



# **BOARD OF VETERANS' APPEALS**

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

[REDACTED]

IN THE CASE OF

[REDACTED]

Appellant Represented by  
Gordon A. Graham, Agent

XSS XXX XX 2404

Docket No. 210331-149454

DATE: July 2, 2024

## **REMANDED**

Entitlement to special monthly compensation (SMC) under 38 U.S.C. § 1114(o) is remanded.

Entitlement to SMC under 38 U.S.C. § 1114(r)(1) is remanded.

## **REASONS FOR REMAND**

The Veteran served on active duty from September 1969 to September 1972, and from October 1972 to October 1975. He died in July 2018. His surviving spouse has been properly substituted as the Appellant in this matter.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a March 2021 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

In the March 2021 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Appellant elected the Evidence Submission docket.

Therefore, the Board may only consider the evidence of record at the time of the March 2021 agency of original jurisdiction (AOJ) decision on appeal, as well as any evidence submitted by the Appellant or representative with, or within 90 days

from receipt of, the VA Form 10182. 38 C.F.R. § 20.303. If evidence was submitted either (1) during the period after the AOJ issued the decision on appeal and prior to the date the Board received the VA Form 10182, or (2) more than 90 days following the date the Board received the VA Form 10182, the Board did not consider it in its decision. 38 C.F.R. §§ 20.300, 20.303, 20.801.

However, because the Board is remanding the claims, any evidence the Board could not consider will be considered by the AOJ in the adjudication of those claims. 38 C.F.R. § 3.103(c)(2)(ii).

**1. Entitlement to SMC under 38 U.S.C. § 1114(o) is remanded.**

**2. Entitlement to SMC under 38 U.S.C. § 1114(r)(1) is remanded.**

The Appellant contends that the Veteran was entitled to a higher level of SMC prior to his death. Specifically, the Appellant contends that the Veteran met the statutory criteria for entitlement to SMC under 38 U.S.C. § 1114(o), and by extension, subsection (r)(1).

Subsection (o) authorizes the payment of additional SMC for conditions entitling the claimant to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. § 1114(l) through (n).

The Veteran is in receipt of SMC under 38 U.S.C. § 1114(l) and 38 C.F.R. § 3.350(b) due to being permanently bedridden. The Veteran is also in receipt of SMC under 38 U.S.C. § 1114(p) and 38 C.F.R. § 3.350(f)(4) at the rate equal to subsection (m) due to service-connected status post myocardial infarction with coronary artery disease and hypertensive heart disease associated with diabetes mellitus.

The February 2020 rating decision awarding the Veteran SMC under subsection (l) failed to explain which service-connected disability or disabilities served as the basis for this award. This information is needed for the Board to evaluate whether the Veteran should also have been awarded a separate grant of SMC under subsection (l), (m) or (n), thus entitling the Appellant to accrued SMC benefits

under subsection (o) and (r)(1). As such, there was insufficient evidence for the Board to render a decision. This represents a pre-adjudication error of the duty to assist. Remand is needed for the RO to provide a clarifying rating decision on these issues.

Further, the Board noted these deficiencies in a March 2021 decision remanding for the RO to identify the service-connected disability or disabilities which served as a basis for the award of SMC(I). Additionally, the Board directed the RO to consider the Appellant's arguments made in her April 2020 VA Form 10182.

However, in issuing the March 2021 rating decision on appeal here, the RO did not identify the service-connected disability or disabilities which served as a basis for the award of SMC(I), nor note its review of the Veteran's April 2020 VA Form 10182 in the list of evidence considered. A Board remand confers the right to compliance with remand orders. *Stegall v. West*, 11 Vet. App. 268 (1998). As there has not been compliance here, a remand is necessary.

The matters are REMANDED for the following action:

1. Issue a clarifying rating decision explaining which of the Veteran's service-connected disabilities served as the basis for an award of SMC under 38 U.S.C. § 1114(l), taking into consideration the Appellant's arguments submitted in her April 2020 VA Form 10182 and March 2021 VA Form 10182 that separate awards under subsections (o) and (r)(1) should also have been granted.

IN THE APPEAL OF

[REDACTED]

IN THE CASE OF

[REDACTED]

XSS XXX XX 2404  
Docket No. 210331-149454



---

Leetra J. Harris  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

J. S. Lofthouse

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*