



Submission of Documents to Department Of Veterans Affairs

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**Evidence Intake Center PO Box 4444
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Janesville WI 53547-4444**

FAX 1-844-822-5246 or 1-844-531-7818

Veteran: [REDACTED]	VSC: VBASEA346
C-File or SSN: [REDACTED]	
Street Address: [REDACTED]	
City, State, Zip: [REDACTED]	

Date: 5/23/2022	ATTN: EP 020 Motion to Revise
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From: Gordon A. Graham	Exclusive Contact Requested
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Type of Document Submitted:
<input type="checkbox"/> VAF 20-0995 Suppl. Claim or VAF 20-0996 Higher Level of Review
<input type="checkbox"/> VAF 21-8940/VAF 21-4192 FOR TDIU
<input type="checkbox"/> VAF 9 APPEAL TO BOARD OF VETERANS' APPEALS (Legacy)
<input checked="" type="checkbox"/> VAF 21-526EZ CLAIM FOR COMPENSATION
<input type="checkbox"/> VAF 10182 NOTICE OF DISAGREEMENT (BVA Review)
<input type="checkbox"/> Privacy Act / Freedom of Information Act (VAF 3288)
<input checked="" type="checkbox"/> Other Eight (8) pages of Movant's legal brief attached.

Number of Pages Submitted (NOT including this cover sheet): Thirteen (13) Pages

VA Directive 6609, NOVEMBER 9, 2007: NOTICE! Access to Veterans records is limited to Authorized Personnel Only. Information may not be disclosed unless permitted pursuant to 38 CFR 1.500-1.599. The Privacy Act contains provisions for criminal penalties for knowingly and willingly disclosing information from the file unless properly authorized to do so.

FORMATION

IMPORTANT: The following questions (Items 15A through 15F) should *only* be completed if you are currently homeless or at risk of becoming homeless. If this item does not apply to you, skip to Section IV.

15A. ARE YOU CURRENTLY HOMELESS? <input type="checkbox"/> YES (If "Yes," complete Item 15B regarding your living situation) <input type="checkbox"/> NO	15B. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION: <input type="checkbox"/> LIVING IN A HOMELESS SHELTER <input type="checkbox"/> NOT CURRENTLY IN A SHELTERED ENVIRONMENT (e.g., living in a car or tent) <input type="checkbox"/> STAYING WITH ANOTHER PERSON <input type="checkbox"/> FLEEING CURRENT RESIDENCE <input type="checkbox"/> OTHER (Specify): _____
15C. ARE YOU CURRENTLY AT RISK OF BECOMING HOMELESS? <input type="checkbox"/> YES (If "Yes," complete Item 15D regarding your living situation) <input type="checkbox"/> NO	15D. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION: <input type="checkbox"/> HOUSING WILL BE LOST IN 30 DAYS <input type="checkbox"/> LEAVING PUBLICLY FUNDED SYSTEM OF CARE (e.g., homeless shelter) <input type="checkbox"/> OTHER (Specify): _____
15E. POINT OF CONTACT (Name of person VA can contact in order to get in touch with you)	15F. POINT OF CONTACT TELEPHONE NUMBER (Include Area Code)

SECTION IV: CLAIM INFORMATION

16. LIST THE CURRENT DISABILITY(IES) OR SYMPTOMS THAT YOU CLAIM ARE RELATED TO YOUR MILITARY SERVICE AND/OR SERVICE-CONNECTED DISABILITY (If applicable, identify whether a disability is due to a service-connected disability; confinement as a prisoner of war; exposure to Agent Orange, asbestos, mustard gas, ionizing radiation, or Gulf War environmental hazards; or a disability for which compensation is payable under 38 U.S.C. 1151.)

NOTE: List your claimed conditions below. See the following three examples for guidance on how to complete Section IV.

EXAMPLES OF DISABILITY(IES)	EXAMPLES OF EXPOSURE TYPE	EXAMPLES OF HOW THE DISABILITY(IES) RELATE TO SERVICE	EXAMPLES OF DATES
Example 1. HEARING LOSS	NOISE	HEAVY EQUIPMENT OPERATOR IN SERVICE	JULY 1968
Example 2. DIABETES	AGENT ORANGE	SERVICE IN VIETNAM WAR	DECEMBER 1972
Example 3. LEFT KNEE, SECONDARY TO RIGHT KNEE		INJURED LEFT KNEE WHEN BRACE ON RIGHT KNEE FAILED	6/11/2008
CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENED
1. Motion to Revise the 10/3/2007 Rating Decision based on clear and unmistakable error of law.		Failure to adjudicate under 38 CFR §3.156(c)	5/25/1983
2.			
3.			
4.	*** See attached Veteran's legal brief in support of claim***		
5.			
6.			
7.	***Under Secretary of Benefits Thomas Murphy has instructed VA representatives		
8.			
9.	to utilize any form to capture the Veteran's data for identification when filing a		
10.			
11.			
12.			
13.			
14.			
15.			

VETERANS SOCIAL SECURITY NO. [REDACTED]

17. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) LISTED IN ITEM 16 AND PROVIDE APPROXIMATE BEGINNING DATE (Month and Year) OF TREATMENT:
 NOTE: If treatment began from 2005 to present, you do not need to provide dates in item 17B.

A. ENTER THE DISABILITY TREATED AND NAME/LOCATION OF THE TREATMENT FACILITY	B. DATE OF TREATMENT (MM/YYYY)	C. CHECK THE BOX IF YOU DO NOT HAVE DATE(S) OF TREATMENT
[REDACTED]		<input type="checkbox"/> Don't have date
		<input type="checkbox"/> Don't have date
		<input type="checkbox"/> Don't have date
		<input type="checkbox"/> Don't have date

NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING, COMPLETE AND ATTACH THE REQUIRED FORM(S) AS STATED BELOW.
 (VA forms are available at www.va.gov/vaforms)

For:	Required Form(s):
Supplemental Claims	VA Form 20-0995, <i>Decision Review Request: Supplemental Claim</i>
Dependents	VA Form 21-686c and, if claiming a child aged 18-23 years and in school, VA Form 21-674
Individual Unemployability	VA Form 21-8940 and 21-4192
Post-Traumatic Stress Disorder	VA Form 21-0781 or 21-0781a
Specially Adapted Housing or Special Home Adaptation	VA Form 28-4555
Auto Allowance	VA Form 21-4502
Veteran/Spouse Aid and Attendance benefits	VA Form 21-2680 or, if based on nursing home attendance, VA Form 21-0779

SECTION V: SERVICE INFORMATION

18A. DID YOU SERVE UNDER ANOTHER NAME?	18B. LIST THE OTHER NAME(S) YOU SERVED UNDER:	
<input type="checkbox"/> YES (If "Yes," complete Item 18B) <input checked="" type="checkbox"/> NO (If "No," skip to Item 19A)		
19A. BRANCH OF SERVICE (Check all that apply)	19B. COMPONENT (Check all that apply)	
<input checked="" type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> MARINE CORPS	<input checked="" type="checkbox"/> ACTIVE	<input type="checkbox"/> RESERVES <input type="checkbox"/> NATIONAL GUARD
<input type="checkbox"/> AIR FORCE <input type="checkbox"/> COAST GUARD		
20A. MOST RECENT ACTIVE SERVICE DATES (MM,DD,YYYY)	20B. PLACE OF LAST OR ANTICIPATED SEPARATION	
Month Day Year	Co. E 54th Inf. Third US Army USAAVNS Germany	
ENTRY DATE: 0 1 - 0 7 - 1 9 6 7		
EXIT DATE: 0 1 - 0 6 - 1 9 6 9		
20C. DID YOU SERVE IN A COMBAT ZONE SINCE 9-11-2001?	20D. ADDITIONAL PERIODS OF SERVICE (Indicate enlistment and discharge date(s), if applicable)	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Enlistment Date(s)	Discharge Date(s)
21A. ARE YOU CURRENTLY SERVING OR HAVE YOU EVER SERVED IN THE RESERVES OR NATIONAL GUARD?	21B. COMPONENT	21C. OBLIGATION TERM OF SERVICE
<input type="checkbox"/> YES (If "Yes," complete Items 21B thru 21F)	<input type="checkbox"/> NATIONAL GUARD	Month Day Year
<input checked="" type="checkbox"/> NO (If "No," skip to Item 22A)	<input type="checkbox"/> RESERVES	From: [REDACTED] - [REDACTED] - [REDACTED]
21D. CURRENT OR LAST ASSIGNED NAME AND ADDRESS OF UNIT:	21E. CURRENT OR ASSIGNED PHONE NUMBER OF UNIT (Include Area Code)	21F. ARE YOU CURRENTLY RECEIVING INACTIVE DUTY TRAINING PAY?
	()	<input type="checkbox"/> YES <input type="checkbox"/> NO
22A. ARE YOU CURRENTLY ACTIVATED ON FEDERAL ORDERS WITHIN THE NATIONAL GUARD OR RESERVES?	22B. DATE OF ACTIVATION: (MM,DD,YYYY)	22C. ANTICIPATED SEPARATION DATE: (MM,DD,YYYY)
<input type="checkbox"/> YES (If "Yes," complete Items 22B & 22C)	Month Day Year	Month Day Year
<input checked="" type="checkbox"/> NO	[REDACTED] - [REDACTED] - [REDACTED]	[REDACTED] - [REDACTED] - [REDACTED]
23A. HAVE YOU EVER BEEN A PRISONER OF WAR?	23B. DATES OF CONFINEMENT (MM,DD,YYYY)	
<input type="checkbox"/> YES (If "Yes," complete Item 23B)	From:	To:
<input checked="" type="checkbox"/> NO	Month Day Year	Month Day Year
	[REDACTED] - [REDACTED] - [REDACTED]	[REDACTED] - [REDACTED] - [REDACTED]
	Month Day Year	Month Day Year
	[REDACTED] - [REDACTED] - [REDACTED]	[REDACTED] - [REDACTED] - [REDACTED]

VETERANS SOCIAL SECURITY NO. [REDACTED]

SECTION VI: SERVICE PAY (Retired Pay, Separation Pay, and Disability Severance Pay)

24A. ARE YOU RECEIVING MILITARY RETIRED PAY?

 YES (If "Yes," complete Items 24C and 24D) NO

24B. WILL YOU RECEIVE MILITARY RETIRED PAY IN THE FUTURE?

 YES (If "Yes," explain below (e.g. future Reserve/National Guard retirement, pending MEB/PEB and also complete Items 24C and 24D)) NO

24C. BRANCH OF SERVICE

24D. MONTHLY AMOUNT

25. RETIRED STATUS

\$

 RETIRED PERMANENT DISABILITY RETIRED LIST TEMPORARY DISABILITY RETIRED LIST

IMPORTANT INFORMATION ON MILITARY RETIRED PAY (Includes all Uniformed Services Retired Pay):

Submission of this application constitutes a waiver of military retired pay in an amount equal to VA compensation awarded, if you are entitled to both benefits. Your retired pay may be reduced by the amount of VA compensation awarded. Receipt of the full amount of military retired pay and VA compensation at the same time *may* result in an overpayment, which *may* be subject to collection. If you qualify for concurrent receipt of VA compensation and military retired pay, the waiver of retired pay will not apply. If you do not want to waive any retired pay to receive VA compensation, you should check the box in Item 26. Note that if you check the box in Item 26, you will not receive VA compensation, if granted. If you are currently in receipt of VA compensation and you check the box in Item 26, your VA compensation will be terminated, if you are also eligible for military retired pay.

IMPORTANT: VA COMPENSATION PAY IS NON-TAXABLE. THEREFORE, VA COMPENSATION PAY MAY BE THE GREATER BENEFIT.

 26. Do NOT pay me VA compensation. I do NOT want to receive VA compensation in lieu of retired pay.

IMPORTANT INFORMATION ON SEPARATION/SEVERANCE PAY:

VA compensation, if granted, may be withheld to recoup any disability severance or separation pay such as involuntary separation pay, voluntary separation pay, or special separation benefit, you receive from your branch of service. In addition, if you receive a Voluntary Separation Incentive (VSI), your VSI payments may be reduced if you are awarded VA compensation. Receipt of VA compensation and VSI at the same time may result in an overpayment of VSI, which *may* be subject to collection.

27A. HAVE YOU EVER RECEIVED SEPARATION PAY, DISABILITY SEVERANCE PAY, OR ANY OTHER LUMP SUM PAYMENT FROM YOUR BRANCH OF SERVICE?

 YES (If "Yes," complete Items 27B through 27D) NO

27B. DATE PAYMENT RECEIVED (MM,DD,YYYY)

Month	Day	Year
[REDACTED]	[REDACTED]	[REDACTED]

27C. BRANCH OF SERVICE

27D. AMOUNT RECEIVED (Provide pre-tax amount)

\$

IMPORTANT INFORMATION ON INACTIVE DUTY TRAINING PAY:

You may elect to keep the active or inactive duty training pay you received from the military service department. However, to be legally entitled to keep your training pay, you must waive VA benefits for the number of days equal to the number of days for which you received training pay. In most instances, it will be to your advantage to waive your VA benefits and keep your training pay.

If you waive VA benefits to receive training pay by checking the box in Item 28, VA will retroactively adjust your VA award to withhold benefits equal to the total number of training days waived and at the monthly rate in effect for the fiscal year period for which you received training pay. This action may result in an overpayment of compensation, which *may* be subject to collection.

IMPORTANT: VA COMPENSATION PAY IS NON-TAXABLE. THEREFORE VA COMPENSATION PAY MAY BE THE GREATER BENEFIT.

 28. Do NOT pay me VA compensation. I do NOT want to receive VA compensation in lieu of training pay.

SECTION VII: DIRECT DEPOSIT INFORMATION

The Department of the Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check *or* deposit slip *or* provide the information requested below in Items 30, 31 and 32 to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of the Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.

 29. I CERTIFY THAT I DO NOT HAVE AN ACCOUNT WITH A FINANCIAL INSTITUTION OR CERTIFIED PAYMENT AGENT (If you check this box skip to Section VIII)

30. ACCOUNT NUMBER (Check only one box below and provide the account number)

Account No.:

 CHECKING SAVINGS

31. NAME OF FINANCIAL INSTITUTION (Provide the name of the bank where you want your direct deposit)

Established

32. ROUTING OR TRANSIT NUMBER (The first nine numbers located at the bottom left of your check)

SECTION VIII: CLAIM CERTIFICATION AND SIGNATURE

VETERAN/SERVICEMEMBER CERTIFICATION AND SIGNATURE

I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me. For the limited purpose of providing VA with this information as it may relate to my claim, I waive any privilege that may apply and would otherwise make the information confidential and not disclosable.

I certify I have received the notice attached to this application titled, *Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits*.

I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; OR, I have no information or evidence to give VA to support my claim; OR, I have checked the box in Item 1, on page 8, indicating I want my claim processed under the standard claim process because I plan to submit additional evidence in support of my claim.

SSA VETERAN/SERVICE MEMBER SIGNATURE (REQUIRED) (Sign in ink) [REDACTED]

33B. DATE SIGNED (MM,DD,YYYY)

5/23/2022

SECTION IX: WITNESSES TO SIGNATURE

34A. SIGNATURE OF WITNESS (Sign in ink) (Note: Only sign if veteran signed in Item 33A using an "X")

34B. PRINTED NAME AND ADDRESS OF WITNESS

35A. SIGNATURE OF WITNESS (Sign in ink) (Note: Only sign if veteran signed in Item 33A using an "X")

35B. PRINTED NAME AND ADDRESS OF WITNESS

SECTION X: ALTERNATE SIGNER CERTIFICATION AND SIGNATURE

(NOTE: REQUIRED ONLY IF ITEM 33A IS BLANK)

I certify that by signing on behalf of the claimant, that I am a court-appointed representative; OR, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; OR, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; OR, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; AND, that the claimant is under the age of 18; OR, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; OR, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

36A. ALTERNATE SIGNER SIGNATURE (REQUIRED) (Sign in ink)

36B. DATE SIGNED (MM,DD,YYYY)

5/23/2022

SECTION XI: POWER OF ATTORNEY (POA) SIGNATURE
(NOTE: POA'S CANNOT SIGN FOR AN ORIGINAL CLAIM ONLY)

I certify that the claimant has authorized the undersigned representative to file this claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature *will not* be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

37A. POA/AUTHORIZED REPRESENTATIVE SIGNATURE (Sign in ink)

37B. DATE SIGNED (MM,DD,YYYY)

5/23/2022

Gordon A. Graham VA #39029 POA EIP

PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs. Social Security information: You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.

RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

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.



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Gordon A. Graham
14910 125th St. NW
Gig Harbor, WA 98329
VA #39029 POA E1P

Dept. of Vet Affairs
Evidence Intake Center
P.O. Box 4444
Janesville, WI 53547-4444

May 23, 2022

Re: [REDACTED]

Motion to Revise the October 7, 2007 Rating Decision

Movant, through counsel, now submits his Motion to Revise the October 7, 2007, rating decision for earlier effective date based on a clear and unmistakable error of law- to wit, §§3.156(c)(1),(3),(4); 3.103 (2007). The original July 1984 rating decision never became final as relevant service treatment records were added to the file after the rating decision.

A recitation of the facts is in order to better understand the etiology of the instant clear and unmistakable error of law. All dates cited are the 'receipt date' annotated in the Movant's VBMS efolder.

History of the Instant Claim

5/25/1983--Veteran files original claim for left hip and left knee conditions.

8/2/1983--MAP-D letter invites Veteran to submit any SMRs he may have in his possession.

9/19/1983--VA finding of fact that no Service Treatment Records (STRs) can be located.

6/18/1984--VA 21-3101 PIES inquiry determines no STRs can be located.

7/18/1984--Rating decision denies service connection for a left hip and left knee condition.

2/27/07--Veteran reopens 1984 original claim for left hip and left knee conditions.

7/12/2007--VA 21-3101 PIES request of 4/07/2007 shows recovery and mailing of relevant service department medical records which had never been associated with the claims file at the time of the prior 7/18/1984 rating decision. STRs not found in claims file.

8/08/2007--VA Form 21-6789 Deferred rating, authored by Melisa Collinsworth, RVSR states: "Note to rater, if exam comes back positive, then we must consider the effective date since the SMRs weren't available at the time of the original [1983] rating."

10/03/2007--Rating decision grants compensable service connection for both left hip and left knee condition based on the new and relevant service department records with incorrect effective date of May 25, 2003.

12/08/2008--The Secretary declares a CUE on themselves and awards an additional rating for the left knee resulting in a combined rating of 30% with incorrect effective date of 9/14/2007.

7/26/2012--VBMS shows inclusion of the contemporary STRs for the first time in the Movant's claims file.

Legal Standard of Review

38 CFR §3.156(c)(1) is not permissive. It is compulsory. The regulation states:

“(1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section.” (emphasis added).

§3.156(c)(3) is equally unequivocal:

“(3) An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.” (emphasis added).

Lastly, §3.156(c)(4) can leave no doubt as to the correct procedure to employ when relevant service department records are associated with the Veteran's claims file.

“(4) A retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly, except as it may be affected by the filing date of the original claim.”

Jones v. Wilkie, 964 F.3d 1374, 1378 (Fed. Cir. 2020) held “In the case of an award that results from reopening under section 3.156(a), the effective date of the award is the date the request for reopening was made or the date of

entitlement, whichever is later." Id. at 1379 (citing 38 U.S.C. § 5110(a), 38 C.F.R. § 3.400(q)(2), and *Blubaugh v. McDonald*, 773 F.3d 1310, 1313 (Fed. Cir. 2014)). However, under 38 C.F.R. § 3.156(c), an exception to the general effective date rule is available if VA receives new service department records and awards benefits based on those new service department records. *Jones*, 964 F.3d at 1379.

Discussion

On May 25, 1983, Movant filed his VA form 526 requesting service connection for both a left knee and left hip condition. On both September 19, 1983, and again on June 18, 1984, a formal finding of fact informed the VBA that Movant's service treatment records (STRs or SMRs) were either lost, misplaced or unavailable. On July 18, 1984, a rating decision denied Movant service connection for his injuries incurred in service.

On February 6, 2006, Movant submitted a VA Form 21-4138 indicating his desire to reopen his original 1983 denied claim for his left hip and left knee. On August 8, 2007 a VA form 21-6789 Deferred Rating Decision was issued confirming that the long-lost STRs had now been associated with the claims file. The Rating Veterans Service Representative (RVSR) further admonished the rater that in the event the c&p exam came back positive, that a possible earlier effective date must be considered based on the recent acquisition of the new, relevant service department records.

On October 3, 2007, a rating decision was promulgated that granted service connection for left hip and left knee but inexplicably chose an arbitrary date of May 25, 2003, for entitlement to same. In the same rating decision, service connection for left hip disorder was also granted with yet another effective date of February 27, 2007 in violation of 38 USC §5110(a); §3.400 (2007). On page two of the October 2007 rating decision, the Secretary freely conceded prior denial of service connection was due to the unavailability of the Movant's STRs. In point of fact, the Secretary unequivocally stated in haec verba:

“Because we now have your records showing your in-service left patella fracture, we have granted service connection effective the date we received your original claim.” A longitudinal review of the claims file reveals that the ‘original claim’ was filed on May 25, 1983.

A longitudinal review of Movant’s claims file shows no interim claims filings from the original May 25, 1983, claim to the February 27, 2007 submission of the Movant’s VA form 21-4138 requesting to reopen his claims for left hip and left knee conditions. This was clear and unmistakable error. The failure to consider the application of §3.156(c)(1) produced an outcome determinative error that manifestly changed the outcome by ignoring the application of §3.156(c)(3)(4) (2007). With the sure knowledge of the information contained in the August 8, 2007, deferred rating, and actual possession of the contemporary 1968 STRs, The Secretary, in violation of statute and regulation, chose to pick an arbitrary, incorrect date for assignment of the entitlement to service connection.

Further, a rating decision was promulgated on December 8, 2008, granting compensable service connection for a left hip disability with an effective date of February 27, 2007. In the December 2008 rating decision, the Secretary declared a clear and unmistakable error occurred in the October 2007 rating inasmuch as the Movant should have been awarded a separate 10 percent rating for slight knee instability. The Confirmed Rating decision, according to the Code Sheet, shows a compensable rating was assigned from September 14, 2007 for a combined rating of 30%. This date of entitlement is incorrect. This, too, was clear and unmistakable error.

Movant was still within the time limits to appeal his “original” rating for his now-service connected disabilities on July 3, 2008, when he submitted yet another VA form 21-4138 asking for a higher initial rating. The Secretary chose to view this as a new request for an increase rather than dissatisfaction with his original rating. This, too, was a clear and unmistakable error. By operation of law (§3.103(a) (2007)), Movant was entitled to an earlier effective date of May 1983 for any and all compensable ratings which were predicated on the now-associated STRS recently associated with the claims file. See *AB v. Brown*, 6 Vet. App. 35, 38 (1993) [applicable law mandates that when a veteran seeks an original or increased rating, it will generally be presumed that the maximum

benefit allowed by law and regulation is sought, and it follows that such a claim remains in controversy where less than the maximum benefit available is awarded].

Entitlement to a compensable rating for service connection for left hip and left knee conditions arose on May 25, 1983 and no earlier. There can only be one correct view of the evidence of record. The VA form 21-3101 dated July 12, 2007, unequivocally supports entitlement to service connection in 1983. The VA form 21-6789 further confirms the VA Examiner was cognizant of the correct application of the pertinent regulation to employ and the entitlement to a 1983 effective date for the left hip and left knee disabilities. The QTC Medical c&p examination of September 14, 2007, unequivocally creates the nexus between the left hip and left knee injury to service based on the newly associated relevant service department records belatedly associated with claims file no earlier than July 12, 2007.

"Clear and unmistakable evidence,' as used in the governing statutes, has been interpreted to mean evidence that 'cannot be misinterpreted and misunderstood, i.e., it is undebatable.'" **Quirin v. Shinseki**, 22 Vet.App. 390, 396 (2009) (citing **Vanerson v. West**, 12 Vet.App. 254, 258-59 (1999)). The language employed by the Secretary in §3.156(c), as well as the possession of the evidence (STRs) explained in the August 8, 2007, deferred rating cannot be misinterpreted or misunderstood- i.e., it is undebatable. Moreover, by willfully ignoring the facts of the case, it can be said this arises to the level of misfeasance.

The claimant must provide "some degree of specificity as to what the alleged error is, and, unless it is the kind of error . . . that, if true, would be CUE on its face, persuasive reasons must be given as to why the result would have been manifestly different but for the alleged error." **Fugo v. Brown**, 6 Vet.App. 40, 44 (1993); see also **Bustos v. West**, 179 F.3d 1378, 1380-81 (Fed. Cir. 1999). Movant has amply identified the fact that the statutory and regulatory provisions extant at the time of the October 7, 2007 rating decision were incorrectly applied.

CUE is the sort of error that is "undebatable, so that it can be said that reasonable minds could only conclude that the original decision was fatally flawed at the time it was made." **Russell v. Derwinski**, 3 Vet.App. 310, 313–14 (1992).

To establish CUE, it must be clear from the face of the decision that a particular fact or law had not been considered in the adjudication of the case. See **Crippen v. Brown**, 9 Vet.App. 412, 421 (1996) (citing **Eddy v. Brown**, 9 Vet.App. 52, 58 (1996)).

When 38 C.F.R. § 3.156 (c) is invoked, "the original claim is not just re-opened, it is reconsidered and serves as the date of the claim and the earliest date for which benefits may be granted." **Vigil v. Peake**, 22 Vet. App. 63, 66-67 (2008); see also *Mayhue v. Shinseki*, 24 Vet. App. 273, 279 (2011); **Emerson** *supra* (clarifying that VA must reconsider a claim when relevant service records are received any time after the original denial).

Here, there can be only one permissible view of the evidence. Moreover, the VA examiner, RVSR Melisa Collingsworth conceded as much. In spite of the her best efforts, a clear and unmistakable error ensued. The error of law created an outcome-based decision that manifestly changed the outcome. It was, and is, the kind of error of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds cannot differ, that the result would have been manifestly different but for the error.

In **Blubaugh v. McDonald**, 773 F.3d 1310, 1313 (Fed. Cir. 2014), the Court held:

"In other words, §3.156(c) serves to place a veteran in the position he would have been in had the VA considered the relevant service department record before the disposition of his earlier claim." Movant seeks no more but certainly no less.

Relief Sought

Movant seeks a compensable rating of 10 percent under DC 5257 for his left knee condition of residuals of left knee patella fracture with effective date of May 25, 1983.

Movant seeks a compensable rating of 10 percent under DC 5260 for painful motion, residuals of left knee patella fracture with degenerative joint disease with effective date of May 25, 1983.

Movant seeks a compensable rating of 10 percent under DC 5010 for left hip degenerative joint disease(also claimed as left leg condition) associated with painful motion, residuals of left knee patella fracture with degenerative joint disease with effective date of May 25, 1983.

Respectfully Submitted,

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