BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

IN THE CASE OF [redacted]

Appellant Represented by
Gordon A. Graham, Agent

[redacted]
Docket No. 250112-502654

DATE: January 8, 2026

ORDER

Entitlement to a separate special monthly compensation (SMC) pursuant to 38 U.S.C. § 1114 (l), solely due to service connected status post myocardial infarction with coronary artery disease and hypertensive heart disease (separate and distinct from the service-connected cancers) is denied.

Entitlement to SMC at the rate specified under 38 U.S.C. § 1114 (o) is denied.

Entitlement to SMC at the rate specified under 38 U.S.C. § 1114 (r)(1) is denied.

FINDINGS OF FACT

1. The Veteran was in receipt of SMC under 38 U.S.C. § 1114 (l) from December 22, 2017 until his death due to his service-connected small cell neuroendocrine carcinoma of the sinuses and secondary service connected brain and liver cancer.

2. The Veteran did not have a service-connected disability (separate from his service-connected cancers) which resulted in the anatomical loss or loss of use of both feet; or of one hand and one foot; or blindness in both eyes, with 5/200 visual acuity or less; or to be permanently bedridden; or with such significant disabilities as to be in need of regular aid and attendance.

3. The Veteran was not entitled to two rates of SMC under 38 U.S.C. § 1114(l).

4. The Veteran has been in receipt of SMC under 38 U.S.C. § 1114 (p) from December 26, 2017 until his death at the rate equal to 38 U.S.C. § 1114 (m) due to entitlement to SMC under 38 U.S.C. § 1114 (l) and his 100 percent disability rating for status post myocardial infarction with coronary artery disease and hypertensive heart disease.

5. The Veteran was not entitled to SMC under 38 U.S.C. § 1114 (o), was not entitled to the maximum rate authorized under 38 U.S.C. § 1114 (p), and was not entitled to SMC at the intermediate rate authorized between the rates authorized under 38 U.S.C. § 1114 (n) and (o).

CONCLUSIONS OF LAW

1. The criteria for entitlement to a separate award of SMC under 38 U.S.C. § 1114 (l) have not been met. 38 U.S.C. § 1114 (l); 38 C.F.R. §§ 3.350, 3.352.

2. The criteria for entitlement to SMC under 38 U.S.C. § 1114 (o) have not been met. 38 U.S.C. § 1114 (o); 38 C.F.R. §§ 3.350, 3.352.

3. The criteria for entitlement to SMC under 38 U.S.C. § 1114 (r)(1) have not been met. 38 U.S.C. § 1114 (r); 38 C.F.R. §§ 3.350, 3.352.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from September 1969 to September 1972 and October 1972 to October 1975. The Veteran died in July 2018. The Appellant, the Veteran's surviving spouse, was properly substituted as claimant in June 2020. 38 U.S.C. § 101(3); 38 C.F.R. § 3.1010.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a January 2025 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

In the January 2025 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Appellant elected the Direct Review docket.

Therefore, the Board may only consider the evidence of record at the time of the January 2025 agency of original jurisdiction (AOJ) decision on appeal. 38 C.F.R. § 20.301. Any evidence submitted after the AOJ decision on appeal cannot be considered by the Board. 38 C.F.R. §§ 20.300, 20.301, 20.801.

If the Appellant would like VA to consider any evidence that was submitted that the Board could not consider, the Appellant may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claim, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

VA regulations provide that, "[u]pon request, a claimant is entitled to a hearing on any issue involved in a claim... before VA issues notice of a decision on an initial or supplemental claim." 38 C.F.R. § 3.103(d)(1). That regulation does not indicate that the claimant is entitled to pre-decisional notice of this optional hearing. In fact, 38 C.F.R. § 3.103(b)(1) provides that, following a decision, "[c]laimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief... [including] the right to a hearing on any issue involved in the claim as provided in paragraph (d) of this section...." Read together with § 3.103(d), the only notice § 3.103(b) requires is that a claimant be provided notice of the right for a hearing with notification of the decision (by definition, a post-decisional notice). In November 2022, VA amended VA Form 21-526EZ and, in May 2024, VA amended VA Form 20-0995 to inform claimants of the right to a hearing at any time during the claims process. The claim in this appeal was originally filed in December 2017, prior to the amended version of VA Form 21-526EZ. However, the Board finds that any error in the failure to inform

the Appellant of the right to a pre-decisional hearing before the RO was harmless error.

In *Bowen*, the Court found that when a claimant is denied a hearing before the RO, there is no due process violation if she is subsequently offered the opportunity for a hearing before the Board, even if a hearing was not requested or conducted, as long as there is no violation of due process concerning the Board hearing opportunity. *Bowen v. Shinseki*, 25 Vet. App. 250, 253-4 (2012). The facts in the case can be differentiated on several levels, to include that the Appellant did not actually request an RO hearing and the issue in *Bowen* was not one of notice. Regardless, the Board cannot find a basis to conclude that the underlying holding and logic of the Bowen case would not lead to the same finding of no prejudicial error under the procedure and facts of this case. The notification letters informing the Appellant of the rating decisions in this appeal included VA Form 20-0998, Your Right to Seek Review of Our Decision, outlining the Veteran's appeal options, to include a hearing before the Board. Additionally, in the January 2025 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Appellant was provided with an option to request a hearing with a Veterans Law Judge. The Appellant instead elected for Direct review by a Veterans Law Judge, and the form explicitly states that by choosing this option, she does not want a Board hearing. Because the Appellant was provided with notice of the right to appeal to the Board, as well as the right to a Board hearing, there was no due process violation in the processing of the claim or any suggestion that she was prejudiced by the failure of VA to provide a hearing at the RO level. See *Bowen*.

The Board acknowledges that 38 C.F.R. § 20.202(c)(2) provides that an Appellant may modify a Notice of Disagreement and change Board dockets by submitting a new Notice of Disagreement within one year of notification of the decision on appeal or within 60 days of the date that the Board received the original Notice of Disagreement, whichever is later. In this case, the Appellant has submitted a waiver of the time to select a docket other than direct review pursuant to *Williams v. McDonough*, 37 Vet. App. 305 (2024). Therefore, the Board will proceed with adjudication of the appeal.

The Appellant's accredited agent has argued that "pro se status legally attaches" to the Appellant because the accredited representative is "merely a VA Agent" and so the Board must liberally construe her arguments. January 2025 Appellate Brief. The file contains a valid, signed VA Form 21-22a Appointment of Individual as Claimant's Representative dated July 15, 2018 which names the accredited agent as the Appellant's representative. The Appellant has not revoked this representation, and the accredited agent has not withdrawn representation. In addition, a Legal Representation Agreement dated July 16, 2018 was signed by both the Appellant and the accredited agent. Therefore, the Board finds that the Appellant is, in fact, represented by the accredited agent.

Procedural History

In December 2017, the Veteran filed a claim for service connection for small cell carcinoma of the nasal passages. Service connection was granted in a February 2020 Board decision. In the February 2020 rating decision which implemented the Board decision, the Veteran was awarded direct service connection for cancer of his nasal passages at 100 percent; secondary service connection for brain cancer at 100 percent; and secondary service connection for liver cancer at 100 percent, all effective December 22, 2017. In addition, the Veteran was awarded SMC at the (l) rate due to being permanently bedridden from December 22, 2017, and SMC at the intermediate (p) rate due to having an additional disability (status post myocardial infarction with coronary artery disease and hypertensive heart disease associated with diabetes mellitus) independently ratable at 100 percent from December 26, 2017.

The Appellant appealed the issue of entitlement to a higher level of SMC to the Board in an April 2020 Notice of Disagreement. In March 2021, the Board remanded the issue of entitlement to a higher level of SMC to clarify the basis of the award of SMC at the (l) rate, which the Board noted was necessary to evaluate whether the Veteran should have also been awarded a higher level of SMC under subsection (o) and (r)(1). A March 2021 rating decision found that the Veteran's service-connected disabilities rendered him completely bedridden and continued the Veteran's current level of SMC.

The Appellant appealed the issue of entitlement to a higher level of SMC in a March 2021 Notice of Disagreement. In a July 2024 Board decision, the issue of entitlement to a higher level of SMC was again remanded to clarify the basis of the award of SMC at the (l) rate and to consider whether a higher level of SMC under subsections (o) and (r)(1) should have also been granted.

In the January 2025 rating decision on appeal, the RO confirmed that the Veteran was entitled to SMC at the (l) rate due to his service-connected small cell neuroendocrine carcinoma of the sinuses, brain cancer, and liver cancer. His current level of SMC was continued.

1. Entitlement to separate SMC at the rate specified under 38 U.S.C. § 1114 (l)

2. Entitlement to SMC at the rate specified under 38 U.S.C. § 1114 (o)

3. Entitlement to SMC at the rate specified under 38 U.S.C. § 1114 (r)(1)

The Appellant contends that the Veteran was in need of aid and attendance, resulting in a separate award of SMC at the (l) rate, based solely on his heart, diabetes, and mental health disabilities. March 2021 Notice of Disagreement.

SMC at the (l) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both feet; (2) anatomical loss or loss of use of one hand and one foot; (3) blindness in both eyes with visual acuity of 5/200 or less; (4) being permanently bedridden; or (5) being so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(l); 38 C.F.R. § 3.350(b).

Although the Appellant's agent cites the relevant statute in the January 2025 Appellate Brief, he has requested that the Board apply the "clear and unequivocal meaning of 'aid and attendance.'" The following factors will be considered in determining whether the Veteran is entitled to SMC based on need for aid and attendance: inability to dress or undress without assistance; to keep ordinarily clean and presentable without assistance; inability of claimant to feed himself or herself without assistance; inability to attend to the wants of nature; and incapacity that

requires care or assistance on a regular basis to protect the claimant from the hazards or dangers incident to his or her daily environment. 38 C.F.R. § 3.352(a).

Loss of use of a hand or foot is defined as no effective function remaining other than that which would be equally well served by an amputation stump at the site of election below the elbow or knee with use of a suitable prosthetic appliance. The determination is made on the basis of the actual remaining function, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance, propulsion, etc., in the case of a foot, could be accomplished equally well by an amputation stump with prosthesis. 38 C.F.R. §§ 3.350(a)(2)(i), 4.63.

SMC at the (m) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both hands; (2) anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place; (3) anatomical loss or loss of use of one arm and of one leg at a level, or with complications, preventing natural elbow and knee action with prosthesis in place; (4) blindness in both eyes having only light perception; or (5) blindness in both eyes which results in being so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(m); 38 C.F.R. § 3.350(c).

SMC at the (n) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both arms at a level, or with complications, preventing natural elbow action with prosthesis in place; (2) anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance; (3) anatomical loss of one arm and one leg so near the shoulder and hip as to prevent use of a prosthetic appliance; or (4) anatomical loss of both eyes or blindness without light perception in both eyes. 38 U.S.C. § 1114(n); 38 C.F.R. § 3.350(d).

SMC at the (o) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; (2) when two or more of the rates (l) through (n) are warranted, with no disability being considered twice; (3) bilateral deafness rated at 60 percent or more (when the hearing impairment in either one or both ears

is service-connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less; or (4) service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more (when the hearing impairment in either one or both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less. 38 U.S.C. § 1114(o); 38 C.F.R. § 3.350(e)(1).

The Court has held that a veteran who is in receipt of SMC at a rate under 38 U.S.C. § 1114(l) through (n) cannot establish entitlement to a second rate under subsection (l) based on the need for aid and attendance, which would result in a higher payment of SMC at the rate under subsection (o), unless the need for aid and attendance arises from a disability other than that for which the veteran is already in receipt of SMC. Determinations must be based upon separate and distinct disabilities. 38 C.F.R. § 3.350(e)(3). The Court explained that such payment is prohibited because section 1114(o) prohibits a "condition from being considered twice" in subsections (l) through (n) when determining whether a veteran is entitled to a higher rate of SMC under subsection (o). *Breniser v. Shinseki*, 25 Vet. App. 64, 65 (2011); see also 38 C.F.R. § 3.350(e)(1)(ii).

There are whole and intermediate (half) steps of increased SMC between the different subsections based on anatomical loss or loss of use of extremities, certain bilateral eye loss of vision (requiring, at a minimum, one eye having light perception only), and blindness in connection with deafness and/or loss or loss of use of a hand or foot, as well as for the presence of additional disabilities not involved in prior SMC determinations. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f).

Further, additional disability or disabilities independently ratable at 50 percent or more warrant the assignment of the next highest half step rate. 38 C.F.R. § 3.350(f)(3). Similarly, additional disability or disabilities independently ratable at 100 percent without consideration of total disability based on individual unemployability (TDIU) warrants the assignment of the next highest whole step rate. 38 C.F.R. § 3.350(f)(4). In no event can the rate be higher than (o). The additional disability or disabilities must be separate and distinct as well as involve different anatomical segments or bodily systems from those used to achieve SMC at the (l) through (n) rate or a half step rate. 38 C.F.R. §§ 3.350(f)(3), (4).

Finally, the next highest half step or whole step rate is assigned for anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities. 38 C.F.R. § 3.350(f)(5).

SMC at the (r) rate concerns the factual need for special aid and attendance. 38 U.S.C. § 1114(r); 38 C.F.R. § 3.350(h). It is an additional allowance available when not hospitalized at government expense. 38 C.F.R. § 3.350(h). To be awarded SMC rate under 38 U.S.C. 1114(r)(1), the Veteran must be entitled to SMC at the rate authorized under 38 U.S.C. 1114(o), the maximum rate authorized under 38 U.S.C. 1114(p), or at the intermediate rate authorized between the rates authorized under 38 U.S.C. 1114(n) and 38 U.S.C. 1114(o) and at the rate authorized under 38 U.S.C. 1114(k). The Veteran must also be in need of regular aid and attendance. 38 U.S.C. 1114(r); 38 C.F.R. 3.350(h), 3.352.

SMC (r)(2) means that the Veteran requires personal health-care services provided on a daily basis in their home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of catheters, and the changing of sterile dressings, or similar functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a licensed physical therapist. 38 C.F.R. 3.352(b)(2).

The Veteran was in receipt of SMC at the (k) rate from March 19, 2003 until his death. In a June 2018 rating decision, the Veteran was awarded SMC at the (s) rate for being rated at 100 percent for his service-connected heart disability with additional disabilities independently ratable at 60 percent or higher.

As a result of the February 2020 rating decision, the Veteran was awarded SMC at the (l) rate from December 22, 2017, the date the Veteran filed his claim of service connection for his cancers. The Veteran was also awarded SMC under subsection (p), at the rate equal to subsection (m) due to the Veteran's heart disease which was

independently rated at 100 percent. SMC paid at the (s) rate was discontinued because SMC at the (l) rate is the greater benefit.

The Appellant's agent contends that there is "tension" as to which disabilities formed the basis of the award of SMC at the (l) rate in the February 2020 rating decision. January 2025 Appellate Brief. As requested by the Board in July 2024, the January 2025 rating decision on appeal clarified that the Veteran is permanently bedridden, and subsequently entitled to SMC at the (l) rate, due to the three cancer disabilities. Therefore, an additional award of SMC at the (l) rate can be awarded if the evidence shows that the Veteran was entitled to that rate for a completely different disability.

The Board also acknowledges the Appellant's argument that awarding SMC at the (l) rate for being bedridden rather than for requiring aid and attendance is clear legal error. January 2025 Appellate Brief. SMC at the (l) rate is awarded when the Veteran "is permanently bedridden or with such significant disabilities as to be in need of regular aid and attendance." 38 U.S.C. § 1114(l). While it is unclear why the Appellant takes issue with the favorable finding that the Veteran was permanently bedridden by his cancer diagnoses, the Board finds that the Veteran would be entitled to SMC at the (l) rate regardless of whether the Veteran was found to be bedridden or merely in need of aid and attendance.

The Appellant's agent's asserts that "nowhere in the four corners of [38 C.F.R.] § 3.350(f) can there be coaxed forth the phrase 'aid and attendance' or 'bedridden'" and that awarding SMC at the (p) rate was an "error." January 2025 Appellate Brief. 38 C.F.R. § 3.350(f) allows for increased SMC between the different subsections based on anatomical loss or loss of use of extremities, certain bilateral eye loss of vision, and blindness in connection with deafness and/or loss or loss of use of a hand or foot, as well as for the presence of additional disabilities not involved in prior SMC determinations. The Veteran was awarded SMC at the (p) rate because he was receiving SMC at the (l) rate and had additional disabilities independently rated at 100 percent.

Legal Analysis

During a January 2018 VA mental health examination, the Veteran was noted to be using a wheelchair. The Veteran explained that he had dizziness which he associated with his cancer treatment. The Veteran was found capable of managing his financial affairs.

During a January 2018 VA heart conditions examination, the Veteran was found to become extremely short of breath after walking 100 feet due to his heart disability.

A June 2018 VA homemaker home health aide consult report noted that the Veteran was refusing bath aid. The Veteran was also noted to be weaker due to only taking Ensure three times per day. The Veteran used a walker, but was "very unsteady." The Veteran's wife, the Appellant, was noted to be his caregiver.

During a June 2018 VA oncology consultation for his cancer, the Veteran reported significant nausea, very minimal oral intake, and a feeling that his health was declining. The Veteran was found to need assistance with activities of daily living.

During a June 2018 VA sinusitis/rhinitis examination, the Veteran was found by the examiner to be bedridden. The examiner also noted that the Veteran was on hospice with a six week or less prognosis.

During a June 2018 VA central nervous system and neuromuscular diseases examination, the Veteran was again found to be bedridden. The examiner also found that the Veteran "can still feed himself," but found that each of his other activities of daily living were affected by his brain and liver cancers.

In a March 2021 Statement in Support of Claim, the Appellant noted that she began taking care of the Veteran around September 2017. The Appellant reported that the Veteran had "started falling pretty regularly when he would try to do things on his own." The Appellant noted that she was concerned the Veteran would hurt himself because he had lost so much weight and had become very weak. The Appellant reported that the Veteran "deteriorated very rapidly toward the end of the year and needed assistance with going to the bathroom, bathing, and was unable to walk

without [her] help." The Appellant reported that the Veteran had heart problems, diabetes, and "extensive numbness in his hands and legs." The Appellant reported that she had to quit her job to cook for and feed the Veteran as well as to manage his medications. The Appellant reported that she could not leave the Veteran home alone and that the Veteran had a hard time walking to the bathroom because he said it made his chest hurt. The Appellant reported that the Veteran deteriorated further around Christmas when the cancer was diagnosed. At that time, the Veteran began using diapers full-time and was too weak to roll over. The Appellant reported that the Veteran was placed on hospice care in April 2018 and had stopped eating and "was barely drinking" 14 days before he passed away.

The Board acknowledges the Appellant's agent's argument that the Veteran was not actually bedridden until April 2018 when the Veteran could no longer ambulate to attend to the wants of nature and that the Veteran's cancers did not require him to stay in bed. January 2025 Appellate Brief. January 2025 Appellate Brief. The Board is bound by the favorable finding that the Veteran was bedridden effective December 22, 2017 absent clear and unmistakable error. *See* 38 C.F.R. §§ 3.104(c), 20.801(a).

First, the Board finds that the Veteran was not entitled to a separate award of SMC at the (l) rate. The evidence does not support a finding that the Veteran had an anatomical loss or loss of use of either hand or foot. The Veteran's visual acuity was greater than 5/200. The Veteran's November 2016 VA eye conditions examination shows that the Veteran had uncorrected distance vision of 20/40 or better in both eyes, uncorrected near vision of 20/200, corrected distance vision of 20/40 or better in both eyes, and corrected near vision of 20/40 or better in both eyes.

Additionally, the Board finds that the Veteran was not in need of aid and attendance or permanently bedridden due to any service-connected disability other than his cancers. Although the Veteran used a wheelchair due to dizziness, the Veteran reported that this was due to his cancer treatment and not due to any other service connected condition. The Veteran did report that walking to the bathroom made his chest hurt, and the medical evidence certainly shows that the Veteran's heart disability would render the Veteran short of breath when walking 100 feet.

However, the evidence fails to show that the Veteran was unable to attend to the wants of nature due to his heart disability. The evidence also fails to show that any service-connected disability rendered the Veteran unable to dress or undress himself or to keep himself ordinarily clean and presentable without assistance due to any service-connected disability other than his cancers.

The Board acknowledges the Appellant's statement that she had to feed the Veteran prior to his cancer diagnosis. However, the June 2018 VA examinations show that the Veteran was still able to feed himself. The VA examiner noted that the Veteran was unable to complete any other activity of daily living besides feeding himself. Additionally, the Board acknowledges the Appellant's assertion that the Veteran fell at home and she was concerned that he would get hurt. The Board finds, however, that the Veteran did not fall due to any service-connected disability.

The Board acknowledges the Appellant's agents' assertion that the Veteran was "awarded not one, but two separate and distinct awards of aid and attendance under authority of [38 C.F.R.] § 3.350(b)(3)." January 2025 Appellate Brief. The Board finds that this is not an accurate representation of the Veteran's compensation. The Veteran was awarded SMC at the (l) rate effective December 22, 2017 due to being bedridden by his service-connected cancers. As noted above, the Appellant argues that the Veteran was merely in need of aid and attendance and not bedridden, but the Veteran would still be entitled to SMC at the (l) rate whether the Veteran were bedridden or merely in need of aid and attendance. Then, the Veteran was awarded SMC under subsection (p) because he was in receipt of SMC at the (l) rate and had a separate disability independently rated at 100 percent. The Veteran was not in receipt of two awards of SMC for aid and attendance under 38 U.S.C. § 1114(l) or 38 C.F.R. § 3.350. Additionally, as discussed above, the Board does not find that the Veteran was entitled to two separate awards of SMC for aid and attendance under 38 U.S.C. § 1114(l) or 38 C.F.R. § 3.350.

Secondly, the Board finds that the Veteran was not entitled to SMC at either the (m) or (n) rate. As noted above, the evidence does not support a finding that the Veteran had anatomical loss or loss of use of either arm or leg. Further, there is no evidence which shows that the Veteran has anatomical loss of both eyes, blindness without light perception in both eyes, or blindness in both eyes having only light

perception. Finally, the Veteran was not in need of aid and attendance due to blindness.

Third, the Board finds that the Veteran was not entitled to SMC at the (o) rate. The Board finds the Veteran did not have anatomical loss of both arms or service-connected hearing loss. As noted above, the Veteran's November 2016 VA eye conditions examination shows that the Veteran had uncorrected distance vision of 20/40 or better in both eyes, uncorrected near vision of 20/200, corrected distance vision of 20/40 or better in both eyes, and corrected near vision of 20/40 or better in both eyes.

As discussed above, the Veteran was also not entitled to two or more awards of SMC at the (l) through (n) rate. The Veteran was in receipt of SMC at the (l) rate due to his service-connected cancers. However, there is no evidence to show that the Veteran was entitled to a separate SMC at the (l), (m), or (n) rates for any other service-connected disability.

Fourth, the Board finds that the Veteran was not entitled to the maximum rate authorized under 38 U.S.C. § 1114 (p), or the intermediate rate authorized between the rates authorized under 38 U.S.C. § 1114 (m) and 38 U.S.C. § 1114 (n) or 38 U.S.C. § 1114(n) and 38 U.S.C. § 1114(o). Again, the Veteran does not have service-connected deafness or blindness to the extent described for the (p) rating. He has not suffered the anatomical loss of use of three extremities. The provisions of 38 U.S.C. § 1114(p) and the intermediate rates provided at 38 U.S.C. § 1114(n) and 38 U.S.C. § 1114(o) are intended to compensate for those situations where the combination of various disabilities causes greater impairment because of the combination itself.

Fifth, the Board finds that the Veteran was not entitled to SMC at the (r)(1) rate. While the Veteran was in receipt of SMC at the (k) rate, there is no evidence to show that the Veteran was entitled to SMC at the (o) rate, the maximum rate under (p), or an intermediate rate between the (n) and (o) rates. As discussed above, the Veteran was not entitled to SMC at the (o) rate. The Veteran was in receipt of SMC under subsection (p) due to being entitled to SMC at the (l) rate for his service-connected cancers plus having a separate 100 percent rating for his heart

disability. 38 C.F.R. § 3.350(f)(4). The Veteran was paid at a rate equal to subsection (m).

Sixth, the Board finds that the Veteran was not entitled to SMC at the (r)(2) rate, which requires that the (r)(1) threshold be met in addition to a factual need for a higher level of special aid and attendance. As noted above, the Veteran was in receipt of SMC at the (k) rate, but there is no evidence to show that the Veteran was entitled to SMC at the (o) rate, the maximum rate under (p), or an intermediate rate between the (n) and (o) rates. As discussed above, the Veteran was not entitled to SMC at the (o) rate. The Veteran was in receipt of SMC under subsection (p) due to being entitled to SMC at the (l) rate for his service-connected cancers plus having a separate 100 percent rating for his heart disability. 38 C.F.R. § 3.350(f)(4). The Veteran was paid at a rate equal to subsection (m).

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The Board acknowledges the Appellant's sincere belief that the Veteran was entitled to a higher level of compensation due to his service-connected disabilities. The Board is sympathetic to the Appellant's claim but is without authority to grant benefits to a claimant that has no basis under the law. *See* 38 U.S.C. §§ 503, 7104 (2018); *Harvey v. Brown*, 6 Vet. App. 416, 425 (1994). Additionally, the Board notes that compensation benefits cannot be granted on an equitable basis. *See Smith v. Derwinski*, 2 Vet. App. 429, 432-33 (1992).

Accordingly, the Board finds that the Veteran was not entitled to a separate award of SMC at the (l) level due to his service-connected disabilities other than cancer. Further, the Board finds that the Veteran was not entitled to SMC at the (m), (n), (o), (r)(1), or (r)(2) levels. Therefore, the criteria for entitlement to a higher level of SMC have not been met. As the evidence persuasively weighs against the claim, the claim must be denied.

Rebecca N. Poulson

Rebecca N. Poulson
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board A. Bush, Associate Counsel

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