



**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

|                          |                   |             |           |
|--------------------------|-------------------|-------------|-----------|
| <b>Veteran:</b>          | [REDACTED]        | <b>VSC:</b> | VBASEA346 |
| <b>C-File or S</b>       | [REDACTED]        |             |           |
| <b>Street Add</b>        | [REDACTED]        |             |           |
| <b>City, State, Zip:</b> | Shelton, WA 98584 |             |           |

|              |           |              |                               |
|--------------|-----------|--------------|-------------------------------|
| <b>Date:</b> | 2/16/2026 | <b>ATTN:</b> | Litigation and Support Intake |
|--------------|-----------|--------------|-------------------------------|

|                                                                                                   |                                                               |  |  |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--|--|
| <b>From:</b>                                                                                      | Gordon A. Graham                                              |  |  |
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| <b>Email:</b> <a href="mailto:gagraham51@gmail.com">gagraham51@gmail.com</a> Gordon.Graham@va.gov |                                                               |  |  |

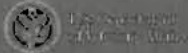
**Type of Document Submitted:**

|                                     |                                                                            |
|-------------------------------------|----------------------------------------------------------------------------|
| <input type="checkbox"/>            | Request for Board Hearing at VA Central Office in D.C.(Rule 703)           |
| <input type="checkbox"/>            | Request for Advancement of the Docket (§20.902(c))                         |
| <input checked="" type="checkbox"/> | Waiver of Time to Select a Different Board Review Option                   |
| <input type="checkbox"/>            | Submission of New and Relevant Evidence associated with the Instant Appeal |
| <input checked="" type="checkbox"/> | VAF 10182 NOTICE OF DISAGREEMENT (BVA Review)                              |
| <input type="checkbox"/>            | Motion for Reconsideration (Rule1002)                                      |
| <input checked="" type="checkbox"/> | Other Appellant's Legal Brief of Five (5) Pages                            |

|                                                                                    |
|------------------------------------------------------------------------------------|
| <b>Number of Pages Submitted (NOT including this cover sheet):</b> Seven (7) 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 author

VA



## DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)

### PART I - PERSONAL INFORMATION

1. VETERAN'S NAME (First, middle initial, last)

2. VETERAN'S FILE NUMBER

3. VETERAN'S DATE OF BIRTH

4. IF I AM NOT THE VETERAN, MY NAME IS (First, middle initial, last)

5. MY DATE OF BIRTH (If I am not the Veteran) (MM/DD/YYYY)

6. MY PREFERRED MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

☐ I AM EXPERIENCING HOMELESSNESS

7. MY PREFERRED TELEPHONE NUMBER  
(Include Area Code) (999-999-9999)  
(360) 584-3204

8. MY PREFERRED E-MAIL ADDRESS  
gordon.graham@va.gov

9. MY REPRESENTATIVE'S NAME  
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.)

☒ 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 (MM/DD/YYYY)

Entitlement to higher level of SMC at the intermediate rate between L and M under authority of §3.350(f)(3) for \$4.119 DC7541 diabetic nephropathy. (Barry Bump)

1/21/2026

Entitlement to higher level of SMC at the M rate under authority of §3.350(f)(3) for \$4.71a DC 5243 at 40% and DC DC 5215-5010 at 10%

1/21/2026

Entitlement to higher level of SMC at the intermediate rate between M and N under authority of §3.350(f)(3) for \$4.119 DC 7913 at 20% and DC 8520 bilateral lower extremity PN at 20% each

1/21/2026

#### C. Additional Issue(s)

☒ Check here if you attached additional sheets. Include the Veteran's last name and the file number. ) 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 (MM/DD/YYYY)

Gordon A. Graham OGC#39029 POA EIP

2/16/2026



**Gordon A. Graham #39029**  
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Dept. Of Veterans Affairs  
Board of Veterans Appeals  
Litigation and Support Group  
P.O. Box 27063  
Washington, DC 20038

February 16, 2025

Veteran [REDACTED]  
Subject: Notice of Disagreement with the 1/21/2026 Rating Decision.

**Before the Department of Veterans Appeals**  
**Appellant's Legal Brief**

Appellant, through his appointed representative, now files his Notice of Disagreement with the January 21, 2026, Rating Decision (RD) which failed to render a decision which granted every benefit that could be supported in law while protecting the interests of the Government under §3.103(a) (2026)-to wit:

Entitlement to higher level of SMC than awarded- specifically entitlement to SMC at the intermediate rate between L and M under authority of §3.350(f)(3) for §4.119 DC7541 diabetic nephropathy rated at 60%;

Entitlement to higher level of SMC than awarded- specifically entitlement to SMC at the M rate under authority of §3.350(f)(3) for §4.71a DC 5243 at 40% and DC 5215-5010 at 10%;

Entitlement to higher level of SMC than awarded- specifically entitlement to SMC at the intermediate rate between M and N under authority of

§3.350(f)(3) for §4.119 DC 7913 at 20% and DC 8520 bilateral lower extremity PN at 20% each.

Because appellant is proceeding *pro se* with a VA representative rather than a VA-accredited attorney, he asks for 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). In **Andrews v. Nicholson**, 421 F.3d (2005) at 1283, the Court held "Although we have held that the duty to construe a veteran's filings sympathetically does not necessarily apply when a veteran is represented by an attorney, the assistance provided by the DAV aide is not the equivalent of legal representation."

### **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. § 3.400(o) (2008)").

38 CFR §3.350(f) deals with the ratings associated with SMC at the P rate. In particular, §3.350(f)(3) provides for the following:

**(3) Additional independent 50 percent disabilities.** In addition to the statutory rates payable under 38 U.S.C. 1114 (l) through (n) and the intermediate or next higher rate provisions outlined above, additional single permanent disability or combinations of permanent disabilities independently ratable at 50 percent or more will afford entitlement to the next higher intermediate rate or if already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 1114, but not above the (o) rate. In the application of this subparagraph the disability or disabilities independently ratable at 50 percent or more must be separate and distinct and involve different anatomical segments

or bodily systems from the conditions establishing entitlement under 38 U.S.C. 1114 (l) through (n) or the intermediate rate provisions outlined above. The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

In **Barry v. McDonough**, WL \_\_\_\_\_ #22-1747 decided May 16, 2024 (F.3d), the Court held there was no stricture in the meaning of the regulation (§3.350(f)(3)) forbidding multiple awards of the "half-step" as long as the disability or disabilities were separate and distinct and involved different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. §1114 (l) through (n).

In **Moreira v. Principi**, 3 Vet.App. 522, 524 (1992), the Court held that 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."

## **Discussion**

Following the Agency of Original Jurisdiction (AOJ) RD of October 23, 2025, the Appellant timely filed his VAF 20-0995 on November 10, 2025, disagreeing with the decision. Unfortunately, due to the delay in revising the VA Adjudications Manual (M 21-1MR (2025)), the precedence established in **Barry supra** was not applied to the instant claim. **Akles supra**.

For the following reasons, the Appellant avers the proper rate of SMC should be as follows:

Entitlement to higher level of SMC than that awarded in the October 23, 2025, RD- specifically entitlement to SMC at the intermediate rate between L

and M under authority of §3.350(f)(3) for §4.119 DC7541 diabetic nephropathy rated at 60% with effective date of September 22, 2025;

Entitlement to higher level of SMC than awarded in the October 23, 2025, RD - specifically entitlement to SMC at the M rate under authority of §3.350(f)(3) for §4.71a DC 5243 at 40% and DC 5215-5010 at 10% with effective date of September 22, 2025;

Entitlement to higher level of SMC than awarded in the October 23, 2025, RD - specifically entitlement to SMC at the intermediate rate between M and N under authority of §3.350(f)(3) for §4.119 DC 7913 at 20% and DC 8520 bilateral lower extremity PN at 20% each with effective date of September 22, 2025.

Each of three contentions voiced in the instant Appeal above are separate and distinct from the index disease of Ischemic Heart Disease (IHD) upon which the award of SMC at the L rate under §3.350(b)(3) was predicated on in the October 23, 2025, RD.

### **Conclusion and Prayer for Relief**

While the Secretary has notably failed to incorporate the required information demanded by both statute (38 USC§ 5104(b)) and regulation (§3.103(f)), Appellant waives review in the first instance below at the Agency level as this does not involve controversy over how the evidence was weighed. In point of fact, it only involves the new Federal Circuit (CAFC) precedence incorporated in **Barry** *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) which held that "We have long applied the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor."

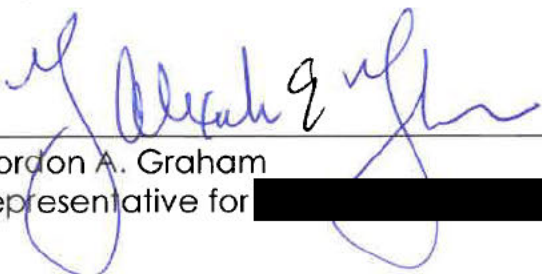
The pro-Veteran canon instructs that provisions providing benefits to veterans should be liberally construed in the veterans' favor, with any interpretative doubt resolved to their benefit. See, e.g., **King v. St. Vincent's Hosp.**, 502 U.S. 215, 220 (1991).

The Supreme Court first articulated this canon in **Boone v. Lightner**, 319 U.S. 561, 575 (1943) 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." This same policy underlies the entire veterans benefit scheme.

See also **Barrett v. Principi**, 363 F.3d 1316, 1320 (Fed. Cir. 2004) ("[T]he veterans benefit system is designed to award entitlements to a special class of citizens, those who risked harm to serve and defend their country. This entire scheme is imbued with special beneficence from a grateful sovereign."

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."

Respectfully submitted,



Gordon A. Graham  
Representative for [REDACTED]

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

[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.*

  
\_\_\_\_\_  
Signature  
Gordon A. Graham #39029 ENP  
[REDACTED]

\_\_\_\_\_  
2/16/2026

\_\_\_\_\_  
Date

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