

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

WAYNE HUNT,

Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,

Appellee.

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Vet. App. No. 21-1289

APPELLANT’S RESPONSE TO THE COURT’S MAY 4, 2023 ORDER

The undersigned counsel submits this response to the Court’s May 4, 2023 Order, which directed the undersigned to provide a copy of the Appellant’s death certificate and show cause why the December 2, 2020 Board of Veterans Appeals (BVA) decision should not be vacated and this appeal dismissed. On July 11, 2023, this Court granted the undersigned counsel’s motion to extend time to develop any potential arguments. This response addresses that request and provides those arguments.

Mr. Hunt’s death does not moot the issue before this Court and he should be posthumously granted veteran status.

Statutorily, there is precedent for a posthumous acknowledgment of veteran status. The existence of statutes like 38 USC § 5121 (Payment of certain accrued benefits upon death of a beneficiary) and 38 USC § 5121A (Substitution in case of death of claimant) establishes that certain determinations (e.g., veteran status, compensation, pension) can be made even after the death of the veteran.

It is important to note that a determination and posthumous acknowledgment of Mr. Hunt's veteran status would *not* entitle his family to any monetary benefits; however, it is no less important for that. Instead, it would affirm and honor the last wishes of a man who fervently fought for his veteran status, not for compensation, but for need-based pension, allowing him access to a significant benefit – burial in a national cemetery.

According to 38 U.S.C. § 2402(a)(1), an individual must be a veteran (or one of a limited number of other individuals; e.g., Reserve or Reserve Officer Training Corps (ROTC) member, spouse or minor child of a veteran, etc.) to be eligible for burial in a national cemetery. 38 U.S.C. § 101(2) is the governing statute and defines a veteran as “a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.”

Mr. Hunt meets those requirements. He served in the United States Navy and received a General, Under Honorable Conditions discharge. [Appendix A – DD-214] Additionally, his death certificate shows that Wayne Robert Hunt was laid to rest on November 3, 2022 and is interred in the Massachusetts National Cemetery in Bourne, Massachusetts, a cemetery that is under the jurisdiction of the NCA. [Appendix B – Wayne Hunt's Death Certificate] The National Cemetery Administration (NCA) acknowledged Wayne Hunt's veteran status by authorizing his burial in a national cemetery.

This later interment conflicts with the earlier Veterans Benefits Administration (VBA) decision, which determined that Mr. Hunt was ineligible for VA pension as a result of his military separation, despite his General, Under Honorable Conditions

discharge. The VBA denied, and the BVA affirmed, Mr. Hunt need-based pension, reasoning that he was barred because he was discharged by reason of court-martial. As we argued in our Brief, filed December 14, 2022, we do not believe this to be the case.

By regulation, the Veterans Benefits Administration (VBA) is responsible for making determinations for requests pertaining to decedents “whose character of discharge may potentially bar eligibility” for burial in a national cemetery. 38 C.F.R. § 38.620, Note 1. In the matter at issue, they were either consulted and found him eligible or they were not consulted at all. Either way, the NCA and VBA decisions are in conflict and must be resolved.

The NCA and VBA made conflicting determinations regarding Mr. Hunt’s veteran status. This conflict must be resolved for Mr. Hunt to receive his benefit – continued interment in the Massachusetts National Cemetery. For the reasons discussed above, we respectfully request that this Court keep open Mr. Hunt’s case and resolve the existing conflict in favor of Mr. Hunt.

Respectfully submitted,

/s/ Ashlyn M. Anderson-Keelin
ASHLYN M. ANDERSON-KEELIN
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The Bob Parsons Veterans Advocacy Clinic
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Appendix A:
Wayne Hunt's DD-214

PERSONAL DATA	1. LAST NAME - FIRST NAME - MIDDLE NAME HUNT, WAYNE ROBERT			3. GRADE, RATE OR RANK SR(E-1)			b. DATE OF RANK (Day, Month, Year) 28 AUG 64									
	4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS NAVY-USN			5. PLACE OF BIRTH (City and State or Country) ALBANY, NEW YORK			6. DATE OF BIRTH 46									
	7-a. RACE MALE		b. SEX MALE		c. COLOR HAIR BROWN		d. COLOR EYES BLUE		e. HEIGHT 68"		f. WEIGHT 108		8. U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SINGLE	
	10. HIGHEST CIVILIAN EDUCATION LEVEL ATTAINED HIGH SCHOOL-01-				b. MAJOR COURSE OR FIELD GENERAL											
TRANSFER OR DISCHARGE DATA	11. TYPE OF TRANSFER OR DISCHARGE DISCHARGED						b. STATION OR INSTALLATION AT WHICH EFFECTED U. S. NAVAL RECEIVING STATION, BROOKLYN, N.Y.									
	c. REASON AND AUTHORITY BUPERS MANUAL ARTICLE C-10310 CODE 460						d. EFFECTIVE DATE 04 FEB 65		DAY 04		MONTH FEB		YEAR 65			
SELECTIVE SERVICE DATA	12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND NAVAL SUBMARINE BASE, NEW LONDON, CONN.						13. CHARACTER OF SERVICE UNDER HONORABLE CONDITIONS						b. TYPE OF CERTIFICATE ISSUED DD257N			
	14. SELECTIVE SERVICE NUMBER NOT APPLICABLE			15. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY AND STATE NOT APPLICABLE						16. DATE INDUCTED NOT APPLICABLE						
	17. DISTRICT OR AREA COMMAND TO WHICH RESERVIST TRANSFERRED NOT APPLICABLE															
SERVICE DATA	18. TERMINAL DATE OF RESERVE OBLIGATION DAY MONTH YEAR NOT APPLICABLE			19. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY <input checked="" type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> REENLISTED <input type="checkbox"/> OTHER:						b. TERM OF SERVICE (Years) MINORITY		c. DATE OF ENTRY DAY MONTH YEAR 29 MAR 63				
	20. PRIOR REGULAR ENLISTMENTS NONE			21. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE SR			22. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) TROY, NEW YORK									
	23. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State) TROY, RENSSELAER, NEW YORK						24. STATEMENT OF SERVICE		YEARS		MONTHS		DAYS			
	25. a. SPECIALTY NUMBER AND TITLE 0000/0000 b. RELATED CIVILIAN OCCUPATION AND D. O. T. NUMBER 000.000						a. CREDITABLE FOR BASIC PAY PURPOSES		(1) NET SERVICE THIS PERIOD		00		07		13	
							(2) OTHER SERVICE		00		00		00			
	(3) TOTAL (Line (1) + line (2))		00		07		13									
	b. TOTAL ACTIVE SERVICE						00		07		13					
	c. FOREIGN AND/OR SEA SERVICE						00		00		00					
	26. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED NOT APPLICABLE															
	27. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known) NOT APPLICABLE															
VA DATA	28. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST-GRADUATE COURSES SUCCESSFULLY COMPLETED												29. OTHER SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED			
	SCHOOL OR COURSE a			DATES (From - To) b			MAJOR COURSES c									
	NOT APPLICABLE			NOT APPLICABLE			NOT APPLICABLE									
	NOT APPLICABLE			NOT APPLICABLE			NOT APPLICABLE									
30. a. GOVERNMENT LIFE INSURANCE IN FORCE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO						b. AMOUNT OF ALLOTMENT NOT APPLICABLE						c. MONTH ALLOTMENT DISCONTINUED NOT APPLICABLE				
31. a. VA BENEFITS PREVIOUSLY APPLIED FOR (Specify type) NOT APPLICABLE						b. VA CLAIM NUMBER NOT APPLICABLE										
AUTHENTICATION	32. REMARKS SOCIAL SECURITY NO.: [REDACTED] 6784 TIME LOST: 442 DAYS EXCESS LEAVE: NONE LEAVE PAID: (8) X															
	33. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County and State) 4-121st STREET, TROY, NEW YORK						34. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED Wayne R Hunt									
	35. a. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER E. B. GLOVER, LT, USN, TRANS PERS OFF BY DIR CO.						b. SIGNATURE OF OFFICER AUTHORIZED TO SIGN EB Glover									

DD

FORM 1 NOV 55 214

REPLACES EDITION OF 1 JUL 52, WHICH IS OBSOLETE.

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

2

Appendix B:
Wayne Hunt's Death Certificate

CERTIFICATE OF VITAL RECORD

VERIFY PRESENCE OF WATERMARK

HOLD TO LIGHT TO VIEW

The Commonwealth of Massachusetts

1288373



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Commonwealth of Massachusetts
Registry of Vital Records and Statistics
CERTIFICATE OF DEATH

106/184

State File # **2022 052521**
Registered # **6896**

07012019

DECEDENT	Place of Death 17 COURT STREET, BOSTON, MA	
	Date of Death OCTOBER 24, 2022	Age 76 YRS Sex MALE
	Current Name HUNT, WAYNE ROBERT	
	Surname at Birth or Adoption HUNT	SSN [REDACTED] 5784
	AKA ---	
	Date of Birth [REDACTED] 946	Birthplace ALBANY, NEW YORK
	Residence 17 COURT STREET, BOSTON, MASSACHUSETTS 02108	
	Race WHITE	Education 9TH - 12TH GRADE, NO DIPLOMA
	Marital Status NEVER MARRIED	Occupation/Industry TRUCK DRIVER/COMMERCIAL DRIVER
	Last Spouse - Last, First, Middle (Surname at Birth or Adoption) ---	
Decedent: U.S. Veteran (Most Recent) ---		
Parent Name - Last, First Middle (Surname at Birth or Adoption) UNKNOWN		
Birthplace UNKNOWN		
Parent Name - Last, First Middle (Surname at Birth or Adoption) UNKNOWN		
Birthplace UNKNOWN		
MEDICAL CERTIFIER	Part I. Cause of Death - Sequentially list immediate cause then antecedent causes then underlying cause	
	a. Immediate Cause (Final condition resulting in death) PARSONAGE - TURNER SYNDROME	
	b. Due to or as a consequence of: ---	
	c. Due to or as a consequence of: ---	
	d. Due to or as a consequence of: ---	
	Part II. Other significant conditions contributing to death but not resulting in underlying cause ---	
	Manner of Death: NATURAL	
	Time of Death: 11:23 AM	
	Result of Injury: NO	
	Certifier MARGARET SEATER, DO Lic # 249322	
Addr. 251 CAUSEWAY STREET, BOSTON, MASSACHUSETTS 02114		
DISPOSITION	Funeral Licensee/ Designee WILLIAM F SPENCER, JR Lic # 5995	
	Facility/Addr. WM. F. SPENCER FUNERAL SERVICE, BOSTON, MASSACHUSETTS	
	Immediate Disposition BURIAL	
	Date of Immediate Disposition NOVEMBER 03, 2022	
	Place/Address MASSACHUSETTS NATIONAL CEMETERY, CONNERY AVENUE, BOURNE, MASSACHUSETTS 02532	
	Date of Record NOVEMBER 02, 2022	
Date of Amendment ---		

Patricia McMahon

REGISTRAR, CITY OF BOSTON

DATE ISSUED: **APRIL 20, 2023**

I, the undersigned, hereby certify that I am the Registrar of the City of Boston; that as such I have custody of the records of birth, marriage, and death required by law to be kept in my office; and I do hereby certify that the above is a true copy from said records, as held in the Commonwealth's central vital records information repository.

Registrar
City of Boston

VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

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HUNT

SFN: 2022 052521

BOSTON 6896

BOSTON

STATE VOL/PG: 106/184 OPEN

If U.S. war veteran, specify war/conflict(s) ---			
Branch of military (most recent) ---		Rank/organization/outfit(most recent) ---	
Date entered(most recent) ---		Date Discharged (most recent) ---	
Service Number(most recent) ---			
Place of Death Type DECEDENT'S RESIDENCE		Date of Pronouncement ---	
Time of Pronouncement ---			
RN/NP/PA Pronouncement? NO		Name of RN/NP/PA Pronouncing Death ---	
Lic # ---			
RN/NP/PA Employing Agency or Institution ---		Name of Physician or Medical Examiner notified ---	
Was M.E. Notified? YES		Provider in charge of patient's care, if not certifier ---	
Autopsy Performed? NO		Findings available for Cause? ---	
Tobacco contribute to death? UNKNOWN		Pregnancy Status, if female ---	
Date of Injury ---		Time of Injury ---	
Injury at Work? ---		If Transportation Injury, specify: ---	
Place of Injury ---		Location/Address of Injury: ---	
Describe How Injury Occurred ---			
Expanded Race: WHITE			
Ethnicity: AMERICAN			
Informant Name MARGARET — TAYLOR		Relationship DAUGHTER	
Addr. 13 FALLON APARTMENTS, APT. # 13, TROY, NEW YORK 12180			
Date Disposition Permit Issued: NOVEMBER 02, 2022		Board of Health Agent PAUL SHOEMAKER	
State Tracking No. 052521		Local Permit No. B22052521	

WARNING:THIS DOCUMENT IS PRINTED ON SECURITY WATERMARKED PAPER AND CONTAINS SECURITY FIBERS.
DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARK.THE DOCUMENT FACE CONTAINS A SECURITY BACKGROUND AND EMBOSSED SEAL. THE BACK CONTAINS
SPECIAL LINES WITH TEXT