



Department of Veterans Affairs

NOTICE OF DISAGREEMENT

A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE AGENCY OF ORIGINAL JURISDICTION. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD.) WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7105)

TO FILE A VALID NOD, THERE IS A TIME LIMIT OF ONE YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPORTIONMENT, THIS TIME LIMIT IS 60 DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.

**(DO NOT WRITE IN THIS SPACE)
(VA DATE STAMP)**

PART I - PERSONAL INFORMATION

1A. VETERAN'S FIRST NAME Gordon	1B. MIDDLE NAME Alexander	1C. LAST NAME Graham
2. VA FILE NUMBER C/CSS -		3. VETERAN'S SOCIAL SECURITY NUMBER

CLAIMANT'S PERSONAL INFORMATION

4A. CLAIMANT'S FIRST NAME Gordon	4B. MIDDLE NAME Alexander	4C. LAST NAME Graham		
5. STREET ADDRESS	6. APT. NO.	7. CITY Gig Harbor	8. STATE WA	9. ZIP CODE
10. DAYTIME TELEPHONE NUMBER	11. EVENING TELEPHONE NUMBER	12. EMAIL ADDRESS		

PART II - TELEPHONE CONTACT

13. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR EMAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

YES NO (If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

8:00 a.m. - 10:00 a.m. 10:00 a.m. - 12:30 p.m. 12:30 p.m. - 2:00 p.m. 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time: _____

PART III - SPECIFIC ISSUES OF DISAGREEMENT

14. NOTIFICATION/DECISION LETTER DATE

12/03/2013

15. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (If known)
Pg.2 Reasons for Decision states 1994 decision did not become final due to 38 CFR 19.29. This includes Porphyria Cutanea Tarda, 2ndy to HCV	<input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input checked="" type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	Effective date of Porphyria, secondary to HCV ⁺ is 3/31/1994 per 19.29 finality of claim
Porphyria is rated as totally disabling akin to 38 CFR 4.115(a) dialysis. Rate at 100%. Ongoing therapy since 11/1992 RBA@2940-47	<input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input checked="" type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	C&P exam dated 7/18/2008 found totally disabled.No heavy work, must avoid sun See RBA @1076-1077
SMC S w/effective date of 3/31/1994 for Housebound	<input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input checked="" type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	Authority is 38 CFR 3.350 (h(i) (1))

PART III - SPECIFIC ISSUES OF DISAGREEMENT (Continued)

A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (If known)
Please also consider this a thirty day letter (notice) to comply with the terms of BVA decision 11-02 889A dated November 13th, 2013	<input type="checkbox"/> Service Connection <input checked="" type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	

16A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

- 1) The JMR dated April 23, 2013 declaring the ambiguity of the Statement of the Case dated January 5, 1995 abated the finality of the 1994 claim based in 38 CFR 19.29. That included all of the three claims on appeal-to wit: Residuals of Hepatitis, Porphyria Cutanea Tarda, secondary to Hepatitis and/or herbicide exposure and request for increase of Tinnitus to a compensable rating. See RBA @3385-3391.
- 2) Tinnitus was granted with an effective date of March 31, 1994. See RBA @3305-3314.
- 3) Hepatitis C was granted with an effective date of March 31, 1994. RBA @ 3019-21
- 4) Porphyria Cutanea Tarda, secondary to now service connected Hepatitis C has not been rated contemporaneously pursuant to 38 CFR 19.29, the JMR or the tenets of Harris v. Derwinski (1991) (Two or more issues are inextricably intertwined if one claim could have an impact on the other). As the Porphyria Cutanea Tarda was service connected on October 1, 2008 as secondary to service connected Hepatitis C, it is wholly dependent on the Hepatitis C rating for its authority. See 38 CFR 3.310 (When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.) See also RBA@ 1101-1103.
- 5) The condition of Porphyria Cutanea Tarda was diagnosed by the C&P doctor on July 18th, 2008 as "totally disabled" and the effects on daily activity were "no heavy house or yard work. Must avoid sun." This comprehends the effects of therapeutic phlebotomies akin to chemotherapy (100%) or dialysis (100%). RBA @ 1076-1077). The Presumption of Regularity attaches to the competence of VA raters. See Cox v. Nicholson, 20 Vet.App. 563 (2007), (the Board was within its rights to presume the competence of the VA medical expert.) See also Miley v. Principi, 366 F.3d 1343, 1347 (Fed.Cir. 2004). ("allows courts to presume that what appears regular is regular, the burden shifting to the attacker to show the contrary." Id. (quoting Butler v. Principi, 244 F.3d 1337, 1340 (Fed.Cir.2001). C&P exam diagnosing total disability performed by Dr. Morgan therefore is presumed to be correct.
- 6) Special Monthly Compensation is for application under 38 CFR 3.350(h) (i) (1) based on an additional 100% disability (60% or more) in addition to a schedular rating of 100%. The same conditions of phlebotomy arose on November 20, 1992 and continue to the present (chronic). See RBA@ 2940-47.
- 7) Please also consider this a 30-day notice to comply with BVA decision 11-02 889A.

16B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

YES NO (If so, how many?)

PART IV - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

17A. SIGNATURE

17B. DATE SIGNED

10/31/2014

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.