IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

LESLIE C. LONG, JR.,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	Vet. App. No. 19-7301
ROBERT L. WILKIE,	)	
SECRETARY OF VETERANS AFFAIRS,	)	
	)	
	)	
Appellee.	)	

REPLY BRIEF OF APPELLANT

CERTIFICATE OF SERVICE

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Lead Representative for Appellant

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4. CERTIFICATE OF ELECTRONIC FILING

I, Gordon A. Graham, hereby certify that I have:

1. Filed this document using the Electronic Filing System of the U.S. Court of Appeals for Veterans Claims which will automatically send it to counsel for the Appellee,

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And;

2. I have mailed a copy of this document to the Appellant by first class mail at his address of record.

/s/ GORDON A. GRAHAM Dated: June 24, 2020
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Lead Representative for Appellant

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APPELLANT'S REPLY BRIEF

SUMMARY OF ARGUMENT

Pursuant to U.S. Vet. App. R. 28 and 31, Leslie Clyde Long, Jr. (appellant or Veteran or claimant) respectfully submits to the United States Court of Appeals for Veterans Claims (Court) his Reply Brief in response to the Appellee's [Secretary's] Brief (Sec. Br.), and continues to assert that there are errors of law contained within the Board of Veterans Appeals (BVA) decision of October 3, 2019. In that decision, the Board of Veterans' Appeals (Board or BVA) determined that application of 38 CFR §3.156(c)(1) was inapplicable to the instant appeal as there were no claims made or pending, formal or informal, implied or inferred, or implicitly denied, for tinnitus, headaches or loss of field of vision. For purposes of this Reply, the Appellant incorporates the Statement of Facts contained within his initial Brief (Br.). Appellant asks for Reversal based on errors of law

and a grant of an effective date of April 29,1970, for his injuries incurred in combat in 1969.

ARGUMENT

1. The VA Form 21-2545

The most salient document, the VA Form 21-2545 dated August 10, 1970, is the Rosetta Stone for deciphering the conundrum presently before the Court as to whether there were claims, formal or informal, before the Veterans Administration. (R 3175). The facts are incontrovertible and clearly show informal (or pending) claims secondary to the original four claims filed on June 22, 1970 (R 3249-3252). The VA Administrator, in 1970, included among the entitlements a rating for an injury to the "right head"). Five days after submission of his claims, VA Form 21-2507 Request for Physical Examination dated June 30, 1970, in block 4, lists appellant's (now) acknowledged service connected (SC) disabilities requiring c&p examinations. In 1970, a claim had to be well-grounded before being sent out for a compensation examination. See ***Grantham v. Brown,*** 114 F.3d 1156, 1158 (Fed. Cir. 1997) (Holding that when a condition is not service connected, VA never reaches the downstream question of compensation). (R 3245). As the VA Administrator clearly had authorized service connection for an injury to the right head, service connection was now a pending claim.

Another copy of the form, dated September 15, 1970, also shows Mr. Long was recalled four days after his initial c&p examination for yet another "special" eye and ear exam. That specific benefit was still acknowledged as pending- i.e. "SFW's [sic] right head. (R 3246).

Beginning with the claims filed for, in block 15 (Narrative History) of the VA Form 21-2545, the VA Administrator again lists in haec verba "SC [service connection] Pending: SFW's [sic] right hand, right arm, right side, right head, injury to right eye, perforated ear drum."(R 3175). In block 17, Present Complaint (Symptoms Only, Not

Diagnosis) of the same VA Form 21-2545, are certain symptoms listed in a specific order. All of the symptoms listed are in quotes so it is to be presumed these phrases describing appellant's symptoms were recorded in his very own words. The document is also sworn to as being true and correct and signed by the appellant.

At the bottom of the document, there is an admonition stating "Penalty-The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled."

With this in mind, the first SC pending (right hand) listed in block 15 appears, on its face, to correspond with the first quoted symptom in Block 17. Paraphrased, it could be rendered: "As to the SFWs of my right hand, my thumb gets numb if I get it hit just above it".

The second SC contention pending was " (SFW's) right arm". Paradoxically, the second symptom mentioned in block 17 is "If I work too much with the right arm or get too much pressure it swells". Of note, it would be forty eight years later, on May 18, 2018, that the Secretary conceded a clear and unmistakable error was made in the September 30, 1970, rating decision, in failing to grant service connection for a SFW injury to the very same right forearm. (R 446-447).

The third contention was "(SFW's) right side" in block 15. Coincidentally, again, the VA Administrator chose (among Mr. Long's answers) to list: " No problems from the right side." This would thus seem to correspond with the pending SC contention above it in block 15.

The fourth contention in block 15 was a claim for "(SFW's) right head". Again, amazingly, the very next quoted symptom listed in block 17 states " I have been having headaches." For the Secretary to now contend there was no pending claim for headaches

is incredulous. Appellant was anally specific about segregating his numerous SFWs which spanned eight muscle groups and specified a claim for one particular SFW injury. He coupled that with a sworn statement that he was suffering chronic headaches secondary to SFW to right temporal area of head. There is no evidence to support the September 30, 1970, contention by the rater that "he has no complaints of his head trauma".(R 3148). X rays taken on March 1, 2016, confirmed numerous SFW retained metal fragments to the sinus area as well as a 2.9 mm fragment in the right temporal area. (R 2372).

The fifth contention listed in block 15 was: "(SFW's) injury to the eye." Even though appellant specifically claimed a perforation to the right eye, the VA Administrator was already characterizing it as more than the officially claimed contention on the VA Form 21-526. Once again, in block 17 appellant's very next response was " My right eye is blurry". Appellant has testified that by "blurry" he was not referring to refractive error. He already had been prescribed corrective lenses to remedy the chronic, traumatic cataract with incipient lens change. Inexplicably, the VA had constructive possession of the separation physical in the file showing a permanent disability of E-3 of the right eye on the PUHLES scale rendering him unfit for further military service. (R 3215-3218).

Last, but certainly not least, in block 15 appellant claimed "perforated ear drum". The contention is in the singular tense but the clinician noted both tympanic membranes were scarred and retracted (R 3177). Fortuitously, again, appellant's four closing descriptions of his symptoms in block 17 yielded: "I have been having an infection in my right ear and the left one has been clogged up. I have earaches. I have drainage in the right ear. I have ringing in my right ear."

But that is not the end of the matter. Above, on the same form 2545, in Section A-Occupational History Since Latest Discharge From Military Service Or Latest VA

Examination, block 9, Mr. Long listed his most current employer as Federal Meat. Co. of Tacoma, Washington. In block 10, he listed his type of work as "packer". He listed his beginning date of employment as August 3, 1970. In block 14, appellant testified under oath that he had already lost three days of work due to "ear infection" (block 14B). Bearing in mind that the date of this compensation examination was August 10, 1970, the record points to a compensable disability. Referring to a period calendar, August 10, 1970 was a Monday. August 3, 1970, was also a Monday. Assuming, arguendo, that Mr. Long was working a standard 40-hour work week, this implies he lost three days due to ear infections in the week prior to the examination.

2. VA Schedule of Rating Disabilites (VASRD) Part IV (1970)

Appellant has argued in his initial Brief that the Secretary is citing to the wrong legal standard of review for tinnitus. Part 4, VA Schedule of Rating Disabilities (VASRD)(1970), clearly and unmistakably requires concussion or head injury as a prerequisite to even qualify for tinnitus. The Eye and Ear exam conducted on August 14, 1970 accurately described "concussion blast injury". §4.84b DC 6260 (1970) directs the rater to §4.124b DC 8045 and lists subjective symptoms such as tinnitus and headaches as symptoms of brain trauma and further refers the rater to DC 9304 for rating at 10%.

Interestingly, the Secretary held on May 2, 2018, in the Statement of the Case that to be entitled to service connection for tinnitus in 1970, Mr. Long would have to have suffered severe and continuous tinnitus that was a product of head injury or concussion before service connection could be granted. (R 429). On August 10, 1970, Jay B. MacLaren, M.D. noted on VA Form 10-2364 that appellant "reports some tinnitus". Dr. MacLaren also noted "Stenger negative at 1000 [hz] H3". It is presumed he was referring to the Stenger test to reveal malingering. An H3 designation using the PULHES scale would be a disqualifier for military service. That the disability still was present fully

nineteen months after the January 18, 1969 concussion blast injury to include perforation of both tympanic membranes lends credence to appellant's complaints of constant, loud ringing of the right ear. (R 3182) . Appellant would ask the Court to note this was an increase up from the H2 PUHLES assigned at separation physical on March 24, 1970. (R 3190).

The Secretary baldly contends appellant sought only service connection for perforated ear drums "and made no notation of any symptoms such as ringing in his ears". (Sec. Br. 19-20). The evidence of record and the VA Form 21-2545 contradict this assertion. Appellant has a rudimentary tenth grade education. He has no medical training and no way of diagnosing himself with tinnitus-let alone spelling it. He is only now a recognized, documented combat Veteran in the eyes of the VA as of March 30, 2015. In the contemporaneous record (R 3175), appellant complained, in his own words, and certified by signing, that "I have ringing in my right ear". The use of the present tense "have" or "been having" to describe the "symptom" (ringing in right ear and headaches), combined with the absence of any conditional quantifying adjective such as "intermittent" or "some", unequivocally showed appellant was complaining of a chronic ongoing condition. His recollections have never varied.

Mr. Long provided lay testimony of a nonexhaustive listing of symptoms he was still experiencing as a result of a mortar blast which detonated mere feet from him. (R 50). The VA Administrator recognized the four listed symptoms on Mr. Long's 1970 Form 21-526 as SC disability claims. However, the failure of the VARO to designate tinnitus, headaches and an unhealed eye injury as claims was error. ***See Clemons v. Shinseki***, 23 Vet. App.1, 5 (2009)(noting that a single claim can encompass more than one condition, based on "the claimant's description of the claim; the symptoms the claimant describes; and the information the claimant submits or that the Secretary obtains in support of the claim").

Appellant avers he has never characterized his ringing in his ear as anything other than constant and loud. As tinnitus is a subjective complaint, and the fact that appellant's Combat Infantryman Badge (CIB) only now gives provenance to his combat presumptive exposure to concussion blast trauma, the benefit of the doubt can only accrue in his favor. Moreover, the "lipstick on the collar" proof showing appellant's close proximity to the explosive event is the acknowledged "extensive pepper spot tattooing" extant from head to right knee (right lower leg was amputated in June 2017 before VA x-rayed it for retained metal fragments). (R 3147-48) (R 747-48). Appellant submits he was never treated as a combat Veteran because his original DD 214 was devoid of any mention of combat medals or awards. (R 3174). In point of fact, a Purple Heart Medal, in and of itself, would not necessarily point to combat nor presumptive exposure to loud explosive events on a regular basis as would the award of a CIB.

With respect to the Secretary's contention that appellant did not have a diagnosis of tinnitus, Mr. Long disagrees. Whether the doctors medically diagnosed him as having tinnitus or merely mentioned he suffered from tinnitus, the distinction is semantic and immaterial. Noting he had any tinnitus whatsoever was a medical admission he suffered the malady. The question then devolves down as to whether it was a product of a concussion or head injury or merely minor acoustic trauma. The evidence of record in the newly associated service department records supports the former. The more recent award of the CIB recorded on a service document (DD 215) can only be read as comparable to JSCRR records revealing a combat encounter fifty years ago. The import of the new documents require reconsideration under §3.156(c)(1) if for no other reason than to prove that an award can be supported at the merits stage.

The Secretary attempts to demolish appellant's contention by failing to express "intent" to file for tinnitus. (Sec. Br 20) This allegation, absent a "reconsideration safari" under §3.156(c)(1), is speculative and void ab initio. The Secretary also attempts to

place a quoted phrase directly on appellant's lips by claiming Mr. Long "was noted as describing intermittent tinnitus" (Sec. Br. at 21). Appellant presumes the Secretary is referring to the Special Eye, Ear, Nose and Throat (EENT) Examination conducted on August 14, 1970 by J.W. Davis, M.D. Appellant avers no such thing was said. He reported constant tinnitus of the right ear and was never asked if it was loud. A careful examination of the document reveals nothing more than the doctor's observation of "Intermittent tinnitus." As tinnitus, whether it is intermittent or constant, is a subjective symptom, it would require the patient to volunteer the degree of disability. Mr. Long had already been quoted as stating "I have ringing in my right ear" four days earlier at his August 10, 1970, examination. At that time, he confirmed to Dr. MacLaren that he had constant, loud ringing in his right ear only. Dr. MacLaren recorded it as "reports some tinnitus."(R 3184) Appellant has never described his symptoms as "intermittent" nor has he ever characterized the explosion as merely a loud acoustical event. The explosion on January 18, 1970, rendered him unconscious. Until 2015, appellant was not even medically cognizant of what tinnitus was-let alone the definition of "intermittent". He described it as it came to him via his five senses-i.e. I have ringing in my right ear. Notably, he did not quantify it with adjectives such as "some", "intermittent" or "only on Fridays". His exact description has always been one of an ongoing, loud, current disorder secondary to his perforated eardrums. As he never saw the medical records of the examination, he was unaware that his description had been recharacterized as some or intermittent.

In what appears to be a contradiction, the May 21, 2018, rating decision stated that the Regional Office had indeed reconsidered the claims under §3.156(c)(1) (R 431-449). Nevertheless, the Board contradicted that finding by a de novo conclusion of law that no reconsideration whatsoever was due based on the lack of any identifiable claims, formal or informal, inferred or implicitly denied for tinnitus, headaches or blurred vision.

The Secretary would have the Court believe appellant lacked a "confirmed" diagnosis of tinnitus by any doctor at any time during the pendency of the 1970 claim. This simply isn't true. By August 14, 1970, no less than two doctors had diagnosed him with some form of tinnitus (R 3177, 3184). Using selective semantics, the Secretary chooses to interpret the definition of tinnitus not by medical definition but by contemporary, regulatory interpretation. In either scenario, the appellant prevails. He was rendered unconscious for some period of time following the detonation of the explosive warhead. According to his spouse' testimony, his before-and-after neurological composition was markedly different and he now has been properly diagnosed with TBI with secondaries specifically attributed to his injuries of January 18, 1969.

Assuming, arguendo, that the Agency of Jurisdiction actually did reconsider appellant's claim under §3.156(c)(1), nowhere is it written that a claim of a pending or previously denied (or granted) claim, formal or informal, under the correct legal standard of review, cannot be raised with respect to the prior original claim at that time. §3.156(c) establishes an exception to these rules, the purpose of which is "to place a veteran in the position he [or she] would have been had . . . VA considered the relevant service department record before the disposition of [the] earlier claim". ***Blubaugh v. McDonald,*** 773 F.3d 1310, 1313 (Fed. Cir. 2014) The legal standard of review is low-that the records be relevant and pertain to the original claim(s). The Secretary chooses to read less into his regulation than he has authored.

3. The Import Of 38 U.S.C. §1154(b) To The Instant Appeal

The Secretary ignores the import of a powerful statute that America accords its combat Veterans; more specifically- the absolute breadth and reach of the combat presumption. 38 U.S.C. §1154(b) states:

(b) In the case of **any veteran** who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, **the Secretary shall accept as sufficient proof of service-**

connection of any disease or injury alleged to have been incurred in or aggravated by such **service satisfactory lay or other evidence** of service incurrence…, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service**, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection** of such injury or **disease may be rebutted by clear and convincing evidence to the contrary.** The reasons for granting or denying service-connection in each case shall be recorded in full. (38 U.S.C. §1154(b) (formerly §354(b)).

Paraphrased for appellant's circumstances, this statute demanded the Secretary should have, following submission of §3.156(c)(1) service department records, reconsidered the merits of the inextricably intertwined 1970 claims and granted entitlement under §3.156(c)(1). Following that, the application of §3.156(c)(3),(4) should have been scrutinized for his now service connected tinnitus, reduced field of vision claimed as blurred vision and his chronic recurrent headaches, all secondary to TBI and SFWs that were incurred on January 18, 1969 at Landing Zone Cork, Dong Ha Province, I Corps, Republic of South Vietnam. Further, appellant, only now a presumed combat Veteran as of March 30, 2015, having proved unequivocally he was exposed to explosive acoustic trauma, has, in addition, presented even more §3.156(c)(1) records which are relevant and mention the Veteran by name. (R 1947-1998) All injuries and secondaries were consistent with the circumstances, conditions, or hardships of such service and more than confirm such incurrence or aggravation. Therefore, the Secretary should have granted every reasonable doubt in favor of the Veteran based on the Veteran's sworn lay testimony and that of his spouse. As the Secretary did not present any clear and convincing evidence to the contrary that rebutted appellant's contentions, and the new service department records, in whole or in part, now support service connection for informal or implicitly denied claims and their secondary symptoms presented originally

in 1970, it was reversible error not to have granted service connection for these claims at these prescribed ratings percentages with an effective date of April 29, 1970.

All of appellant's injuries have been subsequently awarded in the intercurrent period following submission of the relevant service department records. The quandary is whether these awards are a result of reconsideration of the new evidence-in whole or in part- or if the evidence of record, without the addition of any of the new records, was solely responsible or sufficient to support the award of tinnitus, headaches and blurred vision since 1970.

The Secretary misconstrues the root of the combat presumption. In the case of a combat veteran not only is the combat injury presumed, but so is the disability due to the in-service combat injury. ***Reeves v. Shinseki***, 682 F.3d 988, 998-99 (Fed. Cir. 2012). To establish service connection, however, there must be the evidence of a current disability and a causal relationship between the current disability and the combat injury. Id. (citing ***Shedden v. Principi***, 381 F.3d 1163, 1167 (Fed. Cir. 2004)).

In cases involving disabilities related to combat, VA must presume lay evidence that describes the in-service disease or injury is credible so long as it is "consistent with the circumstance, conditions, or hardships of such service, notwithstanding the fact that there is no official record." 38 U.S.C. § 1154(b). This presumption is rebuttable only by clear and convincing evidence. ***Collette v. Brown***, 82 F.3d 389, 393 (Fed. Cir. 1996).

Clear and convincing evidence is a very high standard of review. It surpasses the lesser concession of the benefit of a doubt. Essentially, "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue. The Secretary fails, even now on appeal, to present any such evidence.

The Secretary may not now merely resort to hurling unsupported conjecture or discredit the Veteran's credibility via the absence of evidence. He must rebut appellant's lay testimony under Congress' statute under the clear and convincing standard of review.

The Secretary alleges “Appellant appears to rely on his more recent statements, assertions [sic] that he had tinnitus since his active duty service.” (Sec. Br. at 22). “Appellant also appears to challenge the veracity of the August 1970 examiner’s summary of his reported symptoms”. Id. “Bias of witness may be considered as indication of a lack of credibility”. (Sec. Br. at 23).

Appellant’s sworn testimony on August 10, 1970, stands as the benchmark testimony to rebut under the clear and convincing evidence standard of legal review. Mr. Long discussed all his disabilities in the present tense that day with no quantification of symptomatology. His testimony then, as now, is no less protected under color of §1154(b). He is just as competent to testify today as to what came to him via his five senses in 1969-70. Any lay testimony regarding the actual events and the injuries incurred (read alleged) shall be accepted regardless of how the Secretary feels about appellant’s veracity or bias. The Secretary has had over five years to present this heightened form of evidence to rebut the appellant’s unchanging contentions. The Secretary's impermissible post-hoc rationale now cannot make up for shortcomings in the Board's conclusion no reconsideration was due based on there being no claim(s) to reconsider. See ***Doty v. United States,*** 53 F.3d 1244, 1251 (Fed. Cir. 1995) ("'Courts may not accept appellate counsel's post hoc rationalizations for agency action. It is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself.'" (***quoting Motor Vehicle Mfrs. Ass'n of the U.S., Inc., v. State Farm Mut. Auto. Ins. Co***., 463 U.S. 29,50,103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983))); See also ***Evans v. Shinseki***, 25. Vet. App. 7, 16 (2011) (explaining that "it is the Board that is required to provide a complete statement of reasons or bases" for its decision and "the Secretary cannot make up for [the Board's] failure to do so" by providing his own reasons or bases on appeal). See ***also Smith v. Nicholson***, 19 Vet. App. 63, 73 (2015) ("[I]t is not the task of the Secretary to rewrite the Board's decision through his pleadings filed in this Court.").

§4.2 is instructive in the instant appeal

§4.2 states:

It is the responsibility of the rating specialist to interpret the reports of examination in the light of the **whole recorded history**, reconciling the various reports into a consistent picture, so that the current rating may accurately reflect the elements of permanent and temporary disability present. Each disability must be viewed from the point of view of the veteran working, or seeking work. If a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail for purposes of evaluations, it is incumbent on the rating board to return the report as inadequate. 38 CFR §4.2 (1970) (emphasis added).

Sadly, the VA Administrator did not have the whole recorded history of the appellant's injuries or a more equitable outcome might have ensued. However, with the application of §3.156(c)(1) under the proper legal standard of review- i.e. the Courts' precedence that the Secretary must put the Veteran in the same position he occupied at the time of the original claim- combined with the combat presumption as to lay testimony, a different, more Veteran friendly reconsideration can ensue. ***Blubaugh*** *supra*.

The very idea of denigrating the credibility of a disabled combat Veteran is repugnant on its face. That the Secretary would stoop so low for such an attack reflects what the Courts tried to curtail long ago. See ***Comer v. Peake,*** 552 F.3d 1362, 1369 (Fed. Cir 2009) ("The VA disability compensation system is not meant to be a trap for the unwary, or a stratagem to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him."). See also ***Andrews v. Nicholson***, 421 F.3d 1278, 1283 (Fed. Cir. 2005) "The government's interest in veterans

cases is not that it shall win, but rather that justice shall be done, that all veterans so entitled receive the benefits due to them." ***Barrett v. Nicholson***, 466 F.3d 1038, 1044 (2006); see also ***Jaquay v Principi***, 304 F.3d 1276, 1280 (2002) ("Congress has created a paternalistic veterans' benefits system to care for those who served their country in uniform.").

CONCLUSION

Appellant, after extensive review of the Record Before the Agency and pertinent case law, is unable to ascertain any evidence of any reconsideration whatsoever under §3.156(c) in the appeal before this Court. ***George v.Shulkin***, No.16-1221,2018 WL 703107,at *5 had this to say. “Vigil offers the best guidance on that point, holding that "reconsideration" requires "the development of evidence regarding when Mr. Vigil first suffered PTSD.” Thus, we know without question that § 3.156(c) speaks to more than effective date; it also speaks to development of the claim in at least some respect.” (quoting ***Vigil v. Peake***, 22 Vet. App. 63, 67 (2008)). Oddly, throughout this reopening of the 1970 claim, there has been no notation or acknowledgement of any reconsideration in the myriad new claims refiled for injuries claimed in 1970, either formally or informally, and only now granted in the interim leading up to this appeal. Appellant should not have to put the Secretary on notice that a claim contains new service department records.

Likewise, Mr. Long has heard nothing but crickets on the subject of entitlement to his presumption of credibility under §1154(b). Only now, at the eleventh hour, are there allegations of credibility and bias issues. The Department of Veterans Affairs failed to obtain appellant’s records in 1970. Appellant reopened his claims with proof of combat in 2015. Again, the VA failed to obtain his Service Treatment Records which have lain dormant in St. Louis, Missouri for 45 years. Mr. Long was forced, at every turn, to retrieve and present all the evidence, including x rays and combat medals, to prove he

had: a) a large retained metal fragment in his temporal lobe causing him recurrent, chronic headaches since 1969; b) 9 retained metal fragments in his right eye provoking his blurred vision/reduced field of vision for the last fifty one years; and c) loud, constant tinnitus claimed as "ringing in my right ear." He was never timely examined for neurological deficits as required by law under §§4.41; 4.42 in 1970. He had no incontrovertible evidence showing combat. Only with the addition of the new service department records in 2015 and 2017 did it become apparent Mr. Long's combat TBI injuries in 1970 were never acknowledged nor granted.

Appellant rests his request for reversal on ***Delouch v. Shinseki***, 704 F.3d 1370, 1380 (2013) (explaining that reversal is appropriate only when "the Board has performed the necessary fact-finding and explicitly weighed the evidence" and the Court, "on the entire evidence, is left with the definite and firm conviction that a mistake has been committed.

Respectfully Submitted,

/s/ GORDON A. GRAHAM Dated: June 24, 2020

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