ISSUE:

Service connection for post traumatic stress disorder claimed as due to personal trauma.

EVIDENCE:

- Electronic review October 6, 2017 medical treatment records Puget Sound VA Medical Center from March 6, 2015 to October 5, 2017
- Electronic review October 6, 2017 medical treatment records Palo Alto VA Medical Center from September 23, 2013 to February 20, 2016
- Correspondence to Veteran dated April 13, 2017 and July 5, 2017
- Report of General Information dated May 15, 2017
- Statement in Support of Claim for Service Connection for PTSD received May 18, 2017
- Statement in Support of Claim received May 18, 2017
- VCAA Acknowledgement received July 7, 2017
- Compensation examination for PTSD dated August 24, 2017
- VA Rating Decision dated November 7, 2014
- Notification letter dated November 10, 2014
- Intent to file a claim received October 11, 2016
- Claim for Compensation received March 27, 2017
- Notice of Disagreement received on 3-8-18.
- Report of psychological assessment dated 2-26-18 from Brett Valette.
- Treatment records, VAMC Puget Sound, from 10-5-17 to 10-3-19.

ADJUDICATIVE ACTIONS:

03-27-2017	Claim received.
10-06-2017	Claim considered based on all the evidence of record.
10-11-2017	Claimant notified of decision.
03-08-2018	Notice of Disagreement received.
03-08-2018	De Novo Review election received from appellant.
10-09-2019	De Novo Review performed based on all the evidence of record.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

§3.102 (New) Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

§3.103 Procedural due process and other rights.

(a) *Statement of policy.* Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) *The right to notice—*

(1) *General.* Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice will clearly set forth the elements described under paragraph (f) of this section, the right to a hearing on any issue involved in the claim as provided in paragraph (d) of this section, the right of representation, and the right, as well as the necessary procedures and time limits to initiate a higher-level review, supplemental claim, or appeal to the Board of Veterans' Appeals.

(2) *Advance notice and opportunity for hearing.* Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) *Exceptions.* In lieu of advance notice and opportunity for a hearing, VA will send a written notice to the beneficiary or his or her fiduciary at the same time it takes an adverse action under the following circumstances:
(i) An adverse action based solely on factual and unambiguous information or statements as to income, net worth, or dependency or marital status that the beneficiary or his or her fiduciary provided to VA in writing or orally (under the procedures set forth in §3.217(b)), with knowledge or notice that such information would be used to calculate benefit amounts.
(ii) An adverse action based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report.
(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.
(iv) An adverse action based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see §3.106 on renouncement).
(v) An adverse action based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see §3.654 regarding active service pay).
(vi) An adverse action based upon a garnishment order issued under 42 U.S.C. 659(a).
(Authority: 38 U.S.C. 501(a))
(4) *Restoration of benefits.* VA will restore retroactively benefits that were reduced, terminated, or otherwise adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.
(c) *Submission of evidence*—(1) *General rule.* VA will include in the record, any evidence whether documentary, testimonial, or in other form, submitted by the claimant in support of a pending claim and any issue, contention, or argument a claimant may offer with respect to a claim, except as prescribed in paragraph (c)(2) of this section and §3.2601(f).
(2) *Treatment of evidence received after notice of a decision.* The evidentiary record for a claim before the agency of original jurisdiction closes when VA issues notice of a decision on the claim. The agency of original jurisdiction will not consider, or take any other action on evidence that is submitted by a claimant, associated with the claims file, or constructively received by VA as described in paragraph (c)(2)(iii) of this section, after notice of decision on a claim, and such evidence will not be considered part of the record at the time of any decision by the agency of original jurisdiction, except as described in §3.156(c) and under the following circumstances:
(i) *Receipt of a complete claim.* The agency of original jurisdiction subsequently receives a complete application for a supplemental claim or initial claim; or
(ii) *Board and higher-level review returns.* A claim is pending readjudication after identification of a duty to assist error (which includes an error resulting from constructive receipt of evidence prior to the notice of decision), during a higher-level review or appeal to the Board of Veterans' Appeals. Those events reopen the record and any evidence previously submitted to the agency of

original jurisdiction or associated with the claims file while the record was closed will become part of the evidentiary record to be considered upon readjudication.
(iii) *Constructive receipt of VA treatment records.* Records within the actual custody of the Veterans Health Administration are deemed constructively received by the Veterans Benefits Administration at the time when the Veterans Benefits Administration had knowledge of the existence of said records through information furnished by the claimant sufficient to locate those records (see 38 U.S.C. 5103A(c)).
(d) *The right to a hearing.* (1) Upon request, a claimant is entitled to a hearing on any issue involved in a claim within the purview of part 3 of this chapter before VA issues notice of a decision on an initial or supplemental claim. A hearing is not available in connection with a request for higher-level review under §3.2601. VA will provide the place of hearing in the VA field office having original jurisdiction over the claim, or at the VA office nearest the claimant's home having adjudicative functions, or videoconference capabilities, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Upon request, a claimant is entitled to a hearing in connection with proposed adverse actions before one or more VA employees having original determinative authority who did not participate in the proposed action. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.
(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers relevant and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses must be present. The agency of original jurisdiction will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony.
(e) *The right to representation.* Subject to the provisions of §§14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.
(f) *Notification of decisions.* The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting of relief. Written notification must include in the notice letter or enclosures or a combination thereof, all of the following elements:
(1) Identification of the issues adjudicated;
(2) A summary of the evidence considered;
(3) A summary of the laws and regulations applicable to the claim;
(4) A listing of any findings made by the adjudicator that are favorable to the claimant under §3.104(c);
(5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;

(6) If applicable, identification of the criteria required to grant service connection or the next higher-level of compensation;
(7) An explanation of how to obtain or access evidence used in making the decision; and
(8) A summary of the applicable review options under §3.2500 available for the claimant to seek further review of the decision.
(Authority:38 U.S.C. 501, 1115, 1506, 5104)
[55 FR 13527, Apr. 11, 1990; 55 FR 17530, Apr. 25, 1990, as amended at 55 FR 20148, May 15, 1990; 55 FR 25308, June 21, 1990; 57 FR 56993, Dec. 2, 1992; 58 FR 16360, Mar. 26, 1993; 58 FR 59366, Nov. 9, 1993; 59 FR 6218, Feb. 10, 1994; 59 FR 6901, Feb. 14, 1994; 66 FR 56613, Nov. 9, 2001; 76 FR 52574, Aug. 23, 2011; 77 FR 23129, Apr. 18, 2012; 84 FR 166, Jan. 18, 2019]

§3.104 Binding nature of decisions.
(a) *Binding decisions.* A decision of a VA rating agency is binding on all VA field offices as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A binding agency decision is not subject to revision except by the Board of Veterans' Appeals, by Federal court order, or as provided in §§3.105, 3.2500, and 3.2600.
(b) *Binding administrative determinations.* Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.
(c) *Favorable findings.* Any finding favorable to the claimant made by either a VA adjudicator, as described in §3.103(f)(4), or by the Board of Veterans' Appeals, as described in §20.801(a) of this chapter, is binding on all subsequent agency of original jurisdiction and Board of Veterans' Appeals adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding. For purposes of this section, a finding means a conclusion either on a question of fact or on an application of law to facts made by an adjudicator concerning the issue(s) under review.
[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001; 84 FR 167, Jan. 18, 2019]

§3.159 Department of Veterans Affairs assistance in developing claims.
(a) *Definitions.* For purposes of this section, the following definitions apply:
(1) *Competent medical evidence* means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.
(2) *Competent lay evidence* means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) *Substantially complete application* means an application containing:
(i) The claimant's name;
(ii) His or her relationship to the veteran, if applicable;
(iii) Sufficient service information for VA to verify the claimed service, if applicable;
(iv) The benefit sought and any medical condition(s) on which it is based;
(v) The claimant's signature; and
(vi) In claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income;
(vii) In supplemental claims, identification or inclusion of potentially new evidence (see §3.2501);
(viii) For higher-level reviews, identification of the date of the decision for which review is sought.
(4) For purposes of paragraph (c)(4)(i) of this section, *event* means one or more incidents associated with places, types, and circumstances of service giving rise to disability.
(5) *Information* means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.
(b) *VA's duty to notify claimants of necessary information or evidence.* (1) Except as provided in paragraph (3) of this section, when VA receives a complete or substantially complete initial or supplemental claim, VA will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim (hereafter in this paragraph referred to as the "notice") In the notice, VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. If the claimant has not responded to the notice within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the notice in accordance with the requirements of paragraph (b)(4) of this section, VA must readjudicate the claim.
(Authority: 38 U.S.C. 5103)
(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information.
(Authority: 38 U.S.C. 5102(b), 5103A(3))
(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:
(i) Upon receipt of a supplemental claim under §3.2501 within one year of the date VA issues notice of a prior decision;
(ii) Upon receipt of a request for higher-level review under §3.2601;
(iii) Upon receipt of a Notice of Disagreement under §20.202 of this chapter; or
(iv) When, as a matter of law, entitlement to the benefit claimed cannot be established.
(Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

(4) After VA has issued a notice of decision, submission of information and evidence substantiating a claim must be accomplished through the proper filing of a review option in accordance with §3.2500 on a form prescribed by the Secretary. New and relevant evidence may be submitted in connection with either the filing of a supplemental claim under §3.2501 or the filing of a Notice of Disagreement with the Board under 38 CFR 20.202, on forms prescribed by the Secretary, and election of a Board docket that permits the filing of new evidence (see 38 CFR 20.302 and 20.303).

(c) *VA's duty to assist claimants in obtaining evidence.* VA has a duty to assist claimants in obtaining evidence to substantiate all substantially complete initial and supplemental claims, and when a claim is returned for readjudication by a higher-level adjudicator or the Board after identification of a duty to assist error on the part of the agency of original jurisdiction, until the time VA issues notice of a decision on a claim or returned claim. VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. VA will not pay any fees charged by a custodian to provide records requested. When a claim is returned for readjudication by a higher-level adjudicator or the Board after identification of a duty to assist error, the agency of original jurisdiction has a duty to correct any other duty to assist errors not identified by the higher-level adjudicator or the Board.

(1) *Obtaining records not in the custody of a Federal department or agency.* VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A(b))

(2) *Obtaining records in the custody of a Federal department or agency.* VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further

efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.
(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.
(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.
(Authority: 38 U.S.C. 5103A(b))
(3) *Obtaining records in compensation claims.* In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.
(Authority: 38 U.S.C. 5103A(c))
(4) *Providing medical examinations or obtaining medical opinions.* (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:
(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;
(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and
(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.
(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.
(iii) For requests to reopen a finally adjudicated claim received prior to the effective date provided in §19.2(a) of this chapter, this paragraph (c)(4) applies only if new and material evidence is presented or secured as prescribed in §3.156.
(iv) This paragraph (c)(4) applies to a supplemental claim only if new and relevant evidence under §3.2501 is presented or secured.
(Authority: 38 U.S.C. 5103A(d))

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for an initial or supplemental claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:
(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;
(2) Claims that are inherently incredible or clearly lack merit; and
(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.
(Authority: 38 U.S.C. 5103A(a)(2))
(e) *Duty to notify claimant of inability to obtain records.* (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:
(i) The identity of the records VA was unable to obtain;
(ii) An explanation of the efforts VA made to obtain the records;
(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and
(iv) A notice that the claimant is ultimately responsible for providing the evidence.
(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA.
(Authority: 38 U.S.C. 5103A(b)(2))
(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.
(Authority: 38 U.S.C. 5102(b), 5103(a))
(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations.
(Authority: 38 U.S.C. 5103A(g))
[66 FR 45630, Aug. 29, 2001, as amended at 73 FR 23356, Apr. 30, 2008; 84 FR 169, Jan. 18, 2019]

§19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.
(Authority: 38 U.S.C. 7105(d)(3) (2016))
[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§20.302 Rule 302. Appeals with a request for a Board hearing.
(a) Except as described in paragraphs (b) and (c) of this section, for appeals in which the appellant requested, on the Notice of Disagreement, a Board hearing, the Board's decision will be based on a review of the following:
(1) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal;
(2) Evidence submitted by the appellant or his or her representative at the hearing, to include testimony provided at the hearing; and
(3) Evidence submitted by the appellant or his or her representative within 90 days following the hearing.
(b) In the event that the hearing request is withdrawn pursuant to §20.704(e), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following receipt of the withdrawal.
(c) In the event that the appellant does not appear for a scheduled hearing, and the hearing is not rescheduled subject to §20.704(d), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following the date of the scheduled hearing.
(Authority: 38 U.S.C. 7105, 7107, 7113(b))
[84 FR 182, Jan. 18, 2019]

§20.201 Rule 201. What constitutes an appeal.
An appeal of a decision by the agency of original jurisdiction consists of a Notice of Disagreement submitted to the Board in accordance with the provisions of §§20.202-20.204.
(Authority: 38 U.S.C. 7105)

§20.202 Rule 202. Notice of Disagreement.
(a) *In general.* A Notice of Disagreement must be properly completed on a form prescribed by the Secretary. If the agency of original jurisdiction decision addressed several issues, the Notice of Disagreement must identify the specific decision and issue or issues therein with which the claimant disagrees. The term issue means an adjudication of a specific entitlement as described in 38 CFR 3.151(c). The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to identify the specific decision and issue or issues therein with which the claimant disagrees.
(b) *Review options.* Upon filing the Notice of Disagreement, a claimant must indicate whether the claimant requests:

(1) Direct review by the Board of the record before the agency of original jurisdiction at the time of its decision, without submission of additional evidence or a Board hearing;
(2) A Board hearing, to include an opportunity to submit additional evidence at the hearing and within 90 days following the hearing; or
(3) An opportunity to submit additional evidence without a Board hearing with the Notice of Disagreement and within 90 days following receipt of the Notice of Disagreement.
(c)(1) The information indicated by the claimant in paragraph (b) of this section determines the evidentiary record before the Board as described in subpart D of this part, and the docket on which the appeal will be placed, as described in Rule 800 (§20.800). Except as otherwise provided in paragraph (2) of this section, the Board will not consider evidence as described in Rules 302 or 303 (§§20.302 and 20.303) unless the claimant requests a Board hearing or an opportunity to submit additional evidence on the Notice of Disagreement.
(2) A claimant may modify the information identified in the Notice of Disagreement for the purpose of selecting a different evidentiary record option as described in paragraph (b) of this section. Requests to modify a Notice of Disagreement must be made by completing a new Notice of Disagreement on a form prescribed by the Secretary, and must be received at the Board within one year from the date that the agency of original jurisdiction mails notice of the decision on appeal, or within 60 days of the date that the Board receives the Notice of Disagreement, whichever is later. Requests to modify a Notice of Disagreement will not be granted if the appellant has submitted evidence or testimony as described in §§20.302 and 20.303.
(d) *Standard form required.* The Board will not accept as a Notice of Disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any format other than the form prescribed by the Secretary, including on a different VA form.
(e) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in §20.203(b). In particular, returning the incorrect VA form does not extend, toll, or otherwise delay the time limit for filing the correct form.
(f) *Unclear Notice of Disagreement.* If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the Board receives a Notice of Disagreement completed on the form prescribed by the Secretary, but the Board cannot identify which denied issue or issues the claimant wants to appeal or which option the claimant intends to select under paragraph (b) of this section, then the Board will contact the claimant to request clarification of the claimant's intent.
(g) *Response required from claimant*—(1) *Time to respond.* The claimant must respond to the Board's request for clarification on or before the later of the following dates:
(i) 60 days after the date of the Board's clarification request; or
(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).
(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered a Notice of Disagreement as to any claim for which clarification was requested. The Board will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(h) *Action following clarification.* The unclear Notice of Disagreement is properly completed, and thereby filed, under paragraph (a) of this section when the Board receives the clarification.
(i) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs (f) through (h) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.
(Authority: 38 U.S.C. 7105)

§20.203 Rule 203. Place and time of filing of Notice of Disagreement.
(a) *Place of filing.* The Notice of Disagreement must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.
(b) *Time of filing.* Except as provided in §20.402 for simultaneously contested claims, a claimant, or his or her representative, must file a properly completed Notice of Disagreement with a decision by the agency of original jurisdiction within one year from the date that the agency mails the notice of the decision. The date of mailing the letter of notification of the decision will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.
(c) *Extension of time of filing.* An extension of the period for filing a Notice of Disagreement or a request to modify a Notice of Disagreement may be granted for good cause. A request for such an extension must be in writing and must be filed with the Board. Whether good cause for an extension has been established will be determined by the Board.
(Authority: 38 U.S.C. 7105)
§20.204 Rule 204. Who can file a Notice of Disagreement.
(a) *Persons authorized.* A Notice of Disagreement may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney is on record or accompanies such Notice of Disagreement.
(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.
(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.
(Authority: 38 U.S.C. 7105(b)(2)(A))

§19.23 Applicability of provisions concerning Notice of Disagreement.
(a) Appeals governed by §19.21(a) shall be processed in accordance with §19.24. Sections 19.26 and 19.28 shall not apply to appeals governed by §19.21(a).
(b) Appeals governed by §19.21(b) shall be processed in accordance with §§19.26 and 19.28.
[79 FR 57697, Sept. 25, 2014, as amended at 84 FR 178, Jan. 18, 2019]

§19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

(a) *Initial action.* When a timely Notice of Disagreement in accordance with the requirements of §19.21(a) is filed, the agency of original jurisdiction will reexamine the claim and determine whether additional review or development is warranted.
(b) *Incomplete and complete appeal forms*—(1) *Incomplete appeal forms.* In cases governed by §19.21(a), if VA determines a form filed by the claimant is incomplete and requests clarification, the claimant must timely file a completed version of the correct form in order to initiate an appeal. A claimant is not required to cure or correct the filing of an incomplete form by filing a completed version of the correct form unless VA informs the claimant or his or her representative that the form is incomplete and requests clarification.
(2) *Complete appeal forms.* In general, a form will be considered complete if the following information is provided:
(i) Information to identify the claimant;
(ii) The claim to which the form pertains;
(iii) Any information necessary to identify the specific nature of the disagreement if the form so requires. For compensation claims, this criterion will be met if the form enumerates the issues or conditions for which appellate review is sought, or if it provides other information required on the form to identify the claimant and the nature of the disagreement (such as disagreement with disability rating, effective date, or denial of service connection); and
(iv) The claimant's signature.
(3) *Timeframe to complete correct form.* In general, a claimant who wishes to initiate an appeal must provide a complete form within the timeframe established by §19.52(a). When VA requests clarification of an incomplete form, the claimant must provide a complete form in response to VA's request for clarification within the later of the following dates:
(i) 60 days from the date of the request; or
(ii) 1 year from the date of mailing of the notice of the decision of the agency of original jurisdiction.
(4) *Failure to respond.* If the claimant fails to provide a completed form within the timeframe set forth in paragraph (b)(3) of this section, the decision of the agency of original jurisdiction will become final.
(5) *Form timely completed.* If a completed form is received within the timeframe set forth in paragraph (b)(3) of this section, VA will treat the completed form as the Notice of Disagreement and VA will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, VA will prepare a Statement of the Case pursuant to §19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.
(c) *Issues under appellate review.* If a form enumerates some but not all of the issues or conditions which were the subject of the decision of the agency of original jurisdiction, the form will be considered complete with respect to the issues for which appellate review is sought and identified by the claimant. Any issues or conditions not enumerated will not be considered appealed on the basis of the filing of that form and will become final unless the claimant timely files a separate form for those issues or conditions within the applicable timeframe set forth in paragraph (b)(3) of this section.

(d) *Disagreement concerning whether Notice of Disagreement has been filed.* Whether or not a claimant has timely filed a Notice of Disagreement is an appealable issue, but in such a case, appellate consideration shall be limited to the question of whether the correct form was timely filed.
[79 FR 57697, Sept. 25, 2014, as amended at 84 FR 178, Jan. 18, 2019]

§3.2600 Legacy review of benefit claims decisions.
This section applies only to legacy claims as defined in §3.2400 in which a Notice of Disagreement is timely filed on or after June 1, 2001, under regulations applicable at the time of filing.
(a) A claimant who has filed a Notice of Disagreement submitted in accordance with the provisions of §20.201 of this chapter, and either §20.302(a) or §20.501(a) of this chapter, as applicable, with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by a Veterans Service Center Manager, Pension Management Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.
(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.
(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under the version of §3.103(c) of this chapter predating Public Law 115-55.
(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.
(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.
(Authority: 38 U.S.C. 5109A and 7105(d))
[66 FR 21874, May 2, 2001, as amended at 67 FR 46868, July 17, 2002; 74 FR 26959, June 5, 2009; 79 FR 57697, Sept. 25, 2014; 84 FR 172, Jan. 18, 2019; 84 FR 4336, Feb. 15, 2019]

§3.304 Direct service connection; wartime and peacetime.

(a) *General.* The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) *Presumption of soundness.* The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted. (Authority: 38 U.S.C. 1111)

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to inception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record. (Authority: 10 U.S.C. 1219)

(c) *Development.* The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

(d) *Combat.* Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation. (Authority: 38 U.S.C. 1154(b))

(e) *Prisoners of war.* Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of intercurrent origin. The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

(f) *Posttraumatic stress disorder.* Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with §4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

(1) If the evidence establishes a diagnosis of posttraumatic stress disorder during service and the claimed stressor is related to that service, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(2) If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA

has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-
physiological state of fear, helplessness, or horror.

(4) If the evidence establishes that the veteran was a prisoner-of-war under the provisions of §3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(5) If a posttraumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate the veteran's account of the stressor incident. Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. VA will not deny a posttraumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred. (Authority: 38 U.S.C. 501(a), 1154)

[26 FR 1580, Feb. 24, 1961, as amended at 31 FR 4680, Mar. 19, 1966; 39 FR 34530, Sept. 26, 1974; 58 FR 29110, May 19, 1993; 64 FR 32808, June 18, 1999; 67 FR 10332, Mar. 7, 2002; 70 FR 23029, May 4, 2005; 73 FR 64210, Oct. 29, 2008; 74 FR 14491, Mar. 31, 2009; 75 FR 39852, July 13, 2010; 75 FR 41092, July 15, 2010]

Supplement *Highlights* references: 7(9), 38(5), 51(2), 66(1), 83(2), 85(3), 91(1).

§3.303 Principles relating to service connection

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no

evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

(d) Postservice initial diagnosis of disease. Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid.

§3.307 (effective 09-2013) Presumptive conditions for wartime and service on or after January 1, 1947.

(a) General. A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in §3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in §3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in §3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years;

multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected. (Authority: 38 U.S.C. 1112)

(5) Diseases specific as to former prisoners of war. The diseases listed in §3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service. (Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to certain herbicide agents.

(i) For the purposes of this section, the term herbicide agent means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram. (Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and early-onset peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and has a disease listed at §3.309(e) shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. (Authority: 38 U.S.C. 501(a) and 1116(a)(3))

(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. See also 38 CFR 3.814(c)(2). (Authority: 38 U.S.C. 501(a), 1116(a)(3), and 1821)

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should

describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in §3.303(b) will be considered. The diseases listed in §3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except:

(1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or

(2) Where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease. (Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions. No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree.

(d) Rebuttal of service incurrence or aggravation.

(1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under §3.306 of this part, to show

that the increase in disability was due to the natural progress of the preexisting condition. (Authority: 38 U.S.C 1113 and 1153)

§3.309(a) (effective 11/07/02) Disease subject to presumptive service connection

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in or aggravated by service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, Progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.
Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.

Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud's disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

DECISION:

Service connection for post traumatic stress disorder claimed as due to personal trauma is not established and remains denied.

REASONS AND BASES:

As set forth in the rating decision dated 10-6-17 which is now at issue in response to your Notice of Disagreement, the previous denial of service connection for PTSD claimed as due to personal trauma was continued because the evidence fails to demonstrate a confirmed diagnosis of PTSD related to any known traumatic military events.

Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with 38 CFR 4.125(a); a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. "Credible supporting evidence that the claimed in-service stressor actually occurred" means that there is a legal standard that must be met and that the veteran's report of the incident must be supported by service or civilian documentation of the incident, or if that is not available, there must be other evidence that would lead to the reasonable conclusion

that the incident occurred. Such other evidence would generally include military or civilian documentation of behavioral changes after the incident which could reasonably be expected from a person who had undergone a personal assault. Such changes include, but are not limited to: sudden requests for other duty assignments without justification, obsessive behavior (such as over, or under, eating), increased disrespect for military or civilian authority etc.

As found by the 10-6-17 rating decision, the evidence of record does not provide credible evidence that the claimed stressor occurred as there is no documentation of such event during active military service and it has been determined that there is insufficient evidence to demonstrate that such stressors occurred in fact and that you now have PTSD symptomatology related to such events.

The rating decision determined that the available medical and supporting evidence is insufficient to confirm a link between your current mental health symptoms and an in service stressor. That is, the VA examiner did not diagnose posttraumatic stress disorder. Evidence in your claims file and at VA Medical Centers in Seattle and Palo Alto was reviewed as well as personnel and service treatment medical records.

On de novo review it is noted that the VA examination report dated 8-30-17 reflects the VA examiner's conclusion and opinion that you do not have PTSD. The VA examiner noted that there is no military record of complaints or treatment for the alleged traumatic events during service to support your contentions. The examiner stated that your records do not reflect a history of referral or treatment for symptoms consistent with PTSD. The VA examiner noted you're your treatment records show a history of diagnosis of ADHD, adjustment reaction, partner-relational problems and alcohol abuse, but not PTSD. Additionally, following clinical evaluation and assessment, the VA examiner concluded that the diagnostic criteria for PTSD under DSM-V are not met.

While you have disagreed with the denial of service connection for PTSD, no further evidence or information has been submitted in support of your claim to demonstrate a valid diagnosis of PTSD. Your VA treatment records have been obtained and reviewed, but demonstrate only treatment for ADHD symptoms and while PTSD is noted as a relevant condition, there is no record of treatment for PTSD and no indication of a confirmed diagnosis.

The above-cited report of psychological assessment dated 2-26-18 from [redacted] has been reviewed and considered, but this report is not found to be persuasive evidence of a confirmed diagnosis of PTSD. The private assessment attributes the contended symptoms to unverified military events or to administrative complaints that are not traumatic stressors, such as the veteran's contention of being humiliated or disrespected, and fails to address specific diagnostic criteria required to support a diagnosis of PTSD. There is no analysis of such diagnostic factors as the sufficiency of the alleged stressors or of actual exposure to traumatic stressors during active military service nor the lack of evidence of symptoms specific to diagnosis of PTSD such as intrusive symptoms, avoidance, alterations of cognition or mood, arousal and reactivity, duration of symptoms or of disturbance due to known trauma causing clinically significant distress. The

VA examination report on the other hand clearly indicates that there is no evidence of such criteria that is supportive of a valid diagnosis of PTSD and reports that the alleged stressors considered in the evaluation are not adequate to support a diagnosis of PTSD. As such, it remains that there is no evidence to support a conclusion that sufficient traumatic events did occur or to confirm a diagnosis of PTSD and the link between your current symptoms and an in service stressor. For this reason, it is held on de novo review that service connection for posttraumatic stress disorder is not established and remains denied.

This Statement of the Case constitutes a *de novo* review of your claim as provided for in 38 CFR 3.2600 based upon your Notice of Disagreement and your election for such review by a Decision Review Officer. This decision is based on a review of the evidence of record at the time of the rating decision at issue as well as additional medical evidence obtained after receipt of your Notice of Disagreement. No change is warranted in the rating decision at issue on appeal.

PREPARED BY _____ eSign: Certified by VSCKFREE, DRO_____
[redacted], Decision Review Officer