

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

JUSTIN D. GRAY,)	
Appellant,)	
)	
v.)	Vet. App. No. 22-3933
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Appellee.)	

APPELLEE'S SOLZE NOTICE TO THE COURT

Pursuant to this Court's holding in *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013), that, "in all cases before this Court, the parties are under a duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision," the Secretary of Veterans Affairs, Denis McDonough, files this Notice in accordance with such directive.

On March 1, 2023, the undersigned was informed by the Board of Veterans' Appeals (Board), that the Board issued a remand in Appellant, Justin D. Gray's appeal before the Agency. The remand as issued by the Board is attached. See (Exhibit A).

WHEREFORE, the Secretary respectfully notifies the Court of the above development in this case.

Respectfully submitted,

RICHARD J. HIPOLIT
Deputy General Counsel for Veterans
Programs

MARY ANN FLYNN

Chief Counsel

/s/ Megan C. Kral

MEGAN C. KRAL

Deputy Chief Counsel

Office of the General Counsel (027C)

U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

(202) 632-4354

Counsel for the Secretary

Exhibit A

JUSTIN D. GRAY
1850 IDLEWILD DRIVE
G5
RENO, NV 89509



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: March 1, 2023

SS XXX XX 6457

JUSTIN D. GRAY
1850 IDLEWILD DRIVE
G5
RENO, NV 89509

Dear Appellant:

The Board of Veterans' Appeals made a decision on your appeal.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will contact you regarding next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached for additional options.
Remand	Additional development is needed. VA will contact you regarding next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

Decision Management Branch
Office of Appellate Support

Enclosures (1)
CC: ROBERT V CHISHOLM, Attorney

ROBERT V CHISHOLM, Attorney
321 S Main St Ste 200
Providence, RI 02903



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: March 1, 2023

SS XXX XX 6457

JUSTIN D. GRAY
1850 IDLEWILD DRIVE
G5
RENO, NV 89509

Dear Appellant:

The Board of Veterans' Appeals made a decision on your appeal.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will contact you regarding next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached for additional options.
Remand	Additional development is needed. VA will contact you regarding next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

Decision Management Branch
Office of Appellate Support

Enclosures (1)
CC: ROBERT V CHISHOLM, Attorney



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
JUSTIN D. GRAY

Represented by
Robert V. Chisholm, Attorney

SS XXX XX 6457
Docket No. 19-03 277

DATE: March 1, 2023

REMANDED

The issue of entitlement to service connection for diabetes mellitus, type II, (diabetes), to include as a result of exposure to environmental contaminants at Fort McClellan, Alabama, is remanded.

REASONS FOR REMAND

The Veteran served on active duty from June 1989 to August 1996.

This appeal comes before the Board of Veterans' Appeals (Board) from a June 2017 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO).

The Veteran asserts that he is entitled to service connection for diabetes as a result of his exposure to environmental contaminants while he was stationed at Fort McClellan, Alabama. Specifically, that his diabetes is due to exposure to hazardous radioactive compounds, chemical warfare agents, airborne polychlorinated biphenyls (PCBs) from Monsanto, and herbicides while stationed in Fort McClellan. The Veteran asserts that his duties included him doing physical training around the base, "participating in land navigation courses" which put him in the woods surrounding the base, engaging in weapons training which put him in close contact with the ground, and visiting the nearby town of Anniston, all of which put him in contact with the environmental contaminants at Fort McClellan. *See* June 2017 affidavit.

IN THE APPEAL OF
JUSTIN D. GRAY

SS XXX XX 6457
Docket No. 19-03 277

Following the November 2018 Statement of the Case (SOC), the Veteran submitted additional evidence in support of his claim.

Generally, evidence submitted after the SOC must be reviewed by the agency of original jurisdiction (AOJ), unless this AOJ review is waived by the Veteran. 38 C.F.R. § 20.1305(c). However, evidence received between the SOC and certification of the appeal to the Board cannot be waived. 38 C.F.R. § 19.37. Such is the case here.

Furthermore, in correspondence submitted in June 2020, the Veteran, through his representative, requested to have the AOJ consider this new evidence. As such, remand is required for the AOJ to consider the recently submitted evidence.

The matters are REMANDED for the following action:

Readjudicate the Veteran's claim in light of any additional evidence added to the record following the November 2018 Statement of the Case. If any benefit sought on appeal remains denied, the Veteran and his attorney should be furnished with a Supplemental Statement of the Case and be afforded the applicable opportunity to respond before the record is returned to the Board for further review.



M. Donohue
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

S. Morrad, Counsel

IN THE APPEAL OF
JUSTIN D. GRAY

SS XXX XX 6457
Docket No. 19-03 277

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.