

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

**LEWIS BROWN,**  
**Appellant,**

**v.**

**DENIS MCDONOUGH,**  
**Secretary of Veterans Affairs,**  
**Appellee.**

**VET. APP. NO. 21-3218**

**SOLZE NOTICE**

This Court has directed that, in all cases before it, the parties are under a duty to notify the Court of developments that could deprive it of jurisdiction or "otherwise affect its decision." *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013). This duty is continuing and encompasses "any development which *may conceivably affect*" the Court's decision in a case. *Id.* at 302 (emphasis in *Solze*). When any such development occurs, it is "irrelevant" whether a party believes it would affect the Court's decision because "that [is] not a question within the parties' power to decide." *Id.*

Mr. Brown argued to this Court that the Board erred in dismissing his appeal of the AOJ's refusal to perform a higher level review of a prior AOJ decision. For clarity as to the purpose of this notice, we highlight key aspects of the procedural history. The Board issued a decision in 2019 that adjudicated entitlement to rating based on a reconsidered 1977 claim for compensation benefits; and the AOJ provided notice of that decision to Mr. Brown. Subsequently Mr. Brown both filed a NOA to this Court

seeking review of the Board's decision and asked for higher level review of the AOJ's decision. The Court vacated and remanded the Board's decision.

At oral argument the issue focused around whether the AOJ had issued notice of a decision of the Secretary under 38 U.S.C. § 5104. The Court also solicited input from the parties as to the effect of the appeal to this Court of the Board's 2019 decision. The Board, responding to the Court's memo decision vacating the 2019 decision, issued a decision on October 25, 2023. In this decision, the Board determined that Mr. Brown is entitled to additional ratings from May 2, 1977, for his lumbar spine and radiculopathy, a TDIU rating from May 2, 1977, and a SMC(s) rating from September 13, 2011. In response to the Board's decision, Mr. Brown submitted a supplemental claim seeking additional, ancillary ratings for his disabilities under 38 U.S.C. § 1114(l)-(r) and 38 C.F.R. § 3.155(d)(2). Mr. Brown is enclosing a copy of these documents as Exhibit I.

Appellant; therefore, notifies this Court of the Board's decision awarding additional benefits and Mr. Brown's actions seeking even more benefits.

Respectfully submitted this the 27th day of October, 2023.

/s/ Kenneth H. Dojaquez  
Kenneth H. Dojaquez, Esq.  
Attorney for Appellant  
Carpenter Chartered  
P.O. Box 2099  
Topeka, KS 66601  
Telephone: 785-730-2821  
Email: Kenny@carpenterchartered.com

**EXHIBIT I**



## **BOARD OF VETERANS' APPEALS**

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF  
**LEWIS BROWN**

Represented by  
Kenneth M. Carpenter, Attorney

**[REDACTED]**  
Docket No. 190507-8938  
**Advanced on the Docket**

DATE: October 25, 2023

### **ORDER**

Entitlement to an effective date of May 2, 1977, but no earlier, for the grant of entitlement to service connection and a separate 40 percent rating for left lower extremity radiculopathy is granted.

Entitlement to an effective date of May 2, 1977, but no earlier, for the grant of entitlement to service connection and a separate 10 percent rating for right lower extremity radiculopathy is granted.


Entitlement to an effective date of May 2, 1977, but no earlier, for the grant of entitlement to a total disability rating based on individual unemployability (TDIU) is granted.

Entitlement to special monthly compensation (SMC) at the housebound rate, from September 13, 2011, is granted.

### **FINDINGS OF FACT**

1. The Veteran has had bilateral lower extremity radiculopathy associated with his service-connected back condition for the entire period on appeal.
2. TDIU arose with the Veteran's initial claim for his back condition and associated lower extremity radiculopathy, pending since May 2, 1977.

IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

3. From May 2, 1977, the Veteran was unable to obtain or maintain substantially gainful employment due to his service-connected back condition.
4. From September 13, 2011, the Veteran's back condition alone warrants TDIU and he has additional service-connected disabilities rated at least 60 percent that are separate and distinct.


**CONCLUSIONS OF LAW**

1. The criteria for an effective date of May 2, 1977, but no earlier, for the grant of entitlement to service connection and a separate 40 percent rating for left lower extremity radiculopathy have been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.155, 3.400, 3.400.
2. The criteria for an effective date of May 2, 1977, but no earlier, for the grant of entitlement to service connection and a separate 10 percent rating for right lower extremity radiculopathy have been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.155, 3.400, 3.400.
3. The criteria for an effective date of May 3, 1977, but no earlier, for the grant of entitlement to TDIU have been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.155, 3.400, 4.16.
4. The criteria for SMC based on one service-connected disability rated as total and additional service-connected disabilities independently ratable at 60 percent or more (housebound rate), from September 13, 2011, have been met. 38 U.S.C. §§ 1114(s), 5107; 38 C.F.R. §§ 3.102, 3.350.

**REASONS AND BASES FOR FINDINGS AND CONCLUSIONS**

The Veteran served on active duty from June 1953 to May 1955 and September 1961 to August 1962.


IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

The Veteran filed his service connection claim, VA Form 21-526, for his back condition received on May 2, 1977. The claim was denied in an October 1977 rating decision. The Veteran filed a new informal claim received on September 13, 2011 for his back condition. *See* September 2011 Veteran statement. The claim would be denied in an April 2013 rating decision. The Veteran appealed the April 2013 rating decision. *See* June 2013 notice of disagreement (NOD). A February 2016 rating decision granted service connection for the Veteran's back condition and associated bilateral radiculopathy at a combined 40 percent rating effective May 2, 1977. A statement of the case (SOC) regarding TDIU was sent in May 2016. The Veteran perfected this appeal with a May 2016 VA Form 9. A July 2017 Board of Veterans' Appeals (Board) decision referred the TDIU issue to the agency of original jurisdiction (AOJ for "appropriate action." A November 2017 rating decision denied the claim of TDIU. The Veteran filed a VA Form 21-8940 in January 2018 indicating his back problems and that he stopped working on May 2, 1977. The Veteran appealed the November 2017 rating decision with a NOD filed in January 2018.

An August 2018 rating decision granted TDIU effective September 13, 2011 and granted separate ratings for the Veteran's lower extremity radiculopathy at 10 percent ratings effective June 7, 2018. The Veteran submitted a VA Form 20-0996 in January 2019 seeking Higher-Level Review regarding the effective date for TDIU, effective date of service-connection for left and right lower extremity radiculopathy, and the rating for left lower extremity radiculopathy. A February 2019 rating decision granted an effective date of November 25, 2013 for left lower extremity radiculopathy at a 20 percent rating, and a 40 percent rating from January 26, 2018, but denying the effective date claims for TDIU and the right lower extremity radiculopathy. The Veteran filed a VA Form 10182 in May 2019 appealing the February 2019 rating decision. An August 2019 Board decision granted an effective date of September 13, 2011 for left and right lower extremity radiculopathy, granted a 40 percent rating for the left lower extremity radiculopathy for the entire period on appeal, but denied an earlier effective date regarding TDIU. The Veteran appealed the August 2019 Board decision to the Court of Appeals for Veterans Claims (Court). In May 2021, a Court memorandum decision vacated and remanded the issues regarding the effective dates prior to

IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

September 13, 2011 for the grant of service connection for left and right lower extremity radiculopathy and entitlement to TDIU. The case has returned to the Board for further appellate proceedings.


The Board may only consider the evidence of record at the time of the AOJ decision on appeal. 38 C.F.R. § 20.301. If evidence was associated with the claims file during a period of time when additional evidence was not allowed, the Board has not considered it in its decision on the claims. 38 C.F.R. § 20.300. If the Veteran would like the Department of Veterans Affairs (VA) to consider any evidence that was added to the claims file that the Board could not consider, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claims, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

### **Effective Date**

Unless specifically provided otherwise, the effective date of an evaluation and grant of compensation based on an original claim will be the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 U.S.C. § 5110(a); 38 C.F.R. § 3.400. The effective date for a grant of service connection is the day following the date of separation from active service or the date entitlement arose, if the claim is received within one year after separation from active service; otherwise date of receipt of claim, or date entitlement arose, whichever is later. 38 U.S.C. § 5110(a); 38 C.F.R. § 3.400(b)(2)(i).

Effective March 24, 2015, VA amended its regulations to require that all claims governed by VA's adjudication regulations be filed on a standard form. Prior to March 24, 2015, VA recognized formal and informal claims. 38 C.F.R. § 3.1(p) (2014). The amendments also, *inter alia*, eliminated the constructive receipt of VA reports of hospitalization or examination and other medical records as informal claims to reopen. 38 C.F.R. §§ 3.151, 3.155 (2016). The amended regulations, however, apply only to claims filed on or after March 24, 2015.

IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

Prior to that date, a “claim” was a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement to a benefit. “Date of receipt” of a claim, information, or evidence means the date on which a claim, information, or evidence was received by VA. Any documented communication from, or action by, a veteran indicating intent to apply for a benefit under laws administered by VA may be considered an informal claim.

To determine when a claim was received, the Board must review all communications in the claims file that may be construed as an application or claim. *Quarles v. Derwinski*, 3 Vet. App. 129, 134 (1992).


When there is a prior final decision in the claims file and a later reopened claim results in a grant of the benefit, the general rule for effective dates for reopened claims applies. In such cases the effective date cannot be earlier than the subsequent claim to reopen. 38 C.F.R. § 3.400(r), 3.400(q)(2); *see Leonard v. Principi*, 17 Vet. App. 447, 452 (2004); *Sears v. Principi*, 16 Vet. App. 244, 246-50 (2002), *aff’d*, 349 F.3d 1326 (Fed. Cir. 2003); *Flash v. Brown*, 8 Vet. App. 332, 340 (1995).

The fact that a claimant had previously submitted claim applications which had been denied, is not relevant to the assignment of an effective date based on his current application. “Nothing in the statute indicates that an effective date can be set based upon an application that resulted in a final disallowance of the claim.” *Wright v. Gober*, 10 Vet. App. 343, 347 (1997).

“The statutory framework simply does not allow for the Board to reach back to the date of the original claim as a possible effective date for an award of service-connected benefits that is predicated upon a reopened claim.” *Sears v. Principi*, 16 Vet. App. 244, 248 (2002). In order for the Veteran to be awarded an effective date based on an earlier claim, he or she has to show clear and unmistakable error (CUE) in the prior denial of the claim. *Flash v. Brown*, 8 Vet. App. 332, 340 (1995); *see also Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

However, there is another exception to the general rule that the effective date of an award based on a request to reopen is the date VA receives the request to reopen. In this regard, newly discovered service treatment records (STRs) can serve as a



IN THE APPEAL OF  
**LEWIS BROWN**  
Docket No. 190507-8938  
**Advanced on the Docket**

basis for providing an early effective date under 38 U.S.C. § 3.156(c). That is, 38 C.F.R. § 3.156(c)(1) provides that, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of the same section (which defines new and material evidence).

Under 38 C.F.R. § 3.156(c)(1), service department records include (i) service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the Veteran by name; (ii) additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and (iii) declassified records that could not have been obtained because the records were classified when VA decided the claim.

Under 38 C.F.R. § 3.156(c)(2), service department records do not include records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the JSRRC, or from any other official source. *See also Mayhue v. Shinseki*, 24 Vet. App. 273 (2011); *Vigil v. Peake*, 22 Vet. App. 63, 66-67 (2008).

Under 38 C.F.R. § 3.156(c)(3), an award made based "all or in part" on additional service department records is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim. "In this sense, the original claim is not just re-opened, it is reconsidered and serves as the date of the claim and the earliest date for which benefits may be granted." *Vigil*, 22 Vet. App. at 66-67.

Total disability will be considered to exist where there is present any impairment of mind and body that is sufficient to render it impossible for the average person to follow a substantially gainful occupation. 38 C.F.R. § 3.340. Total disability

IN THE APPEAL OF  
**LEWIS BROWN**Docket No. 190507-8938  
**Advanced on the Docket**

ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities, provided that the Veteran meets the schedular requirements.

Specifically, if there is only one such disability, this disability shall be ratable at 60 percent or more; if there are two or more disabilities, there shall be at least one disability that is ratable at 40 percent or more and sufficient additional disability to bring the combined rating to 70 percent or more. 38 C.F.R. §§ 3.340, 3.341, 4.16(a). For the stated purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable; and (2) disabilities resulting from common etiology or a single accident. 38 C.F.R. § 4.16(a).

“Substantially gainful employment” is that employment “which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the Veteran resides.” *Moore v. Derwinski*, 1 Vet. App. 356, 358 (1991). “Marginal employment shall not be considered substantially gainful employment.” 38 C.F.R. § 4.16(a).

In determining whether unemployability exists, consideration may be given to the Veteran’s level of education, special training, and previous work experience, but not to his age or to any impairment caused by nonservice-connected disabilities. 38 C.F.R. §§ 3.341, 4.16, 4.19.

With respect to an earlier effective date, TDIU is a form of increased rating claim, and, therefore, the effective date rules for increased compensation claims apply. *See Norris v. West*, 12 Vet. App. 413, 420 (1999); *Hurd v. West*, 13 Vet. App. 449 (2000). As a claim for TDIU is a claim for an increased rating, the Board will generally review evidence from that date and during the one year “look back period” preceding the submission of the claim. *See* 38 U.S.C. § 5110(b); 38 C.F.R. § 3.400(o)(2).

IN THE APPEAL OF  
**LEWIS BROWN**[REDACTED]  
Docket No. 190507-8938  
**Advanced on the Docket**


The responsibility for making the ultimate TDIU determination is placed on the adjudicator and not a medical examiner. *See Geib v. Shinseki*, 733 F.3d 1350, 1354 (Fed. Cir. 2013). A medical examiner's role is limited to describing the effects of disability upon the person's ordinary activity. *See Floore v. Shinseki*, 26 Vet. App. 376, 381 (2013). The Veteran is competent to testify as to facts he personally observed or described; this includes recalling what he personally felt, saw, smelled, heard, or tasted. *See Layno v. Brown*, 6 Vet. App. 465, 469 (1994).

Here, the Veteran's TDIU claim was appealed pursuant to the issue being raised with the initial rating for the Veteran's service-connected back condition. *See Rice v. Shinseki*, 22 Vet. App. 447, 453-55 (2009). The Veteran has continuously sought entitlement to TDIU since the initial grant of service-connection for the Veteran's back condition, which was pending and awarded service connection effective May 2, 1977. As such, the period on appeal for TDIU dates back to May 2, 1977.

Similarly, radiculopathy was raised by the record in conjunction with the Veteran's back condition since May 2, 1977 and awarded with the Veteran's initial grant of service connection for the Veteran's back condition. The current effective date for the Veteran's separate ratings for his radiculopathy dates back to his later informal claim for his back condition received on September 13, 2011. Therefore, the issue of radiculopathy also dates back to the initial date of claim and grant regarding the back condition of May 2, 1977. That is because VA is to evaluate any associated objective neurologic abnormalities with the Veteran's back condition, which includes radiculopathy, separately, under an appropriate diagnostic code. 38 C.F.R. § 4.71a, Diagnostic Code 5235 to 5243, Note (1). Therefore, as the back condition, pursuant to the September 2011 claim, remained pending back to May 2, 1977, so did the radiculopathy issues, which currently coincide and are awarded with the September 2011 claim.

Now, regarding radiculopathy, as increased rating claims are not currently before the Board, but rather effective date issues, the Veteran still needs to meet the rating criteria for his current radiculopathy ratings back to 1977. The Board notes that the rating criteria for the Veteran's lower extremity radiculopathy has remained the

IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

same for the entire period on appeal. Under Diagnostic Code 8520, the rating used here for the sciatic nerve, mild incomplete paralysis warrants a 10 percent disability rating, moderate incomplete paralysis warrants a 20 percent disability rating, moderately severe incomplete paralysis warrants a 40 percent disability rating, and severe incomplete paralysis with marked muscular atrophy warrants a 60 percent disability rating. An 80 percent disability rating is warranted for complete paralysis, where the foot dangles and drops, there is no active movement possible of the muscles below the knee, and flexion of the knee is weakened or (very rarely) lost. *See* 38 C.F.R. § 4.124a , Diagnostic Code 8520 (1970).

Descriptive words such as “slight,” “moderate” and “severe” as used in the various diagnostic codes are not defined in the VA Schedule for Rating Disabilities. Rather than applying a mechanical formula, the Board must evaluate all of the evidence for “equitable and just decisions.” 38 C.F.R. § 4.6. According to MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 999 (11th Ed. 2007), “slight” means small in amount. “Moderate” means limited in scope or effect. “Marked” means having a distinctive or emphasized character.

The term “incomplete paralysis” indicates a degree of lost or impaired function that is substantially less than that which is described in the criteria for an evaluation for complete paralysis of this nerve, whether the less than total paralysis is due to the varied level of the nerve lesion or to partial nerve regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. 38 C.F.R. § 4.124a.

From the evidence of record, July 1977 treatment records regarding the back indicated radicular pain. A January 1980 vocational rehabilitation examination indicated the Veteran has a back injury, that he was privately employed as an auto painter and body repairman, but that he was unable to work even though he has tried several times since 1972 due to his back problems. February 1980 treatment records evaluated the back and indicated left leg decreased motor function and sensation. November 1980 treatment records indicated back pain radiating to the legs with the left leg getting weak. The April 1985 examination report indicated back pain, weakness in the limbs and joints, and spasms due to sitting or standing. December 2014 correspondence by Dr. E.A. indicated the Veteran is entitled to

IN THE APPEAL OF  
**LEWIS BROWN**Docket No. 190507-8938  
**Advanced on the Docket**

radiculopathy ratings of 10 percent for mild radiculopathy in the right leg and 20 percent for moderate radiculopathy in the left leg, and that the Veteran has been unemployable due to his back condition since 1977. Dr. E.A. provided a detailed history and adequate rationale. The Board finds Dr. E.A.'s opinion probative.

Overall, as discussed above, the period on appeal regarding lower extremity radiculopathy and TDIU date back to the initial date of claim for the Veteran's back condition as these are associated neurological conditions and TDIU was raised by the record with the Veteran's back condition.


Regarding lower extremity radiculopathy, the evidence above demonstrates at least mild symptoms throughout the period on appeal for the right lower extremity radicular symptoms. This is indicated by a medical professional opinion of record. As such, the Board finds an effective date of May 2, 1977 for the separate 10 percent rating for the Veteran's right lower extremity radiculopathy is warranted.

For the left lower extremity radiculopathy, the evidence suggests that the Veteran's left lower extremity was worse than the right during this period, with a medical professional opinion indicating at least moderate symptoms. When contemplating potential flare-ups, as indicated in the November 2015 examination report, it is likely the Veteran had moderately severe symptoms throughout the period on appeal. As such, the Board finds an effective date of May 2, 1977 for the separate 40 percent rating for the Veteran's left lower extremity radiculopathy is warranted.

Lastly, regarding TDIU, the Veteran now has a 70 percent combined rating for the entire period on appeal with his back condition being rated at 40 percent disabling. As such, the Veteran has met the schedular requirements for TDIU for the entire period on appeal.

A VA Form 21-527 Income-Net Worth and Employment Statement form received on July 27, 1977 indicated the Veteran worked doing body shop repairs and listed back trouble and the nature of his illness, that he will apply for social security, and he is currently not making any wage. *See also* February 1978 VA Form 21-527.

IN THE APPEAL OF  
**LEWIS BROWN**

  
Docket No. 190507-8938  
**Advanced on the Docket**

The Veteran has only worked doing auto body shop work. The record does not indicate the Veteran was gainfully employed at any point during the period on appeal. Multiple vocational and medical opinions indicated the Veteran's back condition prevented him from being employable. Working in an auto body shop requires prolonged physical activity with bending and lifting heavy items. Therefore, the Veteran would not be able to work in such a position due to his back condition. The Veteran does not have training, education, or experience in another field as computer and administrative clerical work that would allow him to sit and not do manual physical labor. Therefore, he would not be able to find gainful employment in such a non-physical labor position. The Veteran indicated he last worked full time on May 2, 1977, the day he filed his claim for the back condition. Therefore, the Board finds that the Veteran's back condition alone warrants a finding of TDIU from May 3, 1977, the day after his last full-time employment.

### **SMC**

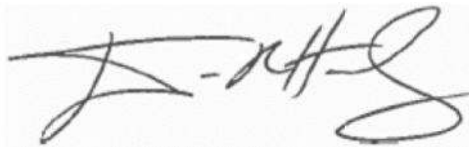
SMC is payable at the housebound rate where the Veteran has a single service-connected disability rated as 100 percent disabling and, in addition: (1) has a service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability, and involving different anatomical segments or bodily systems, or (2) is permanently housebound by reason of service-connected disability or disabilities. 38 U.S.C. § 1114(s); 38 C.F.R. § 3.350(i).

(Continued on the next page)

IN THE APPEAL OF  
**LEWIS BROWN**

**Docket No. 190507-8938**  
**Advanced on the Docket**

Pursuant to this decision, as noted above, the Board grants entitlement to TDIU based on the Veteran's back condition alone. This satisfies a single disability rated as total as required for SMC purposes. The Veteran's other service-connected disabilities combine to at least 60 percent disabling for the entire period on appeal from September 13, 2011. As such, the Veteran is entitled to SMC at the housebound rate from September 13, 2011. *See* 38 U.S.C. § 1114(s).



---

**DONNIE R. HACHEY**  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

A. Zheng, Associate Counsel

*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.*





VA DATE STAMP  
DO NOT WRITE IN THIS SPACE

**INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.**

**PART I - CLAIMANT'S IDENTIFYING 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 the form.

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

[illegible]

2. VETERAN'S SOCIAL SECURITY NUMBER

3. VA FILE NUMBER (If applicable)

4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)

Month                  Day                  Year

5. VETERAN'S SERVICE NUMBER (If applicable)

6. INSURANCE POLICY NUMBER (If applicable)

7. CLAIMANT'S NAME (First, Middle Initial, Last) (If **other** than veteran)

8. CLAIMANT TYPE:

☒ VETERAN    ☐ VETERAN'S SPOUSE    ☐ VETERAN'S CHILD    ☐ VETERAN'S PARENT    ☐ OTHER (Specify)

9. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country)

No. & Street										
--------------	--	--	--	--	--	--	--	--	--	--

[illegible]

State/Province  Country  ZIP Code/Postal Code  -

10. TELEPHONE NUMBER (Include Area Code)

		-			-					Enter International Phone Number ( <i>If applicable</i> )

11. E-MAIL ADDRESS (Optional)

k	e	n	n	y	@	c	a	r	p	e	n	t	e	r	c	h	a	r	t	e	r	e	d	.	c	o	m		
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	--	--

12. BENEFIT TYPE: PLEASE CHECK ONLY ONE (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)

☒ COMPENSATION    ☐ PENSION/DIC/SURVIVORS BENEFITS    ☐ FIDUCIARY    ☐ LIFE INSURANCE    ☐ VETERANS HEALTH ADMINISTRATION  
☐ VETERAN READINESS AND EMPLOYMENT    ☐ LOAN GUARANTY    ☐ EDUCATION    ☐ NATIONAL CEMETERY ADMINISTRATION

**PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM**

13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR **SUPPLEMENTAL CLAIM**. *Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. Include your name and file number on each additional sheet.*

If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in 13A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

13A. SPECIFIC ISSUE(S)

13B. DATE OF VA DECISION NOTICE  
(MM/DD/YYYY)

Entitlement to additional ratings, based on a need for regular aid and attendance, for lumbar spine and related neurological

10/25/2023

disabilities. Both the Board and the AOJ, when it provided 38 USC 5104 notice of the Board's decision, failed to develop SMC ratings.

10/26/2023

Under 38 CFR 3.155(d) (2) Mr. Brown seeks SMC ratings from as early as May 1977 as an ancillary benefit that has "arisen as a result of" the Board's decision recognizing the 1977 claim for benefits as being continuously pursued, and that decision's recognition that as early as May 1977 Mr. Brown was at least totally disabled as a result of his service injuries.

To be clear, we are seeking readjudication of the issues decided by Secretary in the Board's October 25, 2023 decision and the AOJ's

October 26, 2023 decision that did not adjudicate SMC(1)-(r) ratings. NRE is a new theory of entitlement.



**PART III - NEW AND RELEVANT EVIDENCE**

14. To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your supplemental claim. If you have records in your possession, please attach the records to this form. Please list your name and file number on each page. If you would like VA to obtain **non-federal records**, please review your decision notification letter for the appropriate authorization forms to complete and submit those forms to VA with this request form.

15. DO YOU WANT VA TO GET FEDERAL RECORDS?

LIST BELOW ANY **VA MEDICAL CENTER(S) (VAMC), VA TREATMENT FACILITIES, OR FEDERAL DEPARTMENTS OR AGENCIES** THAT HAVE NEW AND RELEVANT EVIDENCE THAT YOU ARE AUTHORIZING VA TO OBTAIN IN SUPPORT OF YOUR SUPPLEMENTAL CLAIM: *You may attach additional sheets of paper, if necessary. Please list your name and file number on each additional sheet.*

15A. NAME AND LOCATION	15B. DATE(S) OF RECORDS (MM/DD/YYYY)

**PART IV - 5103 NOTICE ACKNOWLEDGMENT**

*(This section applies to Compensation, Pension, DIC, and Accrued benefit claims only)*

**NOTE:** If we issued your decision within the past year, you can skip this section.

16. Find out what evidence you'll need to provide by visiting one these pages on VA.gov:

- Evidence to support a claim for Veterans Disability Compensation and related Compensation benefits: <https://www.va.gov/disability/how-to-file-claim/evidence-needed/>
- Evidence to support a claim for VA pension, DIC, or accrued benefits: <https://www.va.gov/resources/evidence-to-support-va-pension-dic-or-accrued-benefits-claims/>

**CERTIFY THAT** I have reviewed the notice of evidence that relates to my claim.

☐ YES ☐ NO (If you check "NO," VA will send the 5103 notice to you via mail.)

**PART V - CERTIFICATION AND SIGNATURE**

**NOTE:** This section is **MANDATORY** and completion is required to process your claim, any omission may delay claim processing time.

**VA AUTHORIZED REPRESENTATIVES ONLY:** I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

**NOTE:** A POA's signature **will not** be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

17A. SIGNATURE OF VETERAN OR CLAIMANT OR VA AUTHORIZED REPRESENTATIVE (Sign in ink)

*Kenneth H. Dojaquez*

17B. DATE SIGNED (MM/DD/YYYY)

10/27/2023

17C. NAME OF VA AUTHORIZED REPRESENTATIVE (Please Print)

Kenneth H. Dojaquez

**ALTERNATE SIGNER CERTIFICATION AND SIGNATURE**

18. I **CERTIFY THAT** by signing on behalf of the claimant, that I am a court-appointed representative; **OR**, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; **OR**, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; **OR**, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; **AND**, that the claimant is under the age of 18; **OR**, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; **OR**, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

18A. SIGNATURE OF ALTERNATE SIGNER (Sign in ink)

18B. DATE SIGNED (MM/DD/YYYY)

18C. NAME OF ALTERNATE SIGNER (Please Print)

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