

No. 2019-1769

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*In the*

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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**CLAIMANT-APPELLEE'S SUPPLEMENTAL BRIEF**

*Re*

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**ROBERT M. SELLERS,**

Claimant-Appellee,

*versus*

**ROBERT L. WILKIE,**

Secretary of Veterans Affairs,

Respondent-Appellee.

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**ON APPEAL FROM THE  
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS  
IN VET APP NO. 16-2993, CHIEF JUDGE ROBERT N. DAVIS,  
JUDGE MARY J. SCHOELEN AND JUDGE MICHAEL P. ALLEN.**

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SELLERS V. DVA, 2019-1769

**Certificate of Interest**

Counsel for the Claimant-Appellee certifies the following:

1. The full name of every party or *amicus* represented by me is:  
  
Robert M. Sellers.
2. The name of the real party in interest (include any real party in interest NOT identified in Question 3) represented by me is:  
  
Robert M. Sellers.
3. Parent corporations and any publicly held companies that own 10 percent or more of the stock of the party:  
  
None.
4. The names of all law firms and the partners or associates that appeared for the party or *amicus* now represented by me in the trial court or agency or are expected to appear in this Court (and who have not or will not enter an appearance in this case) are:  
  
None

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be affected by this court's decision in the pending appeal. *See* Fed.Cir.R. 47.4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary):

None

Date: June 8, 2020

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## Table of Contents

	Page
Certificate of Interest. . . . .	i-ii
Table of Contents. . . . .	iii
Table of Authorities. . . . .	iv
Statement of Related Cases. . . . .	v
Questions from the Panel. . . . .	1
Claimant/Appellee Answers. . . . .	1
I.    A Veteran is able to gain access to his or her military medical records from both the Department of Veterans Affairs, and from the relevant military department in which the veteran served in the following ways. . . . .	1
II.   There is no limitation to access to service treatment records. . . . .	3
III.  Generally, a veteran incurs no costs in obtaining access to such records. . . . .	5
Conclusion. . . . .	6
Certificate of Compliance. . . . .	7
Certificate of Service. . . . .	7

**TABLE OF AUTHORITIES**

Page

**Statutes**

*See* 5 U.S.C. § 552a(b)..... 1

**Regulations**

38 C.F.R. § 1.503..... 3

38 C.F.R. § 1.513..... 5

38 C.F.R. § 1.526..... 5

38 C.F.R. § 3.103(a)..... 5

**Other**

[https://www.archives.gov/personnel-records-center/  
medical-records-veterans-access](https://www.archives.gov/personnel-records-center/medical-records-veterans-access)..... 1

### Statement of Related Cases

Pursuant to Fed. Cir. R. 47.5, undersigned counsel state that he is unaware of any cases which are related to or would directly affect this Court's decision in this appeal.

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### QUESTIONS FROM THE PANEL

When and how does a veteran may gain access to his or her medical records from the Department of Veterans Affairs, and from the relevant military department in which the veteran served?

When access to such records is granted is there any limitations on that access?

Whether a veteran incurs any costs in obtaining access to such records?

### Mr. Sellers Answers to the Questions from the Panel

- I. A Veteran is able to gain access to his or her military medical records from both the Department of Veterans Affairs, and from the relevant military department in which the veteran served in the following ways.**

Access to clinical and medical treatment records by a veteran is accomplished by written request to the National Personnel Records Center (NPRC) in St. Louis, Missouri. NPRC is part of the National Archives of the United States. A records request must be made in writing. *See* 5 U.S.C. § 552a(b). *See also* <https://www.archives.gov/personnel-records-center/medical-records-veterans-access>. Requests can be made online, by fax transmissions or by mailing a completed standardized form SF 180. Although not mandatory, using the SF-180 is the recommended method to send a request for military service information. This form captures all the necessary information to locate a record. Veterans are requested to provide as much

information on the form as possible and send copies of any service documents that he or she may have.

NPRC files most clinical records and medical treatment records by the name of the last hospitalizing or treatment facility as opposed to the branch of service in which the veterans served. It necessary that the veteran provide the following information:

1. Name and location of the last hospitalizing (inpatient clinical records) or treatment facility (outpatient health records). Usually this is the last facility at which treatment was provided.
2. The year of hospitalization or last treatment and the type of treatment received (inpatient, outpatient, dental, mental health, etc.). If copies of specific records are requested, include the type of illness, injury or treatment involved.
3. The patient's full name used during treatment.
4. The patient's social security number and status (specify: veteran, retiree, dependent of military, federal employee or other) during treatment.

It is important to understand that each veteran has a 201 file which is the veteran's personnel file which is provided to NPRC by each service branch. When a request is made by VA for a veteran's service department records from NPRC it is the veteran's 201 file which is provided by NPRC to VA. A veteran's 201 file contained basic



personnel information related to the veteran's service such as entrance and discharge examinations, recorded routine outpatient medical care, record of duty assignments and any awards or punishments while on active duty as well as the DD 214, discharge documents. The 201 file **does not** include inpatient medical records. As noted above these records must be requested separately with such information to allow NPRC to locate those records by treating facility and not by branch of service. Unless specifically requested by VA the service treatment records will not be provided.

If VA has requested service treatment records those records will be provided to a veteran in accordance with the provisions of 38 C.F.R. § 1.503, the veteran may obtain disclosure of records that are relevant to him or her. Section 1.503 allows for disclosure of "information . . . as to matters concerning himself or herself . . . when such disclosure would not be injurious" to the veteran.

**II. There is no limitation to access to service treatment records.**

Mr. Sellers is unaware and has been unable to identify any limitation to a veteran's access to his or her service treatment records. In this case, Mr. Seller's February 26, 1996 application for compensation or pension submitted to VA on VA Form 21-526, Appx137-140, at Box 12, asks specific information regarding "if disability occurred during active duty . . . give branch and date of occurrence." Appx137. Box, 17 asks "nature of sickness, disease or injury for which this claim is

made and the date each began.” *Id.*

At Box 19C, on VA’s Form asks “Name and number or location of hospital, first-aid station, dressing station or infirmary,” which Mr. Seller’s provided. The Veterans Court expressly relied upon the following:

The disability at issue here was identified in the record by military medical professionals well before the appellant filed his March 1996 claim, R. at 777, 2922-43, and the record was in VA’s possession at the time of the initial decision, R. at 2667 (July 1996 rating decision listing “[s]ervice medical records for the period [April 17, 1964,] through [January 22, 1969,] and the period [February 20, 1981,] through [February 26, 1996,] as “Evidence”).

Further, the appellant’s mental health issues were well documented in those records. They reflect that the appellant’s mental health was a subject of serious concern while he was in the military as he was twice diagnosed with dysthymia, subjected to extensive psychological testing, evaluated for retention purposes, and involuntarily hospitalized.

Appx4. It is evident that from the information provided by Mr. Sellers in his original application for compensation, Appx137-140, VA in 1996 obtained relevant service department records pertaining to Mr. Sellers’s mental health issues while on active duty. Thus, there was sufficient information provided by Mr. Sellers to VA for VA to have obtained the service department treatment records pertaining to Mr. Sellers’s mental health issues while on active duty. It was those records which were the evidence of record which reasonably raised a claim for service connection for a

mental disorder. Once in the possession of VA, it was the obligation of VA to assist Mr. Sellers in developing the facts pertinent to his claim for compensation for disabilities resulting from his period of service and to render a decision which granted every benefit that could be supported in law while protecting the interests of the Government. *See* 38 C.F.R. § 3.103(a).

**III. Generally, a veteran incurs no costs in obtaining access to such records.**

Generally there is no charge from NPRC for access to and copies of basic military personnel and health record information provided to veterans, next-of-kin and authorized representatives. If the veteran's request involves a service fee, the veteran will be notified by NPRC as soon as that determination is made. In regards to access from VA, 38 C.F.R. § 1.513 allows disclosure of Department of Defense service records and medical records received by VA. Further under 38 C.F.R. 1.526 provides in pertinent part that "[w]hen VA benefit records are requested by a VA beneficiary or applicant for VA benefits, the duplication fee for one complete set of such records will be waived." A veteran has the ability to obtain a free copy of the Service Records and Service Medical Records which the VA has obtained and "matters concerning" themselves upon his or her written request.

### Conclusion

Mr. Sellers submits the above supplemental brief in response to the questions presented by the panel on May 8, 2020. Mr. Sellers urges this panel to affirm the decision of the Veterans Court.

Respectfully submitted,

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### Certificate of Service

I certify that on the 8th day of June, 2020, the foregoing supplemental brief was electronically filed through CM/ECF system with the Clerk, United States Court of Appeals for the Federal Circuit. Copies of the document were served through the Court's CM/ECF system via the Notice of Docket Activity to:

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### Certificate of Compliance

I certify that this brief complies with the Court's type-volume limitation rules. This brief was printed in Garamond font at 14 points. This brief contains less than 15 pages as directed by the Court's Order dated May 8, 2020.

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