

Dear Secretary McDonald,

I would feel uncomfortable calling you Bob as I was a military brat and respect rank. Thank you for looking into this for me. You may view this document and others mentioned by accessing the Record Before the Agency (RBA) in my CAVC Claim 2012-1980.

I filed in 1994 for "Porphyria Cutanea Tarda as a residual of Hepatitis B or due to Agent Orange" See RBA @ 3400 initial filing dated 30 March 1994. I thought I had finally finished these adjudications in December of 2013-just shy of twenty years. Unfortunately, they forgot one of the two claims and steadfastly deny I am entitled to the 1994 date filed. The OGC remanded this back to the Veterans Law Judge to incorporate the agreement arrived at. VA admitted in the subsequent BVA decision to implement the effective date of my original claim.

See Citation Nr 1338318 Docket # 11-02 889A dated 12/06/2013.

<http://www.index.va.gov/search/va/view.jsp?FV=http://www.va.gov/vetapp13/Files4/1338318.txt>

Veterans Law Judge Mark Hinden is bound by the OGC's JMR finding but submits I did not respond to the SOC dated March 29, 2010 within the allotted sixty days and therefore would not grant me equitable tolling of my Porphyria Cutanea Tarda filing. I was an inpatient at the Seattle VAMC for a year and four operations to save my life including an ileostomy bag. I was discharged to home on April 22, 2010 (twenty five days after the issuance of the SOC) and was febrile for months afterwards. My discharge weight was 118 lbs. Judge Hinden ignored this plea for equitable tolling and therefore did not allow this claim to go forward. This was the onset of the error.

However, sir, the Court's Joint Motion for Remand has to cover both diseases I filed for. The December 2013 BVA decision was for an earlier effective date of March 31, 1994. Nevertheless, the three documents I submitted with my

December 7th, 1994 Notice of Disagreement concerned two distinct, separate facts about the two diseases I filed for. The SOC that was described as being unclear in the JMR finding based on 38 CFR 19.29 encompassed both claims equally as the evidence referred to in that SOC rebutted the VA's findings in both claims. This was finally acknowledged in 2007 and I was granted presumption of exposure at that time (see VA rating dated July 14th, 2007 RBA @ 3311-3314)

Claim #1 for Porphyria Cutanea Tarda--Please see the RBA @ 3388. This is a copy of my orders transferring me on Temporary Duty to the 7th Air Force Tactical Air Combat Control section Tan Son Nhut Air Base RVN dated 14 July 1970. As such, it rebutted the VA's contention that I was not "boots on the ground" in Vietnam. This was a prerequisite for the presumption of exposure to Agent Orange and hence the Porphyria Cutanea Tarda which I filed for. See also RBA@ 3394 denial dated 7 November 1994. As a service department record, it was applicable within the regulation 38 CFR 3.156 (b) or (c). See also RBA @ 3386 (TWIX teletype dated July 9th 1970 confirming my assignment to 7th TACC as a French interpreter). Combined together, these are both new and material to my claim for Porphyria based solely on presumptive exposure. As credible evidence, it elicited the duty to assist me.

Claim #2 for Hepatitis --Please see RBA @3390 showing diagnosis of Hepatitis (NOS) on January 11th, 1971 at McCormick Hospital, a civilian hospital contracted by Air America in NW Thailand. This document proves conclusively that I had hepatitis in the service and rebuts the denial dated November 7th 1994 (RBA @ 3394) stating that my service records are silent for hepatitis as well as Porphyria. Please see also RBA @873-880 dated 21 September 1993 showing Agent Orange Registry Exam lab results and elevated liver functions at RBA @ 878. Although marked "duplicate" you will find this document nowhere else in the RBA. It has been constructively in VA's possession since its creation but never was associated with the c-file until I did so in my Form 9 filing.

I was granted 100% for Hepatitis on June 2nd, 2008 but with an effective date of February 23, 2007 (RBA 3011-3026). On October 3, 2008 I was granted service

connection for Porphyria Cutanea Tarda RBA @ 3648-3654. The basis of the claim was that Porphyria Cutanea Tarda is a secondary to the Hepatitis C. As such, it is inextricably intertwined as it cannot stand on its own. This what I filed for on March 30th, 1994 verbatim. The JMR agreement makes Judge Hinden's BVA decision void ab initio as the AMC rating states:

"This decision represents a Board of Appeals (BVA) grant that is considered to be a full and final determination of this issue on appeal."

The error I wish to attempt to clear up is elementary. My compensation and pension examination dated July 18th, 2008 for Porphyria Cutanea Tarda RBA @1073-1078. On page 1076, Dr. James C. Morgan of QTC Inc. opined as to the "other findings" of my Porphyria:

"the skin lesions are currently in remission as he has avoided sunlight (a precipitating factor) and is being treated with phlebotomies to reduce the iron content of his blood."

Please also see RBA @1077 under "REMARKS":

"The effect on the condition of the claimant's usual occupation is totally disabled. The effect on the condition of the claimant's daily activity is no heavy housework and yard work and must avoid the sun." (emphasis mine)

VA raters proceeded to rate me at 10% for my "total disability" of Porphyria, Mr. McDonald. In essence, I am 100% disabled for two separate diseases (Hepatitis and Porphyria) and am housebound in fact. VA refuses to acknowledge this and focuses instead on the percentage of "scarring". I have an Independent Medical Opinion to refute that now and would gladly submit it but it doesn't change the assessment Dr, Morgan made in 2008 nor does it incorporate what

my dermatologist, Dr. Findley recorded as early as 1992. My skin is damaged over 15% of the visible surface as defined in DC 7800 and the Rule of Nines.

I applied for SMC-S (substantially housebound) by virtue of my disabilities in June 2009 when I first managed to return home from the VAMC. Then I became very ill and spent the rest of the year in the Seattle VAMC fighting a series of abdominal infections. The VA denied my request for SMC "S" or Aid and Attendance on June 16th, 2010. See RBA @ 499-501.

I filed a Notice of Disagreement with the Porphyria decision on October 8th, 2008 based on the outlandish low rating alone- RBA @ 937-941. VA raters upped it to 40% for the phlebotomies but then reduced me from 10% to 0% for the Porphyria itself. See RBA @ 563. 0% for a total disability, sir. Phlebotomies are not contemplated for Porphyria Cutanea Tarda rated under DC 7815. Thus it cannot be pyramiding. A disease that renders its subject totally disabled and unable to access the outdoors for a good portion of the year pretty much describes the term housebound.

For the last two years all I desired was SMC-S and began that process in 2008 when I filed for Cryoglobulinemia and Fibromyalgia to up my percentage to 100% plus an additional 60%. I was talked out of it at the time by rater who did the grant for the hepatitis at 100%. He said I could not go any higher than 100% so I was wasting VA's scarce resources. I promptly withdrew the claims based on this. I have now fought for two years to reopen this to obtain ratings for the cryoglobulinemia and the Fibromyalgia and SMC-S. The nexus letters attributing the disease to my HCV were submitted in 2008 See RBA @ 991 (cryoglobulinemia) and RBA @ 982 (fibromyalgia)

VA refuses to act on my claims. In the alternative, I filed a motion for revision of the 10% rating reduction in 2008 as being Clear and Unmistakable Error. VA denied that on September 13th, 2013 but they refuse to adjudicate my claims and the entitlement to SMC S and/or Aid and Attendance. Mr. McDonald, all I want is to be left alone to pass on soon. I have Stage 4 cirrhosis and the onset of

ascites. Portal gastropathy is on the horizon. When that happens I will begin the inexorable slide into esophageal hemorrhaging, dementia and death. I have autoimmune issues (Crohn's disease) provoked no doubt by my two year exposure to herbicides in Laos and Vietnam. This makes me ineligible for a liver transplant and is essentially a death sentence.

I have no idea what is afoot. VA's IRIS system has now emitted the exact same message three times in the last year and I cut and paste the most recent here:

Dear Mr. Graham:

This is in response to your recent inquiry 140910-001105 to the Department of Veterans Affairs (VA) dated September 10, 2014.

Thank you for your service to our nation.

We apologize for the delay in responding to your inquiry. We are currently experiencing a high volume of inquiries, and are working as quickly as possible to respond to each in a timely manner.

We have taken the liberty of updating our database to reflect the phone number you have listed within your inquiry (253) XXX-XXXX, as your VA daytime phone number of record. Please let us know if this action was completed in error.

Your claim is currently in the development phase of processing. This phase is where we gather all the evidence we need in order to make a decision on your claim. We will review your claim and inform you of any additional information that is needed.

Currently claims at the Seattle Regional Office, are taking about 15 months to complete. Please understand that these timeframes are only averages, and that your claim may take longer based on the specifics of your claim and VA's pending workload.

Due to the present backlog in your regional office, processing of some claims has been taking longer than anticipated. We apologize for any inconvenience the delay in processing your claim may cause, and we appreciate your patience.

We have forwarded the information you provided in your inquiry to the VA Regional Office in Seattle, WA for processing. Please submit all evidence in support of your claim to the address listed below. Be sure to include your VA Claim Number on every piece of information that is submitted.

Hiring an attorney, writing your congressman, or even obtaining a Veteran Service Organization, is always your option, and our recommendation, should you need assistance when following the claims and/or appeals process.

Thank you for contacting us. If you have questions or need additional help with the information in our reply, please respond to this message or see our other contact information below.

Sincerely yours,

C. Boyd

National IRIS Response Center Manager

ggj

When I called the 800-827-1000 number recently, the VA technician recited the exact same thing I was reading on eBenefits. Depending on which screen you believe there, my claim is in the early development stage called Administrative Review or Box #2 called "Under Review". I find this in View my Status under the Compensation and Claims Status. It also refers to the CUE motion for reconsideration on the Porphyria as "scarring (increase)"

However, if I access my appeals actions, it clearly shows the exact same identical information but an adjudication date of 9/13/2013 showing all these same issues adjudicated and on appeal. This is where I have been for a year since 2013. I take the ebenefits site with a grain of salt as I know it is still in the formative stages. However, I do not consider a two year delay for a simple repair order to right a wrong as easy as this being the norm. If that is the case, we're in for some rough sledding to get to a 125-day 98% accuracy rate in 2015 as USB Hickey has touted to Congress.

Soon I will be unable to accomplish this on my own. My wife is ill- equipped to begin learning VA law at this juncture. The relief I beg for is minor, requires little or no investigation and does not deserve to clog the CAVC or your desk as a Writ of Mandamus to obtain compliance. I debated calling you on this matter for over a week but you have impressed me with your take charge approach and being accessible. Besides, I was hoping you could save me fifty dollars and five more years.

Mr. McDonald, let me be frank with you. I am probably a thorn in VA's side with my website Asknod.org and I do not desire to make your life more complicated with my problem. We are all stakeholders in this together and should mutually compliment each other to make things run better. That is all I hope for. I suspect the hierarchy in the Independent Living Program over in VACO's VR&E (Cheryl Church?) has felt my ire before but I merely mean to do the best I can for Veterans-especially the severely disabled, the poor and homeless. VA is improving and under your tutelage I see a new day unlike any before. I have been in this system fighting since 1989. VA's inaction is robbing me of time I

should be enjoying with my two young grandsons. In sum, sir- VA has had twenty years to do this right and has wasted the last eight years of mine in a futile quest to finish it and put paid to it. Promises were made and gifts were exchanged for my JMR agreement. I do not recall parking my Porphyria claim at the door before I entered the CAVC. My shelf life sticker is set to expire. The check engine light is flashing red and VA can't (or won't) entertain my entreaties.

Thank you for allowing me access to you for this. And thank you for being unselfish and serving America, too. Many hear the call. Few sign on the line. Some pay dearly.

Sincerely,

Gordon Alexander Graham

USAF, Air America

1969-1973

Laos, Thailand and Vietnam (May 1970- May 1972)