE AND MODEL

21. YEAR

22. MOTOR OR ENGINE NO.

23. TOTAL PURCHASE PRICE

24 DATE OF SALE

25A. I WILL OPERATE THIS VEHICLE

☐ YES ☐ NO

25B I HAVE A VALID STATE DRIVER'S LICENSE OR LEARNER'S PERMIT

☐ YES ☐ NO

26. NAME OF SELLER

27. ADDRESS OF SELLER

I hereby acknowledge receipt of the automobile or other conveyance with the adaptive equipment specified on attached invoice.

28A. SIGNATURE OF VETERAN OR SERVICEPERSON

28B. DATE OF RECEIPT

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

EXHIBIT

2



DEPARTMENT OF VETERANS AFFAIRS
Regional Office
575 North Pennsylvania Street
Indianapolis IN 46204-1526

May 20, 2010

SHORETTE KAREN
SPOUSE PAYEE OF OF
MS. CHARLES R SHORETTE
1516 WESLOW CT
ANDERSON IN 46011-3174

In reply, refer to:
326/pre/ram
File Number: [REDACTED]
Charles R. Shorette

IMPORTANT

Dear Ms. Shorette:

We are working on your claim for Automobile Allowance.

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.

Is There Anything Else You Need To Send?

- 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
575 North Pennsylvania Street
Indianapolis IN 46204-1526

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: [REDACTED]
Charles R. Shorette

What Have We Received?

- Your claim for benefits, which we received on February 10, 2010.

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, [REDACTED], 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,

Debra A. Street

Debra A. Street
Acting Veterans Service Center Manager

Enclosures: VA Form 21-4138
VA Form 21-4142
Veterans Claims Assistance Act (VCAA)
What the Evidence Must Show - Auto Allowance

cc: AMERICAN LEGION

File Number: [REDACTED]
Charles R. Shorette

Veterans Claims Assistance Act (VCAA)

What the Evidence Must Show for Automobile Allowance or Adaptive Equipment

To support your claim for automobile allowance or adaptive equipment, the evidence must show that you have a service-connected disability resulting in

- the loss, or permanent loss of use, of at least a foot or a hand

OR

- permanent impairment of vision in both eyes, resulting in
 1. vision of 20/200 or less in the better eye with glasses

OR

2. vision of 20/200 or better, if there is a severe defect in your peripheral vision.

You may be entitled to *only* adaptive equipment if you have ankylosis (“freezing”) of at least one knee or one hip due to service-connected disability.

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 connected, we assign a disability rating for compensation purposes. That rating can be changed if your condition changes. Depending on the disability and diagnostic code 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. Under certain circumstances, a disability rating may be assigned based on the result of a specific test or

File Number: [REDACTED]
Charles R. Shorette

measurement. In exceptional cases, we can assign a disability rating based on factors not found in the schedule for a specific condition if your impairment is not adequately covered by the schedule. Additional payment of compensation may be assigned under special circumstances for certain disabilities, or disabilities that affect activities of daily living.

We consider the following evidence in determining the disability rating:

- Nature and symptoms of the condition;
- Severity and duration of the symptoms;
- Impact of the condition upon employment and daily life; and
- Specific test or measurement results, such as pulmonary function tests for certain respiratory ailments, treadmill exercise tests for certain types of heart disease, audiometric tests for hearing loss, optometric tests for visual loss, and range of motion tests for some joint or muscle conditions.

Examples of evidence that are relevant to assigning a disability rating include the following:

- Private, VA, or other Federal treatment and hospitalization records, including medical statements;
- Recent Social Security determinations;
- Statements from employers regarding how your condition(s) affect(s) your ability to work;
- Job application rejections;
- Statements from people who have witnessed how the symptoms of your disabilities affect you; or
- Any other evidence showing the extent of your disability or exceptional circumstances relating to it.

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.

File Number: [REDACTED]
Charles R. Shorette

DOC 02/10/2010

VCAA NOTICE RESPONSE

We provided a notice to you about the evidence and information VA needs to support your claim for benefits. At this time, you may choose to indicate whether you intend to submit additional information or evidence that would help support your claim.

Your signed response will let us know whether to decide your claim without waiting 30 days, or whether we should give you the full 30 days from the date of the letter sent with this notice response before deciding your claim.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled;
- The assistance VA will provide you in obtaining evidence to support your claim; or
- The date any benefits will begin if your claim is granted.

RESPONSE

I elect *one* of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

☐ I have enclosed all the remaining information or evidence that will support my claim, or I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

☐ I will send more information or evidence to VA to support my claim. VA will wait the full 30 days from the date of the letter sent with this notice response before deciding my claim.

Claimant/Representative Signature

Date

EXHIBIT

3

File Number: [REDACTED]
Charles R. Shorette

PULL Pre
Date 6/18/10
Initial d

DOC 02/10/2010

VCAA NOTICE RESPONSE

We provided a notice to you about the evidence and information VA needs to support your claim for benefits. At this time, you may choose to indicate whether you intend to submit additional information or evidence that would help support your claim.

Your signed response will let us know whether to decide your claim without waiting 30 days, or whether we should give you the full 30 days from the date of the letter sent with this notice response before deciding your claim.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled;
- The assistance VA will provide you in obtaining evidence to support your claim; or
- The date any benefits will begin if your claim is granted.

RESPONSE

MAP D
Requested ✓
Completed 6/18/10

I elect one of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

☒ I have enclosed all the remaining information or evidence that will support my claim, or I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

☐ I will send more information or evidence to VA to support my claim. VA will wait the full 30 days from the date of the letter sent with this notice response before deciding my claim.

Charles R. Shorette, guardian
Claimant/Representative Signature

June 13, 2010
Date

My husband's VA rating is 100% service-connected with individual unemployability. He is a permanent resident of the Northern Indiana VA Healthcare Facility in Marion, Indiana, which is where you can access his records.

EXHIBIT

4



DEPARTMENT OF VETERANS AFFAIRS
VA Regional Office
575 N. Pennsylvania Street
Indianapolis IN 46204-1581

July 14, 2010

CHARLES R SHORETTE
1516 WESLOW CT
ANDERSON, IN 46011

In Reply Refer To: 326/211/AJB
CSS [REDACTED]
SHORETTE, Charles R

Dear Mr. Shorette:

We made a decision on your claim for entitlement to automobile and adaptive equipment received on February 10, 2010.

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 We Decided

We denied entitlement to automobile and adaptive equipment only.

Your compensation payment of \$3,477.00 per month will continue unchanged.

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 February 10, 2010. It represents all claims we understood to be specifically made, implied, or inferred in that claim.

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.



CSS [REDACTED]
Shorette, Charles R

If 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 [REDACTED]

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>.

We sent a copy of this letter to your representative, American Legion, whom you can also contact if you have questions or need assistance.

Sincerely yours,

DEBRA STREET

DEBRA STREET

Acting Veterans Service Center Manager

Web site: <http://www.vba.va.gov/ro/central/indy/index.htm>

Enclosure(s): Rating Decision
VA Form 4107

cc: American Legion