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

Veteran: [redacted]	**VSC:** VBASPT317
C-File or SSN: [redacted]	
Street Address: [redacted]	
City, State, Zip: [redacted]	

Date: 10/03/2024	**ATTN:** Litigation and Support Group -Docketing

From:	**Gordon A. Graham**
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Type of Document Submitted:

☐	Request for Board Hearing at VA Central Office in D.C.(Rule 703)
☐	Request for Advancement of the Docket (Rule 903)
☒	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) ***Direct***
☐	Motion for Reconsideration (Rule1002)
☒	Other Attached legal brief of fourteen (14) pages

Number of Pages Submitted (NOT including this cover sheet): Sixteen (16) 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

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

1. VETERAN'S NAME *(First, middle initial, last)*	2. VETERAN'S FILE NUMBER	3. VETERAN'S DATE OF BIRTH
[redacted]	[redacted]	[redacted]

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)*

6. M[redacted] *l 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)*	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.)*

☒ 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
Entitlement to higher level of aid and attendance under §1114(t); §3.350(j)	9/21/2024
Correction of an obvious error in not awarding SMC under §3.350(f)(3) under authority of 38 USC §7103(c)	9/21/2024

C. Additional Issue(s)

☒ Check here if you attached additional sheets. Include the Veteran's last name and the file number. Fourteen (14) 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	10/03/2024

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.

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

June 3, 2024

Re: Burge [redacted]
In reference to: Rating Decision of 5/31/2024

BEFORE THE DEPARTMENT OF VETERANS AFFAIRS

VA Form 10182 Legal Brief

Appellant, through counsel, now timely files his AMA Notice of Disagreement with accompanying legal brief of the May 31, 2024, Rating Decision (RD) denying entitlement to Special Monthly Compensation (SMC) at the (t) rate under 38 USC §1114(t) and 38 CFR §3.350(j). Because Appellant is proceeding pro se, represented by 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).

In order to aid the Trier of Fact in adjudicating the appeal, Appellant submits a brief history of the claim for aid and attendance to date. All dates cited, unless otherwise denoted, refer to entries in the VBMS Receipt Date.

History of the Claim

3/01/2018—CAPRI records page 533 of 603 pages, dated 3/24/2014, VHA employee Lisa A Watts, LCSW, notes "The Veteran's post-deployment screenings were positive for PTSD and TBI (clinical reminder). The Veteran was scheduled for a Polytrauma/TBI physical and a mental health consult was entered."

11/09/2018—Veteran files VAF 21-526b for entitlement to SMC at the (L) level under §3.350(b)(3) for the aid and attendance of another.

12/20/2018—VAF 21-2680 authored by VA physician Paul P. Antony, M.D. notes Veteran requires medication management for his PTSD symptomatology and memory problems and incompetent for purposes of managing his financial affairs.

2/04/2019—RD denies entitlement to aid and attendance but fails to comply with §3.103(f)4)(5); proposes incompetency.

4/26/2019—RD declares Veteran is incompetent to handle disbursement of funds.

9/10/2019—SOC issued confirming and continuing the denial of entitlement to SMC for the aid and attendance of another without consideration of finding of incompetency.

11/04/2019—VA Form 9 filed completing substantive appeal with Travel Board request regarding denial of entitlement to SMC at the (L) rate under §3.350(b)(3).

5/18/2020—VA Form 8 issued certifying claim to BVA.

4/26/2021—VA Form 21-526 filed for entitlement to service connection (SC) for TBI.

4/29/2021—RD denies SC for TBI.

9/21/2021—RD grants SC for TBI and combines it with SC PTSD; grants service connection for left side top of head scar and painful scar.

10/21/2021—RD declares CUE and grants SC for Headaches, secondary to TBI.

4/07/2022—VA Form 21-2680 records need for assistance with bathing and tending to other hygiene needs,

7/14/2022—RD grants entitlement to aid and attendance from 4/28/2021.

10/13/2022—RD grants earlier effective date of 9/17/2014 for entitlement to Chapter 35 DEA.

1/26/2023—Veteran files 526 for entitlement to SMC at the (T) rate under §3.350(j).

2/22/2023—VA c&p exam for aid and attendance does not survey inventory of ability to accomplish daily ADLs.

4/07/2023—RD denies entitlement to a higher level of aid and attendance at the SMC (T) rate and explains that entitlement requires a certified need for hospitalization, nursing home care, or other residential institutional care in the absence of regular aid and attendance, and, in addition, ineligibility for a higher level of aid and attendance under 38 USC §1114(r)(2).

4/27/2023—Veteran files VAF 20-0995 supplemental claim for higher level of aid and attendance at the SMC (T) rate.

5/17/2023—c&p exam with accompanying VAF 21-2680 records Veteran requires medication management and help with bathing and tending to other hygiene needs; notes wife was appointed as fiduciary due to mental incompetency of Veteran.

8/15/2023—RD confirms and continues, inter alia, current SMC (L) rate of evaluation.

2/12/2024—Veteran files new 995 supplemental claim for SMC at the (T) rate with private independent medical opinion by Cloe El-Atoum, M.D.

5/31/2024—RD denies entitlement to SMC at the (T) rate for residuals of TBI.

This appeal ensues.

The Legal Landscape

38 USC §1154(b) states:

(b)
In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, air, or space organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

38 CFR §4.2 Interpretation of examination reports states:

Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described. It is the responsibility of the rating specialist to interpret reports of examination **in the light of the whole recorded history**, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present. Each disability must be considered from the point of view of the veteran working or seeking work. If a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes. (emphasis added to original).

§ 4.6 Evaluation of evidence states:

"The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. **Every element** in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law. (emphasis added to original)."

§ 4.126(a) Evaluation of disability from mental disorders states:

"When evaluating a mental disorder, the rating agency shall consider the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the veteran's capacity for adjustment during periods of remission. **The rating agency shall assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination.** (emphasis added to original).

In ***Bailey v. O'Rourke***, 30 Vet.App. 54, 60 (2018) The Court held that a medical opinion is inadequate where its rationale is based solely on medical literature and not facts specific to the individual veteran).

In ***Guerrieri v. Brown***, 4 Vet. App. 467, 470-71(1993) the Court held "The credibility and weight to be attached to medical opinions is within the providence of the Board as adjudicators. Greater weight may be placed on one physician's opinion over another depending on factors such as reasoning employed by the physicians and the extent to which they reviewed prior clinical records and other evidence."

In ***Nieves-Rodriguez v. Peake***, 22 Vet. App. 304 (2008), the Court held a VA medical examination report is entitled to no weight if it contains only data and conclusions. "It should now be obvious that a review of the claims file cannot compensate for lack of the reasoned analysis required in a medical

opinion. It is the factually accurate, fully articulated, sound reasoning for the conclusion, not the mere fact that the claims file was reviewed, that contributes probative value to a medical opinion." ***Id.*** at 306.

In ***Miller v. West***, 11 Vet. App. 345,348(1998), the Court held that "a bare conclusion, even one reached by a health care professional, is not probative without a factual predicate in the record".

In ***Jones v. Shinseki***, 26 Vet.App. 56, 63 (2012), the Court held that the veteran is entitled to a rating based upon his unmedicated condition – that is, the higher disability evaluation – if the effects of medication are not explicitly mentioned under the applicable diagnostic code of the rating schedule condition.

Most recently, in ***Martinez-Bodon v. Wilkie***, 32 Vet.App. 393, 397 (2020), the Court held establishing service connection generally requires medical or, in certain circumstances, lay evidence of (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a link between the claimed in-service disease or injury and the present disability. See also ***Romanowsky v. Shinseki*** ,26 Vet.App.289, 293 (2013).

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. See also §3.103(a).

In ***Bradley v. Peake***, 22 Vet. App. 280 (2008), the Court held "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).

In **Buie v. Shinseki, 24 Vet.App. 242, 250 (2010)**, the Court held that [w]henever 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.'

In ***Barry v. McDonough***, WL _____ CAFC 2022-1747, decided May 16, 2024, Fed. Cir. (2024), the Court held that there is no restriction on the number of times §3.350(f)(3) can be applied as long as each and every disability is separate and distinct from the index disease and involving different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. §1114 (l) through (n).

38 USC §7103(c) permits the Trier of Fact, on its own motion, to correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

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." ***Moreira v. Principi,*** 3 Vet.App. 522, 524 (1992).

§3.350(f)(3) states, *inter alia*:

"(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."

§4.130 General Rating Formula for Mental Disorders states:

"Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; **persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene);** disorientation to time or place; memory loss for names of close relatives, own occupation, or own name." (emphasis added to original).

Discussion

Initially, Appellant wishes to point out he is a combat Veteran with award of the Combat Infantryman Badge (CIB) as well as two (2) awards of the Army Commendation Medal. Thus, the presumptions accorded Veterans under §1154(b) are for application. He deployed to Iraq three times and was engaged in combat in all three. But for his severe injury to his head from an Improvised Explosive Device (IED) and resultant Traumatic Brain Injury (TBI) in 2006, he had looked forward to making the Army a career. Regrettably, even though annotated in his service medical records, the Agency failed to service connect him for this (TBI) initially. See ***Bell v. Derwinski***, 2 Vet. App. 611, 613 (1992)(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).

It would not be until April of 2021 when his VA treating physicians recognized and affirmed this disability. See CAPRI records page 533 of 603 pages, dated 3/24/2014, VHA employee Lisa A Watts, LCSW, notes "The Veteran's post-deployment screenings were positive for PTSD and TBI (clinical reminder). The Veteran was scheduled for a Polytrauma/TBI physical and a mental health consult was entered." Thus, it can be concluded the Secretary was in constructive possession of these documents at the time the Appellant filed his original claim.

In the intercurrent years following service connection, Appellant's mental health has continued to decline. He has been rated at 100% schedular for his PTSD since September 17, 2014. Appellant was found incompetent on April 26, 2019, and was awarded SMC at the L rate for the aid and attendance of another on April 28, 2021.

In addition, with the May 16, 2024, CAFC decision in ***Barry*** *supra*, the application of additional ratings of intermediate steps under SMC P §3.350(f)(3) is permissible under ***Akles*** *and* ***Bradley***, both *supra*. Appellant submits this ancillary entitlement is legally before the Board.

Application of Laska v McDonough

In ***Laska v. McDonough***, WL _____ Vet. App (2024) CAVC 22-1018, decided September 6, 2024, the Court held that by imposing a regulatory requirement in 38 C.F.R. §3.352(b)(2)(ii,(3), the Secretary exceeded his authority and Congress' express statute- §1114(t).

In the September 21, 2024, RD, as well as the May 21, 2024, RD, the Secretary explicitly held that Appellant did not qualify for SMC at the T rate

because he didn't qualify under the authority of §3.352(b)(2)(ii). The September 2024 RD stated, *in haec verba*:

" Upon review of the evidence in file, criteria has not been met for SMC - T. While evidence shows need for aid and attendance due to poor memory resulting from TBI, evidence not indicate [sic] service connected residuals of TBI due to being permanently bedridden or aid and attendance needed that requires hospitalization or skilled care."

The April 7, 2023, RD, and again the August 15, 2023, RD, manifested the same error inasmuch as both held that the Veteran did not qualify for SMC at the T rate based on the *ultra vires* stricture imposed under §3.352(b)(2)(ii),(3). As the regulation is now held to be *ultra vires*, it is *void ab initio* under ***Barry*** *supra*, Appellant avers entitlement to SMC T arose on April 26, 2019- the date of the finding of incompetency.

On February 12, 2024, the Veteran submitted a supplemental claim that continued to timely pursue entitlement to SMC at the T rate under §1114(t). With the VAF 20-0995, the Veteran provided new and relevant evidence in the form of a private, Independent Medical Opinion (IMO). However, he began this claim stream on January 26, 2023, with his filing of a new claim on a proper VA 21-526 form. He has continuously pursued this claim without surcease.

With the supplemental claim mentioned above, the new and relevant IMO, authored by Tchloe M. El-Atoum, MD, Psychiatrist, dated February 8, 2024, specifically discussed, on page 3 of 12 pages, the Appellant's inability to survive outside of an institutionalized setting in the absence of a full-time caregiver. Dr. EL-Atoum opined thusly:

" Therefore, given the Veteran/s [sic] impaired impulse control with irritability and periods of violence, inability to perform Activities of Daily Living, and noticeable memory deficits on an exam, the Veteran would be unable to survive outside of an institutionalized setting without a full-time caregiver. In Mr. Burge's situation, his full-time caregiver is his wife."

In ***Shedden v. Principi***, 381 F.3d 1163, 1166 -67 (Fed. Cir. 2004), the Court held that service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. § 3.303. The three-element test for service connection requires evidence of: (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the current disability and the in-service disease or injury.

Appellant submits he has met his requirement under ***Shedden*** *supra*. If not, Appellant submits the evidence is so nearly in equipoise as to prevail under §3.102. Moreover, the Secretary contends the evidence shows that the Appellants PTSD with Traumatic Brain Injury rated at 100% schedular indicates the symptomatology of the two etiologies overlaps so inextricably that it would be speculative to opine on where one ends and the other begins. Given this medical ambiguity, the benefit of the doubt must again accrue to the Veteran. Reasonable minds can only concur that the medical evidence equally supports the need for a higher level of care due solely to his TBI or, solely to his PTSD-or both.

Of note, the Veteran's September 21, 2024, Code Rating Sheet, which summarizes the various diagnostic codes, clearly and unmistakably lists the Appellant's neurological disease (DC 8045) before the psychiatric disease (DC 9411). As the Appellant's representative deals almost exclusively with the subset of Veterans who suffer comorbid PTSD with TBI, his experience is that the Secretary's placement invariably dictates which disease is the primary one and which is the secondary as he has frequently seen it expressed both ways. Utilizing the Secretary's very own guidance and illustration on hyphenating diagnostic codes in §4.27, "8045-9411" would translate as "TBI rated as Post Traumatic Stress Disorder." The regulation states: "In this way, the exact source of each rating can be easily identified." Nevertheless, with the concession by all doctors involved, the consensus is that it would be far too speculative to attempt to segregate and identify the numerous overlapping symptomatology.

However, we are bound by the Secretary's regulations. §4.126 Evaluation of disability from mental disorders, states in subparagraph (d) "When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition (see §4.14)." Thus, reasonable minds can agree that, based on this regulatory clarification, that the TBI interpretation is applicable.

Application of Barry v. McDonough

As discussed in ***Barry*** *supra,* Appellant is currently only awarded SMC at the L rate effective April 28, 2021. Invoking §7103(c), Appellant feels the Akles rule is for application. See ***Akles*** *supra*. Simply put, Akles' precedence requiring an investigation as to which SMC ratings are potentially applicable is automatic and mandatory at such time as a Veteran attains a schedular rating, TDIU, or receives entitlement to additional ratings as envisioned in ***Buie*** *supra*.

As the Secretary has been misreading his regulation permitting the application of an award at the intermediate rate between SMCs L through N for over seventy five years, retrospective entitlement is permitted. Employing Barry precedence to the instant case, a retrospective review of the September 2024 Code Rating Sheet reveals the Appellant is rated for musculoskeletal disabilities of the bilateral knees-i.e. DC 5003-5260 10%,10%; DC 5003-5257 10%; DC 7800 10%; DC 7804 10%.

As the above injuries are separate and distinct from any neurological or mental disorders, they combine to create entitlement to SMC P at the intermediate rate between L and M with an effective date of January 26, 2023. This rating precedes any consideration of entitlement to SMC at the T rate in the current Notice of Disagreement. ***Moreira*** *supra*.

Conclusion

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) ("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.

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 vs. Gardner,*** 115 S. Ct. 552,130 (1994 : "interpretive doubt."

Wherefore, Appellant begs the Trier of Fact to perform a *de novo* adjudication of the claim and employ Congress' statute (§1114(t) as written based on recent Laska precedence. Appellant waives review below in the first instance for any duty to assist errors under §5104B and §3.103(f) as further delay would not result in any benefit accruing to the Veteran. See ***also Fugere v. Derwinski,*** 1 Vet. App. 103, 105 (1990), aff'd 972 F.2d 331 (Fed. Cir. 1992), wherein 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.

Respectfully submitted,

Gordon A. Graham
Counsel for Appellant [redacted]

The above legal brief is free of any Artificial Intelligence tools used for construction and reflects the actual legal work of the representative.

[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

10/03/2024
Date

Gordon A. Graham #39029 E1P

Mail or fax this form to:

Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

Fax: 1-844-678-8979