



**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

	VBASTP317

Date: 8/01/2026	ATTN: Litigation and Support Intake
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From: Gordon A. Graham

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Type of Document Submitted:

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|---|
| ☐ 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 Seven (7) Pages |

Number of Pages Submitted (NOT including this cover sheet): Eight (8) Pages
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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



U.S. Department
of Veterans Affairs

DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)

PART I - PERSONAL INFORMATION

☐ I AM EXPERIENCING HOMELESSNESS

7. MY PREFERRED TELEPHONE NUMBER
(Include Area Code) (999-999-9999)
(607) 760-8840

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 may 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 may 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 want the Board to issue a decision as soon as possible, even if it is within the period to request a different review option in Part II. By checking this box, you acknowledge that once the Board issues a decision, you will not be permitted to change your Board review option.

☐ 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.

A. Specific Issue(s)

B. Date of Decision (MM/DD/YYYY)

Entitlement to a higher level of SMC under authority of §3.350(f)(3) than that awarded.

7/14/2026

(See argument in attached legal brief.)

C. Additional issue(s)

☒ Check here if you attached additional sheets. Include the Veteran's last name and the file number. Seven (7) 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)

8/01/2026



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Dept. Of Veterans Affairs
Board of Veterans Appeals
Litigation and Support Group
P.O. Box 27063
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August 1, 2025

Veteran: [REDACTED]
Subject: Notice of Disagreement with the July 14, 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 July 14, 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:

Because appellant is proceeding *pro se* with his non-attorney representative, 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). Appellant's representative is merely a VA Agent, thus *pro se* status continues to attach to the claimant/Appellant.

In addition, Appellant provides a brief history of the claim stream to enlighten the Board member and their staff attorneys. All dates cited refer to VBMS Receipt date.

History of the Instant Appeal

4/29/2020- BVA Decision No. 18-44 055 (Legacy) dated 4/29/2020, restores 40% rating for Veteran's TBI but fails to incorporate entitlement to SMC P.

8/03/2020- RD implements BVA decision and restores illegal reduction of TBI to 40%. RD neglects to consider SMC P.

10/23/2025- Veteran files 526 for fibromyalgia, hyper prolactinemia, hypogonadism, erectile dysfunction, Vitamin D deficiency and adrenal gland neoplasm.

2/09/2026- RD grants, *inter alia*, entitlement to SMC K for loss of use of a creative organ.

5/06/ 2026- Veteran files supplemental claim (VAF 20-995) for entitlement to SMC P overlooked in previous grants for effective date of June 17, 2014.

7/14/2026- RD grants only SMC P at the intermediate rate between L and M but neglects to award all possible entitlements under §3.103(a).

This timely appeal ensues

The Legal Landscape

In **AB v. Brown**, 6 Vet.App. 35, 38 (1993), the Court held that 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. See also **Tatum v. Shinseki**, 23 Vet.App. 152, 157 (2009). This duty is rooted in 38 C.F.R. §3.103(a), which requires VA to "render a decision which grants every benefit that can be supported in law while protecting the interests of the Government."

In **Barry v. McDonough**, 101 F.4th 1348 (Fed. Cir. 2024), 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 **Roberson v. Principi**, 251 F.3d 1378, 1384 (Fed. Cir. 2001), the Court held "VA must determine all potential claims raised by the evidence, applying all relevant laws and regulations."

§3.103 Procedural due process and other rights states:

(a) Statement of policy. Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and **it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.** The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3. (emphasis added to original).

In **Buie v. Shinseki**, 24 Vet.App. 242, 250 (2010), the Court held that whenever a veteran has a total disability rating, schedular or extraschedular, based on multiple disabilities and the veteran is subsequently awarded service connection for any additional disability or disabilities, 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.'

Discussion

The Secretary has a duty to render a decision which grants every benefit that can be supported in law. §3.103(a). Here, in the instant case on appeal, he has neglected to do so. **Roberson** *supra*.

When the Secretary chose to grant SMC at the P rate in the July 14, 2026, Rating Decision (RD), expressed as the rate intermediate between L and M under the authority of §3.350(f)(3), he chose to utilize everything the Veteran was rated for except his kitchen sink. The RD states, *in haec verba*:

"Entitled to special monthly compensation [SMC] under 38 USC 1114, subsection (p) and 38 CFR §3.350(f)(3) at the rate intermediate between subsection (l) and subsection (m) on account of entitlement to the rate equal to subsection (l) with additional disability(ies) sleep apnea, headaches with symptoms of photophobia, chronic left shoulder pain, cervical spondylosis with cervical fusion and right side radiculopathy, tinnitus, tremors of the hands and feet bilaterally, and cervical radiculopathy of the left upper extremity independently ratable at 50 percent or more from June 17, 2014."

Unfortunately, this is an egregious misinterpretation of §3.350(f)(3) and fails to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. From its language, it appears to be an aberration attempting to use all the Veteran's compensable ratings to assemble something akin to SMC at the S rate but only awarding 50% instead of 60%. This is error and squanders valuable adjudicatory resources better allocated to other deserving Veterans. See In **Fugere v. Derwinski**, 1 Vet. App. 103, 105 (1990), *aff'd* 972 F.2d 331 (Fed. Cir. 1992), where the Court held

advancing different arguments at successive stages of the appellate process does not serve the interests of the parties or the Court. Such a practice hinders the decision-making process and raises the undesirable specter of piecemeal litigation.

Which is what we have here in the instant Appeal before the Factfinder. Appellant wishes now to propose a more beneficial reading of his Ratings Code Sheet which might entitle him to the much higher rate of SMC P- to wit: SMC P at N rate with K. To illustrate this entitlement for the Trier of Fact, Appellant will now show the most munificent reading.

To begin with, Appellant is already rated for SMC at the L rate for his PTSD with moderate TBI rated at 100%. In addition, the July 14, 2026, RD awarded an additional one-half step "bump" upwards to the intermediate rate between L and M under the authority of §3.350(f)(3). But that is certainly not the end of the matter. **Barry** *supra*. §3.350(f)(3). For clarification's sake, Appellant submits this increase is due solely to his Obstructive Sleep Apnea (OSA) rated 50% under §4.97 DC 6847 with an effective date of June 17, 2014.

Appellant is also entitled to an additional one-half step upwards to the M rate for his headaches with symptoms of photophobia rated at 50% under §4.124a DC 8100 under authority of §3.350(f)(3) with an effective date of June 17, 2014. **Barry** *supra*, §3.103(a).

Likewise, in the same vein, Appellant is again entitled to another "bump" to the intermediate rate between M and N based on a combination of several disabilities separate and distinct from his need for aid and attendance- to wit: Internal derangement of left shoulder rated at 20% under §4.71a DC 5201, plus cervical spondylosis with cervical fusion and right side radiculopathy with chronic pain syndrome of the back at 20% under §4.71a DC 5239-5241, plus Tinnitus rated at 10% under §4.87 DC 6260 under authority of §3.350(f)(3) with an effective date of June 17, 2014. **Barry** *supra*, §3.103(a).

Lastly, Appellant is entitled to one more half-step increase to SMC P at the N rate plus SMC K based on Fibromyalgia rated at 40% under §4.71a DC 5025 plus cervical radiculopathy of the left shoulder rated at 10% under 4.124a DC 8516 with an effective date of October 23, 2025. **Buie** *supra*.

This incorporates the promise of the Secretary to ensure he grants every benefit that can be supported in law while protecting the fisc of the Government.

Conclusion and Prayer for Relief

Appellant submits his method of counting his disabilities utilizing his most recent July 14, 2026, Rating Code Sheet maximizes his entitlement to SMC all the while protecting the interests of the Government. **AB, Barry** *supra*. He asks for consideration of the statutory canon of construction of the benefit of the doubt. While the evidence is certainly overwhelmingly supportive of the request for considering the rearrangement based entirely on regulation, Appellant still asks that same canon be applied to the instant appeal.

In **Wise v. Shinseki**, 26 Vet. App. 517, 531 (2014), the Court held that the benefit of the doubt rule is a unique standard of proof, and “the nation, “in recognition of our debt to our Veterans” has taken upon itself the risk of error in awarding such benefits.”

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.

In **Barrett v. Principi**, 363 F.3d 1316, 1320 (Fed. Cir. 2004), the Court held ("[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 vs. Gardner**, 115 S. Ct. 552, 130 (1994) : "interpretive doubt."

As all can see, Appellant's Code Sheet reflects a Combat Code of 2 which shows the sum of his injuries all occurred in combat. When he raised his right hand to swear to defend his Country in 1996, She made a promise to him that were he irrevocably injured in this enterprise, he would be cared for. In fact, this is incorporated into the VA's logo "For he who shall have borne the battle". Today, he asks his Country for no more, but certainly no less.

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, plagiarized content or fictitious "unicorn" legal cites.