Submission of Documents to Department Of Veterans Affairs

Board Of Veterans Appeals
Litigation & Support Division
P.O. Box 27063
Washington, D.C 20038

FAX: (844) 678-8979

Please index this submission as one .pdf

[redacted]	**VSC:** VBADET329

Date: 5/17/2025	**ATTN:** Docketing-Litigation and Support Division

From:	**Gordon A. Graham**
	Title: Nonattorney Practitioner VA #39029 POA Code E1P
	Address 14910 125th Street KP North
	City, State Gig Harbor, WA 98329
Tel: (253)-313- 5377	**Fax (253) 590-0265**
	Email: gagraham51@gmail.com **Gordon.Graham@va.gov**

Type of Document Submitted:

☐	Request for Board Hearing at VA Central Office in D.C.(Rule 703)
☒	Request for Advancement of the Docket (§20.902(c))
☒	Waiver of Time to Select a Different Board Review Option
☐	Submission of New and Relevant Evidence associated with the Instant Appeal
☒	VAF 10182 NOTICE OF DISAGREEMENT (BVA Review)
☐	Motion for Reconsideration (Rule1002)
☒	Other Appellant's Legal Brief of Thirteen (13) Pages.

Number of Pages Submitted (NOT including this cover sheet): Fifteen (15) Pages

OMB Approved No. 2900-0674
Respondent Burden: 30 Minutes
Expiration Date: Mar. 31, 2025

VA U.S. Department of Veterans Affairs

DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)

PART I - PERSONAL INFORMATION

[redacted]

7. MY PREFERRED TELEPHONE NUMBER *(Include Area Code)*	8. MY PREFERRED E-MAIL ADDRESS	9. MY REPRESENTATIVE'S NAME
(253) 313- 5377 (law office)	gordon.graham@va.gov	Gordon A. Graham

PART II - BOARD REVIEW OPTION *(Check only one)*

10. A Veterans Law Judge will consider your appeal in the order in which it is received, depending on which of the following review options you select. *(For additional explanation of your options, please see the attached information and instructions.)*

- [X] 10A. Direct Review by a Veterans Law Judge: I do not want a Board hearing, and will not submit any additional evidence in support of my appeal. *(Choosing this option often results in the Board issuing its decision most quickly.)*
- [ ] 10B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will submit to the Board with my VA Form 10182 or within the 90 days of the Board's receipt of my VA Form 10182. *(Choosing this option will extend the time it takes for the Board to decide your appeal.)*
- [ ] 10C. Hearing with a Veterans Law Judge: I want a Board hearing and the opportunity to submit additional evidence in support of my appeal that I will provide within 90 days after my hearing. I want the hearing type below: *(Choosing this option will extend the time it takes for the Board to decide your appeal.)*
  - [ ] Central Office Hearing *(I will attend in person in Washington, DC)*
  - [ ] Videoconference Hearing *(I will go to a Regional Office)*
  - [ ] Virtual Telehearing *(I will attend using an internet-connected device) (Important: **Provide your e-mail address** and Representative in Part I)*

PART III - SPECIFIC ISSUE(S) TO BE APPEALED TO A VETERANS LAW JUDGE AT THE BOARD

11. Please list each issue decided by VA that you would like to appeal. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision and the area of disagreement *(e.g., service connection, disability evaluation, or effective date of award).*

- [ ] Check here if you are including a request for an extension of time to file the VA Form 10182 due to good cause and then attach additional sheets explaining why you believe there is good cause for the extension.
- [ ] Check here if you are appealing a denial of benefits by the Veterans Health Administration (VHA).

A. Specific Issue(s)	B. Date of Decision
Akles Rule- Entitlement to SMC at the intermediate rate between M and N plus K under authority of §3.350(f)(3)- DC 7005 (60%) Ischemic Heart Disease	5/09/2025
Barry- Entitlement to SMC at the N rate plus K under authority of §3.350(f)(3)-DC 9411 (70%) Post Traumatic Stress Disorder	5/09/2025
Barry-Entitlement to SMC at the intermediate rate between N and O plus K under authority of §3.350(f)(3)- DC 7913 (20%) + DC 8526 (B/L @ 30%) + DC 8520 (B/L @ 40%) DM II	5/09/2025
Akles Rule- Entitlement to SMC at the O rate under authority of §3.350(f) Administrative	5/09/2025
Entitlement to SMC at the R One (1) rate under authority of §3.350(h)(2) Administrative	5/09/2025

C. Additional Issue(s)

- [X] Check here if you attached additional sheets. Include the Veteran's last name and the file number. Thirteen (13) pages legal brief

PART IV - CERTIFICATION AND SIGNATURE

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

12. SIGNATURE *(Appellant or appointed representative) (Ink signature)*	13. DATE SIGNED
Gordon A. Graham VA #39029 POA E1P	5/17/2025

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.

Gordon A. Graham #39029
14910 125th St. NW
Gig Harbor, WA 98329
(253) 313-5377

Dept. Of Veterans Affairs
Board of Veterans Appeals
Litigation and Support Group
P.O. Box 27063
Washington, DC 20038

May 16, 2024

Veteran: [redacted]
Subject: Notice of Disagreement with the 5/09/2025 Rating Decision

Before the Department of Veterans Appeals
Appellant's Legal Brief

Pursuant to the recent single judge memorandum decision in Williams v. McDonough, WL _____ CAVC 21-7363 decided June 24, 2024, Appellant does not desire to change his direct venue Notice of Disagreement and waives consideration at this time.

Appellant, through counsel, now files his Notice of Disagreement (NOD) in the BVA AMA Direct Lane with the May 9, 2025, rating decision (RD) which, having discovered a clear and unmistakable error, neglected to correctly apply the ***Akles*** *(infra)* Rule recently decided in the ***Barry v. McDonough*** decision (WL _____ CAFC 2022-1747 decided June 13, 2024) to the instant case at bar.

In order to clarify the argument for the above entitlement for the Trier of Fact, the Veteran will provide a brief recitation of the history of the claim leading up to the adversarial RD being appealed. All dates listed correspond with the VBMS "Date Received" column.

History of the Instant Appeal

10/31/2022-- Veteran files his VAF 21-526 for Parkinson's Disease, Aphonia and the aid and attendance (a&a) of another under §3.352(a).

2/14/2022-- RD grants, *inter alia*, entitlement to Special Monthly Compensation (SMC) at the L rate only for a&a due solely to Parkinson's disease with loss of use of a creative organ only.

2/24/2022-- Veteran files VAF 20-0995 Supplemental claim seeking, *inter alia*, increased entitlement to SMC ratings under §3.350(f)(3)(4).

9/30/2023-- RD, *inter alia*, confirms and continues current rate of SMC entitlement.

10/09/2023-- Veteran files VAF 20-0996 requesting HLR to correct the error in the level of SMC entitlement rate.

2/09/2024—RD, *inter alia*, acknowledges a failure of the duty to assist in the adjudication of the increased entitlement to a&a.

6/13/2024-- Federal Circuit decision in ***Barry*** *supra* reverses CAVC decision #2020-3367 affirming BVA decision on only one application of §3.350(f)(3).

8/02/2024—RD confirms and continues entitlement to SMC at the L rate and no higher.

10/14/2024-- Veteran files 526 for a&a due solely to Chronic Lymphocytic Leukemia (CLL) and for bilateral loss of use of upper and lower extremities.

5/08/2025-- RD (dated 5/09/2025) informs Veteran that due to the extremities in question being on appeal to the BVA, entitlement to loss of use must be held in abeyance; a clear and unmistakable error is also declared and

entitlement to increase of SMC rate from L to M *only* is declared effective October 31, 2022.

5/13/2025-- VA mails notification letter and closes End Product (EP) Code 020 for a&a due solely to chronic lymphocytic leukemia and loss of use of upper and lower extremities; a&a for CLL is presumed to be implicitly denied.

This appeal ensues *solely* with respect to the RD dated May 9, 2025, awarding the increase in entitlement from SMC L to M granted in the revision of the October 31, 2022, RD. Appellant vehemently waives review in the first instance of any procedural or duty to assist errors below at the Agency of Original Jurisdiction with regard to the implicit denial of a claim for a&a due solely to his CLL at this time.

The Legal Landscape

In ***Akles v. Derwinski,*** 1 Vet.App. 118, 121 (1991), the Court noted VA's policy to consider SMC where applicable). See also ***Bradley v. Peake,*** 22 Vet. App. 280 (2008) ("Accordingly, any effective date must be based on that point in time when the evidence first supported an award of SMC, which may be well before Mr. Bradley raised the issue of his entitlement thereto. See 38 U.S.C. §§ 5110(a), 1114(s); 38 C.F.R. § 3400(o) (2008)".

38 USC §1114(l) states, in haec verba: "(l)if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both feet, or of one hand and one foot, or is blind in both eyes, with 5/200 visual acuity or less, or is permanently bedridden **or with such significant disabilities as to be in need of regular aid and attendance, the monthly compensation shall be** ....." (emphasis added to original statute).

In ***Buie v. Shinseki,*** 24 Vet.App. 242, 250 (2010), the Court held VA's duty to maximize benefits requires VA to assess all of the claimant's disabilities without

regard to the order in which they were service connected to determine whether any combination of the disabilities establishes entitlement to [SMC] under section 1114. This duty to maximize encompasses all SMCs and requires VA render a decision which grants every benefit that can be 'supported in law while protecting the interests of the Government.'

In ***Robinson v. Shinseki***, 557 F.3d 1355 (Fed Cir. 2009) the Court held recognizing that the Board is required to consider all issues raised either by the claimant or by the evidence of record.

In ***Mitchell v. McDonald***, 27 Vet App. 431,440 (2015), the Court held that cases "must be decided on the law as we find it, not on the law as we would devise it"). See also ***Morton v. Ruiz***, 415 U.S. 199, 235, 39 L. Ed. 2d 270, 94 S. Ct. 1055 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.").

In ***Bell v. Derwinski,*** 2 Vet. App. 611, 613 (1992), the Court held that records generated by VA facilities that may have an impact on the adjudication of a claim are considered constructively in the possession of VA adjudicators during the consideration of a claim, regardless of whether those records are physically on file).

§3.350(h)(1)(2) Special aid and attendance benefit; 38 U.S.C. 1114(r) states:

1. **Maximum compensation cases**. A veteran receiving the maximum rate under 38 U.S.C. §1114 (o) or (p) who is in need of regular aid and attendance or a higher level of care is entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See §3.552(b)(2) as to continuance following admission for hospitalization.) Determination of this need is subject to the criteria of §3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the

maximum rate under 38 U.S.C. §1114 (o) or (p), or was based on an independent factual determination.

(2) **Entitlement to compensation at the intermediate rate between 38 U.S.C. 1114 (n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k)**

A veteran receiving compensation at the intermediate rate between 38 U.S.C. §1114 (n) and (o) plus special monthly compensation under 38 U.S.C. §1114(k) who establishes a factual need for regular aid and attendance or a higher level of care, is also entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See §3.552(b)(2) as to continuance following admission for hospitalization.) Determination of the factual need for aid and attendance is subject to the criteria of §3.352.

VAOPGCPREC 4-2004 (May 28, 2004) states:

SMC may be granted to Veterans who are so disabled that they require regular aid and attendance or are housebound. See ***Prejean v. West***, 13 Vet.App. 444, 447 (2000)

In ***Moreira v. Principi,*** 3 Vet.App. 522, 524 (1992), the Court held SMC is available when, "as the result of service-connected disability," a veteran suffers additional hardships above and beyond those contemplated by VA's schedule for rating disabilities. See 38 U.S.C. §1114(k)-(s). The rate of SMC "varies according to the nature of the veteran's service-connected disabilities.".

In ***Saunders v. Wilkie***, 886 F.3d 1356, 1362–63 (Fed. Cir. 2018), the Court held "We have recognized that the word "disability" refers to a "functional impairment, rather than the underlying cause of the impairment."

In ***Evans v. McDonald***, 27 Vet. App. 180, 185 n.3 (2014) (en banc), the Court noted that both the CAVC and the Federal Circuit Court have held the

RO's failure to address an implied claim is an action that can be challenged through a motion for CUE.

3.105((a)(1)(ii) states:

(ii) Effective date of reversed or revised decisions. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

In ***Barry v. McDonough,*** (WL _____ CAFC 2022-1747, decided June 13, 2024) F.3d, the Court held "§3.350(f)(3) does not limit how many SMC increases can be provided; instead, it is a mandatory entitlement that can apply multiple times, subject to a statutory cap".

In ***AB v. Brown***, 6 Vet. App. 35, 38 (1993), the Court held 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].

Discussion

As an initial matter, the Appellant wishes the Trier of Fact to note the Code Sheet was e-signed by no less than three VA higher-level employees attesting to the correctness of the revision of the August 4, 2024, RD-one of them the supervisory Coach who is generally a senior employee with extensive subject matter knowledge of the SMC identified as being clearly and unmistakably in error. This provokes an examination of the presumption of regularity of the official acts of public officers.

While this appeal is about entitlement to a higher level of SMC, it also involves the presumption of regularity—how it may be triggered as well as rebutted. Courts often ***cite United States v. Chemical Foundation, Inc***., 272 U.S. 1 (1926) 1 for the Supreme Court's statement of the presumption: "The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." The presumption of regularity reflects Federal courts' deference to the other branches of Government and efficiency concerns. See ***Ashley v. Derwinski (Ashley I),*** 2 Vet.App. 62, 65 (1992), amended on reconsideration, 2 Vet.App. 307 (1992)(amended May 28, 1992) (***Ashley II***).

But the presumption is not a carte blanche. After all, the presumption of regularity is rebuttable. See ***Rizzo v. Shinseki***, 580 F.3d 1288 (Fed. Cir. 2009). Here, in the instant appeal, the presumption of regularity is buttressed by no less than three signatories attesting to the fact that they revised a prior decision which purported to have granted every benefit that could have been supported in law while protecting the interests of the Government. The Secretary's very own regulations rebut the presumption that the revised RD is correct in all respects. The Secretary simply cannot have his CUE cake and eat it too. This is the gravamen of the Veteran's appeal.

The May 2025 revision of the correct rate of SMC entitlement for the Appellant based on CUE was initiated by a request for aid and attendance of another solely under §3.350(b)(3) on October 14, 2024. See VBMS entry of VAF 21-526, page 4 of 6, Section V Claim information, item 1-to wit, *Entitlement to aid and attendance under §4.117 DC 7703 for chronic lymphocytic leukemia (CLL) under authority of §§ 3.307(a)*; 3.309(e). At the same time, in support of his claim, the Appellant also submitted a VAF 21-2680 providing proof of a factual need for a&a for his chronic lymphocytic leukemia under §3.351(c)(3).

On October 22, 2024, the Appellant was notified that his application for entitlement to a&a had been filed on the wrong form. See VBMS entry of 10/22/2024 Request for Application AMA Review Letter. Consequently, on November 1, 2024, in order to comply with the Secretary's request, Appellant

filed the only other VA document available to him which might meet the requirement-i.e., a VAF 20-0995 Supplemental Claim form.

An undated, anonymous note in the "Subject" column to the left of the entry reveals the statement "NOT VALID-ALREADY UNDER EP 020 REC'D 10/14/2024". From this, Appellant's representative surmised the Secretary had erred and indeed accepted the claim for a&a on the original submission using the prior VAF 21-526. To be safe, Appellant re-submitted a VAF 21-2680 to ensure the document was indeed CEST'd with the a&a claim.

On May 9, 2025, (May 8, 2025 in VBMS entry) a RD was promulgated that declared the matter of loss of use of the upper and lower extremities in the October 2024 claims filing was currently under review above at the BVA and was not permitted to be adjudicated in more than one tribunal at a time. Appellant wishes to point out the matter on appeal (BVA Docket No. 15-19 338) deals solely with an earlier effective date for a higher rating for three of his four extremities prior to 2014 only; to be fair, it might be said the Board member hearing that appeal certainly has the authority to grant loss of use based on the evidence of record but Appellant freely concedes he was not so disabled in 2010 as to warrant loss of use. Based on that. The Appellant concedes the point and thus there is no case or controversy on the matter. Appellant will bide his time and wait for the former Legacy appeal to conclude before pursuing the latter.

Oddly, nowhere in the four corners of the claims file can there be found mention of promulgation - up or down- of the October 2024 claim for a&a filed simultaneously with the bilateral loss of use claims. In order to conserve scarce judicial resources, Appellant waives review of this duty to assist error in the first instance below by the Agency of Original Jurisdiction (AOJ) based on the following arguments espoused below in the instant brief. It may very well be that the VA's failure to address the a&a claim was simply an oversight. Or, perhaps the VA felt Appellant could easily infer the decision was implicitly denied due to the Secretary sending out a notification letter declaring a clear and unmistakable error in the Veteran's level of SMC in its stead and closing out the

claim. Appellant is unsure how this could ever pass muster with the four factors required to sustain a finding of implicit denial under Cogburn. See ***Cogburn v. Shinseki***, 24 Vet. App. 205, 213 (2010). In any event, the May 9, 2025, RD is a *fait accompli* at this point.

SMC sometimes offers multiple pathways to certain levels of entitlement depending on the choice of which pathway is selected. Nevertheless, in any case, the Secretary is obligated to follow his own guidance under §3.103(a). In the instant case, the Secretary chose to implement SMC at the "P" rate (M + K) solely under §3.350(f)(4). But, by taking that path, using the ***Akles*** rule and the almost year-old ***Barry*** *supra* decision, the application of §3.350(f)(4)was not the end of the matter. §3.103(a); ***Bell, AB, Robinson*** all *supra*.

Based on ***Barry*** *supra*, additional applications of §3.350(f)(3) entitlement were readily available to the VA Examiner. On page one of seven pages of the Appellant's Code Sheet dated May 9, 2025, the Examiner states in the CUE announcement his rationale for the original award of entitlement to a&a on August 2, 2024 was predicated solely on his "Parkinson's residuals with loss of use of a creative organ." As Appellant is rated for numerous other diseases separate and distinct from the conditions establishing entitlement under 38 U.S.C. §1114 L and involving different anatomical segments or bodily systems, these diseases or injuries are available to award a higher level of SMC entitlement under authority of §3.350(f)(3). ***AB*** *supra*.

Application of Barry Precedence to the Instant Appeal

Initially, Appellant submits he is entitled to an additional increase from SMC at the M rate to the intermediate rate between M and N based solely on his Ischemic Heart Disease (IHD) rated at 60% under the authority of §3.350(f)(3). Reasonable minds can only concur the heart condition is separate and distinct from the index disease of Parkinson's with loss of use of a creative organ (SMC L plus K). ***Barry*** *supra*.

Secondly, Appellant submits he is entitled further to a second increased entitlement from the intermediate rate between M and N to the N rate based solely on his major depressive disorder of PTSD rated at 70% under the authority of §3.350(f)(3). This, too, reasonable minds can only concur with inasmuch as a major depressive disorder is mental in nature and is separate and distinct from the condition of Parkinson's disease residuals with loss of use of a creative organ causing the need for a&a of another. ***Barry*** *supra.*

Thirdly, yet again in the same vein, Appellant asserts he is entitled to a further award from SMC at the N rate to SMC at the intermediate rate between N and M based solely on his combined Diabetes Mellitus Type II with residuals of peripheral neuropathy rated at 50% or more- again separate and distinct from the conditions establishing entitlement under 38 U.S.C. §1114 L and involving different anatomical segments or bodily systems. ***Barry*** *supra.*

As the Trier of Fact is undoubtedly more than aware, SMC at the N and one half rate plus K is equivalent to the maximum rate of SMC P under §3.350(f). Therefore, under the authority of §3.350(h)(2), as Appellant has established a factual need for regular a&a since October 31, 2022, he submits the RD of May 9, 2025, failed to render a decision which granted every benefit that could be supported in law while protecting the interests of the Government. ***AB*** *supra.*

Were the Trier of Fact to feel there was tension in the application of both §3.350(f)(4) and §3.350(f)(3) being employed in reaching the SMC level of the intermediate rate between N and O, a separate pathway would still be available without utilizing §3.350(f)(4) whatsoever.

Using Appellant's 50% rating for Obstructive Sleep Apnea (OSA) under DC 6847, he could obtain entitlement to the intermediate rate between L and M based on the fact that OSA is a disability associated with the pulmonary system. While the Secretary might attribute it to DM II, which is an endocrine dysfunction, it is separate and distinct and involves different anatomical segments or bodily

systems from the conditions establishing entitlement under 38 U.S.C. §1114 (l) through (n).

Similarly, Appellant's residuals of DM II involve numerous ratings sufficient to supply an additional entitlement to §3.350(f)(3) based solely on DC 8526 for bilateral Peripheral Neuropathy of the lower extremities at 40% each which would suffice to advance entitlement to SMC from the intermediate rate between L and M to the full rate of M without disturbing the subsequent, previously mentioned steps via the ***Barry*** *supra* precedence used to reach SMC at the intermediate rate between N and O accompanied by SMC at the K rate.

Procedurally, as this essentially would be considered a disagreement with level of SMC assigned, the Trier of Fact has the authority under §7104(a) to make "one decision on appeal" as to the correct SMC entitlement(s) based on the evidence of record and most especially because it is supported by the Secretary's very own regulatory authorities. Appellant, having thus obtained SMC at the maximum P rate, and having demonstrated a prior factual need for the a&a of another under §3.350(b)(3), Appellant submits he is entitled to advancement to the higher level of a&a at the R 1 (one) rate under authority of §3.350(h)(2) by operation of law.

Conclusion

Appellant is on fours praying for that certain relief that only a higher tribunal seems judicially capable of awarding. The worst he could aspire to is a Bryant notice to belatedly enlighten him (and his representative) of that which the Secretary has pointedly failed so far to enunciate he lacks. Nevertheless, Appellant points to §3.304(c) for the proposition that the evidence is more than ample with which to adjudicate the decision via §3.350(h)(2). His attempts via pro se and VSO representation below have been unavailing. Absent a visit to the Oracle at Delphi, he is convinced he will remain denied below. Appellant submits he has met his burden of proving his entitlement.

In ***Russell v. Derwinski***, 3 Vet. App. 310, 313-14 (1992) (*en banc*), Judge Holdaway stated for posterity, " an error either undebatably exists, or there was no error within the meaning of §3.105(a)". *Id.* at 317. Appellant avers the RD decision here on appeal can never rise to the level of a clear and unmistakable error. SMC entitlement arises the moment the medical evidence supports the entitlement. ***Akles*** *supra.* As entitlement to SMC require no claim and is due and owing the moment the Medical Evidence proves entitlement arises, there can simply be no delimiting suspense date predicated on date of filing. Medical evidence of a qualifying entitlement under §3.350 then becomes the date of claim by operation of law. ***Akles*** *supra*.

Appellant feels the appeal is in equipoise and asks for the time-honored pro-Veteran canon of statutory construction most recently espoused in ***Henderson v. Shinseki,*** 562 U.S. 428,441 (2011), where the Court held "We have long applied the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.").

The pro-Veteran canon instructs that provisions providing benefits to veterans should be liberally construed in the veterans' favor, with any interpretative doubt resolved to their benefit. See, e.g., ***King v. St. Vincent's Hosp.***, 502 U.S. 215, 220 (1991).

The Supreme Court first articulated this canon in ***Boone v. Lightner*** to reflect the sound policy that we must "protect those who have been obliged to drop their own affairs to take up the burdens of the nation." 319 U.S. 561, 575 (1943). This same policy underlies the entire veterans benefit scheme.

Lastly, in ***Fishgold vs. Sullivan Drydock & Repair Corp.***, 328 U.S. 275, 66 S. Ct. 1105 (1946) the Supreme Court declared that veterans laws are "to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need," and the Court showed us how to do so—"construe the separate provisions of the [law]as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of

the separate provisions permits." The slipping stems from two words in an oft cited pro-veteran canon case, ***Brown v. Gardner***, 115 S. Ct. 552,130 (1994 : "interpretive doubt."

Appellant seeks that which was promised him should he ever be injured when he raised his right hand and swore to defend America. He seeks no more- but certainly no less. Unfortunately, for whatever reason, that promised entitlement has eluded him to date. Even worse, perhaps is the perceived appearance of an implicit denial without informing him of that which he lacks under §3.103(f)(5).

Appellant requests a sympathetic reading of his appeals. Because he is proceeding pro se with a VA Agent, he is entitled to both a sympathetic reading of his informal brief and a liberal construction of his arguments. See ***Calma v. Brown***, 9 Vet.App. 11,15 (1996); ***De Perez v. Derwinski***, 2 Vet.App. 85, 86 (1992). Although aides from veterans' service organizations provide invaluable assistance to claimants seeking to find their way through the labyrinthine corridors of the veterans' adjudicatory system, they are "not generally trained or licensed in the practice of law." See ***Cook v. Brown***, 68 F.3d 447, 451 (Fed.Cir.1995).

Respectfully submitted,

Gordon A. Graham
Counsel for Appellant [redacted]

The above legal brief is the sole work product of Appellant's representative and contains no AI-generated information or legal cites.

Veteran: [redacted]

WAIVER OF TIME TO SELECT A DIFFERENT BOARD REVIEW OPTION

If you are waiving any remaining time to select a different Board review option, please check the option below.

X
_____ I ***waive*** my right to select a different Board review option. ***Please review my appeal as soon as possible.***

6/18/2025

Signature
Gordon A. Graham #39029 E1P
Counsel for [redacted]

Date

Mail or fax this form to:
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

Fax: 1-844-678-8979