

~ Department of Veterans Affairs **STATEMENT IN SUPPORT OF CLAIM**

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21122, Compensation, Pension, Education and Rehabilitation Records -VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute or law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.c. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at WWW.whitehouse.gov/omb/nul/OMBIN/VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

FIRST NAME -MIDDLE NAME -LAST NAME OF VETERAN (*Type or print*)

SOCIAL SECURITY NO.

VA FILE NO.

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

Ref. (1): 362/APPEALS/JAM, Dept. of Veterans Affairs letter, Houston RO, April 14, 2011.

Ref. (2): 362/EL/DL, Dept. of Veterans Affairs letter, Houston RO, March 09, 2011.

In regards to my denial for service connection of Hepatitis C, I have enclosed two letters from two different licensed medical practitioners where I sought treatment for the aforementioned infection. In addition, I have enclosed numerous medical studies and government manual to further corroborate the medical practitioners letters, substantiating my claim for compensable service connected Hepatitis C.

In the March 09, 2011 Rating Decision Letter, 362/EL/DL, the opening paragraph under "Reasons For Decision" draws from 38 CFR, Part 3, Subpart A, Ratings and Evaluations; Basic Entitlement Considerations, section 3.301, Line of Duty and Misconduct, para. (a) and (d) only. The opening paragraph under "Reasons For Decision" fails to cite para. (1) of section

3.301 which states, "The residuals of venereal disease are not to be considered the result of willful misconduct". It would seem this paragraph (3.301 (1) Venereal Disease) negates everything stated within the two paragraphs under "Reasons For Decisions". To further confuse matters, a portion of 3.301, para. (d) was cited: "Further, an injury or disease incurred during active military, naval, or air service is not considered to have been incurred in line of duty if such injury or disease was the result of the abuse of alcohol or drugs". 3.301, para. (d) is invalid and has no bearing on my claim; alcohol abuse and/or drugs was never a risk factor group of consideration. There is no further explanation to substantiate or provide validity for this reason. In the second paragraph of the March 09, 2011 Rating Decision Letter under "Reasons For Decision" it states, "Your records were negative for any complaints or treatment of a hepatitis C condition". Hepatitis C was not identified until 1989, long after my discharge from military service and a reliable test that recognized infection was not available until 1992 (see enclosure "The Silent Epidemic: Hepatitis C", The C. Everett Koop Institute). The infection can be asymptomatic for decades and is rarely diagnosed as symptoms, if there are any, are mild and often disappear within a few days. The most common symptom which can take years to show after initial infection is fatigue. Even today, Hepatitis C is often overlooked until there is severe liver disease (See enclosures "Disease Progression" & "The Silent Epidemic: Hepatitis C", The C. Everett Koop Institute)

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief

SIGNATURE

DATE SIGNED

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

TELEPHONE NUMBERS (Include Area Code) DAYTIME EVENING

VA FORM EXISTING SINCE 1946 OF VA FORM 21-4138, CONTINUE ON REVERSE

21-4138

AUG 2004 JUN 2000, WILL BE USED

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

In the second paragraph of the March 09, 2011 Rating Decision Letter under "Reasons For Decision" it is stated the VA examiner "opines that hepatitis C is due to or a result of high risk sexual activity while in the Army". Firstly, the aforementioned 38 CFR, section 3.301, para. (1) entitled Venereal Diseases, serves to nullify this as reason for denial. Secondly, numerous medical studies conclude there is lack of evidence of sexual transmission of the virus; it is not efficiently transmitted via sexual activity (enclosed studies "A National Survey of Genitourinary Medicine Clinic Attenders Provides Little Evidence of Sexual Transmission of Hepatitis C Virus Infection", "Lack of Evidence for Sexual Transmission of Hepatitis C Virus in Patients attending STD Clinics in Pune, India", "Hepatitis C -Prevalence" World Health Organization, "Epidemiology of Hepatitis C Virus

(HCV) Infection"). Apparently, the Dept. of Veterans Affairs is in agreement that the risk of sexually transmitted HCV is extremely low as it is not listed on the "Ways You CAN Get Hepatitis C" wallet card found on the VA website (enclosure "Ways You CAN Get Hepatitis C" wallet card) . To further discount and refute the VA examiner's opinion, I have diagnosed HCV genotype 1a which predominates in North America and Northern Europe (enclosure "Epidemiology of Hepatitis C Virus (HCV) Infection"). Genotype 1a likely originated in the U.s. around 1930 and became more prevalent in the 1960's-70's with more occurrence of illegal drug use

(enclosure "abstract 177. Timing The Ancestry of Hepatitis C Virus Genotype 1A Strains In The United States"). In Korea, where I was treated for STD's while in the Army, the prevailing HCV genotypes are 1b and 2a. A study by Han CJ, et al., at the Department of Internal Medicine, Seoul National University College of medicine, Korea, shows 96% of patients in the study were determined to be genotype 1b or 2a. Another study by Lee OS, Sung YC, Whang YS at the Department of Clinical Pathology, Korea Cancer Center Hospital, Seoul, Korea concluded that 95% of study patients were determined to be genotype 1b or 2a while only 2.1% were 1a. Had transmission of HCV occurred as the VA examiner opined, these studies show, overwhelmingly, that I would have contracted either genotype 1b or 2a -a 95% chance of 1b or 2a compared to 2% for genotype 1a for which I have been diagnosed. The evidence indicates I did not contract HCV genotype 1a from sexual activity while stationed in Korea (enclosures "Hepatitis C virus genotypes in Korea and their relationship to clinical outcome in type C chronic liver disease" and "Distribution of HCV genotypes among blood donors, patients with chronic liver disease, hepatocellular carcinoma, and patients on maintenance hemodialysis in Korea") . High workload, multi-use nozzle jet injectors capable of administering hundreds of vaccinations per hour to consecutive patients using the same, unsterile nozzle were used for decades in the Army and this IS a risk factor category to which I belong. The enclosed "Colorado Immunization Manual" issued by the state of Colorado, discusses the use of these unsafe jet injectors in military use and states they are no longer to be used due to safety concerns. Blood-borne pathogen contamination from jet injectors with unsterile nozzles is not simply theoretical. The enclosed investigation from Centers for Disease Control, "An outbreak of hepatitis B associated with jet injections in a weight reduction clinic" shows 24% of people who received injection via jet injector were infected with Hepatitis B, a common blood-borne pathogen. It is noted in the investigation that ceasing use of jet injectors was responsible for the stoppage of the virus. Two studies done to assess possible contamination from jet injectors provided more evidence that blood-borne pathogens can undoubtedly lead to viral infection. One study was terminated early because the jet injector "failed to prevent contamination in the first batch" (enclosure "Preventing contamination between injections with multiple-use nozzle needle-free injectors: a safety trial"). Another study tested four different types of jet injectors for blood-borne infection potential and found that, "All injectors tested transmitted significant (over 10 pI) volumes of blood; the volumes and frequency of contamination varied with injector. The source of the contamination was consistent with contamination by efflux of injected fluid and blood from the pressurised pocket in tissue that is formed during injection" (enclosure "A model to assess the infection potential of jet injectors used in mass immunisation").

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

In summary:

-38 CFR, Part 3, Subpart A, Ratings and Evaluations; Basic Entitlement Considerations, section 3.301, Line of Duty and Misconduct, para. (1) negates and contradicts both paragraphs under "Reasons For Decision" in VA letter 362/EL/DL dated March 09, 2011.

-The opinion of sexual transmission by the VA examiner is ill-based as the enclosed studies show this method of transmission is inefficient. In addition, my genotype of 1a, prevalent in North America, and the enclosed studies showing 95-96% HCV genotype 1b or 2a prevalence in Korea, voids the opinion of transmission via high risk sexual activity documented in service treatment records.

-The immunizations/vaccinations I received in the Army via multi-use nozzle jet injectors capable of hundreds of injections per hour and consecutively vaccinating using the same nozzle is a documented risk factor; the studies, investigation and state manual enclosed provide sound and credible evidence of this fact.

The mitigating reasons for denial and the fact that the aforementioned 38 CFR, section 3.301, para. (1) was overlooked by VA, makes me feel like this claim is not being taken seriously. The credible documentation, studies, investigations and facts I have provided, conclude that the jet injector equipment used on me for inoculation/vaccination during my military service has a higher probability of causing my HCV infection than did transmission through sex. I more than likely contracted Hepatitis C from jet injector unsterile nozzles as compared to sex and feel a compensable service connected rating for Hepatitis C is warranted.