

Not Published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No: 22-7344

DAVID A. HAMILL, PETITIONER,

v.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

JUDGMENT

The Court has issued a decision in this case. The time allowed for motions under Rule 35 of the Court's Rules of Practice and Procedure has expired.

Under Rule 36, judgment is entered and effective this date.

Dated: January 9, 2024

FOR THE COURT:

TIFFANY M. WAGNER
Clerk of the Court

By: /s/ Sean Moldowan
Deputy Clerk

Copies to:

Yelena Duterte, Esq.

VA General Counsel (027)

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 22-7344

DAVID A. HAMILL, PETITIONER,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before TOTH, LAURER, and JAQUITH, *Judges*.

ORDER

LAURER, *Judge*, filed the opinion of the Court. JAQUITH, *Judge*, filed a dissenting opinion.

On December 19, 2022, David A. Hamill, through counsel, petitioned the Court for extraordinary relief in the nature of a writ of mandamus. He argued that VA had refused to decide whether he'd submitted new and material evidence related to his other than honorable (OTH) character of discharge (COD). He relied on *Harris v. McDonough*¹ to ask the Court to order VA to issue an appealable decision readjudicating his COD.

After the Secretary responded, Mr. Hamill filed a request for class certification and class action (RCA). He acknowledged that his request for relief had been satisfied because he'd received a new and material evidence determination after he filed his petition. But he argues that, even so, his petition isn't moot, and his class action request isn't either, based on certain exceptions to mootness. He urges the Court to certify a class of veterans who received OTH characters of discharge then applied for VA benefits but received decisions that adjudicated only healthcare eligibility, not COD. The Secretary opposes certification, arguing that the class Mr. Hamill describes has no live case or controversy. The Court convened a panel to decide the matter.² As explained below, we dismiss Mr. Hamill's petition and deny his RCA.

I. BACKGROUND

Mr. Hamill served in the United States Marine Corps from January 2009 to March 2013. He was discharged from service under OTH conditions.³ Upon discharge, he filed a claim for disability compensation for post-traumatic stress disorder (PTSD), other psychiatric issues, and back pain.⁴ VA denied his application in May 2014 because his OTH COD made him ineligible for "all benefits administered by the Department of Veterans Affairs under the provisions of 38

¹ *Harris v. McDonough*, 33 Vet.App. 269 (2021) (per curiam order).

² See U.S. VET. APP. INTERNAL OPERATING PROCEDURES XV.

³ Petition (Pet.) at Exhibit (Ex.) A.

⁴ Pet. at Ex. B.

C.F.R. § 3.12(c)(6) and 38 U.S.C. § 5303(a).”⁵ VA noted that petitioner’s COD didn’t bar him from receiving healthcare under chapter 17 of title 38, U.S. Code, “for any disabilities determined to be service connected” for his period of service.⁶

In May 2017, Mr. Hamill filed a new claim for disability benefits based on PTSD, chronic fatigue syndrome, fibromyalgia, chronic depression, lower back pain, and hearing loss.⁷ VA responded in July 2017 and construed Mr. Hamill’s filing as an attempt to reopen the May 2014 decision that had concluded that his COD barred him from service connection except in limited circumstances under chapter 17. VA explained that it couldn’t reopen the May 2014 decision because (1) the time to appeal that decision had expired and (2) Mr. Hamill hadn’t submitted new and material evidence to warrant reopening his claim.⁸ VA included a notice of appellate rights with its July 2017 decision, and Mr. Hamill didn’t appeal.

Four years later, on March 12, 2021, Mr. Hamill submitted two new claims to VA.⁹ First, he filed a claim seeking compensation for the same disabilities he described in his 2017 claim, thereby implicitly seeking to reopen those claims.¹⁰ That same day, he also filed a new benefits application seeking compensation for several other disabilities.¹¹ VA adjudicated both sets of claims in a May 19, 2021, decision and granted service connection for PTSD for treatment purposes only.¹² VA denied service connection for the rest of the claimed disabilities and included a notice of appellate rights with its decision.¹³ Again, Mr. Hamill didn’t appeal.

In response to a July 2022 letter from Mr. Hamill’s attorney, asking VA to “make a decision regarding [Mr. Hamill’s] discharge characterization,” VA notified Mr. Hamill that he should contact his service department to upgrade his COD.¹⁴ Five months later, in December 2022, Mr. Hamill petitioned the Court, arguing that VA had violated *Harris* because it hadn’t adjudicated whether he’d submitted new and material evidence relevant to his COD when it granted chapter 17 benefits.

On March 6, 2023, the Secretary moved to dismiss the petition as moot and included a copy of a February 2023 letter that VA had sent to Mr. Hamill, explicitly finding that he hadn’t submitted new and material evidence to warrant reopening the May 2014 COD decision.¹⁵ Mr. Hamill filed his RCA that same day, recognizing that VA’s February 2023 letter had “satisfied” his request for an appealable decision, but contending that the Court should still certify a class of

⁵ Pet. at Ex. D.

⁶ Pet. at Ex. D. There seems to be a discrepancy within VA’s letter over whether petitioner was eligible for chapter 17 benefits since the May 2014 decision contains conflicting statements. Because petitioner was eventually granted chapter 17 benefits and neither party argues over the discrepancy in the May 2014 decision, the Court determines that the discrepancy is irrelevant, and the parties have waived any argument on that point.

⁷ Pet. at Ex. E.

⁸ Pet. at Ex. F.

⁹ The Court notes that Mr. Hamill submitted his claims on March 12, 2021, but VA didn’t mark them as uploaded into their system until May 10, 2021.

¹⁰ Pet. at Ex. G.

¹¹ Pet. at Ex. G.

¹² Pet. at Ex. H.

¹³ Pet. at Ex. H.

¹⁴ Pet. at Exs. I, J.

¹⁵ Secretary’s Response to Pet. at Attachment A.

veterans who hadn't received explicit new and material evidence determinations like the one he'd received.¹⁶

The Secretary opposes the RCA because he believes the purported class has no live case or controversy. First, he argues that Mr. Hamill's claim is moot since VA implicitly declined to reconsider its COD determination in the May 2021 decision that granted limited chapter 17 benefits for PTSD but denied all other claims. The Secretary reasons that the May 2021 decision mooted Mr. Hamill's petition and satisfied *Harris* because it included a notice of appellate rights. Next, the Secretary maintains that the purported class is inherently moot because its members—by virtue of their membership—would've already received implicit new and material evidence adjudications from VA, with attached notices of appellate rights, so they haven't suffered any harm under *Harris*. And last, the Secretary contends that Mr. Hamill hasn't shown that proceeding by class action would be superior to proceeding by precedential decision, and since the implicit determination question is case specific, a class action would prove an unwieldy tool.

II. ANALYSIS

A. The Petition Is Moot

The Court adheres to Article III of the U.S. Constitution's case-or-controversy jurisdictional requirements¹⁷—meaning that there must be a live issue for the Court to review a case.¹⁸ “[W]hen the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome,” the case or controversy becomes moot.¹⁹ And when a petitioner receives the relief sought, the appropriate course is to dismiss the petitioner's case as moot.²⁰

Here, the parties essentially agree that there's no case or controversy for the Court to rule on with respect to the petitioner. While Mr. Hamill contends that his petition isn't moot, he admits that “his individual request for an appealable decision has been satisfied,” which amounts to acknowledging that his petition is moot since there's no more relief that he could receive or that the Court could direct VA to provide.²¹ Putting that aside, the parties fundamentally disagree on *why* the petition is moot and where the relief that Mr. Hamill has received flows from. That divergence dictates the disposition for both Mr. Hamill's petition and his class action request.

Mr. Hamill points to VA's February 2023 letter as the source of the relief he received. That letter explicitly stated that “no new and relevant evidence [has been] submitted to reopen your claim for [COD] determination.”²² The Secretary frames Mr. Hamill's position as a concession and argues that his petition is moot “[b]ecause the [VA regional office] has issued an appealable

¹⁶ Petitioner's RCA at 7.

¹⁷ *Cardona v. Shinseki*, 26 Vet.App. 472, 474 (2014) (per curiam order); *Mokal v. Derwinski*, 1 Vet.App. 12, 13 (1990).

¹⁸ *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam) (“When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction.”).

¹⁹ *Godsey v. Wilkie*, 31 Vet.App. 207, 218 (2019) (per curiam order) (quoting *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979)).

²⁰ *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order).

²¹ Petitioner's RCA at 7.

²² Secretary's Response to Pet. at Attachment A.

decision,” so there’s no case or controversy.²³ Although the Secretary first relied on the same February 2023 letter that Mr. Hamill cites, the Secretary now maintains that Mr. Hamill’s petition is moot based on the May 2021 letter that included a notice of appellate rights. In that letter, VA implicitly denied reopening its COD determination and provided a notice of appellate rights, which satisfied *Harris*.²⁴ Thus, the Secretary concludes that Mr. Hamill hasn’t described a cognizable harm because he received his requested relief back in May 2021.

The diverging positions clearly have high stakes: if VA mooted Mr. Hamill’s petition in February 2023—after he had already filed his petition with this Court—then Mr. Hamill could reasonably argue that, although he’d received his requested relief, the inherently transitory and picking off exceptions to mootness might allow the class he described to go forward.²⁵ On the other hand, if the May 2021 letter mooted Mr. Hamill’s petition before he filed it, his petition falls away, as does the possibility of certifying a class, since both were moot from the jump.

The implicit denial doctrine, plus a close reading of *Harris*, resolves the controversy. Based on *Harris*, Mr. Hamill argues that VA must explicitly decide whether a claimant has submitted new and material evidence sufficient to reopen a COD decision. He contends that, in his case, VA didn’t comply with its adjudicatory obligation until February 2023, when it explicitly stated that he hadn’t submitted new and material evidence. But the crux of *Harris* describes and remedies a harm that’s distinct from what Mr. Hamill describes. The *Harris* Court stated that, in essence, the relief Mr. Harris sought was “a decision subject to appeal.”²⁶ The Court acknowledged that VA adjudicators must “make a formal [COD] determination when presented with a claim for benefits predicated on a service member’s [OTH] service.”²⁷ But the Court included that reasoning only to explain why the option for “administrative relief from a service department” couldn’t excuse VA from issuing a decision with a notice of appellate rights.²⁸ The Court emphasized the relief that Mr. Harris sought and that VA refused to provide: “a VA decision that will allow him to avail himself of the regular appeals process, not a substitute for that process.”²⁹

Harris must be read in tandem with the implicit denial doctrine since that doctrine is already a well-established part of the framework that VA adjudicators operate within. The United States Court of Appeals for the Federal Circuit has explained that, in some cases, “a claim for benefits will be deemed to have been denied, and thus finally adjudicated, even if the [Department of Veterans Affairs] did not expressly address that claim in its decision.”³⁰ “[T]he implicit denial rule is, at bottom, a notice provision.”³¹ By its nature, the rule arises when a veteran receives notice that doesn’t comply with the strictures of an applicable notice provision. And that makes sense

²³ Secretary’s Response to Pet. at 4; *see also* Secretary’s Response to RCA at 3-7.

²⁴ Pet. at Ex. I.

²⁵ *See Godsey*, 31 Vet.App. at 218-20 (applying the inherently transitory exception to mootness to allow a class action to go forward even though the claims had resolved because the claims were “unavoidably time-sensitive” and “acutely susceptible to mootness”).

²⁶ *Harris*, 33 Vet.App. at 275.

²⁷ *Harris*, 33 Vet.App. at 273 (quoting *Robertson v. Shinseki*, 26 Vet.App. 169, 175 (2013), *aff’d sub nom. Robertson v. Gibson*, 759 F.3d 1351 (Fed. Cir. 2014)).

²⁸ *Harris*, 33 Vet.App. at 273.

²⁹ *Harris*, 33 Vet.App. at 274.

³⁰ *See Adams v. Shinseki*, 568 F.3d 956, 961 (Fed. Cir. 2009).

³¹ *Adams*, 568 F.3d. at 965.

since implicit denial can be invoked only when a claimant’s notice isn’t explicit or when it fails to comply with a regulatory—or even statutory—notice provision. Technically noncompliant notice can still provide a veteran with the substantive information that he’s due, which is why implicit denial has repeatedly received the Federal Circuit’s sanction.³² Yet the dissent parts ways with us here. His departure stems from a commendable desire to ensure that veterans receive adequate notice. But implicit denial folds in his concern because the doctrine only applies when a court is convinced that the notice that a claimant received was adequate, even if it wasn’t textbook.³³

Deciding whether VA implicitly denied a claim depends on notice and hinges on whether a reasonable claimant could conclude, from the notice that he received, that his claim had been implicitly denied.³⁴ Notice inquiries under the implicit denial doctrine are circumstance-specific, so they look to what a reasonable claimant in a particular veteran’s position would be expected to understand.³⁵ Applying the implicit denial doctrine allows a court to balance a claimant’s right to know how his claim has been decided with VA’s interest in finality.³⁶ Our Court in *Cogburn v. Shinseki* fleshed out how to strike that balance based on (1) “the specificity of the claims or the relatedness of the claims”; (2) the “specificity of the adjudication,” with an eye to whether “the adjudication allude[s] to the pending claim in such a way that it could be reasonably inferred that the prior claim was denied”; (3) the “timing of the claims” and whether they’re closely associated time-wise; and (4) whether the claimant was represented by counsel.³⁷

Applied to Mr. Hamill’s case, all four *Cogburn* factors weigh one way: VA implicitly denied his request to reopen his prior COD determination and said enough in its May 2021 decision to notify Mr. Hamill how it had decided the issue.

First, Mr. Hamill’s claims are closely tied—both in timing and in content. On the same day, March 12, 2021, he filed one application seeking new disability benefits and another application seeking to reopen claims for disability claims VA previously denied based on the adverse COD determination. VA’s May 2021 decision more than alludes to the relationship between the claims and petitioner’s OTH discharge—it specifically turns on the fact that an adverse COD bars VA from granting benefits beyond chapter 17. The one directly controls the other. VA denied Mr. Hamill’s new benefits application because of his adverse COD, which

³² See, e.g., *Adams*, 568 F.3d at 961; *Jones v. Shinseki*, 619 F.3d 1368, 1373 (Fed. Cir. 2010); *Deshotel v. Nicholson*, 457 F.3d 1258, 1262 (Fed. Cir. 2006); *Williams v. Peake*, 521 F.3d 1348, 1351 (Fed. Cir. 2008); *Munro v. Shinseki*, 616 F.3d 1293, 1299 (Fed. Cir. 2010); *Cogburn v. McDonald (Cogburn III)*, 809 F.3d 1232, 1236-37 (Fed. Cir. 2016), *aff’g Cogburn v. Gibson (Cogburn II)*, No. 12-3323, 2014 WL 2600052 (Vet. App. June 11, 2014) (mem. dec.), *aff’g after remand Cogburn v. Shinseki (Cogburn I)*, 24 Vet.App. 205 (2010); *Hampton v. McDonough*, 68 F.4th 1376, 1381-82 (Fed. Cir. 2023), *petition for cert. filed*, No. 23-543 (U.S. Nov. 21, 2023).

³³ *Cogburn III*, 809 F.3d at 1236 (“[W]hen the implicit denial rule applies, the claimant necessarily ‘received adequate notice of, and an opportunity to respond to, the [VA’s] decision . . . [and therefore] was not deprived of any due process rights.’” (quoting *Adams*, 568 F.3d at 965)).

³⁴ See *Adams*, 568 F.3d at 962-64.

³⁵ See *Munro*, 616 F.3d at 1299 (holding that the implicit denial rule properly applied because the veteran “had multiple reasons to know” that his claims had been denied); *Jones*, 619 F.3d at 1373 (reaching the same conclusion because the veteran in the case “reasonably [could] be expected to understand” that his claim had been denied based on the particular procedural history).

³⁶ See *Adams*, 568 F.3d at 963.

³⁷ *Cogburn I*, 24 Vet.App. at 212-13.

remained in place and which VA cited as evidence it had considered.³⁸ Had VA reached a different conclusion on the COD question, it would've had to address his disability claims on the merits rather than granting only limited chapter 17 benefits and denying his new disability claims outright. Furthermore, only a few months separated petitioner's filings and VA's adjudication, leaving little doubt about what VA was adjudicating. Finally, Mr. Hamill was represented by his current counsel when he filed the applications that prompted VA's May 2021 letter. Because an attorney providing competent representation would advise a veteran "of any claim [or issue] that was unadjudicated in a regional office decision, and the possible consequences of not directly addressing the claim at the time of the original rating action," we must presume that Mr. Hamill had a reasonable understanding of the implications of VA's actions.³⁹ All told, there's only one way to read VA's May 2021 decision: since it hinged on his adverse COD, it gave Mr. Hamill sufficient notice that VA had declined to revisit the COD issue.

This conclusion is reinforced by the history of VA proceedings over the COD issue. VA explicitly adjudicated Mr. Hamill's COD in May 2014, and he didn't appeal.⁴⁰ Three years later, Mr. Hamill tried to reopen the 2014 decision. In its July 2017 decision, VA explicitly found that Mr. Hamill hadn't submitted new or material evidence, and it included a notice of appellate rights.⁴¹ Again, Mr. Hamill didn't appeal. In March 2021, appellant filed a new application for benefits and another claim. Two months later, VA adjudicated both filings, granted chapter 17 benefits for PTSD, denied the remaining claims, and implicitly adjudicated the COD question. VA included another notice of appellate rights.⁴² To date, petitioner has received two decisions with notices of appellate rights, either explicitly or implicitly adjudicating his COD.

VA certainly must adjudicate every claim that's been raised, but Mr. Hamill misreads the caselaw in saying that VA's failure to explicitly decide every issue leaves a claim or request pending. Reading our precedent that way would undercut the implicit denial doctrine. *Harris* doesn't displace the applicability of implicit denial in this context or in any other. The decisions VA issued put petitioner on notice of the Agency's determination on the character of his discharge and thereby gave him access to the regular appeals process, so *Harris* doesn't afford him an avenue for any more relief than what he's already received. Since Mr. Hamill received a COD determination and a notice of appellate rights—all before he filed his petition—no harm remains for the Court to remedy, so his petition is moot.

Petitioner asserts that applying the implicit denial doctrine to the May 2021 decision would require the Court to presume that VA violated the more robust notice obligations made part of 38 U.S.C. § 5104 by the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), which would conflict with the presumption of administrative regularity.⁴³ But the same allegation could be leveled against the doctrine and the preamendment version of section 5104, yet the two coexisted. At bottom, petitioner suggests that the revised version of section 5104 does "not allow

³⁸ See RCA at Ex. D (listing the "Administrative Decision received on May 15, 2014" as one of the pieces of evidence it had reviewed).

³⁹ *Cogburn I*, 24 Vet.App. at 213.

⁴⁰ Pet. at Ex. D.

⁴¹ Pet. at Ex. F.

⁴² Pet. at Ex. H.

⁴³ Petitioner's Reply at 8-9.

for implicit denials,”⁴⁴ but he doesn’t adequately develop an argument that Congress intended through the AMA to sweep away this longstanding aspect of veterans law.⁴⁵

B. No Mootness Exception Applies

The claims of the proposed class members don’t survive our holding that Mr. Hamill’s petition is moot. Although he acknowledges that he has received his requested relief, Mr. Hamill argues that the class should still go forward because the inherently transitory exception to mootness, as well as the related picking off exception, applies to the injuries sustained by the proposed class members.⁴⁶

A class action can continue after the “named plaintiff’s claim” has been rendered moot if an exception to mootness applies.⁴⁷ Here, petitioner argues that the inherently transitory exception to mootness applies, so the Court should still certify the class he describes even though he’s received his requested relief. The Court has adopted the inherently transitory exception to mootness, which deals with classes comprised of claims that are “unavoidably time-sensitive” and “acutely susceptible to mootness.”⁴⁸ Inherently transitory claims are those that “a trial court will not have enough time to rule on” before they become moot.⁴⁹ To let claimants litigate those harms, courts can certify classes that consist of inherently transitory claims even after a named plaintiff’s claim has become moot. That way, the short-lived nature of the claim doesn’t shield a defendant—VA here—from litigating a case just because it’s susceptible to a quick remedy. The picking off exception to mootness is a near cousin to the inherently transitory exception. It refers to those scenarios in which a defendant would like to avoid litigation, and to do so, gives an injured claimant the relief that he was seeking to moot his claim and close off the possibility of litigation.⁵⁰ Though distinct, the exceptions end in the same spot. One deals with claims that are moot because they’re “transitory by [their] very nature,” and the other deals with claims that are made “transitory by virtue of the defendant’s litigation strategy.”⁵¹ In either case, without an operative exception, mootness could insulate those claims from judicial review.

Mr. Hamill cites both exceptions to argue for the certification of the class of claimants he’s described.⁵² But neither exception applies here. Take the second exception first. We’ve concluded that the May 2021 letter—not the February 2023 letter—mooted Mr. Hamill’s petition. VA issued its May 2021 letter in the ordinary course of business, well before Mr. Hamill filed his petition in December 2022. Since no litigation was pending in May 2021, VA couldn’t have issued the May

⁴⁴ *Id.* at 8 (capitalization altered).

⁴⁵ The dissent insists that we are taking an “expansive view of the implicit denial” doctrine. *Post* at p. 10. But we are simply applying the well-established *Cogburn* factors to the COD dispute in this case. Rather, it is the dissent that seems to adopt the sweeping position that implicit denials cannot be sanctioned in the AMA context. *See id.*

⁴⁶ Petitioner’s RCA at 7-8 (citing *Godsey*, 31 Vet.App. at 217-20).

⁴⁷ *Godsey*, 31 Vet.App. at 218-20 (citing *Monk v. Shulkin (Monk I)*, 855 F.3d 1312, 1317 (Fed. Cir. 2017), *class certification denied sub nom. Monk v. Wilkie (Monk II)*, 30 Vet.App. 167 (2018) (en banc order), *aff’d, Monk III*, 978 F.3d 1273 (Fed. Cir. 2020)).

⁴⁸ *Godsey*, 31 Vet.App. at 219 (quoting *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011)).

⁴⁹ *Godsey*, 31 Vet.App. at 219 (quoting *County of Riverside v. McLaughlin*, 500 U.S. 44, 51-52 (1991)).

⁵⁰ *Godsey*, 31 Vet.App. at 219 (quoting *Pitts*, 653 F.3d at 1091).

⁵¹ *Pitts*, 653 F.3d at 1091.

⁵² Petitioner’s RCA at 7-8.

2021 decision to moot Mr. Hamill’s petition and avoid litigation. Thus, the picking off exception doesn’t apply. The same goes for the inherently transitory exception to mootness. That exception has only limited usefulness: it only works to capture claims that don’t last long enough for the Court to get a chance for review. The alleged injury here—VA’s inaction related to a request to revisit a COD determination—isn’t by its nature a transitory one that would permit us to ignore mootness.

Because Mr. Hamill’s petition was mooted before he sought aggregate litigation, and since no exception to mootness applies, the Court denies the RCA.⁵³

C. A Class Action Wouldn’t Be Superior to a Precedential Decision

The Court doesn’t have to walk through the strictures of Rule 23, but we’ll address one issue for the sake of completeness. When it reviews an RCA, the Court considers whether the proposed class meets the requirements for class certification laid out in Rule 23 of our Rules of Practice and Procedure.⁵⁴ The Court also considers whether a class action would be superior to a “precedential decision granting relief on a non-class action basis.”⁵⁵ Prospective class representatives must make this showing.⁵⁶ And it’s no small feat because this Court has limited factfinding abilities, so class actions here are the exception, not the rule.⁵⁷ To that end, the Court presumes that “classes should not be certified because our ability to render binding precedential decisions ordinarily will be adequate.”⁵⁸

When considering whether this presumption has been rebutted, some of the factors that the Court considers include the litigation’s factual complexity, whether the record has been fully developed, and whether the class has alleged enough facts to warrant remedial enforcement.⁵⁹ These factors go to the question of manageability, a prime concern given our appellate posture and limited factfinding ability.⁶⁰

Proceeding by class action isn’t the right way to go here. Implicit adjudication questions are case specific, so they’re ill-suited to both class-wide review and class-wide relief. Although

⁵³ *Kernz v. McDonough*, ___ Vet.App. ___, ___, No. 20-2365, 2023 WL 6459373, at *13 (Oct. 4, 2023) (en banc order), *appeal docketed*, No. 24-1171 (Fed. Cir. Nov. 21, 2023).

⁵⁴ *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974) (holding that a court should first assess whether a requested class action satisfies procedural requirements under Rule 23 of the Federal Rules of Civil Procedure before conducting an inquiry into the merits of the claims advanced); *see also* U.S. VET. APP. R. 23(a).

⁵⁵ U.S. VET. APP. R. 22(a)(3).

⁵⁶ *Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (“An appellant bears the burden of persuasion on appeals to this Court . . .”), *aff’d per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table).

⁵⁷ *Gardner-Dickson v. Wilkie*, 33 Vet.App. 50, 62-63 n.9 (2020) (order) (quoting *Skaar v. Wilkie*, 32 Vet.App. 156, 196 (2019) (en banc order), *class certification aff’d*, 33 Vet.App. 127 (2020), *reversed on other grounds sub nom. Skaar v. McDonough*, 48 F.4th 1323 (Fed. Cir. 2022)), *aff’d per curiam sub nom. Gardner-Dickson v. McDonough*, No. 2021-1462, 2021 WL 5144367 (Fed. Cir. Nov. 5, 2021) (nonprecedential R. 36 judgment).

⁵⁸ *Skaar*, 32 Vet.App. at 196.

⁵⁹ *Skaar*, 32 Vet.App. at 197.

⁶⁰ *Godsey*, 31 Vet.App. at 223 n.4 (acknowledging that the Court considers manageability when it certifies a class, even though it won’t “categorically decline to certify classes because class or aggregate actions may be more difficult to manage than cases involving individual petitions”); *see also Monk II*, 30 Vet.App. at 184-200 (Allen, J., concurring in part, dissenting in part).

Mr. Hamill alleges that VA has a practice of failing to adjudicate whether a claimant has submitted new and material evidence, an allegation that resonates in the language of Federal Rule of Civil Procedure 23(b)(2), he hasn't shown that the Court could fashion relief for all the class members without conducting an individualized review of each claimant's records. The common issue facing the potential class members is a legal one—whether the implicit denial doctrine applies—and that issue is bound tightly to individualized facts—whether each veteran received notice that could reasonably alert the claimant that his or her attempt to reopen a COD determination had been implicitly denied.

To the extent that any prospective class member has a live case or controversy—and to be clear, the Court isn't saying whether that's the case for any claimant here—that theoretically live claim wouldn't be fit to resolve by class action. Here's why. If any particular prospective class member didn't receive a decision that implicitly adjudicated whether he'd submitted new and material evidence related to a prior COD decision, that claim's merits would revolve around case-specific facts that would best be handled by an individual appeal. Setting aside all the mootness concerns the Court has discussed, Mr. Hamill hasn't persuaded the Court that a class action would be a better vehicle for proceeding than a precedential decision—which would then guide individualized litigation—given the fact-specific nature of the claims he's described as similarly situated to his own.

One final note. The Secretary has informed the Court that he's updated the relevant portion of the *Veterans Affairs Adjudication Procedures Manual, M21-1*, so VA now must issue explicit new and material evidence determinations when it decides whether a prior COD decision can be reopened.⁶¹ And the Secretary assures the Court that VA is trying to locate veterans and issue separate COD determinations—presumably like the one Mr. Hamill received in February 2023.⁶² The policy change the Secretary describes takes the wind out of Mr. Hamill's sails since it shows that the Secretary is doing what Mr. Hamill wanted done—though it's not dispositive since the class doesn't survive our holding that Mr. Hamill's petition was moot well before he filed it.

III. CONCLUSION

Based on the above, it is

ORDERED that petitioner's March 6, 2023, request for class certification and class action is denied. It is also

ORDERED that the Secretary's March 6, 2023, motion to dismiss the petition is granted, and petitioner's December 19, 2022, petition is DISMISSED.

DATED: December 18, 2023

⁶¹ Secretary's Response to RCA at 13, Appendix 2.

⁶² Secretary's Response to RCA at 13, Appendix 2; *see also* Secretary's Response to Pet. at Attachment A.

JAQUITH, *Judge*, dissenting: Though I appreciate my colleagues' thorough and well-written opinion, I disagree with their dismissal of the veteran's petition and denial of his class action request, so I respectfully dissent. In my view, the majority's expansive view of the implicit denial construct and disregard for the AMA neutralize the veteran's right to notice, and the majority's narrow reading of *Harris*⁶³ neutralizes that case's prescribed remedy. Sanctioning silent denials of implied claims relegates the real adjudicatory work to the shadows, with a loss of transparency that sows confusion among the parties and undermines confidence in the system.

I. THE VETERAN'S CLAIMS AND VA'S DECISIONS

The majority holds that a May 2021 decision by a VA regional office (RO) implicitly denied the veteran's request to reopen his prior character of discharge determination, and that the RO "said enough in its May 2021 decision to notify Mr. Hamill how it had decided the issue."⁶⁴ The RO's May 2021 decision purportedly was responsive to two documents signed by the veteran's representative on March 12, 2021, and received by VA on May 10, 2021. One was an application for disability compensation for eight disabilities: irritable bowel syndrome, acid reflux/gastroesophageal reflux disease (GERD), equilibrium issues, stuttering, memory issues, sensitivity to light, headaches/migraines, and traumatic brain injury (TBI).⁶⁵ The application had a section for service information, but it was left blank. The other document was a supplemental claim listing six issues: PTSD, chronic fatigue syndrome, fibromyalgia, depression, lower back, and hearing loss.⁶⁶ Neither document said anything about the veteran's discharge.

The RO's May 2021 decision granted "[s]ervice connection for treatment purposes only under 38 USC chapter 17 for [PTSD]" and denied service connection for four other disabilities.⁶⁷ The disabilities adjudicated were combinations of the disabilities claimed: PTSD "(also claimed as memory issues)"; GERD "(also claimed as acid reflux)"; irritable bowel syndrome; "migraine headaches (also claimed as sensitivity to light)"; and TBI "(also claimed as equilibrium issues and stuttering)."⁶⁸ The combinations covered all eight disabilities on the veteran's compensation application but only PTSD on his supplemental claim. The May 2021 decision explained that service connection was granted for PTSD because the records show that the veteran had earned a Combat Action Ribbon and had been diagnosed with PTSD. The decision specified that "[c]ompensation is not payable for this condition. (38 CFR 17.109)."⁶⁹ The explanation for the denials of service connection for each of the other four disabilities was that the records showed no complaint of or treatment for the disability during service.

The May 2021 decision was accompanied by a letter that said the rating decision explained the reasons for the RO's decision, and that the letter and rating decision constituted VA's decision

⁶³ *Harris v. McDonough*, 33 Vet.App. 269 (2021) (per curiam order).

⁶⁴ See discussion *ante* at p. 5.

⁶⁵ RCA Ex. B at 1-5 (VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits).

⁶⁶ RCA Ex. B at 6-5 (VA Form 20-0995, Decision Review Request: Supplemental Claim).

⁶⁷ RCA Ex. D.

⁶⁸ *Id.* at 1.

⁶⁹ *Id.* at 6.

“based on [the veteran’s] claim received on May 10, 2021” and “all claims [VA] understood to be specifically made, implied, or inferred in that claim.”⁷⁰

The cited regulation, 38 C.F.R. § 17.109, provides certain veterans with presumptive eligibility for medical benefits for psychosis and active mental illness other than psychosis; the regulation does not concern the character of a veteran’s discharge.⁷¹ The regulatory provision that applies to the veteran’s status is not even in chapter 17 of the statute or the regulation; it is in 38 C.F.R. § 3.360. Section 3.360(a) provides as follows:

The health-care and related benefits authorized by chapter 17 of title 38 U.S.C. shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty.⁷²

The only mention of the veteran’s discharge in the May 2021 decision and notice letter is the listing in the rating decision of “Certificate of Release or Discharge from Active Duty” among seven items of evidence—with no indication of the nature of the discharge or its import or effect.

II. NOTICE

Notice is the linchpin of our nonadversarial, pro-claimant system for adjudicating veterans benefits.⁷³ “The entire thrust of the VA’s nonadversarial claims system is predicated upon a structure which provides for notice and an opportunity to be heard at virtually every step in the process.”⁷⁴ Notice is a foundational requirement grounded in the Due Process Clause of the Fifth Amendment of the United States Constitution, which fully protects veterans’ property interest in benefits.⁷⁵ Appropriate notice is “[a]n essential principle of procedural due process.”⁷⁶

Beyond their constitutional rights, veterans “have a right to fair process in the development and adjudication of their claims and appeals before VA.”⁷⁷ Even “where no particular procedural process is required by statute or regulation, the principle of fair process may nonetheless require additional process if it is implicitly required when ‘viewed against [the] underlying concepts of procedural regularity and basic fair play’ of the VA benefits adjudicatory system.”⁷⁸ The principle of fair process applies throughout the process of a veteran’s case and requires VA to properly provide content-complying notice and an opportunity to respond.⁷⁹ Moreover, “[t]his Court’s

⁷⁰ Pet. at Ex. H; RCA at Ex. D. RCA at Ex. D includes both the RO’s notice letter and the RO’s rating decision. Though the pages of exhibit D are not numbered, the notice letter is at pages 1-3, and the rating decision is at pages 4-6.

⁷¹ See 38 C.F.R. § 17.109 (2023).

⁷² 38 C.F.R. § 3.360(a) (2023).

⁷³ See *Bryant v. Wilkie*, 33 Vet.App. 43, 46 (2020); *Hodge v. West*, 155 F.3d 1356, 1363 (Fed. Cir. 1998) (highlighting “the importance of systemic fairness” in the “uniquely pro-claimant” system for awarding veterans benefits).

⁷⁴ *Thurber v. Brown*, 5 Vet.App. 119, 122 (1993).

⁷⁵ *Cushman v. Shinseki*, 576 F.3d 1290, 1298 (Fed. Cir. 2009).

⁷⁶ *Noah v. McDonald*, 28 Vet.App. 120, 129 (2016). Even rudimentary due process demands timely and adequate notice. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

⁷⁷ *Bryant*, 33 Vet.App. at 46.

⁷⁸ *Smith v. Wilkie*, 32 Vet.App. 332, 337 (2020) (quoting *Thurber*, 5 Vet.App. at 123).

⁷⁹ *Smith*, 32 Vet.App. at 337-38; *Pelegri v. Principi*, 18 Vet.App. 112, 123 (2004).

caselaw requires us to ensure compliance with reasonable notice and fair process.”⁸⁰ In my view, the majority opinion’s application of the implicit denial construct in this case fails to fulfill the Court’s obligation.

The implicit denial construct is not a hole in the notice requirement that “VA’s nonadversarial claims system is predicated upon.”⁸¹ “[T]he implicit denial rule is, at bottom, a notice provision.”⁸² So implicit denial is acceptable only if the decision “provides sufficient notice to the claimant that the pending claim [not explicitly addressed] has been finally resolved.”⁸³ As this Court has said, “the key to an implicit denial inquiry is whether there was notice to the claimant that the Secretary has acted on the claim.”⁸⁴ The RO’s May 2021 decision provided no such notice.

III. THE AMA

To address the most obvious shortcoming first, it cannot seriously be argued that the RO’s May 2021 decision complies with the AMA’s expanded notice requirements—to the extent that the Secretary and my colleagues attribute a character of discharge determination to that decision. The AMA added a detailed, itemized list of requirements for each VA notice of a decision affecting the provision of benefits. To “‘help veterans better understand VA’s decisions on their claims’ and ‘help better inform the veteran’s decision regarding whether to appeal VA’s rating decision,’”⁸⁵ each notice of decision must include

- (1) Identification of the issues adjudicated.
- (2) A summary of the evidence considered by the Secretary.
- (3) A summary of the applicable laws and regulations.
- (4) Identification of findings favorable to the claimant.
- (5) In the case of a denial, identification of elements not satisfied leading to the denial.
- (6) An explanation of how to obtain or access evidence used in making the decision.
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.⁸⁶

This notice requirement applies to decisions by VA’s ROs, such as the May 2021 decision at issue in this case.⁸⁷

⁸⁰ *Roberts v. McDonald*, 27 Vet.App. 108, 111 (2014).

⁸¹ *Thurber*, 5 Vet.App. at 123.

⁸² *Adams v. Shinseki*, 568 F.3d 956, 965 (Fed. Cir. 2009).

⁸³ *Jones v. Shinseki*, 619 F.3d 1368, 1372 (Fed. Cir. 2010).

⁸⁴ *Locklear v. Shinseki*, 24 Vet.App. 311, 314-15 (2011).

⁸⁵ *Greer v. McDonough*, 36 Vet.App. 220, 224 (2023) (quoting H.R. REP. NO. 115-135, at 3 (2017), as reprinted in 2017 U.S.C.C.A.N. 97, 99.).

⁸⁶ *Id.*; 38 U.S.C. § 5104(b).

⁸⁷ *See Greer*, 36 Vet.App. at 224 (“Congress explained that [the change to section 5104(b)] was intended to ‘help veterans better understand VA’s decisions on their claims’ and ‘to help better inform the veteran’s decision regarding whether to appeal VA’s rating decision.’” (quoting H.R. REP. NO. 115-135, at 3 (2017)), *Id.* at 227 (“In its discussion of the ‘detailed decision notification letters’ mandated by [the AMA], Congress clearly stated that ‘[t]he intent of this provision is to help better inform the veteran’s decision regarding whether to appeal VA’s rating decision.’” (quoting H.R. REP. NO. 115-135, at 3)); Pet. at Ex. H; RCA at Ex. D.

The statute does not prescribe the form for informing claimants of the section 5104(b) notice elements; “it only requires that those elements be clearly conveyed to claimants.”⁸⁸ By regulation, the Secretary has added, as a procedural due process right, that the notice required by section 5104(b) must be provided to claimants in writing.⁸⁹ These statutory and regulatory requirements apply to Mr. Hamill’s March 2021 claims and the RO’s May 2021 decision adjudicating them.⁹⁰ Since the RO’s decision does not address the character of the veteran’s discharge at all, the decision falls woefully short of meeting the AMA’s notice mandate. Neither the Secretary nor the majority opinion contends otherwise. The Secretary does not address the AMA’s notice requirements at all. The majority opinion relies only on the coexistence of the implicit denial construct with the pre-AMA version of section 5104.⁹¹ The silence and terseness are understandable.

Before the AMA, section 5104 required only a general notice with the RO’s reason for its decision; the AMA’s systemic overhaul added six specific notice elements that apply to all decisions.⁹² The majority opinion summarizes circumstances that sometimes have sufficed for notice under the old rules. But no one has advanced a credible explanation of how a decision that does not even mention a claim can satisfy the specific statutory elements required by the AMA for notice to be sufficient. The Secretary’s invocation of the implicit denial rule is incongruent with his prior assurances that (1) “[t]his new process will provide veterans with timely, fair, and high quality decisions”⁹³; (2) all decision notices “must now include seven specified data elements,” including a summary of the evidence considered, to ensure that claimants have “a clear understanding” of what was done⁹⁴; (3) “[e]nhanced decision notices will allow claimants and their representatives to make more informed choices about whether to seek further review and, if so, which of the new review lanes best fits the claimant’s needs”⁹⁵; and (4) requiring the use of standard claims forms will enable VA “to cut processing time in identifying and developing claims, which will result in faster delivery of benefits to all veterans.”⁹⁶

VA’s recent emphasis on requiring claims to be explicitly spelled out on forms so they can be expressly addressed expeditiously, with any lingering issues repackaged in supplemental claims subject to the same requirements, goes hand in hand with VA’s obligation to provide specific notice of the decision that resolves those issues. If the AMA’s requirements are not enough, this is a poster case showing why the expansive view of the implicit denial construct adopted by the majority is unworkable. Sanctioning implicit denials of implicit claims relegates the real adjudicatory work to the shadows, with a loss of transparency that sows confusion among the parties and undermines confidence in the system.

⁸⁸ *Cowan v. McDonough*, 35 Vet.App. 232, 242 (2022).

⁸⁹ 38 C.F.R. § 3.103(f) (2019).

⁹⁰ See *Mattox v. McDonough*, 34 Vet.App. 61, 69 (2021) (holding that the AMA applies to an initial decision on a claim for which an administrative appeal is being processed has been issued on or after February 19, 2019), *aff’d*, 56 F.4th 1369 (Fed. Cir. 2023).

⁹¹ See discussion *ante* at pp. 6-7.

⁹² *Greer*, 36 Vet.App. at 224; *Cowan*, 35 Vet.App. at 239.

⁹³ VA Claims and Appeals Modernization, 83 Fed. Reg. 39,818, 39,819 (proposed Aug. 10, 2018).

⁹⁴ VA Claims and Appeals Modernization, 84 Fed. Reg. 138, 141 (Jan. 18, 2019) (codified at 38 C.F.R. pts. 3, 8, 14, 19, 20, 21).

⁹⁵ VA Claims and Appeals Modernization, 83 Fed. Reg. at 39,820.

⁹⁶ *Veterans Just. Grp., LLC v. Sec’y of Veterans Affs.*, 818 F.3d 1336, 1351 (Fed. Cir. 2016) (quoting Standard Claims and Appeals Forms, 79 Fed. Reg. 57,660, 57,661 (Sept. 25, 2014) (codified at 38 C.F.R. pts. 3, 19, 20)).

IV. THE *INGRAM* STANDARD

This Court’s admonition more than 16 years ago was prescient: “[A]ccepting a broadly interpreted doctrine of sub silentio denials has grave implications for due process and protecting the appellate rights of veterans.”⁹⁷ The problem is most acute when the implicit denial is of an implied claim, as the *Ingram* Court highlighted.

Treating the Secretary’s failure to sympathetically read and adjudicate a reasonably raised claim as a pending claim benefits veterans because it protects their appellate rights and works no hardship on the Secretary in that it requires only that each claim be specifically addressed. If a veteran is aware of a particular benefit and makes an unambiguous claim for it, the Secretary’s duty to sympathetically read [the veteran’s] submissions is irrelevant. That duty primarily helps those veterans who have not clearly articulated that they are seeking a particular benefit. It is illogical to expect such veterans to immediately recognize when the Secretary has failed to adjudicate a reasonably raised claim because it is ignorance of the intricacies of potential claims that makes the duty necessary. Hence, if the law equates a VA failure to adjudicate a reasonably raised claim to a sub silentio denial of the claim, then it is unlikely that the veteran would have sufficient notice of the disposition of his claim to assert error on direct appeal.⁹⁸

So the *Ingram* Court set a workable standard for the implicit denial of an implied, reasonably raised claim: “[W]here an RO decision discusses a claim in terms sufficient to put the claimant on notice that it was being considered and rejected, then it constitutes a denial of that claim even if the formal adjudicative language does not ‘specifically’ deny that claim.”⁹⁹ In this case, as in *Ingram*, there was no such denial.¹⁰⁰

The majority rests its reliance on implicit denial on the *Cogburn* factors.¹⁰¹ But the majority’s analysis departs significantly from the Court’s analysis in *Cogburn*. The veteran’s two March 2021 claims for disability compensation are related in timing and content, and the RO’s decision explicitly addresses 9 of the 14 disabilities claimed, but the nature of his discharge issue is different and was raised 4 and 7 years before. Most importantly, the RO’s May 2021 decision completely fails the “specificity of the adjudication” test in that the decision does not allude to any discharge claim at all. The majority cannot identify even a hint in the May 2021 decision that the RO considered the veteran to have sought to reopen the RO’s character of discharge decisions from 2014 and 2017, and denied that request. The majority’s conclusory assertion that the RO’s

⁹⁷ *Ingram v. Nicholson*, 21 Vet.App. 232, 254 (2007) (per curiam).

⁹⁸ *Id.* at 253.

⁹⁹ *Id.* at 255.

¹⁰⁰ The Federal Circuit cases the majority trumpets likewise require more than was afforded the veteran here, where there was nothing to indicate that the May 2021 decision considered evidence regarding the veteran’s discharge or addressed the merits of that evidence. *See, e.g., Hampton v. McDonough*, 68 F.4th 1376, 1381 (Fed. Cir. 2023), *petition for cert. filed*, No. 23-543 (U.S. Nov. 21, 2023).

¹⁰¹ *See Cogburn v. Shinseki*, 24 Vet.App. 205, 212-13 (2010), *aff’d after remand sub nom. Cogburn v. Gibson*, No. 12-3323, 2014 WL 2600052 (Vet. App. June 11, 2014) (mem. dec.), *aff’d sub nom. Cogburn v. McDonald*, 809 F.3d 1232 (Fed. Cir. 2016). To the extent that *Cogburn* rests on its indication that the non-adversarial, pro-claimant nature of the veterans benefits system leaves veterans with watered-down due process rights, *see id.* at 210, *Cogburn* has not stood the test of time. *See supra* at 11-12. Veterans are entitled to both constitutional due process and the fair process deeply rooted in the nature of the veterans benefits system. *Id.*

May 2021 decision specifically turns on an adverse character of discharge determination is mere speculation that the RO would, could, or should have decided on that basis. But such woulda-coulda-shoulda analysis is not what is required for veterans. They are entitled to notice in or with the RO's decision. Even if the implicit denial construct somehow survives the AMA's specific notice requirements, the reasonable notice of the implicit denial cannot be found in the RO's May 2021 decision. There is nothing in the May 2021 decision and notice letter that makes it clear to a reasonable person that the decision is intended to dispose of any renewed challenge by the veteran to his character of discharge.¹⁰² That decision specifies the RO's reasons—Mr. Hamill is a combat veteran diagnosed with PTSD, but his records showed no complaint of or treatment for GERD, irritable bowel syndrome, migraine headaches, or TBI during service.¹⁰³ None of the reasons given relate to the veteran's character of discharge.

V. THERE WAS NO IMPLICIT DENIAL REGARDING DISCHARGE

The history of this case demonstrates that there was no implicit denial in the May 2021 decision regarding the veteran's character of discharge. When he applied for disability compensation in April 2013,¹⁰⁴ VA responded (in September 2013) that the military said that his service was not honorable, so VA had to decide whether he was eligible for VA benefits.¹⁰⁵ In May 2014, VA explicitly decided that it considered the veteran's other than honorable discharge to be a bar to all VA benefits.¹⁰⁶

The veteran applied for disability compensation again in May 2017.¹⁰⁷ VA specifically construed the veteran's application as a request to reopen the issue of the character of his discharge, and VA explicitly denied that request in July 2017.¹⁰⁸ VA's history of highlighting the veteran's character of discharge and explicitly deciding that issue as a condition precedent to his eligibility for disability compensation is incompatible with the Secretary's invocation of implicit denial now (and the Court's embrace of it). Since the RO had twice explicitly separated and addressed the character of the veteran's discharge as a prerequisite to adjudicating his disability compensation claims, a reasonable person would expect to see a specific decision about his character of discharge if that was being considered again.¹⁰⁹

In this case, it is obvious from their conduct that neither the veteran nor the Secretary viewed the issue of the veteran's character of discharge determination to have been resolved by VA's May 2021 decision. In July 2022, the veteran asked VA to make a written decision regarding his character of discharge.¹¹⁰ The RO responded in 6 days, mischaracterizing the veteran's letter

¹⁰² See, e.g., *Adams*, 568 F.3d at 964.

¹⁰³ RCA at Ex. D at 6-7.

¹⁰⁴ Pet. at Ex. B.

¹⁰⁵ Pet. at Ex. C.

¹⁰⁶ Pet. at Ex. D. Oddly, the May 2014 decision says both that the veteran "is entitled to health care under Chapter 17 of Title 38 U.S.C. for any disabilities determined to be service connected for [the] period of service from February 26, 2009 through March 15, 2013," *Id.* at 1, and that he "is not entitled to health care under Chapter 17 of Title 38 U.S.C. for any disabilities determined to be service connected for period of service from February 26, 2009 through March 15, 2013," *Id.* at 3.

¹⁰⁷ Pet. at Ex. E.

¹⁰⁸ Pet. at Ex. F.

¹⁰⁹ See *Locklear*, 24 Vet.App. at 316-18.

¹¹⁰ Pet. at Ex. I.

as a “request to upgrade his DD 214.”¹¹¹ The RO did not say that it had read the veteran’s March 2021 disability claims as implicit requests to reopen the character of his discharge, nor did the RO say that it had implicitly decided such a request. The RO did not even indicate whether VA would act on the veteran’s request for a decision. Instead, the RO stated that he “can also ask the Service Department to change the character of discharge or [the veteran] can apply for correction of military records.”¹¹²

In December 2022, the veteran filed the petition at hand, asking the Court to order the Secretary “to make a character of service determination on the decision of the Supplemental Claim that rendered in May 2021.”¹¹³ The veteran asserted that VA had “refused to acknowledge, let alone adjudicate, [his character of discharge] claim on the merits despite having a statutory obligation to do so.”¹¹⁴ The veteran relied on *Harris*, which held that the veteran was “entitled to a writ compelling the Secretary to issue an appealable decision as to whether the evidence submitted since [his] COD determination is new and material with respect to whether his COD is a bar to VA benefits.”¹¹⁵

As in July 2022, the Secretary did not respond by saying that the RO’s May 2021 decision had addressed the veteran’s character of discharge, implicitly or otherwise. Having been confronted with the *Harris* holding in the veteran’s December 2022 petition, the RO did as *Harris* dictated. In February 2023, VA informed the veteran that it had “made a decision regarding [his] discharge from military service,” deciding that “[t]here ha[d] been no new and relevant evidence submitted to reopen [his] claim for Character of Discharge determination,” and that his military service was “dishonorable for VA purposes.”¹¹⁶ In the Secretary’s July 2023 response to the veteran’s class action request, the Secretary argued that VA’s May 2021 decision “meets the criteria for an implicit denial as to [the veteran’s COD determination].”¹¹⁷ That is a post hoc rationalization the Court should not accept.¹¹⁸

VI. THE VERERAN’S PETITION IS NOT MOOT

The only reasonable conclusion is that VA overlooked *Harris* in May 2021 (and in July 2022) and realized in December 2022, when the petition highlighted the *Harris* requirement, that the RO needed to issue a decision addressing whether the veteran had submitted new and relevant evidence warranting readjudication of his character of discharge determination.¹¹⁹ On January 12, 2023, the veteran moved for an extension of time to file his request for class certification and class action. On February 21, 2023, the RO decided that the character of the veteran’s discharge was

¹¹¹ Pet. at Ex. J.

¹¹² *Id.*

¹¹³ Pet. at 10.

¹¹⁴ *Id.*

¹¹⁵ *Harris*, 33 Vet.App. at 273.

¹¹⁶ Secretary’s Response to Pet. at Attachment A.

¹¹⁷ Secretary’s Response to RCA at 5.

¹¹⁸ *See In re Lee*, 277 F.3d 1338, 1345-46 (Fed. Cir. 2002) (“[C]ourts may not accept appellate counsel’s post hoc rationalization for agency action.” (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962))); *Simmons v. Wilkie*, 30 Vet.App. 267, 277 (2018).

¹¹⁹ *See Harris*, 33 Vet.App. at 276-77; 38 U.S.C. § 5108 (reflecting the AMA standard for readjudicating a claim). As previously noted, the RO had issued a benefits decision in May 2021 but had ignored any implied challenge to the character of discharge determination.

dishonorable. The Secretary filed the RO's February 2023 letter with his petition response on March 6, 2023.¹²⁰ The veteran filed his RCA the same day.

The veteran alleges that VA engages in a pattern of inaction on character of discharge claims.¹²¹ His proposed class is comprised of claimants

who are former service members with less than-honorable discharges who: i. applied for VA benefits and VA denied some or all benefits based on a COD determination, and that decision became final; ii. later filed for disability compensation, health care, pension benefits, or a character of service determination; iii. received a determination as to whether the veteran's condition is eligible for Chapter 17 healthcare; and iv. did not receive a decision as to whether there is new and material or new and relevant evidence to readjudicate the COD determination.¹²²

The Secretary contends that the petition is moot,

and the veteran has not demonstrated that a class action is superior to a precedential decision, largely because "the purported class members have all received appealable decisions that implicitly denied their COD determinations."¹²³ The Secretary otherwise concedes that the purported class would meet the requirements set forth in U.S. VET. APP. R. 23(a).¹²⁴

As the majority acknowledges, the picking off exception to mootness applies when claims are rendered transitory by the tactic of mooting petitions before judicial resolution.¹²⁵ "[C]lass actions . . . help prevent the VA from mooting claims scheduled for precedential review."¹²⁶ The picking off problem is a recurrent one.¹²⁷ In my view, the picking off exception applies here, so the veteran's RCA is not moot. The veteran's January 2023 motion for an extension of time made clear that he was seeking class certification and class action, and he was entitled to a fair opportunity to file his RCA with the Court.¹²⁸ His filing of the RCA on the same day that the RO issued its February 2023 letter was prompt enough to prevail over the pick off.

Though the veteran's RCA is not moot, and the implicit denial construct runs into both *Ingram* and *Harris*, those issues have received nearly all the attention in this case, and there is more to deciding whether a class should be certified. Before acting on the RCA, I would require

¹²⁰ Secretary's Response to Pet. at Attachment A.

¹²¹ RCA at 2-3.

¹²² RCA at 9.

¹²³ Secretary's Response to RCA at 12.

¹²⁴ *Id.* at 14.

¹²⁵ See *Godsey v. Wilkie*, 31 Vet.App. 207, 219 (2019) (per curiam order).

¹²⁶ *Monk v. Shulkin*, 855 F.3d 1312, 1321 (Fed. Cir. 2017), *class certification denied sub nom. Monk v. Wilkie*, 30 Vet.App. 167 (2018) (en banc order), *aff'd*, 978 F.3d 1273 (Fed. Cir. 2020).

¹²⁷ See *Godsey*, 31 Vet.App. at 219; *Monk*, 855 F.3d at 1321; *Kernz v. McDonough*, ___ Vet.App. ___, ___, No. 20-2365, 2023 WL 6459373, at *21 (Oct. 4, 2023) (en banc order) (Jaquith, J., dissenting) (decrying the Court's practice of empowering VA to manufacture mootness whenever VA fears an adverse precedential decision), *appeal docketed*, No. 24-1171 (Fed. Cir. Nov. 21, 2023).

¹²⁸ See *Richardson v. Bledsoe*, 829 F.3d 273, 286-88 (3d Cir. 2016).

further briefing and oral argument on the issues that remain, including granting the Secretary's request for an opportunity to provide a supplemental response on the merits of whether a writ of mandamus is warranted for the proposed class.¹²⁹

VII. CONCLUSION

In a system that is supposed to be nonadversarial and pro-claimant, notice is a primary foundational requirement that should not be neutralized so unstated claims can be denied in silence. Constitutional due process, systemic fair process, and the AMA require no less. If the implicit denial construct survives the AMA, it must only apply when the denial is evident in the decisional document. It is obvious from the course of this case that the parties saw no implicit denial in the RO's May 2021 decision—for good reason, as there was none to see. I respectfully dissent.

¹²⁹ Secretary's Response to RCA at 1 n.1.

General Docket
United States Court of Appeals for Veterans Claims

Case Number:22-7344

Docketed: 12/19/2022

David A. Hamill v. Denis McDonough

Appeal From: Department of Veteran Affairs

Fee Status: dfh

Case Type Information:

- 1) Petition
- 2) -
- 3) -

Prior Cases:

None

Current Cases:

None

David A. Hamill
Petitioner

Yelena Duterte, Esq., Attorney
Direct: 312-427-2737
[COR LD NTC]
Firm: 312-427-2737
UIC John Marshall Law School Veterans Legal Clinic
300 South State Street
Chicago, IL 60604

Renee A. Burbank, Esq., Attorney
Direct: 202-621-5780
[COR NTC]
Firm: 202-621-5780
National Veterans Legal Services Program
1100 Wilson Boulevard, Suite 900
Arlington, VA 22209

Cynthia Johnson, Esq., Attorney
Direct: 202-808-8620
[COR NTC]
Firm: 202-808-8620
National Veterans Legal Services Program
1100 Wilson Boulevard, Suite 900
Arlington, VA 22009

Ryan Kelley, Esq., Attorney
Direct: 202-621-5707
[COR NTC]
Firm: 202-621-5707
National Veterans Legal Servies Program
1100 Wilson Boulevard, Suite 900
Arlington, VA 22209

Jenny Vanacker, Esq., Attorney
Direct: 312-427-2737
[COR NTC]
Firm: 312-427-2737
UIC Law School Veterans Legal Clinic
300 S. State Street, Suite J-110
Chicago, IL 60604

v.

Denis McDonough, Secretary of Veterans Affairs
Respondent

Nathan P. Kirschner, Esq., Attorney
Direct: 202-632-4352
[COR LD NTC]
Firm: 202-632-4352
Department of Veterans Affairs, OGC (027G)
810 Vermont Ave., NW
Washington, DC 20420

Appx20

OGC-ICM4, Non-Attorney
Direct: 202-632-6951
[COR NTC]
Department of Veterans Affairs, OGC (027)
810 Vermont Avenue, N.W.
Washington, DC 20420

David A. Hamill,

Petitioner

v.

Denis McDonough, Secretary of Veterans Affairs,

Respondent

12/19/2022	<input type="checkbox"/> 	Petition for extraordinary relief (ALH)
	0 pg, 0 KB	
12/19/2022	<input type="checkbox"/> 	Declaration of Financial Hardship (ALH)
	1 pg, 604.95 KB	
12/19/2022	<input type="checkbox"/> 	Appearance of Attorney(s) Yelena Duterte for party(s) Petitioner David A. Hamill, in case 22-7344 as lead counsel (ALH)
	1 pg, 74.15 KB	
12/19/2022	<input type="checkbox"/> 	Retainer Agreement (ALH)
	0 pg, 0 KB	
12/20/2022	<input type="checkbox"/> 	Notice of Docketing for petition for extraordinary relief (ALH)
	0 pg, 0 KB	
12/20/2022	<input type="checkbox"/>	Assigned case to Judge Laurer (PTD)
12/22/2022	<input type="checkbox"/> 	ORDERED that the Secretary, within 30 days from the date of this order, respond to the petition, addressing petitioner's specific allegations and providing any documentation necessary to aid the Court's resolution of this matter. (LAURER) (RW)
	2 pg, 81.09 KB	
01/12/2023	<input type="checkbox"/> 	Motion of Petitioner to ext time to file response until 03/06/2023 to (YD)
	2 pg, 73.88 KB	
01/17/2023	<input type="checkbox"/> 	Judge's stamp order granting Petitioner's motion to ext time to file response until 03/06/2023 .(LAURER) (RW)
	2 pg, 210.38 KB	
01/18/2023	<input type="checkbox"/> 	Appearance of Anna M Castillo for Denis McDonough, in case 22-7344 as lead counsel (AMC)
	1 pg, 71.77 KB	
01/20/2023	<input type="checkbox"/> 	Motion of Respondent to ext time to file response to Court Order until 02/22/2023. (AMC)
	2 pg, 86.67 KB	
01/23/2023	<input type="checkbox"/> 	Judge's stamp order granting Respondent's motion to extend time to file response to Court Order until 2/22/2023 (LAURER) (TM)
	2 pg, 161.44 KB	
02/21/2023	<input type="checkbox"/> 	RECEIVED: Motion of Respondent to ext time to file response to Court Order until 03/08/2023.--[Edited 02/22/2023 by RW] (AMC)
	3 pg, 87.99 KB	
02/22/2023	<input type="checkbox"/> 	Motion of Respondent to ext time to file response to Court Order until 03/08/2023. (AMC)
	3 pg, 88.09 KB	
02/23/2023	<input type="checkbox"/> 	Judge's stamp order granting Respondent's motion to extend time to file a response to the Court's order until 3/8/2023. (LAURER) (RW)
	3 pg, 164.4 KB	
03/06/2023	<input type="checkbox"/> 	Response by Respondent to the Court's December 22, 2022, Order (AMC)
	10 pg, 774.08 KB	
03/06/2023	<input type="checkbox"/> 	Request for Class Certification and Class Action (YD)
	70 pg, 4.26 MB	
03/07/2023	<input type="checkbox"/> 	Appearance of Renee A Burbank for David A. Hamill, in case 22-7344 as co-counsel (RAB)
	1 pg, 73.77 KB	
03/13/2023	<input type="checkbox"/> 	Appearance of Nathan P Kirschner for Denis McDonough, in case 22-7344 as lead counsel (NPK)
	1 pg, 59.7 KB	
03/15/2023	<input type="checkbox"/> 	RECEIVED: Appearance of as co-counsel (A step was missed when filing your Notice of Appearance)--[Edited 03/16/2023 by RW] (JV)
	1 pg, 94.22 KB	
03/16/2023	<input type="checkbox"/> 	RECEIVED: Appearance of as co-counsel (A step was missed when filing your Notice of Appearance. Your Information Did Not Appear On The Docket Under Your Colleagues Information)--[Edited 03/17/2023 by RW] (JV)
	1 pg, 99.34 KB	
03/17/2023	<input type="checkbox"/> 	Appearance of Jenny Vanacker for David A. Hamill, in case 22-7344 as co-counsel (JV)
	1 pg, 99.34 KB	
03/21/2023	<input type="checkbox"/> 	It is ORDERED that this case is submitted to the panel of Judges Toth, Laurer, and Jaquith for decision. (GOB) (KM)
	1 pg, 8.62 KB	
03/31/2023	<input type="checkbox"/> 	PER CURIAM ORDERED that the Secretary, within 30 days from the date of this order, respond to petitioner's RCA motion. He must address the motion's specific allegations and provide any documentation necessary to aid the Court's resolution of this matter. (TOTH, LAURER and JAQUITH) (RW)
	2 pg, 78.18 KB	

04/27/2023	<input type="checkbox"/>	Motion of Respondent to ext time to file response to Court Order until 06/15/2023. (NPK)
	2 pg, 79.36 KB	
04/28/2023	<input type="checkbox"/>	Judge's stamp order granting for the panel, respondent's motion to extend time to file response to Court Order until 06/15/2023. (LAURER) (SM)
	2 pg, 236.89 KB	
06/07/2023	<input type="checkbox"/>	Motion of Respondent to stay proceedings until 07/21/2023 (NPK)
	2 pg, 74.18 KB	
06/09/2023	<input type="checkbox"/>	Judge's stamp order granting for the panel, respondent's motion to stay proceedings until 7/21/2023. (LAURER)--[Edited 06/09/2023 by RW] (RW)
	2 pg, 232.03 KB	
07/21/2023	<input type="checkbox"/>	Response by Respondent to <i>Petitioner's RCA and the 3/31/23 Order</i> (NPK)
	86 pg, 2.5 MB	
08/23/2023	<input type="checkbox"/>	Motion of Petitioner for leave to file <i>REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S REQUEST FOR CLASS CERTIFICATION AND CLASS ACTION (RCA) AND THE COURT'S MARCH 31, 2023 ORDER</i> (YD)
	21 pg, 2.86 MB	
08/23/2023	<input type="checkbox"/>	RECEIVED: Appearance of as co-counsel (A step was missed when filing your Notice of Appearance. You will see your information on the docket when all steps have been satisfied.)--[Edited 08/24/2023 by RW] (RK)
	1 pg, 74.6 KB	
08/24/2023	<input type="checkbox"/>	Appearance of Ryan Kelley for David A. Hamill, in case 22-7344 as co-counsel (RK)
	1 pg, 79.25 KB	
08/25/2023	<input type="checkbox"/>	Judge's stamp order granting, for the Panel, Petitioner's motion for leave to file a reply to Respondent's response to Petitioner's request for class certification and clas action (RCA) and the Court's March 31, 2023, Order. (LAURER) (RW)
	21 pg, 3 MB	
08/25/2023	<input type="checkbox"/>	Petitioner's reply to appellee's response to Petitioner's request for class certification and class action (RCA) and the Court's March 31, 2023, order (RW)
	19 pg, 2.6 MB	
08/29/2023	<input type="checkbox"/>	Appearance of Cinthia Johnson for David A. Hamill, in case 22-7344 as co-counsel (CJ)
	1 pg, 79.42 KB	
08/31/2023	<input type="checkbox"/>	Opposed motion of Respondent to stay proceedings <i>pending resolution of Freund at the Fed Cir</i> (NPK)
	3 pg, 98.19 KB	
09/08/2023	<input type="checkbox"/>	Petitioners response to respondent's motion to stay--[Edited 09/08/2023 by PTD] (YD)
	4 pg, 450.48 KB	
09/21/2023	<input type="checkbox"/>	PER CURIAM ORDERED that the Secretary's August 31, 2023, motion is DENIED. (TOTH, LAURER and JAQUITH) (RW)
	2 pg, 66.31 KB	
10/11/2023	<input type="checkbox"/>	Supplemental authorities under Rule 30(b). (NPK)
	2 pg, 124.38 KB	
10/18/2023	<input type="checkbox"/>	Supplemental authorities under Rule 30(b). (YD)
	2 pg, 114.08 KB	
12/18/2023	<input type="checkbox"/>	ORDERED, that petitioner's March 6, 2023, request for class certification and class action is denied. It is also ORDERED that the Secretary's March 6, 2023, motion to dismiss the petition is granted, and petitioner's December 19, 2022, petition is DISMISSED. TOTH, LAURER and JAQUITH. JAQUITH, Judge, dissenting.--[Edited 02/29/2024 by ARW] (RW)
	18 pg, 286.94 KB	
01/09/2024	<input type="checkbox"/>	Judgment (SM)
	1 pg, 8.55 KB	
02/29/2024	<input type="checkbox"/>	Petitioner's Notice of Appeal to the U.S. Court of Appeals for the Federal Circuit--[Edited 02/29/2024 by TM] (YD)
	1 pg, 179.33 KB	
02/29/2024	<input type="checkbox"/>	(p) RECEIVED: U.S. Court of Appeals for the Federal Circuit filing fee (\$600) (TBR)--[Edited 02/29/2024 by ARW] (AAM)
03/01/2024	<input type="checkbox"/>	Petitioner's Notice of Appeal transmitted to U.S. Court of Appeals for the Federal Circuit--[Edited 03/01/2024 by RW] (RW)
	1 pg, 10.89 KB	
03/06/2024	<input type="checkbox"/>	RECEIVED: Notice of Docketing from the U.S. Court of Appeals for the Federal Circuit dated 3/6/24; (24-1543) (TM)
	4 pg, 273.85 KB	

Clear All

Documents and Docket Summary

Documents Only

Include Page Numbers

Selected Pages: **Selected Size:** (Max: 10 MB)

Totals reflect accessible documents only and do not include unauthorized restricted documents.

View Selected

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY
This Report Contains Information Subject to the Privacy Act of 1974, As Amended.

1. NAME (Last, First, Middle) HAMILL, DAVID ANGELO		2. DEPARTMENT, COMPONENT AND BRANCH USMC-11		3. SOCIAL SECURITY NUMBER [REDACTED]				
4a. GRADE, RATE OR RANK LCPL		b. PAY GRADE E3	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]		6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000			
7a. PLACE OF ENTRY INTO ACTIVE DUTY DES PLAINES, IL 60018			7b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) GLEN ELLYN, IL 60137					
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 3DBN 3DMAR 3DMARDIV, KANEOHE BAY HI			b. STATION WHERE SEPARATED HAWAII INSTALLATION PERSONNEL ADMIN CENTER (45650)					
9. COMMAND TO WHICH TRANSFERRED N/A				10. SGLI COVERAGE <input type="checkbox"/> NONE AMOUNT: \$ 400,000				
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 0621. FIELD RADIO OPERATOR (PMOS), 03 YEARS, 07 MONTHS			12. RECORD OF SERVICE					
			a. DATE ENTERED AD THIS PERIOD			YEAR(S)	MONTH(S)	DAY(S)
			b. SEPARATION DATE THIS PERIOD			2009	01	26
			c. NET ACTIVE SERVICE THIS PERIOD			2013	03	15
			d. TOTAL PRIOR ACTIVE SERVICE			04	01	20
			e. TOTAL PRIOR INACTIVE SERVICE			00	00	00
			f. FOREIGN SERVICE			00	00	00
			g. SEA SERVICE			01	01	06
			h. INITIAL ENTRY TRAINING			00	00	00
i. EFFECTIVE DATE OF PAY GRADE			00	04	07			
2013			01	10				
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) COMBAT ACTION RIBBON (AFGHANISTAN) NAVY UNIT COMMENDATION NAVY MERITORIOUS UNIT COMMENDATION MARINE CORPS GOOD CONDUCT MEDAL NATIONAL DEFENSE SERVICE MEDAL AFGHANISTAN CAMPAIGN MEDAL (W/2 STARS) GLOBAL WAR ON TERRORISM SERVICE MEDAL			14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) FIELD RADIO OPERATOR (25U), 8 WKS, 10/2009					
15a. COMMISSIONED THROUGH SERVICE ACADEMY								
b. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Sec. 2107b)								
c. ENLISTED UNDER LOAN REPAYMENT PROGRAM (10 USC Chap. 109) (If yes, years of commitment)								
16. DAYS ACCRUED LEAVE PAID NONE		17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION		18. REMARKS SERIAL # 2753335 ITEM NO. 13 CONT SEA SERVICE DEPLOYMENT RIBBON(2) NATO MEDAL-ISAF AFGHANISTAN MERITORIOUS MAST EXPERT RIFLE QUALIFICATION BADGE (003) CONTINUED ON CONTINUATION SHEET The information contained here in is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.				
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) 4918 NORTH ROCKWELL APT 2, CHICAGO IL 60625			b. NEAREST RELATIVE (Name and address - include Zip Code) ROXANNE RONQUILLO (SPOUSE), 9626 WEST MONTANA, CHICAGO IL 60639					
20. MEMBER REQUESTS COPY 6 BE SENT TO (Specify state/locality) IL OFFICE OF VETERANS AFFAIRS								
a. MEMBER REQUESTS COPY 3 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (WASHINGTON, DC)								
21a. MEMBER SIGNATURE 		b. DATE (YYYYMMDD) 20090126		22a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title, signature) R. A. HOSEY, GS-07, SEPARATIONS OIC				
				b. DATE (YYYYMMDD) 20130315				
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)								
23. TYPE OF SEPARATION DISCHARGED			24. CHARACTER OF SERVICE (Include upgrades) UNDER OTHER THAN HONORABLE CONDITIONS					
25. SEPARATION AUTHORITY MARCORSEPMAN 6419			26. SEPARATION CODE KFS1		27. REENTRY CODE RE-4B			
28. NARRATIVE REASON FOR SEPARATION IN LIEU OF TRAIL BY COURT MARTIAL								
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE				30. MEMBER REQUESTS COPY 4 (Initials) DH				

DD FORM 214, AUG 2009

PREVIOUS EDITION IS OBSOLETE.

MEMBER - 4
Adobe Designer 8.0

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

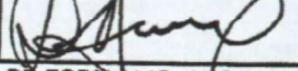
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (Continuation Sheet)
 This Report Contains Information Subject to the Privacy Act of 1974, As Amended.

1. NAME (Last, First, Middle) HAMILL, DAVID ANGELO	2. DEPARTMENT, COMPONENT AND BRANCH USMC-11	3. SOCIAL SECURITY NUMBER [REDACTED]
---	--	---

(Specify the item number of the block continued for each entry.)

SERIAL # 2753335
 ITEM NO. 18 CONT
 NON-CREDITABLE DELAYED ENTRY PROGRAM TIME 20090105 TO 20090125.
 GOOD CONDUCT MEDAL PERIOD COMMENCES 20130110.
 MARINE CORPS MARTIAL ARTS PROGRAM: TAN BELT
 MEMBER PARTICIPATED IN OPERATION ENDURING FREEDOM 121, AFGHANISTAN, 20111103-20120520.
 MEMBER PARTICIPATED IN OPERATION ENDURING FREEDOM, AFGHANISTAN, 20100520-20101205.
 MEMBER CONTRIBUTED \$1200.00 TOWARDS THE MGIB.
 MEMBER NOT ENTITLED DUE TO CHARACTERIZATION OF SERVICE.

21.a. MEMBER SIGNATURE

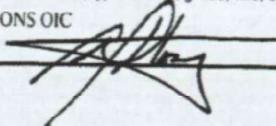


b. DATE (YYYYMMDD)

20130315

22.a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title, signature)

R. A. HOSEY, GS-07, SEPARATIONS OIC



b. DATE (YYYYMMDD)

20130315

DD FORM 214C, AUG 2009

MEMBER - 4
 Adobe Designer 8.0

OMB Control No. 2900-0747
Respondent Burden: 25 minutes

Department of Veterans Affairs VA DATE STAMP (DO NOT WRITE IN THIS SPACE)

APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 8 before completing the form.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION

1. VETERAN'S NAME (Last, first, middle) HAMILL, DAVID, ANGELO	2. SOCIAL SECURITY NUMBER [REDACTED]	3. DATE OF BIRTH (MM,DD,YYYY) [REDACTED]
4. SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	5. HAVE YOU EVER FILED A CLAIM WITH VA? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," provide your file number in Item 6)	6. VA FILE NUMBER

RECEIVED YARD 328
CHICAGO, IL
2013 APR 30 PM 9:59
SUPPORT SERVICES-3

[REDACTED]	7B. TELEPHONE NUMBERS (Include Area Code)
	DAYTIME ()
	EVENING ()
	CELL PHONE ()

8A. PREFERRED E-MAIL ADDRESS (if applicable)	8B. ALTERNATE E-MAIL ADDRESS (if applicable)
--	--

9. LIST THE DISABILITY (IES) YOU ARE CLAIMING
Only if applicable, identify whether a claimed disability is due to a service-connected disability, is due to confinement as a Prisoner of War, is due to exposure to Agent Orange, Asbestos, Mustard Gas, Ionizing Radiation, or Gulf War Environmental Hazards, or is related to benefits under 38 U.S.C. 1151.

*PTSD Any psych issues
Back pain*

10. LIST VA MEDICAL CENTER(S) WHERE YOU RECEIVED TREATMENT FOR YOUR CLAIMED DISABILITY(IES) AND PROVIDE TREATMENT DATES	<input type="checkbox"/> ES DATE(S) OF TREATMENT
A. NAME AND LOCATION OF VA MEDICAL CENTER	<input type="checkbox"/> PDG
	DATE MAIL PROCESSED

NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING DISABILITY COMPENSATION RELATED BENEFITS, COMPLETE AND ATTACH TO THIS FORM THE REQUIRED BENEFIT FORM(S) AS STATED (VA forms are available at www.va.gov/vaforms).

Benefits for:	Required Form(s):
Dependents	VA Form 21-686c and, if claiming a child aged 18-23 years and in school, VA Form 21-674
Individual Unemployability	VA Form 21-8940 and 21-4192
Specially Adapted Housing or Special Home Adaptation	VA Form 26-4555
Auto Allowance	VA Form 21-4502
Veteran/Spouse Aid and Attendance benefits	VA Form 21-2680 or, if based on nursing home attendance, VA Form 21-0279

DATE OF CLAIM
06/2013
328 - J. BUSHMAN

SECTION II: SERVICE INFORMATION

11A. DID YOU SERVE UNDER ANOTHER NAME? <input type="checkbox"/> YES (If "Yes," complete Item 11B) <input checked="" type="checkbox"/> NO (If "No," skip to Item 12A)	11B. PLEASE LIST THE OTHER NAME(S) YOU SERVED UNDER
--	---

12A. I ENTERED ACTIVE SERVICE ON (MM,DD,YYYY) 01/26/2009	12B. BRANCH OF SERVICE USMC	12C. RELEASE DATE OR ANTICIPATED DATE OF RELEASE FROM ACTIVE SERVICE 03/15/2013
---	--------------------------------	--

12D. DID YOU SERVE IN A COMBAT ZONE SINCE 9-11-2001? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12E. PLACE OF LAST OR ANTICIPATED SEPARATION HAWAII
---	--

13A. ARE YOU CURRENTLY ACTIVATED TO FEDERAL ACTIVE DUTY UNDER THE AUTHORITY OF TITLE 10, U.S.C. (National Guard)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," provide date of activation in Item 13B)	13B. DATE OF ACTIVATION (MM,DD,YYYY)
---	--------------------------------------

14A. WHAT IS THE NAME AND ADDRESS OF YOUR RESERVE/NATIONAL GUARD UNIT?	14B. WHAT IS THE TELEPHONE NUMBER OF YOUR CURRENT UNIT? (Include Area Code) ()
--	--

15A. HAVE YOU EVER BEEN A PRISONER OF WAR? <input type="checkbox"/> YES (If "Yes," complete Item 15B) <input checked="" type="checkbox"/> NO (If "No," skip to Item 16A)	15B. DATES OF CONFINEMENT
--	---------------------------

0-2 Acc. info review 6/18/13 re

SECTION III: SERVICE PAY		
16A. DID YOU RECEIVE ANY TYPE OF SEPARATION/SEVERANCE/RETIRED PAY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Items 16B and 16C)	16B. LIST AMOUNT (if known) \$	16C. LIST TYPE (if known)
<p>IMPORTANT: Unless you check the box in Item 17 below, you are telling us that you are choosing to receive VA compensation instead of retired pay. If it is determined you are entitled to both benefits, if you are awarded retired pay prior to compensation, we will reduce your retired pay by that amount. VA will notify the Retired Pay Center of all benefit changes. If you receive both retired pay and VA compensation, some of the amount you get may be recouped by VA, or, in the case of Voluntary Separation Incentive (VSI), by the Department of Defense.</p>		
17. <input type="checkbox"/> No, I do not want VA compensation in lieu of retired pay.		
SECTION IV: DIRECT DEPOSIT INFORMATION		
<p>The Department of Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 18, 19 and 20 to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.</p>		
18. ACCOUNT NUMBER (Check the appropriate box and provide the account number, or simply write "Established" if you have a direct deposit with VA)		
<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input checked="" type="checkbox"/> I CERTIFY THAT I DO NOT HAVE AN ACCOUNT WITH A FINANCIAL INSTITUTION OR CERTIFIED PAYMENT AGENT		
Account No.: _____ Account No.: _____		
19. NAME OF FINANCIAL INSTITUTION (Please provide the name of the bank where you want your direct deposit)		20. ROUTING OR TRANSIT NUMBER (The first nine numbers located at the bottom left of your check)
SECTION V: CLAIM CERTIFICATION AND SIGNATURE		
<p>I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or governmental agency, to give the Department of Veterans Affairs any information about me except protected health information, and I waive any privilege which makes the information confidential.</p> <p>I certify I have received the notice attached to this application titled, <i>Notice to Veteran of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits</i>.</p> <p>I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; OR, I have no information or evidence to give VA to support my claim; OR, I have checked the box in Item 21, indicating that I do not want my claim considered for rapid processing in the Fully Developed Claim (FDC) Program because I plan to submit further evidence in support of my claim.</p>		
21. The FDC Program is designed to rapidly process compensation or pension claims received with the evidence necessary to decide the claim. VA will automatically consider a claim submitted on this form for rapid processing under the FDC Program. Check the box below ONLY if you DO NOT want your claim considered for rapid processing under the FDC Program because you plan on submitting further evidence in support of your claim.		
<input type="checkbox"/> I DO NOT want my claim considered for rapid processing under the FDC Program because I plan to submit further evidence in support of my claim.		
22A. VETERAN'S SIGNATURE (REQUIRED) 		22B. DATE SIGNED 04/03/2013
SECTION VI: WITNESSES TO SIGNATURE		
23A. SIGNATURE OF WITNESS (if veteran signed above using an "X")		23B. PRINTED NAME AND ADDRESS OF WITNESS
24A. SIGNATURE OF WITNESS (if veteran signed above using an "X")		24B. PRINTED NAME AND ADDRESS OF WITNESS
<p>PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA2122/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs, Social Security information. You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.</p> <p>RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if the number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/default.do?app=main. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.</p>		

DEPARTMENT OF VETERANS AFFAIRS

Regional Office
2122 West Taylor Street
Chicago IL 60612



September 04, 2013

MR. DAVID ANGELO HAMILL
[REDACTED]

In reply, refer to:
328/X1/RH
File Number: [REDACTED]
David A. Hamill

IMPORTANT – reply needed

Dear Mr. Hamill:

We are continuing to work your application for service-connection compensation; however we received notification from the service department about your service.

Any time a veteran receives a discharge that is not "honorable," we have to decide if you are eligible for VA benefits.

The military has said your service **beginning January 23, 2009 and ending March 15, 2013**, was not "honorable." Therefore, we have to make a decision about your service. As long as we decide that your service was not "dishonorable," you will be eligible for VA benefits.

What You Should Do

There are some things you should do if you want to help us make our decision. We'll carefully consider any evidence you send us. In particular, you should:

- Read the regulation we've enclosed.
- Tell us about the events that led to your discharge.
- Send us evidence to support your story. This might include statements from people who know about the events that led to your discharge. We have enclosed VA Form 21-4138, Statement in Support of Claim, for your use in providing this information. It could also include other documents, which show that your statements are true.
- Tell us why you think your service was honorable.
- Tell us if you want to have a personal hearing. Personal hearings are explained in the enclosed VA Form 21-0789, Your Rights to Representation and a Personal Hearing.

Page 2

File Number: [REDACTED]
David A. Hamill

Time Limit

We may have to turn down your claim if we do not get the information and evidence by 60 days from the date of this letter. If you do not reply within 60 days, we will assume you have no additional evidence to submit, and you do not want additional time to submit any evidence. We will make a decision based on the evidence available.

What We Will Do

We will look at your military records and any other evidence you can give us. We'll also use the enclosed regulation, 38 Code of Federal Regulations, section 3.12, to make our decision. Then we will decide whether your service entitles you to VA benefits. If we determine your service is a statutory bar to benefits, you will not be entitled to any gratuitous VA benefits. It is the VA's policy to assist a claimant in developing their claim. We will make a decision that grants every benefit that can be supported by law, while protecting the interest of the Federal Government.

We have requested the facts and circumstances surrounding your discharge from the service department. If you have copies of these records, please send them to us.

We have requested information regarding your eligibility for complete separation and dates and terms of enlistment and reenlistment from the service department. If you have this information, please send it to us.

How Can You Contact Us?

If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov>. Otherwise, you can contact us in several ways. Please give us your VA file number, [VA File number], when you do contact us.

- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
- On the Internet at <https://iris.va.gov>.
- Write to us at the address at the top of this letter.

Page 3

File Number: [REDACTED]
David A. Hamill

Sincerely yours,

Julio A. Vela

Julio A. Vela
Veterans Service Center Manager

Enclosures: VA Form 21-4138
VA Form 21-0789
38 CFR 3.12

cc: ILLINOIS DEPARTMENT OF VETERANS AFFAIRS

Page 4

File Number: [REDACTED]
David A. Hamill

Veterans Claims Assistance Act (VCAA)

VA is Responsible for Getting the Following Evidence:

- Relevant records that you adequately identify and authorize VA to obtain from any Federal agency. These may include records from the military, VA medical centers (including private facilities where VA authorized treatment), or the Social Security Administration.
- VA will provide a medical examination for you, or get a medical opinion, if we determine it is necessary to decide your compensation claim.

On Your Behalf, VA Will Make Reasonable Efforts to Get the Following Evidence:

Relevant records not held by a Federal agency that you adequately identify and authorize VA to obtain. These may include records from State or local governments, private doctors and hospitals, or current or former employers.

How Can You Help: If you have any information or evidence that you have not previously told us about or given to us, please tell us or give us that evidence now. If the evidence is not in your possession, you must give us enough information about the evidence so that we can request it from the person or agency that has it. If the holder of the evidence declines to give it to us, asks for a fee to provide it, or VA otherwise cannot get the evidence, we will notify you. *It is your responsibility to make sure we receive all requested records that are not in the possession of a Federal department or agency.*

How VA Determines the Disability Rating: When we find disabilities to be service connected, we assign a disability rating. That rating can be changed if there are changes in your condition. Depending on the disability involved, we will assign a rating from 0 percent to as much as 100 percent. VA uses a schedule for evaluating disabilities that is published as title 38, Code of Federal Regulations, Part 4. In rare cases, we can assign a disability level other than the levels found in the schedule for a specific condition if your impairment is not adequately covered by the schedule.

We consider evidence of the following in determining the disability rating:

- Nature and symptoms of the condition;
- Severity and duration of the symptoms; and
- Impact of the condition and symptoms on employment.

Examples of evidence that you should tell us about or give to us that may affect how we assign a disability evaluation include the following:

- Information about on-going treatment records, including VA or other Federal treatment records, you have not previously told us about;
- Recent Social Security determinations;

Page 5

File Number: [REDACTED]
David A. Hamill

- Statements from employers as to job performance, lost time, or other information regarding how your condition(s) affect your ability to work; or
- Statements discussing your disability symptoms from people who have witnessed how they affect you.

How VA Determines the Effective Date: If we grant your claim, the beginning date of your entitlement or increased entitlement to benefits will generally be based on the following factors:

- When we received your claim; or
- When the evidence shows a level of disability that supports a certain rating under the rating schedule or other applicable standards.

If VA received your claim within one year of your separation from the military, entitlement will be from the day following the date of your separation.

Examples of evidence that are relevant to determining the effective date of any benefits we award include the following:

- Information about continuous treatment or when treatment began;
- Service treatment records in your possession that you may not have sent us; or
- Reports of treatment for your condition while attending training in the Guard or Reserve.

Page 6

File Number: [REDACTED]
David A. Hamill

VCAA NOTICE RESPONSE

Date of Claim: April 30, 2013

We provided a notice to you about the evidence and information VA needs to support your claim for benefits. At this time, you may choose to indicate whether you intend to submit additional information or evidence that would help support your claim.

Your signed response will let us know whether to decide your claim without waiting 30 days, or whether we should give you the full 30 days from the date of the letter sent with this notice response before deciding your claim.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled;
- The assistance VA will provide you in obtaining evidence to support your claim; or
- The date any benefits will begin if your claim is granted.

RESPONSE

I elect one of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

I have enclosed all the remaining information or evidence that will support my claim, or I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

I will send more information or evidence to VA to support my claim. VA will wait the full 30 days from the date of the letter sent with this notice response before deciding my claim.

Claimant/Representative Signature

Date

**DEPARTMENT OF VETERANS AFFAIRS**

Chicago VA Regional Office

2122 West Taylor Street

Chicago Illinois 60612

C# [REDACTED]

NAME: David A. Hamil

ADMINISTRATIVE DECISION**ISSUE:** Character of DischargeEVIDENCE:

- VA Form 21-526 Veterans' Application for Compensation and/or Pension benefits received 04/30/2013.
- Service treatment records from the service department.
- Due Process Notification letter informing claimant of discharge that is other than honorable, stating that we must decide if he is eligible for VA benefits on 09/04/2013.
- Due Process Notification letter informing claimant of discharge that is other than honorable, stating that we must decide if he is eligible for VA benefits on 11/04/2013.
- “Facts and Circumstances Surrounding Discharge” received 04/30/2013.
- Conditional period of discharge received 04/30/2013.
- Claimant response from notification of Due Process letter on VA Form 21-4138 Statement in Support of Claim. We have not received a response from the veteran.

DECISION:

The claimant's character of discharge for the period February 26, 2009 through March 15, 2013 is considered a bar to all benefits administered by the Department of Veterans Affairs under the provisions of 38 CFR 3.12(c)(6) and 38 U.S.C. 5303(a).

The individual is entitled to health care under Chapter 17 of Title 38, U.S.C. for any disabilities determined to be service connected for period of service from February 26, 2009 through March 15, 2013.

REASONS AND BASES:

38 CFR 3.1(d) states "Veteran" means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

(n) "Willful misconduct" means an act involving conscious wrongdoing or (n) known prohibited action. A service department finding that injury, disease or death was not due to misconduct will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the facts and the requirements of laws administered by the Department of Veterans Affairs.

(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

38 CFR 3.12 (d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions.

(4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.

38 CFR 3.13 (b) Except as provided in paragraph (c) of this section, the entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of such period of active service except that for death pension purposes, §3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

38 CFR 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable conditions.

- (a) *General.* The health-care and related benefits authorized by Chapter 17 of Title 38, United States Code, shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval or air service in line of duty.
- (b) *Discharge categorization.* With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in CFR 3.12(c) applies.
- (c) *Eligibility criteria.* In making determinations of health-care eligibility, the same criteria will be used as is now applicable to determinations of service incurrence and in line of duty when there is no character of discharge bar.

DISCUSSION:

The veteran enlisted in the United States Marine Corp from February 26, 2009 to March 15, 2013 and received an other than honorable discharge.

On January 10, 2013, the accused was NJP'd for smoking marijuana and received the following punishment: reduction to E-3, forfeiture of \$1007.00 per month for two months, 45 days restriction and 45 days EPD. While awaiting his administrative separation, the results from a urinalysis test taken on January 02, 2013 came back and the accused tested positive for MDA(3, 4-methlenedioxyamphetmine) . He was then placed in pretrial confinement on February 08, 2013. The accused waived his IRO hearing.

The veteran enlisted in the United States Marine Corps on February 26, 2009. The claimant opted to receive a Separation in Lieu of Trial by Court-Martial. The accused was charged with specification of violating Article 112a of the UCMJ for using MDA (3, 4-methlenedioxyamphetmine)

A letter was sent to the claimant on September 04, 2013 advising him of his procedural and due process rights, and asking him for information concerning his discharge. We did not receive a response from the veteran.

There is no claim or evidence to warrant raising the issue of insanity.

The discharge for the period February 26, 2009 through March 15, 2013, is a bar to VA benefits under the provisions of 38 CFR 3.12(c)(6) and 38 U.S.C. 5303(a). The individual is not entitled to health care under Chapter 17 of Title 38, U.S.C. for any disabilities determined to be service connected for period of service from February 26, 2009 through March 15, 2013.

SUBMITTED BY: *R. W. [Signature]* DATE: 05/15/14

CONCURRED IN: *W. [Signature]* DATE: 5/15/14

APPROVED BY: *[Signature]* DATE: 5/15/14

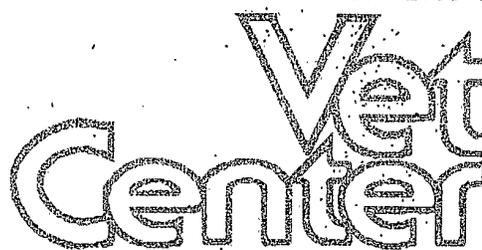
P.001

99%

MAY-02-2017 16:16

FACSIMILE

Cover Sheet



1901 Howard St.
Evanston, IL 60202

To: *VVA INTAKE OFFICE*

At: *CHICAGO, IL*

Fax Number: *312 706 6683*

Office Phone: *1 -*

RECEIVED
VARO 328 CHICAGO IL
2017 MAY -8 AM 11:55
SUPPORT SERVICES-3

From: *DAVID HANELL*

Fax Number: 847/332-1024

Office Phone: 847/332-1019

Total Number of Pages = Cover + *6*

Comments: *DISABILITY CLAIM FWD.*

This transmission is intended only for the use of the person or office to whom it is addressed and may contain information that is privileged, confidential, or protected by law. All others are hereby notified that the receipt of this message does not waive any applicable privilege or exemption from disclosure and that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone at the above number shown.

Date: *5/2/17*

Time: *1555*



APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 10 before completing the form.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION

1. VETERAN/SERVICE MEMBER NAME (First, Middle Initial, Last)

David A Hamilton

2. VETERAN'S SOCIAL SECURITY NUMBER

[REDACTED]

3. HAVE YOU EVER FILED A CLAIM WITH VA?

YES NO (If "Yes," provide your file number in Item 4)

4. VA FILE NUMBER

[REDACTED]

5. DATE OF BIRTH (MM.DD.YYYY)

Month Day Year

[REDACTED]

6. SEX

MALE FEMALE

7. VETERAN'S SERVICE NUMBER (If applicable)

[REDACTED]

8A. ARE YOU CURRENTLY HOMELESS OR AT RISK OF BECOMING HOMELESS?

YES NO (If "Yes," complete Items 8B & 8C)

8B. POINT OF CONTACT (Name of person that VA can contact in order to get in touch with you)

8C. POINT OF CONTACT TELEPHONE NUMBER (Include Area Code)

[REDACTED]

9A. SERVICE (Check all that apply)

ARMY NAVY MARINE CORPS AIR FORCE COAST GUARD

9B. COMPONENT (Check all that apply)

ACTIVE RESERVES NATIONAL GUARD

10A. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

[REDACTED]

10B. FORWARDING ADDRESS AND EFFECTIVE DATE (Provide the date you will be living at this address)

No. & Street [REDACTED]

Apt./Unit Number [REDACTED] City [REDACTED]

State/Province [REDACTED] Country [REDACTED] ZIP Code/Postal Code [REDACTED]

EFFECTIVE DATE:

Month Day Year [REDACTED]

11. PREFERRED TELEPHONE NUMBER

[REDACTED]

12A. PREFERRED E-MAIL ADDRESS (If applicable)

12B. ALTERNATE E-MAIL ADDRESS (If applicable)

[REDACTED]

P.003

MAY-02-2017 16:16

VETERANS SOCIAL SECURITY NO. [REDACTED]

13. LIST THE DISABILITY(IES) YOU ARE CLAIMING (If applicable, identify whether a disability is due to a service-connected disability, is due to confinement as a Prisoner of War, is due to exposure to Agent Orange, Asbestos, Mustard Gas, Ionizing Radiation, or Gulf War Environmental Hazards, or is related to benefits under 38 U.S.C. 1151).

Please list your contentions below. See the following examples, for more information:

- Example 1: Hearing loss
- Example 2: Diabetes-Agent Orange (exposed 12/72, Da Nang)
- Example 3: Left knee - secondary to right knee

DISABILITIES	
1.	PTSD - Military Related
2.	Chronic Fatigue Syndrome -
3.	OEF/OIF Gulf
4.	Fibromyalgia - OEF/OIF Gulf
5.	Chronic Depression
6.	Lower Back Pain
7.	Hearing Loss
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	

RECEIVED
 VA FOIA REQUEST
 2017 MAY -6 AM 11:55
 DEPARTMENT OF VETERANS AFFAIRS

14. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) AND PROVIDE TREATMENT DATES:

A. NAME AND LOCATION	B. DATE(S) OF TREATMENT	
Evanston Vet Center, Evanston, IL	09/16/2016	05/02/2017
Rush "Road Home Program" Chicago, IL	07/01/2016	01/31/2017

VETERANS SOCIAL SECURITY NO

NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING, COMPLETE AND ATTACH THE REQUIRED FORM(S) AS STATED BELOW (VA forms are available at www.va.gov/vaforms).

Table with 2 columns: For, Required Form(s). Rows include Dependents, Individual Unemployability, Post-Traumatic Stress Disorder, Specially Adapted Housing or Special Home Adaptation, Auto Allowance, and Veteran/Spouse Aid and Attendance benefits.

SECTION II: SERVICE INFORMATION

15A. DID YOU SERVE UNDER ANOTHER NAME? 15B. PLEASE LIST THE OTHER NAME(S) YOU SERVED UNDER:

15A. MOST RECENT ACTIVE SERVICE ENTRY DATE (MM,DD,YYYY) 15B. RELEASE DATE OR ANTICIPATED DATE OF RELEASE FROM ACTIVE SERVICE (MM,DD,YYYY)

15C. DID YOU SERVE IN A COMBAT ZONE SINCE 9-11-2001? 15D. PLACE OF LAST OR ANTICIPATED SEPARATION

17A. ARE YOU CURRENTLY SERVING OR HAVE YOU EVER SERVED IN THE RESERVES OR NATIONAL GUARD? 17B. COMPONENT 17C. OBLIGATION TERM OF SERVICE

17D. CURRENT OR LAST ASSIGNED NAME AND ADDRESS OF UNIT: 17E. CURRENT OR ASSIGNED PHONE NUMBER OF UNIT (Include Area Code) 17F. ARE YOU CURRENTLY RECEIVING INACTIVE DUTY TRAINING PAY?

17A. ARE YOU CURRENTLY ACTIVATED ON FEDERAL ORDERS WITHIN THE NATIONAL GUARD OR RESERVES? 17B. DATE OF ACTIVATION: (MM,DD,YYYY) 17C. ANTICIPATED SEPARATION DATE: (MM,DD,YYYY)

17A. HAVE YOU EVER BEEN A PRISONER OF WAR? 17B. DATES OF CONFINEMENT (MM,DD,YYYY)

SECTION III: SERVICE PAY

20A. DID/DO YOU RECEIVE ANY TYPE OF SEPARATION/SEVERANCE/RETIRED PAY? 20B. LIST AMOUNT (If known) 20C. LIST TYPE (If known)

IMPORTANT: Submission of this application constitutes an election of VA compensation in lieu of military retired pay if it is determined you are entitled to both benefits. If you are entitled to receive military retired pay, your retired pay may be reduced by the amount of any VA compensation that you are awarded.

IMPORTANT: You may elect to keep the training pay for inactive duty training days you received from the military service department. However, to be legally entitled to keep your training pay, you must waive VA benefits for the number of days equal to the number of days for which you received training pay.

22. I elect to waive VA benefits for the days I accrued inactive duty training pay in order to retain my inactive duty training pay.

VA 032855011
REC'D
MAY - 06 2017
55
3

900 5

MAY-02-2017 16:16

VETERANS SOCIAL SECURITY NO. [REDACTED]

SECTION IV: DIRECT DEPOSIT INFORMATION

The Department of Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check or deposit slip or provide the information requested below in items 23, 24 and 25 to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.

23. ACCOUNT NUMBER (Check the appropriate box and provide the account number, or simply write "Established" if you have a direct deposit with VA)
[] CHECKING [] SAVINGS [] I CERTIFY THAT I DO NOT HAVE AN ACCOUNT WITH A FINANCIAL INSTITUTION OR CERTIFIED PAYMENT AGENT
Account No.: Account No.:

24. NAME OF FINANCIAL INSTITUTION (Please provide the name of the bank where you want your direct deposit)
25. ROUTING OR TRANSIT NUMBER (The first nine numbers located at the bottom left of your check)

SECTION V: CLAIM CERTIFICATION AND SIGNATURE

I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me, and I waive any privilege which makes the information confidential.
I certify I have received the notice attached to this application titled, Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits.

I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; OR, I have no information or evidence to give VA to support my claim; OR, I have checked the box in item 26, indicating that I do not want my claim considered for rapid processing in the Fully Developed Claim (FDC) Program because I plan to submit further evidence in support of my claim.

ALTERNATE SIGNER: By signing on behalf of the claimant, I certify that I am a court-appointed representative; OR, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; OR, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; OR, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; AND, that the claimant is under the age of 18; OR, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; OR, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury, I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

26. The FDC Program is designed to rapidly process compensation or pension claims received with the evidence necessary to decide the claim. VA will automatically consider a claim submitted on this form for rapid processing under the FDC Program. Check the box below ONLY if you DO NOT want your claim considered for rapid processing under the FDC Program because you plan on submitting further evidence in support of your claim.

[] I DO NOT want my claim considered for rapid processing under the FDC Program because I plan to submit further evidence in support of my claim.

27A. VETERAN/SERVICE MEMBER/ALTERNATE SIGNER SIGNATURE (REQUIRED) 27B. DATE SIGNED 05022017

SECTION VI: WITNESSES TO SIGNATURE

28A. SIGNATURE OF WITNESS (If veteran signed above using an "X") 28B. PRINTED NAME AND ADDRESS OF WITNESS

29A. SIGNATURE OF WITNESS (If veteran signed above using an "X") 29B. PRINTED NAME AND ADDRESS OF WITNESS

SECTION VII: POWER OF ATTORNEY (POA) SIGNATURE

I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature will not be accepted unless at the time of submission of this claim a valid VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, or VA Form 21-22a, Appointment of Individual As Claimant's Representative, indicating the appropriate POA is of record with VA.

30A. POA AUTHORIZED REPRESENTATIVE SIGNATURE 30B. DATE SIGNED

PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101) The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pensions, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs. Social Security information: You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.

RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.omb.eop.go.kr/USAMail. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

PRIORITY[®]
★ MAIL ★



VISIT US AT USPS.COM[®]
ORDER FREE SUPPLIES ONLINE

FROM: DEPT OF VETERANS AFFAIRS
2122 W TAYLOR ST
CHICAGO IL 60612-4281

TO:

DEPT OF VETERANS AFFAIRS
CLAIMS INTAKE CENTER
PO BOX 5235
JANESVILLE WI 53547-5235

Label 228C, July 2013

FOR DOMESTIC AND INTERNATIONAL USE



DEPARTMENT OF VETERANS AFFAIRS

July 21, 2017



In reply, refer to:
346/TMR
File Number: [Redacted]
DAVID HAMILL

Dear Mr. HAMILL:

We have received your request to reopen the following claims:

Contention	Date of Decision Notice
Character of discharge	May 15, 2014

Each decision notice includes a *VA Form 4107, Your Rights to Appeal Our Decision*, which explains your appeal rights. You had one year from the date of the decision notice to appeal the decision. The time period for submission of an appeal has now expired.

To reopen a claim, new and material evidence must be submitted. At this time, your claim cannot be reopened because

- you have submitted no evidence, or
- the evidence you have submitted is entirely duplicative of evidence previously considered in a prior decision.

The prior decision to deny your claim for these disabilities is continued.

What Should You Do?

We will take no further action on this claim. If you wish to have this issue reviewed you have two options.

1. **Submit a claim to reopen accompanied by new and material evidence.** Please submit your upgraded discharge.
2. **Identify a clear and unmistakable error in a prior VA decision.** Clear and unmistakable errors are undebatable so that reasonable minds could only conclude that the previous decision was flawed at the time it was made. There is no time limit for submission of a claim for clear and unmistakable error.

What You Should Do If You Disagree With Our Decision

Page 2

File Number: [REDACTED]
 HAMILL, DAVID

If you do not agree with our decision, you must complete and return to us the enclosed VA Form 21-0958, *Notice of Disagreement*, in order to initiate your appeal. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, “*Your Rights to Appeal Our Decision*,” explains your right to appeal.

What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Service members, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- **Submit claims for benefits and/or upload documents directly to the VA**
- **Request to add or change your dependents**
- **Update your contact and direct deposit information and view payment history**
- **Request a Veterans Service Officer to represent you**
- **Track the status of your claim or appeal**
- **Obtain verification of military service, civil service preference, or VA benefits**
- **And much more!**

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .



In all cases, be sure to refer to your VA file number, 

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.

We sent a copy of this letter to your representative, ILLINOIS DEPARTMENT OF VETERANS AFFAIRS, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Regional Office Director

Enclosures: Where to Send Your Written Correspondence
VA Form 21-0958
VA Form 4107
DD Form 149
DD Form 293

cc: ILLINOIS DEPARTMENT OF VETERANS AFFAIRS

Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

Location of Residence	Address
<p>All United States and Foreign Locations</p> <p>*Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.</p>	<p>Department Of Veterans Affairs Evidence Intake Center P.O. Box 4444 Janesville, WI, 53547-4444</p> <p>Or fax your information to: Toll Free: 844-531-7818 Local: 248-524-4260</p>

For correspondence relating to all **Veterans Pension** and **Survivor Benefit** claims:

Location of Residence	Address
<p>Alabama Kentucky Missouri Arkansas Louisiana Ohio Illinois Michigan Tennessee Indiana Mississippi Wisconsin</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: Milwaukee Pension Center P.O. Box 5192 Janesville, WI 53547-5192 Or fax your information to: Toll Free: (844) 655-1604</p>
<p>Alaska Montana Texas Arizona Nebraska Utah California Nevada Washington Colorado New Mexico Wyoming Hawaii North Dakota Mexico Idaho Oklahoma Central America Iowa Oregon South America Kansas South Dakota Caribbean Minnesota</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: St. Paul Pension Center P.O. Box 5365 Janesville, WI 53547-5365 Or fax your information to: Toll Free: (844) 655-1604</p>
<p>Connecticut New Hampshire South Carolina Delaware New Jersey Vermont Florida New York Virginia Georgia North Carolina West Virginia Maine Pennsylvania District of Maryland Rhode Island Columbia Massachusetts Puerto Rico Canada</p>	<p>Department Of Veterans Affairs Claims Intake Center Attention: Philadelphia Pension Center P.O. Box 5206 Janesville, WI 53547-5206 Or fax your information to: Toll Free: (844) 655-1604</p>
<p>Countries outside of North, Central or South America</p>	

OMB Control No. 2900-0862
Respondent Burden: 15 minutes
Expiration Date: 2/28/2022



Department of Veterans Affairs

VA DATE STAMP
DO NOT WRITE IN THIS SPACE

DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM

INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.

PART I - CLAIMANT'S IDENTIFYING INFORMATION

NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.

1. VETERAN'S NAME (First, Middle Initial, Last)

David

A

Hamill

2. VETERAN'S SOCIAL SECURITY NUMBER

3. VA FILE NUMBER (If applicable)

4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)

Month Day Year

5. VETERAN'S SERVICE NUMBER (If applicable)

6. INSURANCE POLICY NUMBER (If applicable)

7. CLAIMANT'S NAME (First, Middle Initial, Last) (If other than veteran)

8. CLAIMANT TYPE:

- VETERAN VETERAN'S SPOUSE VETERAN'S CHILD VETERAN'S PARENT OTHER (Specify)

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

12. BENEFIT TYPE: PLEASE CHECK ONLY ONE (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)

- COMPENSATION PENSION/SURVIVORS BENEFITS FIDUCIARY INSURANCE VETERANS HEALTH ADMINISTRATION VOCATIONAL REHABILITATION AND EMPLOYMENT LOAN GUARANTY EDUCATION NATIONAL CEMETERY ADMINISTRATION

PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM

13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR SUPPLEMENTAL CLAIM. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. Include your name and file number on each additional sheet.)

Check this box if any issue listed below is being withdrawn from the legacy appeals process. OPT-IN from SOC/SSOC

13A. SPECIFIC ISSUE(S)	13B. DATE OF VA DECISION NOTICE
PTSD	7/20/2017
Chronic Fatigue Syndrome	7/20/2017
Fibromyalgia	7/20/2017
Depression	7/20/2017
Lower Back	7/20/2017
Hearing Loss	7/20/2017

PART III - NEW AND RELEVANT EVIDENCE

14. To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your supplemental claim. If you have records in your possession, please attach the records to this form. Please list your name and file number on each page. If you would like VA to obtain **non-federal records**, please review your decision notification letter for the appropriate authorization forms to complete and submit those forms to VA with this request form.

15. DO YOU WANT VA TO GET FEDERAL RECORDS?

LIST BELOW ANY VA MEDICAL CENTER(S) (VAMC), VA TREATMENT FACILITIES, OR FEDERAL DEPARTMENTS OR AGENCIES THAT HAVE NEW AND RELEVANT EVIDENCE THAT YOU ARE AUTHORIZING VA TO OBTAIN IN SUPPORT OF YOUR SUPPLEMENTAL CLAIM: *You may attach additional sheets of paper, if necessary. Please list your name and file number on each additional sheet.*

15A. NAME AND LOCATION	15B. DATE(S) OF RECORDS

PART IV - CERTIFICATION AND SIGNATURE

NOTE: This section is **MANDATORY** and completion is required to process your claim, any omission may delay claim processing time.

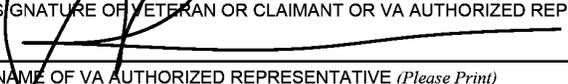
VA AUTHORIZED REPRESENTATIVES ONLY: I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature *will not* be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

16. I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

COMPENSATION BENEFIT CLAIMS ONLY:

5103 NOTICE Acknowledgment - I certify I have received the notice to this application titled, **Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits** as provided at www.va.gov/disability-evidence. If the box is not checked, VA will send you this information through an electronic communication or written correspondence sent to the address on file with VA if your application is being submitted more than one year after VA provided notice of our decision for any issue listed in item 13.

16A. SIGNATURE OF VETERAN OR CLAIMANT OR VA AUTHORIZED REPRESENTATIVE <i>(Sign in ink)</i> 	16B. DATE SIGNED 3/12/2021
---	-------------------------------

16C. NAME OF VA AUTHORIZED REPRESENTATIVE *(Please Print)*
Yelena Duterte

ALTERNATE SIGNER CERTIFICATION AND SIGNATURE

17. I CERTIFY THAT by signing on behalf of the claimant, that I am a court-appointed representative; **OR**, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; **OR**, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; **OR**, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; **AND**, that the claimant is under the age of 18; **OR**, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; **OR**, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

17A. SIGNATURE OF ALTERNATE SIGNER <i>(Sign in ink)</i>	17B. DATE SIGNED
---	------------------

17C. NAME OF ALTERNATE SIGNER *(Please Print)*

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.

VETERANS SOCIAL SECURITY NO. [REDACTED]

SECTION III: HOMELESS INFORMATION

IMPORTANT: The following questions (Items 15A through 15F) should *only* be completed if you are currently homeless or at risk of becoming homeless. If this item does not apply to you, skip to Section IV.

<p>15A. ARE YOU CURRENTLY HOMELESS?</p> <p><input type="radio"/> YES (If "Yes," complete Item 15B regarding your living situation)</p> <p><input type="radio"/> NO</p>	<p>15B. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION:</p> <p><input type="radio"/> LIVING IN A HOMELESS SHELTER</p> <p><input type="radio"/> NOT CURRENTLY IN A SHELTERED ENVIRONMENT (e.g., living in a car or tent)</p> <p><input type="radio"/> STAYING WITH ANOTHER PERSON</p> <p><input type="radio"/> FLEEING CURRENT RESIDENCE</p> <p><input type="radio"/> OTHER (Specify)</p>
<p>15C. ARE YOU CURRENTLY AT RISK OF BECOMING HOMELESS?</p> <p><input type="radio"/> YES (If "Yes," complete Item 15D regarding your living situation)</p> <p><input type="radio"/> NO</p>	<p>15D. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION:</p> <p><input type="radio"/> HOUSING WILL BE LOST IN 30 DAYS</p> <p><input type="radio"/> LEAVING PUBLICLY FUNDED SYSTEM OF CARE (e.g., homeless shelter)</p> <p><input type="radio"/> OTHER (Specify)</p>
<p>15E. POINT OF CONTACT (Name of person VA can contact in order to get in touch with you)</p>	<p>15F. POINT OF CONTACT TELEPHONE NUMBER (Include Area Code)</p>

SECTION IV: CLAIM INFORMATION

16. LIST THE CURRENT DISABILITY(IES) OR SYMPTOMS THAT YOU CLAIM ARE RELATED TO YOUR MILITARY SERVICE AND/OR SERVICE-CONNECTED DISABILITY (If applicable, identify whether a disability is due to a service-connected disability; confinement as a prisoner of war; exposure to Agent Orange, asbestos, mustard gas, ionizing radiation, or Gulf War environmental hazards; or a disability for which compensation is payable under 38 U.S.C. 1151)

NOTE: List your claimed conditions below. See the following three examples for guidance on how to complete Section IV.

EXAMPLES OF DISABILITY(IES)		EXAMPLES OF EXPOSURE TYPE	EXAMPLES OF HOW THE DISABILITY(IES) RELATE TO SERVICE	EXAMPLES OF DATES
Example 1. HEARING LOSS		NOISE	HEAVY EQUIPMENT OPERATOR IN SERVICE	JULY 1968
Example 2. DIABETES		AGENT ORANGE	SERVICE IN VIETNAM WAR	DECEMBER 1972
Example 3. LEFT KNEE, SECONDARY TO RIGHT KNEE			INJURED LEFT KNEE WHEN BRACE ON RIGHT KNEE FAILED	6/11/2008
CURRENT DISABILITY(IES)		IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENERD
1.	Irritable Bowel Syndrome	Presumptive to Gulf Service		
2.	Acid Reflux/GERD	Direct or Secondary to PTSD		
3.	Equilibrium Issues			
4.	Stuttering			
5.	Memory Issues			
6.	Sensitivity to Light			
7.	Headaches/Migraines			
8.	TBI			
9.				
10.				
11.				
12.				
13.				
14.				
15.			Appx52	

VETERANS SOCIAL SECURITY NO. [REDACTED]

17. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) LISTED IN ITEM 16 AND PROVIDE APPROXIMATE BEGINNING DATE (Month and Year) OF TREATMENT:

NOTE: If treatment began from 2005 to present, you do not need to provide dates in Item 17B.

A. ENTER THE DISABILITY TREATED AND NAME/LOCATION OF THE TREATMENT FACILITY	B. DATE OF TREATMENT (MM-YYYY)	C. CHECK THE BOX IF YOU DO NOT HAVE DATE(S) OF TREATMENT
	-	<input type="radio"/> Don't have date
	-	<input type="radio"/> Don't have date
	-	<input type="radio"/> Don't have date
	-	<input type="radio"/> Don't have date

NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING, COMPLETE AND ATTACH THE REQUIRED FORM(S) AS STATED BELOW.
(VA forms are available at www.va.gov/vaforms)

For:	Required Form(s):
Supplemental Claims	VA Form 20-0995, <i>Decision Review Request: Supplemental Claim</i>
Dependents	VA Form 21-686c and, if claiming a child aged 18-23 years and in school, VA Form 21-674
Individual Unemployability	VA Form 21-8940 and 21-4192
Post-Traumatic Stress Disorder	VA Form 21-0781 or 21-0781a
Specially Adapted Housing or Special Home Adaptation	VA Form 26-4555
Auto Allowance	VA Form 21-4502
Veteran/Spouse Aid and Attendance benefits	VA Form 21-2680 or, if based on nursing home attendance, VA Form 21-0779

SECTION V: SERVICE INFORMATION

18A. DID YOU SERVE UNDER ANOTHER NAME? <input type="radio"/> YES (If "Yes," complete Item 18B) <input type="radio"/> NO (If "No," skip to Item 19A)		18B. LIST THE OTHER NAME(S) YOU SERVED UNDER:	
19A. BRANCH OF SERVICE <input type="radio"/> ARMY <input type="radio"/> NAVY <input type="radio"/> MARINE CORPS <input type="radio"/> AIR FORCE <input type="radio"/> COAST GUARD <input type="radio"/> SPACE FORCE		19B. COMPONENT <input type="radio"/> ACTIVE <input type="radio"/> RESERVES <input type="radio"/> NATIONAL GUARD	
20A. MOST RECENT ACTIVE SERVICE DATES (MM,DD,YYYY) ENTRY DATE: Month Day Year EXIT DATE: - - -		20B. PLACE OF LAST OR ANTICIPATED SEPARATION Month Day Year From: - - - To: - - -	
20C. DID YOU SERVE IN A COMBAT ZONE SINCE 9-11-2001? <input type="radio"/> YES <input type="radio"/> NO	20D. ADDITIONAL PERIODS OF SERVICE (Indicate enlistment and discharge date(s), if applicable)		
21A. ARE YOU CURRENTLY SERVING OR HAVE YOU EVER SERVED IN THE RESERVES OR NATIONAL GUARD? <input type="radio"/> YES (If "Yes," complete Items 21B thru 21F) <input type="radio"/> NO (If "No," skip to Item 22A)		21B. COMPONENT <input type="radio"/> NATIONAL GUARD <input type="radio"/> RESERVES	21C. OBLIGATION TERM OF SERVICE Month Day Year From: - - - To: - - -
21D. CURRENT OR LAST ASSIGNED NAME AND ADDRESS OF UNIT:		21E. CURRENT OR ASSIGNED PHONE NUMBER OF UNIT (Include Area Code)	21F. ARE YOU CURRENTLY RECEIVING INACTIVE DUTY TRAINING PAY? <input type="radio"/> YES <input type="radio"/> NO
22A. ARE YOU CURRENTLY ACTIVATED ON FEDERAL ORDERS WITHIN THE NATIONAL GUARD OR RESERVES? <input type="radio"/> YES (If "Yes," complete Items 22B & 22C) <input type="radio"/> NO		22B. DATE OF ACTIVATION: Month Day Year - - -	
		22C. ANTICIPATED SEPARATION DATE: Month Day Year - - -	
23A. HAVE YOU EVER BEEN A PRISONER OF WAR? <input type="radio"/> YES (If "Yes," complete Item 23B) <input type="radio"/> NO		23B. DATES OF CONFINEMENT From: To: Month Day Year Month Day Year - - - - - - Month Day Year Month Day Year - - - - - -	

VETERANS SOCIAL SECURITY NO. [REDACTED]

SECTION VIII: CLAIM CERTIFICATION AND SIGNATURE

VETERAN/SERVICEMEMBER CERTIFICATION AND SIGNATURE

I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me. For the limited purpose of providing VA with this information as it may relate to my claim, I waive any privilege that may apply and would otherwise make the information confidential and not disclosable.

I certify I have received the notice attached to this application titled, *Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits.*

I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; **OR**, I have no information or evidence to give VA to support my claim; **OR**, I have checked the box in Item 1, on page 8, indicating I want my claim processed under the standard claim process because I plan to submit additional evidence in support of my claim.

33A. VETERAN/SERVICE MEMBER SIGNATURE (REQUIRED)

33B. DATE SIGNED (MM-DD-YYYY)

- -

SECTION IX: WITNESSES TO SIGNATURE

34A. SIGNATURE OF WITNESS (Sign in ink) (Note: Only sign if veteran signed in Item 33A using an "X")

34B. PRINTED NAME AND ADDRESS OF WITNESS

35A. SIGNATURE OF WITNESS (Sign in ink) (Note: Only sign if veteran signed in Item 33A using an "X")

35B. PRINTED NAME AND ADDRESS OF WITNESS

SECTION X: ALTERNATE SIGNER CERTIFICATION AND SIGNATURE
(NOTE: REQUIRED ONLY IF ITEM 33A IS BLANK)

I certify that by signing on behalf of the claimant, that I am a court-appointed representative; **OR**, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; **OR**, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; **OR**, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; **AND**, that the claimant is under the age of 18; **OR**, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; **OR**, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

36A. ALTERNATE SIGNER SIGNATURE (REQUIRED)

36B. DATE SIGNED (MM-DD-YYYY)

- -

SECTION XI: POWER OF ATTORNEY (POA) SIGNATURE
(NOTE: POA'S CANNOT SIGN FOR AN ORIGINAL CLAIM ONLY)

I certify that the claimant has authorized the undersigned representative to file this claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature **will not** be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

37A. POA/AUTHORIZED REPRESENTATIVE SIGNATURE

37B. DATE SIGNED (MM-DD-YYYY)

03 - 12 - 2021

PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs. Social Security information: You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.

RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

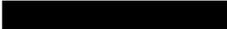
PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled.

Appx 55

May 19, 2021



In Reply Refer To: 319/21


HAMILL, David Angelo

Dear Mr. Hamill:

We made a decision on your claim for service connected compensation received on May 10, 2021.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What We Decided

Service connection for treatment purposes only under 38 USC chapter 17 for posttraumatic stress disorder (also claimed as memory issues) is granted.

Service connection for treatment purposes only under 38 USC chapter 17 for gastroesophageal reflux disease (also claimed as acid reflux) is denied.

Service connection for treatment purposes only under 38 USC chapter 17 for irritable bowel syndrome is denied.

Service connection for treatment purposes only under 38 USC chapter 17 for migraine headaches (also claimed as sensitivity to light) is denied.

Service connection for treatment purposes only under 38 USC chapter 17 for traumatic brain injury (also claimed as equilibrium issues and stuttering) is denied.

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered, and the reasons for our decision. Your Rating Decision and this letter constitute our decision based on your claim received on May 10, 2021. It represents all claims we understood to be specifically made, implied, or inferred in that claim.



What You Should Do If You Disagree With Our Decision

If you do not agree with this decision, you have one year from the date of this letter to select a review option to preserve your earliest effective benefit date. The review options and their proper applications are as follows, for a(n):

- **Supplemental Claim**, complete **VA Form 20-0995**, *Decision Review Request: Supplemental Claim*.
- **Higher-Level Review**, complete **VA Form 20-0996**, *Decision Review Request: Higher-Level Review*.
- **Appeal to the Board**, complete **VA Form 10182**, *Decision Review Request: Board Appeal (Notice of Disagreement)*.

Please see the enclosed VA Form 20-0998, *Your Rights To Seek Further Review Of Our Decision*. It explains your options for an additional review. You may obtain any of the required application by down loading them from www.va.gov/vaforms/ or by contacting us. You can also learn more about the disagreement process at www.va.gov/decision-reviews. If you would like to obtain or access evidence used in making this decision, please contact us as noted below. Some evidence may be obtained by signing in at www.va.gov.

What Is eBenefits?

eBenefits provides electronic resources in a self-service environment to Service members, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of your military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.



If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number in the letter. Please mail all written correspondence to <i>Where to Send Your Correspondence</i> .

In all cases, be sure to refer to VA file number 

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov/>.

What is VA.gov

VA.gov provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the VA.gov website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in VA.gov is easy. Just visit www.va.gov for more information. If you submit a claim in the future, consider filing through VA.gov. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.



We sent a copy of this letter to your representative, Yelena C Duterte, whom you can also contact if you have questions or need assistance.

Sincerely,

Regional Office Director

Information is available - <https://iris.va.gov>

Enclosure(s): Rating Decision dated May 19, 2021
Where to Send Your Correspondence
VA Form 20-0998

cc: Yelena C Duterte

Where to Send Your Correspondence

Documents may be submitted by mail, in person at a VA regional office or electronically. However, VA recommends submitting correspondence electronically as this is the fastest method of receipt.

VA provides several tools to assist in electronic submission. To learn more about how to submit documents and claims electronically, visit www.va.gov/disability/upload-supporting-evidence. You can also go directly to access.va.gov to digitally upload any correspondence using Direct Upload.

By visiting www.va.gov you can also check your claim status and learn about other VA benefits.

If you need assistance, you can find a local, accredited representative at <https://www.benefits.va.gov/vso/>

If you prefer to mail your correspondence, please use the related mailing address below:

<p>Compensation Benefits Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547</p>	<p>Pension & Survivors Benefits Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547</p>
<p>Board of Veterans' Appeals Department of Veterans Affairs Board of Veterans' Appeals P.O. Box 27063 Washington, DC 20038 Toll Free Fax: (844) 678-8979</p>	<p>Fiduciary Department of Veterans Affairs Fiduciary Intake Center P.O. Box 95211 Lakeland, FL 33804</p>

These addresses serve **all United States and foreign locations.**



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit www.veteranscrisisline.net



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefit Administration
Regional Office**

DAVID HAMILL

VA File Number



**Represented By:
YELENA C DUTERTE**

**Rating Decision
05/19/2021**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from January 26, 2009 to March 15, 2013. You filed a new claim for benefits that was received on May 10, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for treatment purposes only under 38 USC chapter 17 for posttraumatic stress disorder (also claimed as memory issues) is granted.
2. Service connection for treatment purposes only under 38 USC chapter 17 for gastroesophageal reflux disease (also claimed as acid reflux) is denied.
3. Service connection for treatment purposes only under 38 USC chapter 17 for irritable bowel syndrome is denied.
4. Service connection for treatment purposes only under 38 USC chapter 17 for migraine



DAVID HAMILL

■■■■
2 of 3

headaches (also claimed as sensitivity to light) is denied.

5. Service connection for treatment purposes only under 38 USC chapter 17 for traumatic brain injury (also claimed as equilibrium issues and stuttering) is denied.

EVIDENCE

- Standard 5103 Notice, received on May 20, 2021
- STR - Medical - Photocopy, received on June 08, 2017
- STR - Medical, received on April 23, 2013
- STR - Medical, received on April 23, 2013
- Certificate of Release or Discharge From Active Duty (e.g. DD 214, NOAA 56-16, PHS 1867), received on June 08, 2017
- Administrative Decision, received on May 15, 2014
- VA 21-526EZ, Fully Developed Claim (Compensation), received on April 30, 2013

REASONS FOR DECISION

1. Service connection for treatment purposes only under 38 U.S.C. chapter 17 for posttraumatic stress disorder (also claimed as memory issues).

Service connection for treatment purposes only under 38 U.S.C. chapter 17 for posttraumatic stress disorder (also claimed as memory issues) is granted because the records show you are in receipt of the combat action ribbon and you have a diagnosis of posttraumatic stress disorder. Compensation is not payable for this condition. (38 CFR 17.109)

2. Service connection for treatment purposes only under 38 U.S.C. chapter 17 for gastroesophageal reflux disease (also claimed as acid reflux).

Service connection for treatment purposes only under 38 U.S.C. chapter 17 for gastroesophageal reflux disease (also claimed as acid reflux) is denied because the records show no treatment or complaint of acid reflux during service and no diagnosis. (38 CFR 17.109)

3. Service connection for treatment purposes only under 38 U.S.C. chapter 17 for irritable bowel syndrome.

Service connection for treatment purposes only under 38 U.S.C. chapter 17 for irritable bowel syndrome is denied because the records show no complaint or treatment for irritable bowel syndrome during service. (38 CFR 17.109)

4. Service connection for treatment purposes only under 38 U.S.C. chapter 17 for migraine headaches (also claimed as sensitivity to light).



DAVID HAMILL



3 of 3

Service connection for treatment purposes only under 38 U.S.C. chapter 17 for migraine headaches (also claimed as sensitivity to light) is denied because the records show no treatment or complaints of headaches during service. (38 CFR 17.109)

5. Service connection for treatment purposes only under 38 U.S.C. chapter 17 for traumatic brain injury (also claimed as equilibrium issues and stuttering).

Service connection for treatment purposes only under 38 U.S.C. chapter 17 for traumatic brain injury (also claimed as equilibrium issues and stuttering) is denied because the records show no treatment for a traumatic brain injury or any head injury during service. (38 CFR 17.109)

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.



Rating Decision		<i>Department of Veterans Affairs Veterans Benefit Administration</i>		Page 1 of 2 05/19/2021
NAME OF VETERAN DAVID HAMILL	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA YELENA C DUTERTE	
COPY TO				

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
01/26/2009	03/15/2013	Marine Corps	Dishonorable for VA Purposes - Chapter 17

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: New Claim Received 05/10/2021

ASSOCIATED CLAIM(s): 020; New/Increase; 05/10/2021

TREATMENT PURPOSES ONLY

- 7319 IRRITABLE BOWEL SYNDROME
Chapter 17, Not Entitled to Chapter 17

- 7346 GASTROESOPHAGEAL REFLUX DISEASE (ALSO CLAIMED AS ACID REFLUX)
Chapter 17, Not Entitled to Chapter 17
Static Disability

- 8045 TRAUMATIC BRAIN INJURY (ALSO CLAIMED AS EQUILIBRIUM ISSUES AND STUTTERING)
Chapter 17, Not Entitled to Chapter 17

- 8100 MIGRAINE HEADACHES (ALSO CLAIMED AS SENSITIVITY TO LIGHT)
Chapter 17, Not Entitled to Chapter 17

- 9411 POSTTRAUMATIC STRESS DISORDER (ALSO CLAIMED AS MEMORY ISSUES)
Chapter 17, Gulf War, Entitled to Chapter 17
Static Disability



Rating Decision	<i>Department of Veterans Affairs</i> <i>Veterans Benefit Administration</i>	Page 2 of 2 05/19/2021	
NAME OF VETERAN DAVID HAMILL	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA YELENA C DUTERTE
			COPY TO

eSign: certified by VSCCANDE, RVSR





UNIVERSITY OF
ILLINOIS CHICAGO

School of Law

RE: David Hamill

VA File #: [REDACTED]

To Whom It May Concern:

Mr. David Hamill requests that the VA make a decision regarding his discharge characterization.

Mr. Hamill is a veteran of the Gulf War Era veteran (Rating Decision, May 2021) and received a Combat Action Ribbon in Afghanistan, Navy Unit Commendation, Navy Meritorious Unit Commendation, Marine Corps Good Conduct Medal, National Defense Service Medal, Afghanistan Campaign Medal with two stars, and the Global War on Terrorism Service Medal. He served in the Marine Corps from January 23, 2009, to March 15, 2013.

Mr. Hamill applied to receive VA Benefits in 2013. The VA responded, informing him that "Anytime a veteran receives a discharge that is not "honorable", we have to decide if you are eligible for VA benefits. The military has said your service was not "honorable." Therefore, we have to make a decision about your service. As long as we decide that your service was not "dishonorable", you will be eligible for VA benefits." (VCAA/DTA Letter, September 4, 2013).

Mr. Hamill submitted a claim for VA Benefits on May 10, 2021 (Rating Decision, May 19, 2021). The VA gave him a rating decision on May 19, 2021, for his service-connected claims. His claim for post-traumatic stress disorder was granted for 38 USC Chapter 17 benefits, and his claims for gastroesophageal reflux disease, irritable bowel syndrome, migraine headaches, and traumatic brain injury were denied. However, per the original letter received by the VA, it is necessary to make a decision regarding Mr. Hamill's service when deciding a veteran's eligibility for benefits.

The VA has failed to reconsider and make a written decision regarding Mr. David Hamill's discharge characterization. We expect to hear back within 30 days with a determination of Mr. Hamill's service.

Respectfully,

Yelena Duterte
Director

Veterans Legal Clinic
School of Law
300 S. State Street (MC 300)
Chicago, IL 60604

Phone 312.360.2656
Fax 312.803.1958
Email law-vlsc@uic.edu
Web law.uic.edu



Department of Veterans Affairs
1240 East 9th St
Cleveland, OH 44199

July 13, 2022

DAVID HAMILL



In Reply Refer To: 325/214/CC
CSS [REDACTED]
Hamill D A

Dear David Hamill,

This letter from the Department of Veterans Affairs regarding Mr. Hamill request to upgrade his DD 214.

You can also ask the Service Department to change the character of discharge or you can apply for correction of military records To request change use the enclosed DD Form 293 Application for the Review of Discharge or Dismissal from the Armed Forces of the United States To apply for correction use the enclosed DD Form 149 Application for Correction of Military Record under the Provisions of Title 10 Code Section 1552 Send the completed form to the proper address on the back of the form.

Do You Have Questions or Need Assistance?

If you have any questions, you may contact us by telephone, email or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	www.VA.gov- "ask a question"
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address below: Department of Veterans Affairs Claims Intake Center PO Box 4444 Janesville, WI 53547-4444 Toll Free Fax: 844-531-7818 DID Fax: 248-524-4260

With sincere regard for the Veteran's service,

RO Director
VA Regional Office

To email us visit www.VA.gov- "ask a question"

Appx67

Do you know about VA.gov?

The new VA.gov design focuses on the top information Veterans seek out across all VA websites. This homepage also provides Veterans with a standard way to log in to access a personalized user experience. Users are able to log into VA.gov via their existing MyHealthVet, DS Logon, or ID.me credentials.

As VA continues to transition self-service capabilities from eBenefits to VA.gov, there are limited functions available exclusively in eBenefits. All eBenefits functionality has been transitioned to VA.gov except:

- Request for Certificate of Eligibility
- Chapter 31 VRE application
- POA Search and VAF 21-22/a submission
- Specially Adapted Housing (SAH) or Special Home Adaptation (SHA) grant application
- Order prosthetic socks
- View My Document

To register for an account, follow the online prompts on VA.gov.

APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES <i>(Please read Privacy Act Statement and Instructions on Pages 3 and 4 BEFORE completing this application.)</i>						OMB No. 0704-0004 OMB approval expires Dec 31, 2017
The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Alexandria, VA 22350-3100 (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.						
1. APPLICANT DATA <i>(The person whose discharge is to be reviewed).</i> PLEASE PRINT OR TYPE INFORMATION.						
a. BRANCH OF SERVICE <i>(X one)</i>		<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> NAVY	<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD
b. NAME <i>(Last, First, Middle Initial)</i>			c. GRADE/RANK AT DISCHARGE		d. SOCIAL SECURITY NUMBER	
e. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 <i>(Forward notification of any change in address.)</i>					f. TELEPHONE NUMBER <i>(Include Area Code)</i>	
					g. E-MAIL	
					h. FAX NUMBER <i>(Include Area Code)</i>	
2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i>		4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>			5. BOARD ACTION REQUESTED <i>(X all that apply)</i>	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION		<input type="checkbox"/> HONORABLE			<input type="checkbox"/> CHANGE TO HONORABLE	
		<input type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS	
		<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO UNCHARACTERIZED <i>(Not applicable to Air Force or service members with over 6 months of service)</i>	
		<input type="checkbox"/> BAD CONDUCT <i>(Special Court-Martial only)</i>			<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION:	
<input type="checkbox"/> UNCHARACTERIZED						
<input type="checkbox"/> OTHER <i>(Explain)</i>						
6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST <i>(Continue in Item 13. See instructions on Page 3.)</i>						
7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON <i>(YYYYMMDD)</i> _____ AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.						
8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: <i>(Continue in Item 14. If military documents or medical records are relevant to your case, please send copies.)</i>						
9. TYPE OF REVIEW REQUESTED <i>(X one)</i>						
<input type="checkbox"/> CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR <i>(counsel/representative)</i> WILL NOT APPEAR BEFORE THE BOARD.						
<input type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.						
<input type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO <i>(enter city and state)</i> _____ (NOTE: The Naval and Coast Guard Discharge Review Boards do not have traveling panels.)						
10.a. COUNSEL/REPRESENTATIVE <i>(if any)</i> NAME <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See Item 10 of the instructions about counsel/representative.)</i>				b. TELEPHONE NUMBER <i>(Include Area Code)</i>		
				c. E-MAIL		
				d. FAX NUMBER <i>(Include Area Code)</i>		
11. APPLICANT MUST SIGN IN ITEM 12.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name <i>(print)</i> _____ and relationship by marking a box below.						
<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i> _____	
12. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>						CASE NUMBER <i>(Do not write in this space.)</i>
a. SIGNATURE - REQUIRED <i>(Applicant or person in Item 11 above)</i>				b. DATE SIGNED - REQUIRED <i>(YYYYMMDD)</i>		

13. CONTINUATION OF ITEM 6, ISSUES *(If applicable)*

14. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS *(If applicable)*

15. REMARKS *(If applicable)*

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

<p style="text-align: center;">ARMY</p> <p>Air Force Review Boards Agency 251 18th Street South Suite 385 Arlington, VA 22202-3531 (See http://arba.army.pentagon.mil)</p>	<p style="text-align: center;">NAVY AND MARINE CORPS</p> <p>Secretary of the Navy Council of Review Boards ATTN: Naval Discharge Review Board 720 Kennon Ave S.E., Suite 309 Washington Navy Yard, DC 20374-5023</p>
<p style="text-align: center;">AIR FORCE</p> <p>Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742</p>	<p style="text-align: center;">COAST GUARD</p> <p>Commandant (CG-133) Attn: Office of Military Personnel US Coast Guard Stop 7907 2703 Martin Luther King, Jr. Ave., S.E. Washington, DC 20593-7907</p>

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553, Review of Discharge or Dismissal; DoD Instruction 1332.28, Discharge Review Board (DRB) Procedures and Standards; and E.O. 9397 (SSN), as amended.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual. The appropriate Military Service Discharge Review Board reviews submitted packages and makes determinations. Completed forms are covered by the correction of discharge review board and official military records SORNs maintained by each of the Military Services. The DoD Systems of Records Notices can be located at <http://dpclid.defense.gov/Privacy/SORNsIndex/DODComponentNotices.aspx>.

ROUTINE USE(S): The DoD Blanket Routine Uses found at <http://dpclid.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx> may apply to this collection.

DISCLOSURE: Voluntary. However, failure to provide identifying information may impede processing of this application. The SSN is used by the Military Services to ensure the correct individual's official military personnel file is updated.

Applicable SORNs:

Discharge Review Board Records:

Army (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6000/a0015-185-sfmr.aspx>)

Navy/Marine Corps (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6510/nm01000-1.aspx>)

Air Force (<http://dpclid.defense.gov/Privacy/SORNsIndex/tabid/5915/Article/5899/f036-safcb-a.aspx>)

Coast Guard (<http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/html/2011-27881.htm>)

Official Military Personnel Files:

Army (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6131/a0600-8-104-ahrc.aspx>)

Navy (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6405/n01070-3.aspx>)

Marine Corps (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODComponentArticleView/tabid/7489/Article/6775/m01070-6.aspx>)

Air Force (<http://dpclid.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/5876/f036-af-pc-c.aspx>)

Coast Guard (<http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/html/2011-27881.htm>)

INSTRUCTIONS FOR COMPLETION OF DD FORM 293**REQUESTING COPIES OF YOUR OFFICIAL MILITARY PERSONNEL FILE**

Information on how to obtain military or health records is available at the National Personnel Records Center website at

www.nara.gov/regional/mpr.html or at your local Veterans

Administration office.

Applicants are strongly encouraged to submit any request for their military records prior to applying for a discharge review rather than after submitting a DD Form 293 in order to avoid substantial delays in processing of the application and scheduling of review. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review prior to the review. The Board shall notify applicants of the date of availability of the records for examination in their standard scheduling information.

Submission of a request for an applicant's military records (including a request pursuant to the Freedom of Information Act or Privacy Act) after the DD Form 293 has been submitted will automatically result in the suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the possession of the headquarters of the Discharge Review Board. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable.

DD FORM 293 - PLEASE PRINT OR TYPE INFORMATION. (Items on the form are self-explanatory unless otherwise noted below.)

ITEM 1b. Use the name which you served under while in the Armed Forces. If your name has since changed, then also include your current name after adding the abbreviation "AKA". If the former member is deceased or incompetent, see Item 11.

ITEM 1e. Indicate the address to be used for all future correspondence regarding this application. If you change this address while this application is pending, you must notify the Discharge Review Board immediately. Failure to attend a hearing as a result of an unreported change in address may result in a waiver of your right to a hearing.

ITEM 2. If you received more than one discharge, the information in this item should refer to the discharge that you want changed. Discharge Review Boards cannot consider any type of discharge resulting from a sentence given by a general court-martial.

ITEM 3. If the discharge you want reviewed was issued over 15 years ago, instead of applying on a DD Form 293, you must petition the appropriate Board for Correction of Military Record using DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552.

ITEM 5. If you request a change of narrative reason for separation, you must list the specific reason for discharge that you believe to be appropriate, otherwise the Board will presume that you do not want a change in reason for discharge. If you do not request a change of discharge characterization in this item, the Board will presume you want to change discharge to Honorable.

If you were separated on or after 1 October 1982 while in an entry level status with an under other than honorable conditions discharge and less than 180 days of active service, you can request a change of discharge characterization to "Uncharacterized" and discharge reason to "Entry Level Separation".

ITEM 6. "Issues" are the reasons why you think your discharge should be changed. You are not required to submit any issues with your application. However, if you want the Board to respond in writing to the issues of concern, you must list your specific issues in accordance with those instructions and regulations governing the Board. Issues must be stated clearly and specifically. Your issues should address the reasons why you believe that the discharge received was improper or inequitable. It is important to focus on matters that occurred while you served in the Armed Forces.

The following examples demonstrate one way in which issues may be stated (the example issues do not indicate, in any way, the only type of issues that should be submitted to the Board):

Example 1. My discharge was inequitable because it was based on one isolated incident in 28 months of service with no other adverse action.

INSTRUCTIONS FOR COMPLETION OF DD FORM 293 (Continued)**ITEM 6. ISSUES (Continued)**

Example 2. The discharge is improper because the applicant's pre-service civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings.

In Item 6 list each of your issues that you want the Board to address. There is no limit to the number of issues that you may submit. If you need additional space, continue in Item 14 or on a plain sheet of paper and attach it to this application.

NOTE: If an issue is not listed in Item 6, it may result in the Board not addressing the issue even if the issue is discussed in a legal brief or other written submissions or at the hearing. Changes or additions to the list may be made on the DD Form 293 anytime before the Discharge Review Board closes the review process for deliberation. Please be sure that your issues are consistent with the Board Action Requested (Item 5). If there is a conflict between what you say in your issues and what you requested in Item 5, the Board will respond to your issue in the context of the action requested in Item 5. For example, if you request a General Discharge in Item 5 but your issue in Item 6 indicated you want an Honorable Discharge, the Board will respond to the issue in terms of your request for a General Discharge. Therefore, if you are submitting issues for the purpose of obtaining an Honorable Discharge, be sure to mark the box for an Honorable Discharge in Item 5.

Incorporation by Reference. Issues that are listed on a legal brief or other written submissions may be incorporated by reference in Item 6. The reference must be specific enough for the Board to clearly identify the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated.

Example: Issue 1. Brief, page 2, paragraph 1, sentences one and two.

Applicants should be as specific as possible with all references so the Board can clearly distinguish the scope of the issue. Because it is to your benefit to bring such issues to the Board's attention as early as possible in the review, if you submit a brief, you are strongly urged to set forth all such issues as a separate item at the beginning of the brief.

ITEM 8. Evidence not in your official records should be submitted to the Board before the review date. It is to your advantage to submit such documentation with this application. This also applies to legal briefs or counsel submissions. However, you have the right to submit evidence until the time the Discharge Review Board closes the review process for deliberation. Documents that are of the most benefit are those which substantiate or relate directly to your issues in Item 6. Other documents that may be helpful are character references, criminal, credit and employment reports, educational achievements, exemplary post-service conduct, and medical reports. You should add your name and Social Security Number to each document submitted. The Board will consider all documents submitted in your behalf, but will respond in writing only to those issues set forth in Item 6.

ITEM 9. TYPE OF REVIEW REQUESTED

A Discharge Review is conducted in two basic ways: (1) Records Review or (2) Hearing.

1. **Records Review.** You may have the Board conduct a discharge review based solely on military records and any additional documentation that you provide. This review is conducted without personal appearance by you and/or your counsel appearing. A personal appearance hearing can be requested, however, you forfeit your right to a record review.

ITEM 9. TYPE OF REVIEW REQUESTED (Continued)

2. **Hearing.** You may appear personally (alone or assisted by a representative/counsel) before the Board in the Washington, D.C. Metro Area or before a Traveling Panel of the Board in selected locations throughout the U.S., if appropriate. The Department of Defense is not responsible for, nor will it pay for, any costs incurred by the applicant or representative/counsel for appearance or providing testimony or documentation. Detailed notification and/or scheduling information for all personal appearances will be provided after the application has been processed. In addition, without appearing yourself, you may have your case presented by a representative/counsel of your choice. **NOTE: The Naval and Coast Guard Discharge Review Boards do not have traveling panels.**

Applicants participating in a personal appearance or hearing examination may make sworn or unsworn statements, introduce witnesses, documents, or other information on their behalf. Applicants may make oral or written arguments personally and/or through representative/ counsel. Applicants and witnesses who present sworn or unsworn statements may be questioned by the Board.

FAILURE TO APPEAR AT A HEARING OR RESPOND TO A SCHEDULING NOTICE. If you do not appear at a scheduled hearing or respond as required to a scheduling notice, and you did not make a prior, timely request for a continuance, postponement, or withdrawal of the application, you will forfeit the right to a personal appearance and the Board shall complete its review of the discharge based upon the evidence of record.

ITEM 10.a - d. Omit if you do not have a representative/counsel. If you later obtain the services of either, inform the Board immediately.

The military services do not provide counsel representation or evidence for you, nor do they pay the cost of such representation under any circumstance. The following organizations regularly furnish representation at no charge to you. Representatives may or may not be lawyers.

1. American Legion
2. Disabled American Veterans
3. State or Regional Veterans Offices

In addition, there are other organizations willing to assist you in completing this application and to provide representation at no cost. It is to your advantage to coordinate with your counsel prior to submitting this application. This will insure that your counsel is able to appear at the location you listed in Item 9. Please note that some of the organizations listed above only represent applicants who appear before the Board in the Washington, D.C. Metro Area. Contact your local veterans affairs office, Veterans Administration Office or veterans service organization for further information.

ITEM 11. If the former member is deceased or incompetent, the application may be submitted by the next of kin, a surviving spouse or a legal representative. Legal proof of death or incompetency and satisfactory evidence of the relationship to the former member must accompany this application.

ITEM 12.a. and b. A signature and date entered by the applicant or person identified in Item 11 are required.

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552

(Please read Privacy Act Statement and instructions on back BEFORE completing this application.)

OMB No. 0704-0003 OMB approval expires: 20221031

DO NOT WRITE BELOW

CASE NUMBER

SECTION 1: SERVICE MEMBER (The person whose discharge is to be reviewed.)

PLEASE PRINT OR TYPE INFORMATION

1. BRANCH AT TIME OF ERROR OR INJUSTICE [] ARMY [] NAVY [] AIR FORCE [] COAST GUARD [] MARINE CORPS

2. COMPONENT AT TIME OF ERROR OR INJUSTICE [] REGULAR [] RESERVE [] GUARD

3. NAME WHILE SERVING Last First MI Suffix

4. CURRENT NAME (if different) Last First MI Suffix

5a. SSN WHILE SERVING CURRENT SSN (if different)

5b. (provide, if applicable) [] DoD ID Number, [] SERVICE NUMBER, or [] TIN

6. MAILING ADDRESS (If Service Member is deceased, skip this question.)

Street City, State / APO / Country or Foreign Address ZIP Email Phone

SECTION 2: SEPARATION INFORMATION (if not currently serving)

7. CURRENTLY SERVING? [] YES [] NO 8. DATE OF SEPARATION (YYYYMMDD)

9. CHARACTER OF SERVICE (If by court-martial, also state Type of Court in space provided.)

[] Honorable [] Under Honorable Conditions (General) [] Under Other than Honorable Conditions [] Bad Conduct Discharge [] Dishonorable [] Dismissal [] Uncharacterized / Entry Level Separation [] Other Type of Court

SECTION 3: ERROR OR INJUSTICE

10a. IS THIS A REQUEST FOR RECONSIDERATION OF A PRIOR APPLICATION TO THE BOARD? [] YES [] NO

10b. IF YES AND KNOWN, PROVIDE CASE NUMBER AND DECISION DATE (YYYYMMDD)

11. CATEGORY (Select all that apply. Example: Administrative Correction - change in name, DOB, SSN.)

[] Administrative Correction [] Pay & Allowance [] Decoration / Awards [] Performance / Evaluations / Derogatory Information [] Disability [] Promotions / Rank [] Discharge / Separation [] Other

12. WHAT CORRECTION AND RELIEF ARE YOU REQUESTING FOR THIS ERROR OR INJUSTICE IN THE SERVICE MEMBER'S RECORD? (required)

13. ARE ANY OF THE FOLLOWING ISSUES/CONDITIONS RELATED TO YOUR REQUEST: (Select all that apply.)

[] PTSD [] TBI [] Other Mental Health [] Sexual Assault / Harassment [] DADT [] Transgender [] Reprisal / Whistleblower

14. WHY SHOULD THIS CORRECTION BE MADE? (required)

15. APPROXIMATE DATES (YYYYMMDD) THE ERROR OR INJUSTICE OCCURRED: AND WAS DISCOVERED:

IF THE DATE OF DISCOVERY IS MORE THAN 3 YEARS AGO, EXPLAIN YOUR DELAY AND WHY THE BOARD SHOULD CONSIDER YOUR REQUEST. REFER TO BLOCK 18.

INSTRUCTIONS FOR COMPLETION OF DD FORM 149

Under Title 10 United States Code Section 1552, current and former members of the Armed Forces, their lawful or legal representatives, spouses and ex-spouses of former members seeking Survivor Benefit Program (SBP) benefits, and civilian employees seeking correction of military records other than those related to civilian employment, who feel that they have suffered an injustice as a result of error or injustice in military records may apply to their respective Boards for Correction of Military (or Naval) Records (BCMR/BCNR) for a correction of their military records. These Boards are the highest level appellate review authority in the military. Therefore, applicants must exhaust all other administrative correction and appeal procedures before applying to the Boards.

This form collects the basic data that the Boards need to process and act on the request. Type or print all entries for all applicable items. If the item is not applicable, enter "NA." If the space provided is insufficient, attach an extra page.

SECTION 3, ITEM 12. State the specific correction of record and all relief desired. If possible, identify exactly what document or information in your record you believe to be erroneous or unjust and indicate what correction you want made to it. For additional errors or injustices, use Section 8.

ITEM 14. To justify correction of a military record, you must explain and show to the satisfaction of the Board that the alleged entry or omission in the record is in error or unjust.

ITEM 15. U.S. Code, Title 10, Section 1552(b), states that no correction may be made unless the request is made within three years after the discovery of the error or injustice, but the Board may excuse failure to file within three years in the interest of justice.

ITEM 16. Indicate whether you attribute the error or injustice to your involvement in a particular war or contingency operation.

ITEM 17. A hearing is not required to ensure the Board's full and impartial consideration of your application. If the Board decides that a hearing is warranted, you, your witnesses, and your counsel may attend at no expense to the government, except that counsel may be provided if the Inspector General has reported reprisal against you.

SECTION 4. You are responsible for obtaining and submitting clear, legible evidence to persuade the Board to grant your request, including any evidence that is not already in your military record. Do not assume a document is in your record. Your evidence should be submitted with this form and may include, for example, military records and orders, witnesses' sworn affidavits, and a brief of arguments supporting your request. List your evidence in item 19 and, if your case involves a medical condition, submit relevant medical records and VA rating decisions as noted in item 20. Do not send irreplaceable original documents because they will not be returned.

SECTION 5. The person whose record will be corrected if relief is granted must sign this form in Section 7. If that person is deceased or incompetent to sign, a lawful claimant, such as a spouse, widow(er), next of kin (child, parent, or sibling), or legal representative, may sign the form. Proof of death, incompetency, or power of attorney must be submitted. Former spouses may apply as claimants for SBP issues.

SECTION 6. You may want counsel if your case is complex. Some veterans and service organizations furnish counsel without charge. Contact your local post or chapter.

For detailed information on application and Board procedures, see: Army Regulation 15-185 and www.arba.army.pentagon.mil; Navy - SECNAVINST.5420.193 and www.hq.navy.mil/bcnr/bcnr.htm; Air Force Instruction 36-2603, Air Force Pamphlet 36-2607, and www.afpc.randolph.af.mil/safmrbr; Coast Guard - Code of Federal Regulations, Title 33, Part 52 and www.uscg.mil/Resources/legal/BCMR.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS	AIR FORCE	COAST GUARD
Army Review Boards Agency 251 18th Street South, Suite 385 Arlington, VA 22202-3531 http://arba.army.pentagon.mil	Board for Correction of Naval Records 701 S. Courthouse Rd, Suite 1001 Arlington, VA 22204-2490 http://www.secnav.navy.mil/mra/bcnr/Pages/default.aspx	Air Force Board for Correction of Military Records 3351 Celmers Lane Joint Base Andrews, MD 20762-6435 http://www.afpc.af.mil/Board-for-Correction-of-Military-Records/	DHS Office of the General Counsel Board for Correction of Military Records, Stop 0485 2707 Martin Luther King Jr. Ave. S.E. Washington, DC 20528-0485 https://www.uscg.mil/Resources/legals/BCMR/

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON PAGE 3.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1552, Correction of military records: claims incident thereto; and E.O. 9397 (SSN), as amended.
PRINCIPAL PURPOSE(S): To initiate an application for correction of military record. The form is used by Board members for review of pertinent information in making a determination of relief through correction of a military record. Completed forms are covered by correction of military records SORNs maintained by each of the Services or the Defense Finance and Accounting Service.

ROUTINE USE(S): The DoD Routine Uses can be found in the applicable system of records notices below:
 Army (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/569931/a0015-185-sfmr.aspx>)
 Navy and Marine Corps (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570411/nm01000-1/>)
 Air Force (<https://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/569833/f036-safcb-a/>)
 Defense Finance and Accounting Service (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570192/t7340b/>)
 Coast Guard (<https://www.gpo.gov/fdsys/pkg/FR-2013-10-02/html/2013-23991.htm>)
 Official Military Personnel Files:
 Army (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570054/a0600-8-104-ahrc.aspx>)
 Navy (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570310/n01070-3/>)
 Marine Corps (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570626/m01070-6/>)
 Air Force (<http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-Component-Article-View/Article/569821/f036-af-pc-c/>)
 Coast Guard (<http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/html/2011-27881.htm>)

DISCLOSURE: Voluntary. However, failure by a claimant to provide the information not annotated as "optional" may result in a denial of your application. A claimant's SSN is used to retrieve these records and links to the member's official military personnel file and pay record.

February 21, 2023

DAVID HAMILL
[REDACTED]
[REDACTED]
[REDACTED]

In reply, refer to:
328/SMB
File Number: [REDACTED]
David Hamill

Dear Mr. Hamill:

We made a decision regarding your discharge from military service. Every effort was made to see that your claim received complete consideration.

This letter tells you what we decided. It includes a copy of our administrative decision that gives the evidence used and reasons for our decision. We have also included information on what you can do if you don't agree with our decision, and who to contact if you have questions or need assistance.

What We Decided

We decided that your military service for the period of January 26, 2009, through March 15, 2013, is dishonorable for VA purposes. You and your dependents aren't eligible for any VA benefits for this period of military service. Only Veterans with honorable service are eligible for VA benefits.

There has been no new and relevant evidence submitted to reopen your claim for Character of Discharge determination.

You may be eligible for treatment at a VA hospital for the condition of Post-Traumatic Stress Disorder. You should apply for treatment at the nearest VA Medical Center or Outpatient Treatment Clinic. If you apply in person, please bring this letter. If you apply by letter, include your VA file number on your letter.

Page 2

File Number: [REDACTED]
 HAMILL, DAVID

What You Should Do If You Disagree With Our Decision

If you do not agree with this decision, you have one year from the date of this letter to select a review option to preserve your earliest effective benefit date. Your three review options and their proper applications are as follows, for a(n):

- **Supplemental Claim**, complete **VA Form 20-0995**, *Decision Review Request: Supplemental Claim*
- **Higher-Level Review**, complete **VA Form 20-0996**, *Decision Review Request: Higher-Level Review*
- **Appeal to the Board**, complete **VA Form 10182**, *Decision Review Request: Board Appeal (Notice of Disagreement)*

Please see the enclosed VA Form 20-0998, *Your Right to Seek Review of Our Decision* for an explanation of additional review options. You may obtain any of the required applications by downloading them from www.va.gov/vaforms/ or by contacting us. You can also learn more about the disagreement process at www.va.gov/decision-reviews. If you would like to obtain or access evidence used in making this decision, please contact us as noted below. Some evidence may be obtained online by signing in at www.va.gov.

You can also ask the Service Department to change the character of discharge or you can apply for a correction of military records. To request a change, use the enclosed DD Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States. To apply for correction, use the enclosed DD Form 149, Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, and Section 1552. Send the completed form to the proper address on the back of the form.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov .

Page 3

File Number: [REDACTED]
HAMILL, DAVID

If you	Here is what to do.
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail all written correspondence to the appropriate address listed on the attached <i>Where to Send Written Correspondence</i> .

In all cases, be sure to refer to your VA file number, [REDACTED].

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

We sent a copy of this letter to your representative, YELENA C DUTERTE, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Regional Office Director

Enclosures: Administrative Decision dated May 15, 2014
Where to Send Written Correspondence
VA Form 20-0998
DD Form 149
DD Form 293

cc: YELENA C DUTERTE

AFFIDAVIT

I, Yelena Duterte, having been first duly sworn, provide this Affidavit in support of the Petitioner's Request for Class Action Certification.

1. I am the Director of the Veterans Legal Clinic at University of Illinois Chicago School of Law.
2. On April 11, 2022, I sent out a survey created by law students to a listserv that is hosted by William & Mary Law School's Veterans Benefits Clinic.
3. The listserv consists of attorneys in law school veteran legal clinics, legal aid organizations, and law firms that provide pro bono services to veterans.
4. As an introduction to the survey, I wrote:

"The UIC Law Clinic is looking into creating a Class Action for Veterans that are experiencing issues with the VA in processing a COD review. This could include extensive delays in receiving an answer from the VA spanning multiple years. It could also include inadequate answers from the VA that lack an explanation for the denial.

Some examples include:

- VA making a Chapter 17 decision, without the underlying COD determination.
- VA relying on an old COD determination and not considering whether there is new/material or new/relevant evidence.
- VA refusing to make a decision on a COD"

5. The survey was created in a software called Qualtrics, which provides a platform to receive survey responses online.
6. The responses herein were collected between April and November 2022, with most of the responses being received in May 2022.
7. We received twenty response to the survey, with five of the respondents denying that they have seen this issue.
8. The attached exhibit is a true and correct copy of the summary of results generated by Qualtrics, except Questions 10-14, which asked for respondents' names, emails, phone number, and whether they agree to be contacted has been removed. Although the survey starts at "Q3," this is the first question of the survey and appears to be a clerical error.

The Qualtrics results collates answers to multiple-choice questions into bar graphs. For example, for Question 3 (Q3), five attorneys chose the option that they had 1-2 clients who are facing this type of issue; four attorneys chose the "3-5 clients" option; three attorneys chose 6-10 clients; and three attorneys reported they have 11 or more clients facing this issue. For survey questions soliciting respondent-generated text, the Qualtrics results lists the various responses given.

I hereby certify, under penalty of perjury, that the information contained in this affidavit is true and correct.

STATE OF _____)
) SS
COUNTY OF _____)

Yelena Duterte
PRINT FULL NAME

[Signature]
SIGNATURE

Sworn to and subscribed before me this 6th day of March, 20 23.

[Signature]
Notary

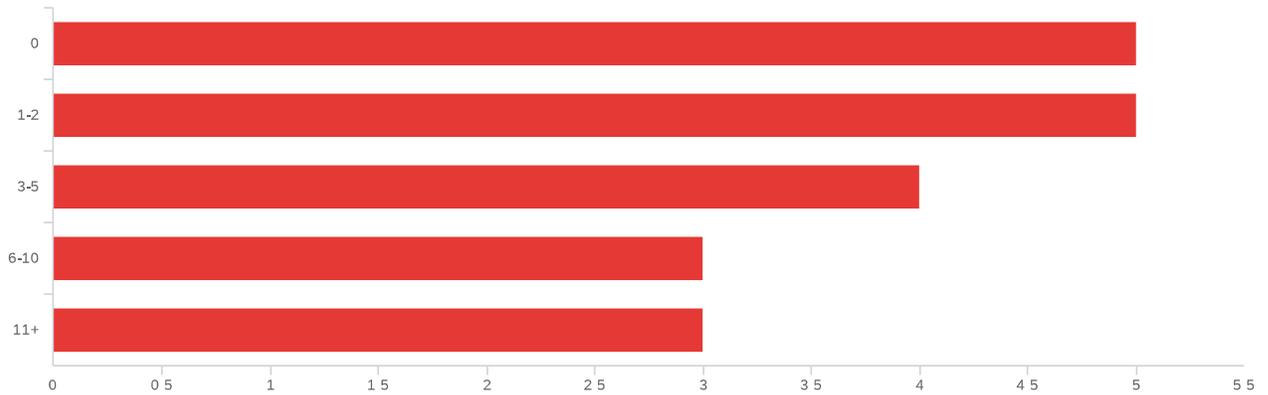


Default Report

Vets Class Action Survey

November 6, 2022 9:53 AM MST

Q3 - How many clients do you currently represent who are facing this issue?

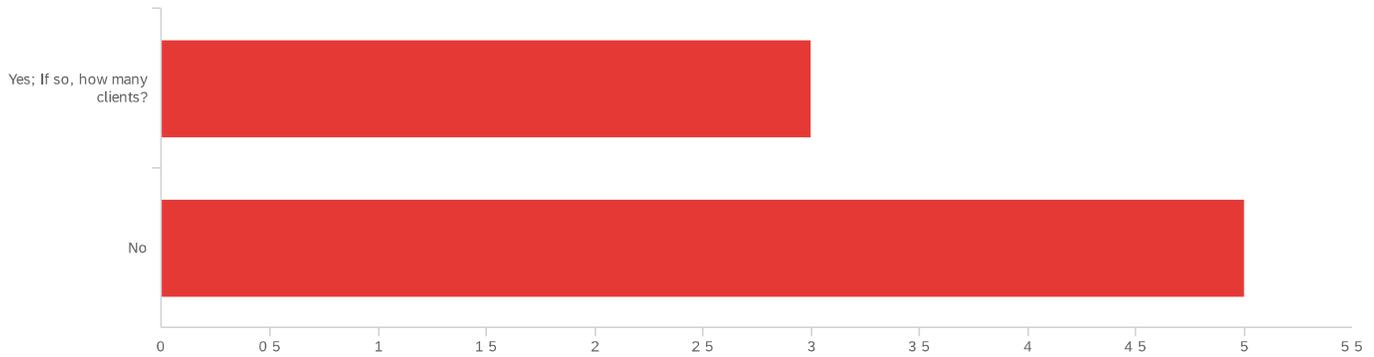


#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	How many clients do you currently represent who are facing this issue?	1.00	5.00	2.70	1.38	1.91	20

#	Field	Choice Count
1	0	25.00% 5
2	1-2	25.00% 5
3	3-5	20.00% 4
4	6-10	15.00% 3
5	11+	15.00% 3
		20

Showing rows 1 - 6 of 6

Q4 - Do you have clients who are waiting for a determination from their initial COD claim?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Do you have clients who are waiting for a determination from their initial COD claim? - Selected Choice	1.00	2.00	1.63	0.48	0.23	8

#	Field	Choice Count
1	Yes; If so, how many clients?	37.50% 3
2	No	62.50% 5

8

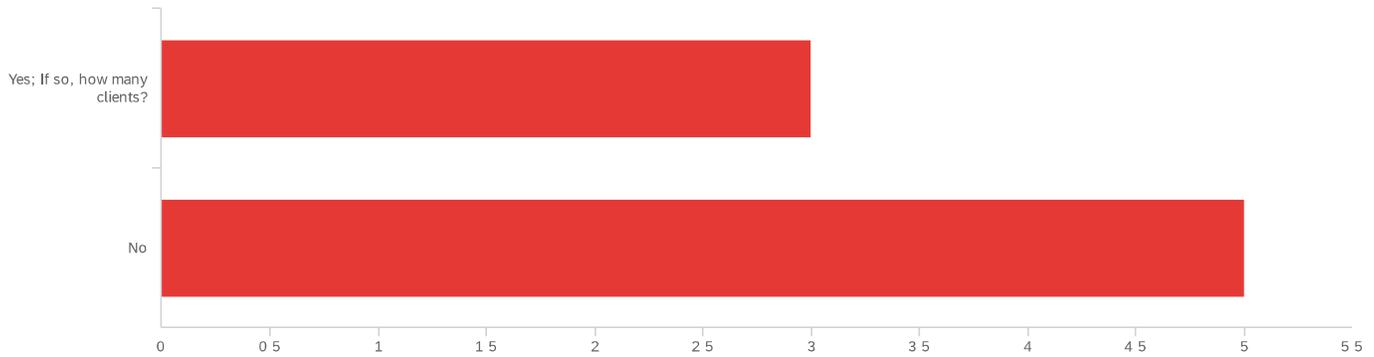
Showing rows 1 - 3 of 3

Q4_1_TEXT - Yes; If so, how many clients?

Yes; If so, how many clients?

1
6
1

Q5 - Do you have clients who have received a Ch. 17 determination without the underlying COD?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Do you have clients who have received a Ch. 17 determination without the underlying COD? - Selected Choice	1.00	2.00	1.63	0.48	0.23	8

#	Field	Choice Count
1	Yes; If so, how many clients?	37.50% 3
2	No	62.50% 5

8

Showing rows 1 - 3 of 3

Q5_1_TEXT - Yes; If so, how many clients?

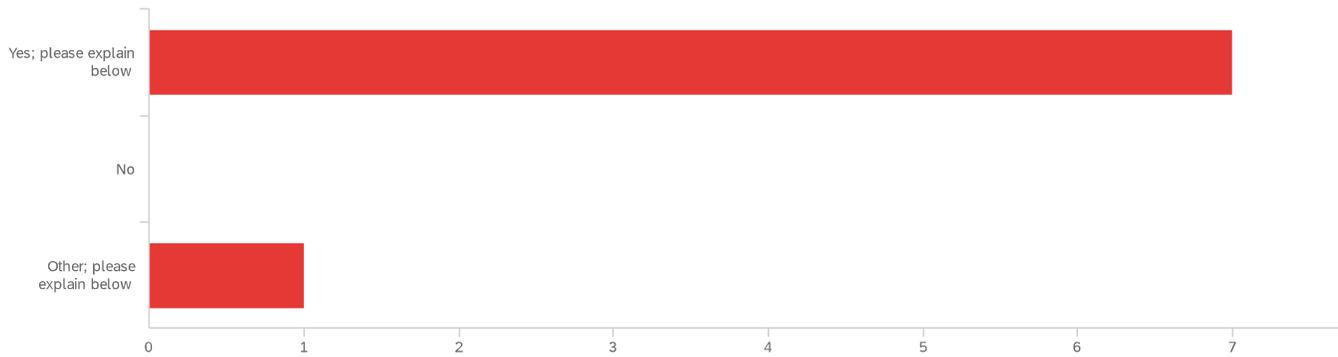
Yes; If so, how many clients?

2

1

3-5

Q6 - Did the VA deviate from the standard process of review for your clients' COD claim?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Did the VA deviate from the standard process of review for your clients' COD claim? - Selected Choice	1.00	3.00	1.25	0.66	0.44	8

#	Field	Choice Count
1	Yes; please explain below:	87.50% 7
2	No	0.00% 0
3	Other; please explain below:	12.50% 1
		8

Showing rows 1 - 4 of 4

Q6_1_TEXT - Yes; please explain below:

Yes; please explain below:

two cases VA failed to initiate COD for very long time, one still pending since 2015; one speedy denial of supplemental claim on COD without re-reviewing anything; never put "sanity" at issue in cases where MH claimed or apparent; improper insanity determinations; other issues too

Did not reopen the COD issue when new/relevant evidence of mental health disorder existed at the time of discharge, was submitted with application for disability compensation.

did not apply benefit of the doubt standard. Did not provide rationale for finding misconduct to be willful and persistent.

Refused to consider after initial COD many years ago. Told clients that they couldn't reconsider unless clients got a discharge upgrade.

CP exam on insanity issue was botched

Yes; please explain below:

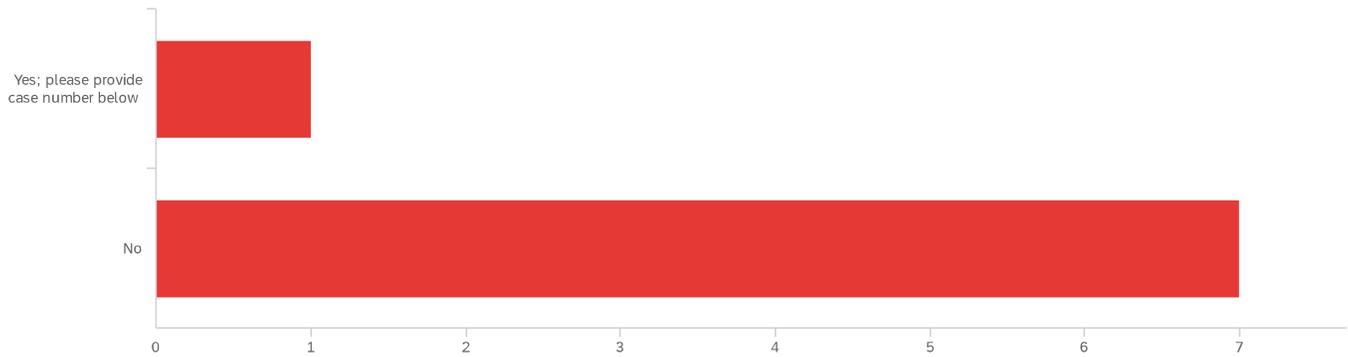
In multiple ways. They never get it right. Ever.

Q6_3_TEXT - Other; please explain below:

Other; please explain below:

I don't think the VA has a standard process.

Q7 - Have you filed a writ of mandamus?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Have you filed a writ of mandamus? - Selected Choice	1.00	2.00	1.88	0.33	0.11	8

#	Field	Choice Count
1	Yes; please provide case number below:	12.50% 1
2	No	87.50% 7

8

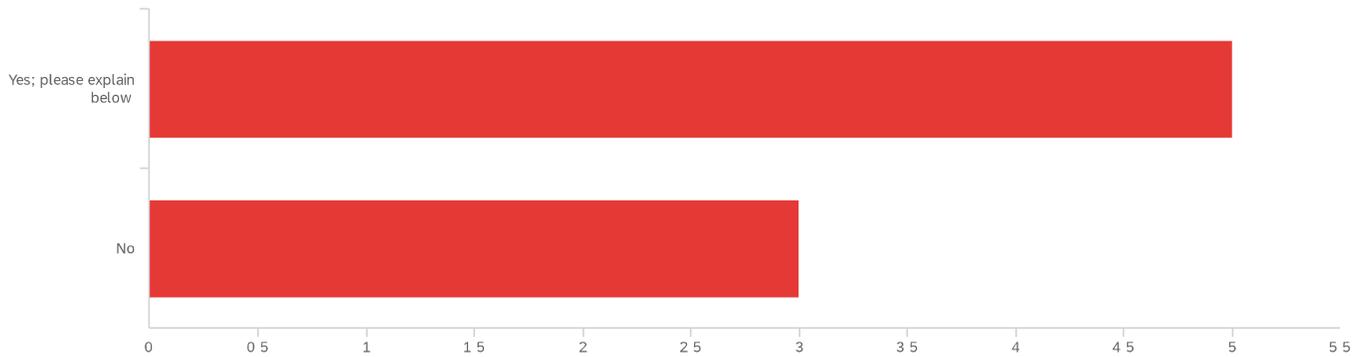
Showing rows 1 - 3 of 3

Q7_1_TEXT - Yes; please provide case number below:

Yes; please provide case number below:

Yes

Q8 - Have you attempted to get an answer from the VA outside of a writ?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Have you attempted to get an answer from the VA outside of a writ? - Selected Choice	1.00	2.00	1.38	0.48	0.23	8

#	Field	Choice Count
1	Yes; please explain below:	62.50% 5
2	No	37.50% 3
		8

Showing rows 1 - 3 of 3

Q8_1_TEXT - Yes; please explain below:

Yes; please explain below:

we are in appeals process on some matters; in one case (and prior cases) we reached out to RO staff

Appeal via HLR/informal conference and requested an informal hearing on the COD issue.

Contacted CMAs and director of offices who manage COD claims of clients affected.

In some cases, I send emails to Regional Office leadership in an effort to get a proper result.

Yes

Q9 - Additional comments

Additional comments

VA consistently refuses to review COD claims which were denied decades ago. Never reviews insanity without being forced. Often uses the wrong standard.

I frequently talk with VA staff and judges about these processing issues. The Board is often difficult, but usually does the right thing. Cases with mandamus are 19-8241; 20-4745; 20-2547; 17-1998; 20-5726;

We are representing clients who have previously received unfavorable CODs and have come to us with a new diagnosis of PTSD/MST etc. We are trying to get the VA to re-evaluate these. There are long delays. The VA also says that they will not consider BCDs without a strong insanity argument.

AFFIDAVIT

I, Yelena Duterte, having been first duly sworn, provide this Affidavit in support of the Petitioner's Request for Class Action Certification.

1. I am the Director of the Veterans Legal Clinic at University of Illinois Chicago School of Law.
2. In addition to representing Mr. Hamill, I represent at least three other veterans who have received Chapter 17 decisions, without an underlying character of service determination.
3. Most recently, I have seen this very issue happen with a veteran I will call "Veteran C."
4. The Veterans Legal Clinic has represented Veteran C since 2021 on his VA benefits claim.
5. He originally filed for benefits in 1977, but was denied benefits due to his less-than-honorable discharge characterization.
6. Veteran C applied for compensation in April 2021.
7. In December 2021, VA sent him a character of discharge letter, explaining that "[a]ny time a Veteran receives a discharge that is not 'honorable,' VA must decide whether that Veteran is eligible for VA benefits . . . As long as we decide that your service was not 'dishonorable,' you will be eligible for VA benefits."
8. In response, Veteran C provided a statement about his service and provided a copy of his military records, which the VA did not have in its possession, yet.
9. VA attempted to obtain his military records through the NPRC, but did not receive them until October 2022.
10. In January 2023, VA issued a Chapter 17 decision, but did not make a decision as to his character of service.
11. In February 2023, I emailed the Veterans Service Center Manager (VSCM) from the New Orleans Regional Office to fix the error, since the New Orleans Regional Office made the Chapter 17 Decision.
12. The VSCM from the New Orleans Regional Office responded via email to me, explaining that the "[n]otification letter, dated August 8, 1977, notified [Veteran C] of that decision along with his appeal rights . . . The letter that was sent in December 2021 indicating a review of the character of his service would occur was sent in error and should not have been sent . . . [Veteran C] can submit the attached DD Form 149 to the Military Review Board. The form indicates where it should be sent once completed based on branch of service. If [Veteran C] believes VA did not have all of the information during the initial COD determination, he can request VA look at that decision again based on new evidence submitted."

13. The email from the VSCM does not provide Veteran C with proper appellate rights to appeal whether VA already received new and relevant evidence.

I hereby certify, under penalty of perjury, that the information contained in this affidavit is true and correct.

STATE OF _____)
) SS
COUNTY OF _____)

Yelena Dvorse
PRINT FULL NAME

[Signature]
SIGNATURE

Sworn to and subscribed before me this 6th day of March, 2023.

[Signature]
Notary Public

Notary Seal



IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DAVID A. HAMILL)	
Petitioner,)	
)	
v.)	Docket No.: _____
)	
DENIS MCDONOUGH,)	
Secretary of the U.S.)	
Department of Veterans Affairs,)	
)	
Respondent.)	

PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF MANDAMUS

Pursuant to U.S. Vet. App. R. 21, Veteran David A. Hamill petitions this Court for extraordinary relief in the nature of a Writ of Mandamus directed to the Respondent, Denis McDonough, Secretary of the U.S. Department of Veterans Affairs (“VA”). Mr. Hamill (“Petitioner”) petitions the Court to compel the Secretary to adjudicate his claim for a character of service determination (“COD”) on the merits. In support of his verified petition, Petitioner alleges the following:

THE PARTIES

1. Petitioner David A. Hamill is a Veteran who served in the U.S. Marine Corps from January 23, 2009, to March 15, 2013.
2. Respondent Denis McDonough is the Secretary of VA and is named herein solely in his official capacity.

JURISDICTION

3. This Court has jurisdiction over the subject matter of this action based upon (1) All Writs Act, 28 U.S.C. § 1651(a) (2012) and (2) 38 U.S.C. § 7261(a)(2). Further,

jurisdiction is based upon the general supervisory authority of the United States Court of Appeals for Veterans Claims (“this Court”) over VA, as conferred by the Veterans Judicial Act of 1988. Finally, this Court may hear this Petition in aid of the Court’s potential jurisdiction over Petitioner’s future claims.

FACTS AND PROCEDURAL HISTORY

4. Petitioner served in the United States Marine Corps from January 2009 through March 2013. Exhibit A, DD-214.
5. In 2013, Petitioner filed a claim for benefits for post-traumatic stress disorder (“PTSD”), other mental health issues, and back pain. Exhibit B, VA Form 21-526EZ.
6. After filing this claim, Petitioner received a letter back from the VA stating “Anytime a veteran receives a discharge that is not “honorable”, we have to decide if you are eligible for VA benefits. The military has said your service was not “honorable.” Therefore, we have to make a decision about your service. As long as we decide that your service was not “dishonorable”, you will be eligible for VA benefits.” Exhibit C, VCAA – DTA Letter September 4, 2013.
7. In an Administrative Decision letter dated in May 2014, it was decided that because of Petitioner’s Other than Honorable (“OTH”) discharge from the Marine Corps he would only be eligible for Chapter 17 medical benefits. Exhibit D, Administrative Decision May 5, 2014.
8. In May 2017, Petitioner filed for benefits including PTSD, Chronic Fatigue Syndrome, Fibromyalgia, Chronic depression, lower back pain, and hearing loss. Exhibit E, VA Form 21-526EZ, May 8, 2017.

9. On July 21, 2017, the VA denied Petitioner's request, since no new evidence was submitted. Exhibit F, VA Denial July 21, 2017.
10. In March 2021, Petitioner filed an Application for Compensation and Supplemental Claim for PTSD, Chronic Fatigue Syndrome, Fibromyalgia, Depression, Lower Back Pain, and Hearing Loss. Exhibit G, 526EZ and Supplemental Claim March 10, 2021.
11. When the decision was rendered, it failed to address the COD determination and only informed Petitioner that he would be receiving Chapter 17 benefits for PTSD. Exhibit H, Decision May 19, 2021.
12. On July 07, 2021, Petitioner, through his counsel, sent a letter to the VA Regional Office ("RO") asking for the character of service determination to be made. Exhibit I, Letter from UIC Law Veterans Legal Clinic July 7, 2022.
13. On July 13, 2022, the VA responded to Petitioner's letter stating that Petitioner "can also ask the Service Department to change the character of discharge or [Petitioner] can apply for correction of military records." Exhibit J, VA Letter July 13, 2022.

SUMMARY OF THE ARGUMENT

Petitioner is entitled to Writ of Mandamus because Respondent has refused to acknowledge, let alone adjudicate, Petitioner's COD claim on the merits despite having a statutory obligation to do so. *See* 38 U.S.C. § 511(a). In 2014, Petitioner received a COD determination stating that because of his other than honorable ("OTH") discharge status he would be eligible for Chapter 17 medical benefits. Petitioner then filed an application for benefits and a supplemental claim for service connection in March of 2021. The decision rendered May 2021 only informed Petitioner that he would be receiving Chapter 17 medical benefits, but no COD decision was made despite Petitioner making a subsequent request. Even following Petitioner's separate request, the

only communication he received from the VA instructed Petitioner to turn to the service department.

However, this Court has explained in *Harris v. McDonough* that such an option, while permissible, is an inadequate means of relief because the VA must adjudicate COD claims, *not* service departments and neither the VA nor this Court have jurisdiction over the service department. Submitting new and material evidence is similarly inadequate because there is no lawful grounds upon which the Secretary may decline to adjudicate a claim because evidence already-submitted is not new and material. Finally, and most significantly, Petitioner’s statutory right to an appealable decision demonstrates not only Petitioner’s clear and indisputable right to a writ, but also that the circumstances show that issuance of a writ is warranted in this case.

ARGUMENT

I. THE VETERAN IS ENTITLED TO A WRIT OF MANDAMUS BECAUSE THE VA HAS FAILED TO ADJUDICATE HIS COD CLAIM, AND NO ALTERNATIVE MEANS EXISTS TO COMPEL THE VA TO ACT.

Petitioner is seeking relief by way of writ of mandamus pursuant the All Writs Act, 28 U.S.C. § 1651(a). The United States Court of Appeals for Veterans Claims “has authority to issue extraordinary writs in aid of its prospective jurisdiction pursuant to the All Writs Act.” *Harris v. McDonough*, 33 Vet. App. 269, 273 (2021).

Writs of mandamus are a drastic remedy and should only be used “in extraordinary situations.” *Id.* (quoting *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, 426 U.S. 394, 402 (1976) (internal quotations omitted). For this Court to issue a writ, the three “*Cheney*” conditions must be met: “(1) [t]he petitioner must demonstrate the lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be

convinced, given the circumstances, that issuance of the writ is warranted.” *Id. See also Cheney v. United States Dist. Court*, 542 U.S. 367, 380-81 (2004); *Kelley v. Shinseki*, 26 Vet. App. 183, 186-92 (2013).

I. Petitioner Has No Adequate Alternative Means Of Relief

a. Seeking A Discharge Upgrade Is An Inadequate Alternative

This Court should find that Petitioner has exhausted all options, has no adequate alternative means of relief, and as such, that issuance of a writ is warranted. In *Harris v. McDonough*, this Court made clear that merely seeking a discharge upgrade (“DU”) from service department is an inadequate means of relief when the VA skirts its “statutory obligation to adjudicate VA benefits claims.” *Harris*, 33 Vet. App. at 271. There, the VA regional office (“RO”) denied a Veteran (“Harris”) discharged OTH due to a pattern of misconduct. *Id.* Later, a 2010 administrative decision found his COD was considered dishonorable based on willful and persistent conduct and there was no evidence or allegation of insanity. *Id.* Despite submitting additional evidence and filing a claim for service-connected PTSD in 2015 and 2018, the RO repeatedly stated it was unable to process his claims because the initial COD determination was final. *Id.* Harris then filed a Notice of Disagreement (“NOD”), which the RO ultimately refused to accept because the one-year time limit to appeal the 2010 decision passed and was final. *Id.* The RO advised Harris that he could file a supplemental claim, request higher-level review, or appeal to the Board if he disagreed with its decision. *Id.*

After Harris petitioned for a writ of mandamus, this Court rejected the Secretary’s argument that merely asking the service department for a DU constituted adequate means of relief because “VA adjudicators, not the service departments, must ‘make a formal character of discharge (“COD”) determination when presented with a claim of benefits predicated on a service

member's other than honorable service.'" *Id.* at 273 (quoting *Robertson v. Shinseki*, 26 Vet. App. 169, 175 (2013), *aff'd sub nom. Robertson v. Gibson*, 59 F.3d 1351 (Fed. Cir. 2014)) (emphasis added). Thus, while petitioners "may [ask the service department for a DU], their "ability to seek administrative relief from a *service department* [does not] prevent[] [petitioners] from obtaining a writ compelling action by the *VA.*" *Id.* at 273-74 (emphasis in original).

Here, as in *Harris*, Petitioner submitted new and material evidence in support of his supplemental VA benefits claim for his PTSD after being informed that his OTH left him eligible only for Chapter 17 medical benefits. While the RO here *did* award service-connection for his PTSD, it failed to even *acknowledge* his COD claim in making that determination—rendering *no* decision as to his COD. Yet, despite Petitioner's subsequent letter requesting that this claim be adjudicated, the VA advised Petitioner that he "can also ask the Service Department to change the character of discharge or [Petitioner] can apply for correction of military records." (VA Letter, July 13, 2022).

However, like *Harris*, the Secretary has failed to show how turning to the service department— "an entity over which neither the Secretary nor this Court has jurisdiction . . . —is an *adequate* alternative means of obtaining relief from the VA's alleged failure to carry out its statutory obligation to issue a decision affecting the provision of VA benefits or is any way related to the regular appeals process for such decisions[.]" *Id.* at 274 (emphasis added). What the veteran sought in *Harris* is precisely what Petitioner seeks: "a VA decision that will allow him to avail himself of the regular appeals process, not a substitute for that process." *Id.* Hence, as this "Court [could not] conclude that the possibility of seeking a discharge upgrade from the service department [was] an adequate alternative means for Mr. Harris to obtain relief that would bar

issuance of a writ,” this Court should make the same conclusion as to Petitioner. *Harris*, 33 Vet. App. at 274.

a. Submitting New And Material Evidence Is Also Inadequate

The *Harris* court also rejected the notion that submitting “new and material evidence as to [Harris’s] [COD]” would constitute an adequate alternative means of relief in lieu of issuing a writ. *Id.* at 274-75. Even if the Secretary were to raise that argument here, *Harris* explained that such an argument rests, “at least in part, on two interrelated assumptions.” *Id.* at 274.

The first assumption, like in *Harris*, is that the evidence Petitioner submitted in support of his PTSD claim was “not material and, therefore, [Petitioner] has not yet met his burden to reopen the COD determination.” *Id.* at 274. However, the Secretary could not explain in *Harris*, and cannot explain now, “why a claimant’s failure to present a winning argument allows VA to evade its statutory obligation to issue a decision affecting the provision of VA benefits.” *Id.* See also 38 U.S.C. § 511(a). As this Court pointed out, there is simply no “authority permitting VA to decline to adjudicate a request to reopen a claim based on new and material evidence on the basis that the evidence in question is not new and material.” *Id.* at 274-75.

The second assumption upon which that argument rests, however, “hits at the crux” of Petitioner’s dispute. *Id.* at 275. Similar to *Harris*, Petitioner “may not appeal” the decision awarding his PTSD benefits because no COD determination was even made and, as such, is “not a decision subject to appeal.” *Id.* However, “a decision subject to appeal is, in essence, the relief [Petitioner] seeks, and to which he is statutorily entitled.” *Id.* See 38 U.S.C. § 511(a). Therefore, because Petitioner’s “entitlement to a decision is guaranteed by statute,” this Court should “decline[] to accept” any “assertion that filing a *second* request to reopen the COD determination based on new and material evidence is an adequate alternative means to obtaining a decision as to

the *first* request to reopen.” *Id.* (emphasis in original). Like the veteran in *Harris*, Petitioner simply “wants VA to issue an appealable decision regarding his . . . character of his discharge.” *Id.* Moreover, “it is clear” from the VA’s failure to adjudicate his COD claim when it awarded Petitioner his Chapter 17 medical benefits and its reply to his subsequent request for COD adjudication that he may “ask the Service Department to change the character of discharge or [Petitioner] can apply for correction of military records,” (VA Letter, July 13, 2022), that the VA “has not issued, and does not intend to issue, such a decision.” *Id.*

In sum, as Petitioner is statutorily “entitled to VA issuance of a decision regarding” adjudication of his COD claim “that is ‘subject to one review on appeal’ to the Board,” this Court should find that Petitioner has satisfied the first *Cheney* condition and has no adequate alternative means of relief barring issuance of a writ. *Id.* at 276 (quoting 38 U.S.C. § 7104(a)).

II. Petitioner Has A Clear And Indisputable Right To The Writ As The Secretary Has Failed To Perform His Statutory Duties

Petitioner has a clear and indisputable right to the writ because the Secretary is statutorily required to “decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary.” 38 U.S.C. § 511(a). The VA acknowledged this obligation in response to his 2013 application for VA benefits. Upon receipt of Petitioner’s application, the VA responded stating, “[a]nytime a veteran receives a discharge that is not ‘honorable’, we have to decide if you are eligible for VA benefits. The military has said your service was not ‘honorable.’ Therefore, we have to make a decision about your service. As long as we decide that your service was not ‘dishonorable’, you will be eligible for VA benefits.” (VCAA/DTA Letter, September 4, 2013). Despite the VA’s acknowledgment in this regard, it has failed to adjudicate Petitioner’s COD claim when it decided to award Chapter 17 medical benefits and again after Petitioner’s subsequent request that the VA do so.

Indeed, as explained above, “petitioners have a statutory right to decisions affecting the provision of benefits,” and have a ‘clear and undisputable right to such a decision.’” *Harris*, 33 Vet. App. at 276 (citing 38 U.S.C. § 511(a) and *Chisolm v. McDonald*, 28 Vet. App. 240, 243 (2016) and quoting *Rosinski v. Wilkie*, 31 Vet. App. 1, 11 (2019)). Thus, this Court should find that “[P]etitioner[] [has] show[n] a clear and undisputable right to issuance of a writ” and that the second *Cheney* condition “is met.” *Id.* See *Cheney*, 542 U.S. at 381.

III. The Circumstances Show That Issuance Of The Writ Is Warranted

As this Court has explained and Petitioner has reiterated, Petitioner “has a statutory entitlement to issuance of a VA decision that, if adverse to him, he may appeal to the Board and the Court[.]” *Harris*, 33 Vet. App. at 276. See also 38 U.S.C. § 511(a) (stating that “[t]he Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits . . .”) (emphasis added); 38 C.F.R. § 3.156(d) (“If new and relevant evidence . . . is presented or secured with respect to the supplemental claim, the agency of original jurisdiction will readjudicate the claim taking into consideration all of the evidence of record.”) (emphasis added); 38 C.F.R. § 3.2501 (defining “new and relevant evidence” as “evidence not previously part of the actual record before agency adjudicators [and] [r]elevant evidence is information that tends to prove or disprove a matter at issue in the claim [that] includes evidence that raises a theory of entitlement that was not previously addressed.”). Additionally, “because [Petitioner] is entitled to issuance of a decision of which the over which the Court may ultimately have jurisdiction, VA’s refusal to issue that decision frustrates judicial review.” *Harris*, 3 Vet. App. at 276. Given that Petitioner lacks “adequate alternative means of relief” and judicial review is frustrated due to the VA’s inaction, this Court should find that “a writ is necessary to protect

[this Court's] potential jurisdiction in this matter" and that the circumstances in toto show that issuance of a writ is warranted. *Id.*

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Court to issue an order directing the Secretary and his agents to make a character of service determination on the decision of the Supplemental Claim that rendered in May 2021.

Dated: December 19, 2022

Respectfully submitted,

/s/ Yelena Duterte
Yelena Duterte
Counsel for the Veteran/Petitioner
Director Veterans Legal Clinic
UIC School of Law
300 S. State St., MC 300
Chicago, IL 60604
(312) 427-2737 ext. 843
Yduter2@uic.edu

APPENDIX CONTENTS

Exhibit A – DD-214.

Exhibit B – VA Form 21-526EZ, April 30, 2013.

Exhibit C – VCAA – DTA Letter September 4, 2013.

Exhibit D – Administrative Decision May 5, 2014.

Exhibit E – VA Form 21-526EZ, May 8, 2017.

Exhibit F – VA Denial, July 21, 2017.

Exhibit G – 526EZ and Supplemental Claim March 10, 2021.

Exhibit H – Decision May 19, 2021.

Exhibit I – Letter from UIC Law Veterans Legal Clinic July 7, 2022.

Exhibit J – VA Letter July 13, 2022.

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

DAVID A. HAMILL,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 22-7344
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

ANSWER TO THE COURT ORDER DATED DECEMBER 22, 2022

Pursuant to the United States Court of Appeals for Veterans Claims Rule 21(d), Respondent, Denis McDonough, Secretary of Veterans Affairs, submits this response to the Court's December 22, 2022, Order, which directed Respondent to file, a response to Petitioner's petition for a writ of mandamus. [December 19, 2022, Petition at 1-10 (1-56)]. In his Petition, Petitioner requests that this Court issue an order directing Respondent to adjudicate his character of service determination (COD) on the merits. Respondent hereby provides the following response to the Court's order to provide the Court with the information necessary to determine whether issuance of a writ of mandamus is justified. For the reason set forth below, the Court should dismiss the Petition as moot.

Petitioner served in the U.S. Marine Corps from January 2009 through March 2013 at which point he was separated with an Other than Honorable (OTH) discharge. See [Petition, Exhibit A (DD 214)]. In 2013, Petitioner filed a

claim for benefits for, *inter alia*, posttraumatic stress disorder (PTSD). See [Petition, Exhibit B (Apr. 2013 claim for disability compensation)]. VA subsequently issued an Administrative Decision finding that Petitioner's COD was a bar to all benefits administered by VA under 38 C.F.R. § 3.12(c)(6) and 38 U.S.C. § 5303(a) but found that he is entitled to health care under Chapter 17 for disabilities deemed service-connected for his period of service. See [Petition, Exhibit D (May 2014 Administrative Decision)]. Petitioner did not appeal this decision.

In May 2017, Petitioner filed another claim seeking service connection for PTSD, chronic fatigue syndrome (CFS), fibromyalgia, chronic depression, lower back pain, and hearing loss. See [Petition, Exhibit E (May 2017 claim for disability compensation)]. This claim was denied as there was no new and material evidence presented sufficient to reopen the claim. See [Petition, Exhibit F (July 2017 decision)]. Petitioner did not appeal this decision.

Thereafter, in May 2021, Petitioner submitted a Supplemental Claim for PTSD, CFS, fibromyalgia, depression, lower back pain, and hearing loss. See [Petition, Exhibit G (May 2021 Supplemental Claim)]. VA issued a decision awarding service connection under Chapter 17 for PTSD. See [Petition, Exhibit H (May 2021 decision)]. Petitioner did not appeal the decision, however, in July 2022, he submitted a letter to VA requesting that decision regarding his character of discharge. See [Petition, Exhibit I (July 2022 letter)]. In response, VA sent Petitioner a letter advising him to ask the Service Department to change the

character of discharge or apply for correction of military records. See [Petition, Exhibit J (July 2022 VA letter)].

On February 21, 2023, the regional office (RO) issued a decision which found that no new and relevant evidence had been submitted to reopen the claim for a COD determination.¹ [Attachment A].

This Court is bound by the case-or-controversy requirement of Article III of the U.S. Constitution. *Mokal v. Derwinski*, 1 Vet.App. 12, 15 (1990). When the relief sought in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order); *Bond v. Derwinski*, 2 Vet.App. 376, 377 (1992) (per curiam) (“When there is no case or controversy, or when a once live case or controversy becomes moot, the Court lacks jurisdiction.”).

A person seeking an extraordinary writ must satisfy three conditions:

(1) The petitioner must demonstrate a “clear and indisputable” entitlement to the writ; (2) the petitioner must demonstrate that he lacks adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted.

Ramsey v. Nicholson, 20 Vet.App. 16, 21 (2006) (citing *Cheney v. United States Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004)).

¹ On March 1, 2023, the undersigned contacted Petitioner’s counsel to ensure receipt of the February 21, 2023, decision. She advised that although she has not yet received the decision in the mail, she has access to the Veterans Benefits Management System (VBMS) and has seen the decision.

In this matter, Petitioner is alleging unreasonable delay. [Petition at 8] (alleging that VA has failed to adjudicate Petitioner's COD claim). When delay is the basis for a petition, "[t]he overarching inquiry . . . is 'whether the agency's delay is so egregious as to warrant a mandamus.'" *Martin*, 891 F.3d at 1344 (quoting *Telecomms. Research & Action Ctr. V. FCC (TRAC)*, 750 F.2d 70, 79 (D.C. Cir. 1984)). In *Martin*, the Federal Circuit held that six factors should be considered when this Court determines whether unreasonable agency delay warrants mandamus. *Id.* at 1345. In *TRAC*, the U.S. Court of Appeals for the D.C. Circuit identified six factors relevant to that inquiry:

(1) The time agencies take to make decisions must be governed by a "rule of reason"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed."

750 F.2d at 80.

Preliminarily, as explained above, the RO has issued an appealable decision regarding the COD determination. [Attachment A]. Because the RO has issued an appealable decision on Petitioner's COD determination, there is no continuing case or controversy before the Court over which it has jurisdiction.

Therefore, the petition is moot, and dismissal of the petition is appropriate. See *Thomas*, 9 Vet.App. at 270-72; *Bond*, 2 Vet.App. at 377.

Although there has been some delay in the processing of Petitioner's claim, a decision has since been issued and therefore, there has not been "complete inaction" by VA. See *Martin*, 891 F.3d at 1345-46. Thus, as to the first, second, and fifth factors, this Court should find that VA's action has not been unreasonable and weighs against issuance of a writ. *Id.* Lastly, the Court should find that the sixth factor weighs against issuance of a writ because there has been no showing of impropriety in the agency's delay.

Petitioner argues that he has submitted new and material evidence in support of his supplemental claim for his PTSD. See [Petition at 6]. In the decision issued on February 21, 2023, the RO determined that no new and relevant evidence was presented to warrant a reopening of the claim for COD determination. [Attachment A]. Attached to the decision is a notice of Petitioner's appellate rights. See *id.* If Petition disagrees with the decision, he has one year from the date of the decision to select a review option. *Id.*

For the foregoing reasons, the Court should find the petition is moot, and that issuance of a writ is not warranted based upon consideration of the *TRAC* factors.

WHEREFORE, Respondent respectfully requests that the Court dismiss as moot the petition for a writ of mandamus, as requested by Petitioner.

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Vet. App. No. 22-7344

DAVID A. HAMILL,

Petitioner,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,

Respondent.

PETITIONER'S REQUEST FOR CLASS CERTIFICATION
AND CLASS ACTION (RCA)

Yelena Duterte (*Counsel*)
UIC School of Law
Veterans Legal Clinic
300 S. State St.
Chicago, IL 60604
312-427-2737 ext. 843
yduter2@uic.edu

Renee Burbank
National Veterans Legal Services
Program
1100 Wilson Blvd
Suite 900
Arlington, VA 22209
202-621-5780
Renee.Burbank@nvlsp.org

Counsel for Appellant

Table of Contents

INTRODUCTION 1

ARGUMENT 3

I. The Secretary Has A Duty To Adjudicate VA Benefits Claims And The Failure To Adjudicate Deprives Veterans Of Their Due Process Rights..... 3

II. Mr. Hamill Has Standing to Pursue The Claim On Behalf Of The Proposed Class 5

1. Although the Secretary Has Satisfied Petitioner’s Individual Request, This Petition Is Not Moot 7

III. Class Action Requirements Are Met..... 9

1. Class Definition 9

2. Rule 23(a) Requirements 9

3. Class Certification Is Superior To A Precedential Decision 18

4. Class Counsel Sufficiency is Met 21

5. Precise Relief Sought; Reasons In Support; Legal Authorities In Support . 22

6. Rule 22(a)(6) Factual Requirements 23

CONCLUSION 25

APPENDIX CONTENTS 27

1. Although the Secretary Has Satisfied Petitioner’s Individual Request, This Petition Is Not Moot

Mr. Hamill’s claim also is not moot, even though his individual request for an appealable decision has been satisfied. On February 21, 2023, soon after the petition in this case was filed—and nearly two years after Petitioner received his Chapter 17 determination—the Regional Office issued the Petitioner a decision as to character of service determination, with proper appellate rights.²⁴

Nonetheless, his claim is not moot because his claim is capable of repetition yet evading review, and because it meets the “picking off” exception to mootness. As this Court found in *Godsey*, a class-action claim is not necessarily moot upon the termination of the named petitioner’s claim where other persons similarly situated will continue to be subject to the challenged conduct.²⁵ The *Godsey* court found that the petition was not moot, since the petitioners presented a live case or controversy at the time that they filed their petition.²⁶ The court noted that to rule otherwise would enable VA to avoid class actions by “picking off” potential lead plaintiffs by selectively mooting their claims before judicial resolution.²⁷

Although VA recently made a decision on Mr. Hamill’s request, he petitioned the court while this request was still a live case or controversy. VA is attempting to evade judicial review by deciding his particular matter before this Court has the chance to rule on

²⁴ Exhibit F, Decision, February 21, 2023.

²⁵ *Godsey v. Wilkie*, 31 Vet. App. 207, 217 (2019).

²⁶ *Id.* at 220.

²⁷ *Id.* at 219.

the matter. Like in *Godsey*, VA can easily evade review of the challenged conduct in Mr. Hamill's petition by simply issuing the requested decision for his particular case, and then continuing to engage in this conduct when it decides other class members' claims or even future claims of Mr. Hamill's. Thus, the issue here is capable of repetition, yet evades review, and the petition is not moot.

Alternatively, if this Court would prefer a named petitioner who still has not received an appealable COD determination, the petition could be amended in add additional named petitioners. Yelena Duterte, counsel on the petition, represents other veterans who are similarly situated and could serve as named petitioners.²⁸ For example:

- Veteran C²⁹ received his original character of service determination in 1977.³⁰ He filed for compensation in April 2021.³¹ In January 2023, VA issued a decision approving Veteran C for Chapter 17 benefits, but failed to decide whether the evidence he submitted towards his character of service determination was new and relevant.³² Rather, VA ignored that determination entirely, similar to Petitioner Hamill.

Professor Duterte's caseload—which, as part of a law school clinic setting, is quite small—includes no less than three other veterans with the similar COD due process issues as Mr. Hamill.³³ This further demonstrates what the survey of other practitioners suggests: that problems relating to COD determinations appear to be a far-ranging and systemic.

²⁸ Exhibit F, Attorney Affidavit.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

CONCLUSION

In consideration of the above information and evidence presented, the Court should certify a class. Mr. Hamill and the class members have met all four requirements of Vet. App. Rule 23(a)¹⁰³ There are likely thousands of veterans who are waiting on a decision from VA on their COD claims based on new and relevant evidence and have not received a decision for their COD.

Mr. David Hamill is an adequate class representative because he has an interest in vigorously pursuing the claims of the class, and has no interests antagonistic to the interests of other class members. Even though Mr. Hamill's request has been satisfied, this petition is capable of repetition, yet evading review. If the court finds that Mr. Hamill's petition is moot, counsel asks the court to allow joinder or, in the alternative, permit counsel to amend the underlying petition to add class members. Lastly, a class action is superior to other available methods, as it would achieve "economies of time, effort, and expenses, and promote uniformity" while not "sacrificing procedural fairness or bringing about other undesirable results."¹⁰⁴ For the reasons above, we ask this Court to find that this class action certification is warranted.

¹⁰³ Vet. App. Rule 23(a) <https://www.uscourts.cavc.gov/rule23.php>

¹⁰⁴ *King v. United States*, 84 Fed. Cl. 120, 128 (2008); see also *Curry v. United States*, 81 Fed. Cl. 328, 337 (2008)

Respectfully submitted,

/s/ Yelena Duterte

Yelena Duterte (*Counsel*)
UIC School of Law
Veterans Legal Clinic
300 S. State St.
Chicago, IL 60604
312-427-2737 ext. 843
yduter2@uic.edu

Renee Burbank
NVLSP
1100 Wilson Blvd
Suite 900
Arlington, VA 22209
202-621-5780
Renee.burbank@nvlsp.org

Counsel for Appellant

Dated: March 6, 2023

(i.e., the presumption that VA’s decision complied with section 5104 by expressly articulating the issues decided).

Second, because the 2021 decision did not satisfy Mr. Hamill’s entitlement to an appealable decision on the COD issue under *Harris v. McDonough*, 33 Vet. App. 269 (2021), the Secretary’s February 2023 decision—issued two months after this petition was filed—is a textbook example of “picking off” a petitioner. Mr. Hamill’s petition therefore is not moot. Third and last, class resolution is overwhelmingly superior to a precedential decision. Mr. Hamill’s own case demonstrates that a precedential decision in *Harris* was not sufficient for him and similarly situated veterans to receive the decisions to which they are entitled.

I. The Secretary Does Not Distinguish *Harris v. McDonough* Because Mr. Hamill Did Not Receive an Implicit Denial.

The Secretary fails to distinguish this case from *Harris v. McDonough*. 33 Vet. App. 269 (2021). In that case, Mr. Harris’ character of discharge was found to be dishonorable for purposes of VA benefits in 2010. *Id.* at 271. Years later, he filed a claim seeking service connection for post-traumatic stress disorder and submitted additional supporting evidence. *Id.* VA notified him that it was unable to process his claim for benefits because the April 2010 determination, that his COD was a bar to benefits, was final. *Id.* The Court held that Mr. Harris was entitled to an appealable decision as to whether the evidence submitted since the April 2010 COD determination was new and material with respect to whether his COD is a bar to VA benefits. *Id.* at 276. “Mr. Harris has a statutory entitlement to issuance of a VA decision that, if adverse to him, he may

appeal to the Board and the Court,” explained the Court. “VA’s refusal to issue that decision frustrates judicial review.” *Id.* Mr. Hamill and the class members want the exact relief this Court already determined Mr. Harris was entitled to: an appealable decision as to whether they have submitted new and material evidence sufficient to reopen their CODs. Hamill Petition at 3-4; 33 Vet. App. at 276.

VA’s one and only argument for why *Harris* does not apply to Mr. Hamill is that VA implicitly denied Mr. Hamill’s COD determination in 2021. Sec’y’s Resp. at 11. That argument fails under both (1) the well-established analysis for implicit denials and (2) the legal presumption that VA complied with its obligations under 38 U.S.C. § 5104 when it issued the 2021 decision.

A. The May 2021 Decision was Not an Implicit Denial Under *Cogburn*

The decision Mr. Hamill received in 2021 was not an implicit denial of his request to reopen the COD determination. “[T]he key question in the implicit denial inquiry is whether it would be clear to a *reasonable person* that the [Secretary’s] action that expressly refers to one claim is intended to dispose of others as well.” *Adams v. Shinseki*, 568 F.3d 956, 964 (Fed. Cir. 2009) (emphasis added). An implicit denial requires knowledge of the claim, adjudication of the claim, and notice to the veteran of the claim. *Id.* at 963-64. It may only be used when VA’s discussion of the claim in its decision is sufficient to *put the veteran on notice that his claim was considered and rejected*. *Id.* The Court has identified four factors for consideration when determining whether a claim was implicitly denied: (1) “[t]he relatedness of the claims”; (2) “whether the adjudication alluded to the pending claim in such a way that it could reasonably be inferred that the

prior claim was denied”; (3) “the timing of the claims”; and (4) whether “the claimant is represented.” *Cogburn v. Shinseki*, 24 Vet. App. 205, 212-14 (2010).

1. *The relatedness or specificity of the claims*

The first factor to be considered is the specificity or relatedness of the claims. This Court cited some examples for guidance stating it is “important to note whether the claimant is seeking benefits for a generalized set of symptoms, a specifically diagnosed disorder, or two (or more) specifically diagnosed disorders that are closely related.” *Cogburn*, 24 Vet. App. at 212 (noting examples of related and not related conditions). Here, the question is whether a petitioner or class member’s claim for service-connected benefits is sufficiently related to a character of discharge determination.

The Secretary asserts without support that any reasonable person would know those issues are related because “it is axiomatic that the character of a former servicemember discharge is the foundation” of a service-connection claim. Sec’y’s Resp. at 5-6. Though the Secretary’s counsel may believe there is an obvious connection, it is far from clear that any reasonable person would believe that a claim granting or denying service connection for Chapter 17 benefits—*i.e.*, evaluating whether a present disability was caused or aggravated by service—carries an implicit determination related to the issues relevant to a COD determination, such as whether the veteran engaged in “willful and persistent misconduct,” or was discharged for “an offense involving moral turpitude,” or whether the person “was insane at the time of committing the offense causing [their] discharge.” 38 C.F.R. § 3.12(b), (d).

Mr. Hamill sought disability compensation benefits related to a variety of conditions, ranging from traumatic brain injury to PTSD to acid reflux and irritable bowel syndrome. *See* RCA – Exhibit D. There is no indication in the VA’s 2021 decision that it had made any analysis about whether new and relevant evidence existed related to the standards of 38 C.F.R. § 3.12. *See* RCA – Exhibit D. How would a reasonable person presume that granting service connection for PTSD meant that VA had considered and rejected that the same evidence was new and relevant to his prior COD determination? Or that the denial of his acid reflux claim and irritable bowel syndrome claims did the same? This factor of *Cogburn* has not been met.

2. *The specificity of the adjudication*

The second factor of *Cogburn*, the specificity of the adjudication, is the most important of the four because “the implicit denial rule is, at bottom, a notice provision.” *Adams*, 568 F.3d at 965. Under this factor, the Court must ask, “does the adjudication allude to the pending claim in such a way that it could reasonably be inferred that the prior claim was denied?” *Cogburn*, 24 Vet. App. at 212.

The answer for Mr. Hamill (and the class) is, quite simply, “No.” The May 2021 decision states only that Chapter 17 benefits were being granted or denied. *See* RCA – Exhibit D. A reasonable person is unlikely to be aware of the existence or meaning of Chapter 17 benefits, and the May 2021 decision does not allude to his character of discharge also being reviewed or denied. In fact, the May 2021 decision is ambivalent regarding his character of discharge. The Rating Decision states Petitioner is a “Veteran of the Gulf War Era” implying that he meets the VA’s definition of Veteran under 38

U.S.C 101(2) (“a person who served in the active military, naval, or air service, and who was discharged or released therefrom *under conditions other than dishonorable*”) (emphasis added). The decision never mentions or even alludes to Mr. Hamill’s characterization of discharge, in either the five numbered decisions, or in the detailed “reasons for decision.” *See* RCA – Exhibit D. The codesheet, which the VA has recently begun including with rating decisions, mentions Petitioner’s character of discharge as “dishonorable for VA purposes,” but this is an informational inclusion to the rating decision that summarizes his current status, and not part of the Rating Decision itself. *See* RCA – Exhibit D.

Mr. Hamill’s situation is similar to the veteran in *Ingram*, which as this Court explained, “when Mr. Ingram was informed that his claim for pension benefits was denied because his condition was ‘not established as permanent,’ he had no reason to know how a disability compensation claim based on section 1151 might have been decided by the regional office.” *Cogburn*, 24 Vet. App. at 212-213. The same is true for Petitioner. When Mr. Hamill was informed about his entitlement to Chapter 17 benefits on a variety of conditions, he had no reason to know if his character of discharge determination was reopened or reconsidered by the regional office. There was no inclusion of language that clarified 38 U.S.C. chapter 17, no discussion of new and relevant evidence, no explanation of how 38 C.F.R 3.12(d) was applied, and no updated Administrative Decision included. *See* RCA – Exhibit D. Compare that with the February 2023 decision, which the regional office sent to Petitioner well after the May 2021 Rating Decision under discussion, which includes the specificity of adjudication that signals to a

reasonable person the character of discharge has been adjudicated. The second *Cogburn* factor also has not been met.

3. *The timing of the claims*

The third *Cogburn* factor is the timing of the claims. Petitioner filed for service-connected disability compensation in March 2021. *See* RCA – Exhibit B. As the Secretary noted, this claim resulted in the May 2021 rating decision. It is conceded that this factor alone weighs in favor of an implicit denial.

4. *Representation of the Petitioner*

The fourth factor in determining if the Petitioner’s character of discharge determination was implicitly readjudicated is whether the Petitioner is represented by an attorney. The fourth factor alone, however, cannot support a finding of implicit denial. *Cogburn*, 24 Vet. App. at 213 (citing *Robinson v. Shinseki*, 557 F.3d 1355, 1360 (Fed. Cir. 2009) (affirming this Court’s decision, but cautioning that representation by a lawyer alone would not permit a finding of waiver)). Moreover, as Judge Schoelen has opined, “while the presence of counsel can positively influence a claim’s processing and the claimant’s understanding of VA’s decision on the claim, I do not believe that there is any basis in law for finding the presence of counsel to alleviate, or alter the scope of, VA’s obligations to a claimant.” *Cogburn*, 24 Vet. App. at 218 (concurring opinion).

Here, the RCA submitted supporting evidence that attorney representation does not support implicit denial. The RCA described a survey of twenty other attorneys who do not recognize language used in the May 2021 rating decision as an implicit denial of the claimant’s character of discharge determination. RCA Exhibit A. Therefore, even with

attorney representation, any “implicit denial” is so stealthy a reasonable attorney is unable to see it. Again, the language and clarity of the February 2023 decision is the expected characterization of service decision by attorneys who regularly practice in this area of the law.

Balancing all four *Cogburn* factors, Mr. Hamill’s May 2021 decision did not constitute an implicit denial. His claim, therefore, was not resolved until VA picked off his claim by issuing an actual decision in February 2023.

B. The Requirements Under the Amended § 5104 Do Not Allow for Implicit Denials.

The Court’s analysis can end with *Cogburn*, but the Veterans Appeals Improvement and Modernization Act (AMA) provides additional reasons why Mr. Hamill and class members who filed claims under the AMA did not receive “implicit denials.” Unlike when the implicit denial standard was first pronounced in *Deshotel v. Nicholson*, 457 F.3d 1258 (2006), the Secretary now must include additional items in its decision notices, including the issues adjudicated, a summary of the laws and regulations, and in the case of a denial, identification of elements not satisfied leading to the denial. *See* 38 U.S.C. § 5104. Congress amended Section 5104 “to help veterans better understand VA’s decision on their claims.” H.R. Rep No. 115-135 at 3 (2017). By explicitly mandating the VA to provide the issues it adjudicated, Congress has required that VA be more intentional in its decisions. Not only is the VA required to identify the issues adjudicated, it is also now required to provide the regulations it relied upon and the elements not satisfied. If the VA does not notify the claimant of the denial of a claim, it will continue

to remain open until VA adjudicates the claim. *Cook v. Principi*, 318 F.3d 1334, 1340 (Fed. Cir. 2002).

Because the AMA applied to VA's 2021 decision, the Secretary's implicit denial argument is directly inconsistent with the presumption of administrative regularity. That presumption requires the Court and the parties to presume that the VA's 2021 decision complies with 38 U.S.C. § 5104 – meaning that the 2021 decision expressly articulated all of the issues that the decision resolved. Mr. Hamill's 2021 decision did not expressly refer to a COD determination, and, by definition, neither did the VA decision for any members of the putative class. Moreover, Mr. Hamill's 2021 decision did not set forth the statutory or regulatory requirements related to new and relevant evidence to adjudicate Mr. Hamill's character of discharge determination. Nor did it provide what elements were not satisfied under new and relevant evidence or 38 C.F.R. § 3.12 to adjudicate the character of discharge determination.

Therefore, the Court and the parties must presume that VA complied with 38 U.S.C. § 5104 by expressly articulating in its 2021 decision all of the issues the decision resolved. It therefore inexorably follows that the AMA and 38 U.S.C. § 5104 prevent the continued application of the implicit denial case law applicable to legacy claims, and this Court should hold the test does not apply to claims made under the AMA.

Rather than hold that VA implicitly denied the COD issue and, in so doing, violated Section 5104, the Court should simply hold that there was no implicit denial. Because VA did not notify Mr. Hamill of its decision declining to reopen or change his character of discharge determination, the issue is still pending before the VA.

II. The “Picking Off” Exception to Mootness Applies to Petitioner’s Claim.

Because the May 2021 decision was not an implicit denial, Mr. Hamill’s claim was not resolved until he received a decision in February 2023. Although the Secretary incorrectly argues otherwise, the “picking off” exception to mootness applies and, notwithstanding the February 2023 decision, the Court should proceed to the merits of the petition. RCA at 7-8.

As in *Godsey*, the Secretary attempts here to evade judicial review by mooting out the Petitioner’s matter before this Court has the chance to rule on class certification. *See Godsey v. Wilkie*, 31 Vet. App. 207 (2019). This is a textbook case of the “picking off” exception to mootness. VA cannot simply provide the requested relief to one veteran and thereby avoid fulfilling its legal duties to other veterans.

The Secretary claims that the “challenged conduct here (alleged failure to issue an appealable decision) cannot reasonably be construed as inherently transitory because Petitioner has challenged what is essentially *indefinite* action (or, more accurately, indefinite inaction) regarding the issue of COD determinations.” Sec’y’s Resp. at 8 (emphasis in original). This argument is puzzling given this Court’s holding in *Godsey*, in which the petitioners also challenged VA inaction and, as explained above, the Court found the delay they experienced to be “inherently transitory.” *Godsey*, 31 Vet. App. at 219. The Secretary fails to draw any relevant distinction between the challenged conduct in *Godsey* and the challenged conduct at issue here.

The Secretary also argues that, because VA has since amended its M21-1 manual, the whole purpose of the “picking off” exception to mootness is irrelevant here. Sec’y’s

Resp. at 8-9. But changing a policy is not the same as actually providing relief to class members, particularly to those who *already* received inadequate decisions. In addition, although it would be inefficient—and contrary to the picking-off exception, if the Court holds that Mr. Hamill’s petition is moot, counsel is prepared to amend the petition to substitute other similarly situated veterans for Mr. Hamill. *See* RCA at 8.

III. Class Resolution Is Superior to a Precedential Decision

The Secretary has conceded that the proposed class meets the criteria of Rule 23, including numerosity, commonality, typicality, adequacy, and that the Secretary “has acted or failed to act on grounds that apply generally to the class, so that final injunctive or other appropriate relief is appropriate respecting the class as a whole.” Vet. App. R. 23(a). *See* Sec’y’s Resp. at 14. If the Court agrees mootness does not apply, therefore, the only class certification factor in dispute is whether class resolution is superior to a precedential decision. Vet. App. R. 22(a)(3). The history of Mr. Hamill’s own case, the Secretary’s inadequate remediation of its practices, and the lack of any retroactive application of a precedential decision all demonstrate the superiority of a class.

A. Mr. Hamill’s individual case demonstrates superiority of class resolution.

First, Mr. Hamill’s own case demonstrates superiority of class resolution. Through the *Harris* decision, this Court had *already provided* a precedential decision on the issue in this case. The Court opined that a veteran is entitled to an appealable decision as to whether the evidence submitted after a prior COD determination was new and material or new and relevant with respect to whether a COD is a bar to VA benefits. That is all Mr. Hamill seeks for himself and the class.

Yet that precedential decision did not provide relief to Mr. Hamill. In fact, until Mr. Hamill petitioned this Court, the Secretary had apparently made no steps to implement *Harris*. Only after this litigation “brought this issue to VA’s attention” did VA admit that its own policies were inadequate and amend the VA Adjudication Procedures Manual, M21-1. Sec’y’s Resp. at 13. If this Court’s precedential holding in *Harris* was not enough to effect a systemic change in the conduct of the VA regional offices, there is no guarantee that an amendment to the M21-1 Manual will effect a systemic change either.

Given that the precedential decision in *Harris* did not provide relief to the class members, there is no reason to believe another precedential decision would do any more for the unnamed class. As explained in the RCA, this case meets the standards promulgated in *Skaar* and *Beaudette* for evaluating the superiority of a class. *See* RCA at 19-20. The Secretary makes conclusory statements that these factors do not weigh in Mr. Hamill’s favor, Sec’y’s Resp. at 12, but his only real argument is to repeat his flawed assessment that this case is distinguishable from *Harris* because in that case, VA issued no decision, whereas for Mr. Hamill and the proposed class, VA issued decisions that provided no determination on whether to reopen the COD. *See* Sec’y’s Resp. at 10-11.

That purported distinction makes no difference. As explained above, VA’s silence does not constitute a valid, appealable denial. VA must provide a decision on whether new and material or new and relevant evidence has been submitted on the issue of a character of discharge determination, and it did not do so for the class. Although each class member’s claim for benefits and supporting evidence are individual, VA’s

response—or rather, absence of any response on the COD—is identical. Either VA has to provide an explicit decision on whether to reopen, or it doesn't. This Court can and should decide that question for all class members “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

B. The Secretary's Reassurances That the VA Will Remedy the Problem Without Court Involvement Are Unconvincing and Inadequate.

Realizing that VA's noncompliance with this Court's holding in *Harris* was “problematic,” the Secretary now assures the Court that the agency is addressing the “larger concerns” raised by this litigation. Sec'y's Resp. at 13. He explains that he has updated the M21-1 to conform with *Harris*, and, for an unspecified group of “potentially affected claimants,” “has attempted to . . . issue separate COD decisions.” *Id.*

Those two vague sentences explaining VA's efforts are wholly inadequate. Although Petitioners agree that the updated M21-1 provision finally directs VA decisionmakers to comply with *Harris*, the Secretary has provided the Court no information about (1) who VA considers to be a “potentially affected claimant;” (2) what steps VA has taken to identify those people; (3) how many people are affected; or (4) whether VA has completed its efforts or if not, when it anticipates finishing. VA has not even demonstrated what remedy it is providing or proffered a template decision that shows that claimants are provided with a meaningful implementation of *Harris*, which is

particularly concerning given that VA continues to insist that, actually, no COD-related decision is required under *Harris* as long as VA issues *any* decision.¹

VA's failure to voluntarily provide this Court with information that would permit the Court to fully understand whether and to what extent VA is now complying with *Harris* reinforces that a class remedy is superior to a precedential decision in this matter.

C. A Precedential Decision Could Leave Thousands of Veterans' Claims in Indefinite Limbo

Last, a precedential decision alone would not affirmatively require VA to provide COD decisions to all veterans who have already received Chapter 17 decisions where VA failed to address their COD-related claims. *See RCA* at 20 (citing *Tobler v. Derwinski*, 2 Vet. App. 8, 14 (1991)). Without class relief, unless a veteran or their advocate realizes the right under *Harris* to such a determination and seeks mandamus in this Court, the request to reopen the COD determination will remain adjudicated indefinitely. Providing a remedy for all class members will promote justice and fairness for thousands of veterans—veterans who, because of their prior negative COD determination, are more likely to be at risk of homelessness, poverty, and suicide. A class remedy will also promote efficiency for the VA and for the Court by resolving these veterans' claims rather

¹ Because counsel for Mr. Hamill represent numerous veterans, undersigned counsel are aware of at least one type of document that VA is issuing, apparently in relation to this case. VA has sent to certain veterans letters that claim they are "Not a New Decision." *See Exhibit B*. By claiming that the document does not provide a new decision, it is unclear what those documents are, and how, if at all, they affect the claimant's appellate rights. These "non-decisions" have confused, rather than clarified, class members' rights.

than letting them languish indefinitely until and unless the veteran demands an appealable decision, perhaps years in the future.

In conclusion, the Petitioner requests that the Court find that the May 2021 decision was not an implicit denial, that the February 2023 decision meets the picking off exception to mootness, that the RCA meets all of the elements for class certification, that class certification is superior to a precedential opinion, and that the Court grants Mr. Hamill's petition and request for class certification. In granting the petition and request for class certification, the Court should (1) certify the class as defined in the RCA; (2) appoint Yelena Duterte of UIC School of Law and Renée Burbank of the National Veterans Legal Services Program as Class Counsel; (3) order the Secretary, within 45 days of the order, to identify all class members and notify the Court of the process by which he identified said class members, *see Godsey*, 31 Vet. App. at 231 (ordering Secretary to identify class members to Court); and (4) order the Secretary, within 60 days of the order, to submit to the Court for approval a plan for notifying class members that their character of discharge determination remains pending and for VA to issue decisions, with appellate rights, to each class member; *see Wolfe v. Wilkie*, 32 Vet. App. 1, 41 (2019), *rev'd on other grounds sub nom. Wolfe v. McDonough*, 28 F. 4th 1348 (Fed. Cir. 2022) (ordering Secretary to submit a notice plan to Court for approval).

Respectfully submitted,

/s/ Yelena Duterte

Yelena Duterte (*Counsel*)
UIC School of Law
Veterans Legal Clinic
300 S. State St.
Chicago, IL 60604
312-427-2737 ext. 843
yduter2@uic.edu

Renee Burbank
National Veterans Legal Services
Program
1100 Wilson Blvd
Suite 900
Arlington, VA 22209
202-621-5780
Renee.burbank@nvlsp.org

Counsel for Appellant

Dated: August 23, 2023



DEPARTMENT OF VETERANS AFFAIRS

May 19, 2021

DAVID HAMILL

In reply, refer to:

DAVID HAMILL

Dear Mr. HAMILL:

We received your correspondence on May 10, 2021, indicating that you would like to file a claim for benefits for the following condition(s)/issue(s):

- PTSD, Chronic Fatigue Syndrome, lower back, depression, hearing loss, and fibromyalgia

You cannot file a supplemental claim because there are no contentions that were previously denied as of the date of this claim.

What Should You Do?

If you do not feel ready to submit your claim, you may also submit an intent to file identifying the general benefit(s) you are seeking. If a completed application is received within one year from the date that a complete intent to file is received and we decide that you are entitled to VA benefits, we may be able to compensate you from the date we received your complete intent to file. If you would like to submit an intent to file, you may do so using one of the following methods:

- Visit eBenefits.va.gov and initiate an application for benefits (*compensation only*). This will protect your date of claim similar to VA Form 21-0966, *Intent to File a Claim for Compensation and/or Pension Benefits*.
- Call us at 1-800-827-1000 to submit an intent to file over the telephone. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
- Complete, sign, and return VA Form 21-0966, *Intent to File a Claim for Compensation and/or Pension Benefits*, and identify the general type of benefit for which you intend to file a claim.

We will take no further action until we receive your completed application for benefits or complete intent to file. To locate the appropriate form(s), please visit the following website: www.va.gov/vaforms.

[REDACTED]

HAMILL, DAVID

What is eBenefits?

eBenefits provides electronic resources in a self-service environment to Service members, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.va.gov .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail all written correspondence to the appropriate address listed on the attached <i>Where to Send Written Correspondence</i> .

In all cases, be sure to refer to your VA file number, [REDACTED]

If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.va.gov>.

Page 3


HAMILL, DAVID

We sent a copy of this letter to your representative, YELENA C DUTERTE, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Regional Office Director

Enclosures: Where to Send Written Correspondence

cc: YELENA C DUTERTE

SECTION IV - OPTIONAL INFORMAL CONFERENCE

16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER FOR THE SOLE PURPOSE OF POINTING OUT ERRORS OF FACT OR LAW IN THE PRIOR DECISION. (VA will only conduct one informal conference by telephonic communication associated with this request for Higher-Level Review.)

16A. I WOULD LIKE AN INFORMAL CONFERENCE. I understand electing an informal conference is optional and may delay a decision.

16B. IF YOU SELECTED THE BOX ABOVE, VA will make two attempts to contact you OR your representative to schedule the informal conference. Contact attempts will be between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time. INDICATE ONE PREFERENCE:

- Call me between 8:00 a.m. - 12:00 p.m. ET
Call me between 12:00 p.m. - 4:30 p.m. ET
Call my representative between 8:00 a.m. - 12:00 p.m. ET
Call my representative between 12:00 p.m. - 4:30 p.m. ET

17. IF YOU WOULD LIKE VA TO CONTACT YOUR REPRESENTATIVE, YOU MUST PROVIDE YOUR REPRESENTATIVE'S CONTACT INFORMATION BELOW.

17A. REPRESENTATIVE'S NAME (First, Last)

Y E L E N A D U T E R T E

17B. REPRESENTATIVE'S TELEPHONE NUMBER (Include Area Code)

3 1 2 - 4 2 7 - 2 7 3 7 X843

17C. REPRESENTATIVE'S E-MAIL ADDRESS

Y D U T E R 2 @ U I C . E D U

SECTION V - ISSUES FOR HIGHER-LEVEL-REVIEW

18. If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in 18A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

INDICATE EACH ISSUE DECIDED BY VA FOR WHICH YOU ARE REQUESTING A HIGHER-LEVEL REVIEW. Refer to your decision notice(s) for a list of adjudicated issues. For each issue, identify the date of VA's most recent decision on the issue. You may attach additional sheets, if necessary - include your name and file number on each additional sheet. IMPORTANT: You may only list issues for the benefit type selected in Section III. A separate form is required for each benefit type.

Table with 2 columns: 18A. SPECIFIC ISSUE(S) OF DISAGREEMENT (REQUIRED) and 18B. DATE OF VA DECISION NOTIFICATION LETTER (REQUIRED). Includes examples of issues and a date grid.



July 25, 2023

DAVID HAMILL

We have included with this letter:

1. Additional Benefits
2. Where to Send Your Correspondence
3. VA Form 20-0998
4. Administrative Decision (07/21/2023)
5. Higher Level Review (07/21/2023)
6. Fraud Prevention Attachment

Contact information:

Web: www.vets.gov
Phone: 1-800-827-1000
TDD: 711
To send questions online: visit <https://iris.custhelp.com/>

Social Media:

Twitter: @VAVetBenefits
Facebook: www.facebook.com/VeteransBenefits

Your representative:

You appointed YELENA C DUTERTE as your accredited representative. They have also received a copy of this letter.

They can help you with any questions you have about your claim.

If you or someone you know is in crisis, call the *Veterans Crisis Line* at 1-800-273-8255 and press 1.

We made a decision on your VA benefits.

Dear David Hamill:

This letter will guide you through the information you should know and steps you may take now that VA has made a decision about your benefits.

Your Benefit Information:

1. The character of discharge administrative decision dated May 15, 2014, was properly adjudicated. Recharacterization of determination is not warranted.
2. Your service in the s U.S. Marine Corps service for the period January 26, 2009, to March 15, 2013, is Dishonorable for VA Purposes and is a bar to VA benefits under the provisions of 38 CFR 3.12 (d)(4).
3. You are entitled to health care benefits under Chapter 17, Title 38 U.S.C. and 38 CFR 3.360(a) for any disability determined to be service connected for the period of service from January 26, 2009, to March 15, 2013.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you have one year from the date of this letter to select a review option in order to protect your initial filing date for effective date purposes. You must file your request on the required application form for the review option desired. The table below represents the review options and their respective required application form.



[REDACTED]

HAMILL, DAVID

Review Option	Required Application Form
Supplemental Claim	VA Form 20-0995, <i>Decision Review Request: Supplemental Claim</i>
Higher-Level Review	VA Form 20-0996, <i>Decision Review Request: Higher-Level Review</i>
Appeal to the Board of Veterans' Appeals	VA Form 10182, <i>Decision Review Request: Board Appeal (Notice of Disagreement)</i>

Please note: You **may not** request a higher-level review of a higher-level review decision issued by VA.

The enclosed VA Form 20-0998, *Your Right To Seek Review Of Our Decision*, explains your options in greater detail and provides instructions on how to request further review. You may download a copy of any of the required application forms noted above by visiting www.va.gov/vaforms/ or you may contact us by telephone at 1-800-827-1000 and we will mail you any form you need.

You can visit www.va.gov/decision-reviews to learn more about how the disagreement process works.

If you would like to obtain or access evidence used in making this decision, please contact us by telephone, email, or letter as noted below letting us know what you would like to obtain. Some evidence may be obtained online by visiting www.va.gov.

Thank you for your service,

Regional Office Director

cc: YELENA C DUTERTE
315 South Plymouth Ct.
Chicago IL 60604



HAMILL, DAVID

Additional Benefits

Medical Care and Treatment:

- Mental Health Counseling: For more information, please visit www.myhealth.va.gov/mhv-portal-web/.
- Blind Rehabilitation: For more information, please visit www.va.gov/blindrehab/.

Home Adaptations/Loans, Automobile Benefits, and Life Insurance:

- Loans: For more information, please visit www.benefits.va.gov/homeloans/.
- Funding Fee Refund: If you paid a funding fee at the closing of a VA guaranteed home loan and your VA compensation award provides an effective rating date that was prior to your loan closing date, then you may be eligible for a funding fee refund. Please contact either your current mortgage servicer or a VA Regional Loan Center at (877) 827-3702 to begin the refund process.

Armed Forces Commissary and Exchange:

- You may be entitled to Armed Forces Commissary and Exchange privileges. Honorably discharged Veterans with a service-connected disability; Former Prisoners of War; Purple Heart or Medal of Honor recipients; military retirees; members of the reserves; and their dependents may qualify for entitlement to this additional benefit. For more information, please visit va.gov/resources/commissary-and-exchange-privileges-for-veterans.



Where to Send Your Correspondence

Documents may be submitted by mail, in person at a VA regional office or electronically. However, VA recommends submitting correspondence electronically as this is the fastest method of receipt.

VA provides several tools to assist in electronic submission. To learn more about how to submit documents and claims electronically, visit www.va.gov/disability/upload-supporting-evidence. You can also go directly to access.va.gov to digitally upload any correspondence using QuickSubmit.

By visiting www.va.gov you can also check your claim status and learn about other VA benefits.

If you need assistance, you can find a local, accredited representative at <https://www.benefits.va.gov/vso/>

If you prefer to mail your correspondence, please use the related mailing address below:

<p>Compensation Benefits Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (844) 531-7818</p>	<p>Pension & Survivors Benefits Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (844) 655-1604</p>
<p>Board of Veterans' Appeals Department of Veterans Affairs Board of Veterans' Appeals P.O. Box 27063 Washington, DC 20038 Toll Free Fax: (844) 678-8979</p>	<p>Fiduciary Department of Veterans Affairs Fiduciary Intake Center P.O. Box 5211 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (888) 581-6826</p>

These addresses serve **all United States and foreign locations.**



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit www.veteranscrisisline.net



YOUR RIGHT TO SEEK REVIEW OF OUR DECISION

This document outlines your right to seek review of our decision on any issue with which you disagree. You may generally select one of three different review options for each issue decided by VA. However, you may not request review of the same issue using more than one option at the same time. Below is information on the three different review options.

	 Supplemental Claim	 Higher-Level Review	 Board Appeal
What Is This?	A reviewer will determine whether new and relevant evidence changes the prior decision.	An experienced claims adjudicator will review your decision using the same evidence VA considered in the prior decision.	A Veterans Law Judge at the Board of Veterans' Appeals (Board) will review your decision.
By Selecting This Option	<p>You are adding or identifying new and relevant evidence to support your claim that we did not previously consider.</p> <p>VA will assist you in gathering new and relevant evidence that you identify to support your claim.</p>	<p>You have no additional evidence to submit to support your claim, but you believe there was an error in the prior decision.</p> <p>You can request an optional, one-time, informal conference with a Higher-Level Reviewer to identify specific errors in the case, although requesting this conference may delay the review.</p>	<p>You must choose a docket:</p> <p>Direct Review - You do not want to submit evidence or have a hearing.</p> <p>Evidence Submission - You choose to submit additional evidence without a hearing.</p> <p>Hearing - You choose to have a hearing with a Veterans Law Judge.</p>
Goal To Complete	125 days on average	125 days on average	365 days on average for Direct Review (longer for the other options)
Form To File To Select This Option*	VA Form 20-0995, <i>Decision Review Request: Supplemental Claim</i>	VA Form 20-0996, <i>Decision Review Request: Higher-Level Review</i>	VA Form 10182, <i>Decision Review Request: Board Appeal (Notice of Disagreement)</i>
Further Options After This Decision Review	You may request another Supplemental Claim, a Higher-Level Review, or a Board Appeal.	You may request a Supplemental Claim or a Board Appeal.	You may request a Supplemental Claim or appeal to the U.S. Court of Appeals for Veterans Claims.

* All forms listed above are available at www.va.gov/vaforms/.



For most VA benefits, you have 1 year from the date on your decision notice to request a decision review to ensure the earliest possible effective date. Consult your decision notice for specific limitations.

If you do not submit a decision review request within the required time, you may only seek review through the following:

- A request to revise the decision based on a clear and unmistakable error, or
- A Supplemental Claim. If you file a Supplemental Claim after the 1-year time limit, the effective date for any resulting award of benefits generally will be tied to the date VA receives the Supplemental Claim.

While most decision review options are available to you, there are limitations based on the type of decision you received.

- If you are a party to a **contested claim** - such as claims for apportionment, attorney fee disagreement, or multiple parties filing for survivor's benefits - your *only* option for disagreeing with your decision is to file a Board Appeal within **60 days** of the date on your decision notice.
- If you are seeking review of an **insurance decision** you have an *additional* option to challenge VA's decision by filing a complaint with a United States district court in the jurisdiction in which you reside within 6 years from when the right of action first accrues. Consult your decision notice for details on what options are available and where to send the request.

Get Help with Your Review Request:

For more information on all the available review options, contact us at 1-800-827-1000 or visit www.va.gov/decision-reviews/. If you need help filing a decision review, you may want to work with an accredited attorney, claims agent, or a Veterans Service Organization (VSO) representative. Additional information about working with an accredited attorney, claims agent, or VSO representative is available at www.va.gov/decision-reviews/get-help-with-review-request/. You may also find a directory of accredited representatives at www.va.gov/vso.

DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Decision Review Operations Center
RO 317, St. Petersburg, FL

DAVID HAMILL

ADMINISTRATIVE DECISION

ISSUE: Character of Discharge Determination

EVIDENCE:

In making our decision, we considered the following evidence:

- Special Inquiry, Email correspondence, received June 7, 2023
- Higher Level Review- Informal Conference, completed on June 5, 2023
- VA Form 20-0996 Request for Higher-Level Review, received March 6, 2023
- VA Notification Letter, dated February 17, 2023
- Military Personnel Records, received January 23, 2023
- VA Notification Letter, dated May 19, 2021
- VA Form 21-526ez Fully Developed Claim (Compensation), received May 10, 2021
- VA Form 20-0995 Supplemental Claim Application, received May 10, 2021
- VA Notification Letter, dated July 21, 2017
- DD 214 Certified Original Certificate of Release or Discharge from Active Duty, for the period of January 26, 2009, through March 15, 2013, received June 8, 2017
- Service Treatment Records, received June 8, 2017
- Military Personnel Records, received June 1, 2017
- VA Form 21-526ez Fully Developed Claim (Compensation), received May 8, 2017
- Administrative Decision, dated May 15, 2014
- Character of Decision Notification Letter, May 15, 2014
- Character of Discharge Due Process Notification Letter, dated September 4, 2013
- VA Form 21-526ez Fully Developed Claim (Compensation), received April 30, 2013
- Service Treatment Records, received April 23, 2013

PERTINENT LAWS AND REGULATIONS:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.4 Compensation
- 38 C.F.R. §3.12 Character of discharge
- 38 C.F.R. §3.103 Procedural due process and other rights
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims
- 38 C.F.R. §3.203 Evidence of service
- 38 C.F.R. §3.354 Determinations of insanity
- 38 C.F.R. §3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition
- 38 C.F.R. §3.400 General
- 38 C.F.R. §3.401 Veterans

38 C.F.R. §3.2500 Review of decisions
38 C.F.R. §3.2501 Supplemental claims
38 C.F.R. §3.2601 Higher-Level Reviews

According to 38 CFR §3.12(a), if the former service member did not die in service, then pension, compensation, or Dependency and Indemnity Compensation (DIC) is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable (38 U.S.C. 101(2)).

As stated in 38 CFR §3.360(a) and (b), the health care and related benefits authorized by Chapter 17 of Title 38 U.S.C. shall be provided to certain former service members with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty. With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in 38 CFR §3.12(c) applies.

As stated in 38 CFR §3.12(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions:

- (1) Acceptance of an undesirable discharge to escape trial by general court-martial.
- (2) Mutiny or spying.
- (3) An offense involving moral turpitude. This includes, generally, conviction of a felony.
- (4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.**
- (5) Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.

DECISION:

1. Your discharge in the U.S. Marine Corps for the period of January 26, 2009, to March 15, 2013, is dishonorable for VA Purposes. You do not have basic eligibility VA benefits under the provisions of 38 CFR 3.12(d)(4).
2. You meet the basic eligibility criteria in 38 CFR 3.360 for health care benefits under Chapter 17, Title 38 U.S.C.

REASONS AND BASES:

Based on the evidence and a review of the file the following facts & circumstances surrounding the claimant's discharge revealed the following:

- The veteran enlisted in the United States Marine Corps on February 26, 2009 and requested to receive a Separation of Other Than Honorable in lieu of trial by court-martial
- DD-214, *Certificate of Release or Discharge from Active-Duty*, U.S. Marine Corps from January 26, 2009 through March 15, 2013, Character of Service: Under Other than Honorable Conditions, Separation reason – In Lieu of Trial by Court-Martial
- A Violation of Article 112a of the UCMJ occurred for the wrongful use, possession, of controlled substance marijuana on June 17, 2012, and July 16, 2012. You received a reduction to E-3, forfeiture of \$1007.00 per month for two months, 45 days restriction and 45 days EPD. While awaiting the administrative separation, the results from a uranalysis test taken on January 2, 2013, came back and showed positive for MDA (3,4-methlenedioxyamphetamine). He was then placed in pretrial confinement on February 8, 2013. Mr. Hamill waived his rights for a hearing

Sanity is not an issue.

Your United States Marine Corps service for the period January 26, 2009, through March 15, 2013 Under Other Than Honorable Conditions (OTH) is considered to have been under dishonorable conditions for VA purposes and is a bar to VA benefits under the provisions of 38 CFR 3.12(d)(4).

A review of the file was conducted. An informal conference was requested on March 6, 2023. The informal conference was conducted on June 5, 2023. During the informal conference it was requested that a review of 3.301 be conducted along with previous administrative decisions.

CFR 3.301 Line of duty and misconduct reference was reviewed. 3.301(a) Line of Duty. Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs. 3.301(b) Willful misconduct. Disability pension is not payable for any condition due to the veteran's own willful misconduct.

Further review of the Veterans file was completed. An original claim for compensation was received April 30, 2013. A character of discharge due process notification letter was sent on September 4, 2013. You failed to show sufficient reason why the bars to benefits imposed under 38 CFR 3.12 should be set aside in your favor. No response was received an administrative decision was completed on May 15, 2014. The notification letter advised that your military service for the period of January 26, 2009, through March 5, 2013, was not considered honorable for VA purposes. Entitlement to healthcare under 38 USC Chapter 17 for any disability determined to be service connected was granted.

This discharge was not the result of a general or special court-martial's finding of bad conduct, and sanity was not an issue.

Every effort was made to obtain all necessary records for a Character of discharge determination. This decision was made based on all the available evidence of record. The total of these offenses over the span of your military service do not constitute minor offenses, and your service was not "otherwise honest, faithful, and meritorious." Your offenses are deemed to be willful and persistent misconduct under 38 C.F.R. §3.12(d)(4).

It is therefore determined that your discharge from the period of service from January 26, 2009, through March 15, 2013, was under dishonorable conditions for the purpose of eligibility for VA benefits and is therefore considered a bar to benefits under 38 CFR 3.12(d)(4).

You are eligible for health care benefits only for medical conditions found to be service connected under the provisions of Chapter 17, Title 38 U.S.C. for this period of service.

FAVORABLE FINDINGS:

You are entitled to health care benefits under Chapter 17, Title 38 USC and 38 CFR §3.360(a) for any disability determined to be service connected from January 26, 2009, through March 15, 2013.



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Decision Review Operations Center**

David Hamill



**Represented By:
Yelena C Duterte**

**Higher-Level Review
June 5, 2023**

INTRODUCTION

You have requested VA provide a higher-level review of the issue(s) addressed in this decision.

The records reflect that you are a service member of the Gulf War era. You served in the Marine Corps from January 26, 2009, to March 15, 2013. You submitted a request for Higher-Level Review received on March 6, 2023. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

We completed an informal conference with you and your attorney Yelena Duterte on June 5, 2023. The arguments made were documented and have been considered.

ISSUE:

Whether the Character of Discharge determination was proper.

EVIDENCE:

- Administrative decision, completed on June 5, 2023
- Higher Level Review- Informal Conference, completed on June 5, 2023
- VA Form 20-0996 Request for Higher-Level Review, received March 6, 2023
- VA Notification Letter, dated February 17, 2023
- Military Personnel Records, received January 23, 2023
- VA Notification Letter, dated May 19, 2021
- VA Form 21-526ez Fully Developed Claim (Compensation), received May 10, 2021
- VA Form 20-0995 Supplemental Claim Application, received May 10, 2021

- VA Notification Letter, dated July 21, 2017
- DD 214 Certified Original Certificate of Release or Discharge from Active Duty, for the period of January 26, 2009, through March 15, 2013, received June 8, 2017
- Service Treatment Records, received June 8, 2017
- Military Personnel Records, received June 1, 2017
- VA Form 21-526ez Fully Developed Claim (Compensation), received May 8, 2017
- Administrative Decision, dated May 15, 2014
- Character of Decision Notification Letter, May 15, 2014
- Character of Discharge Due Process Notification Letter, dated September 4, 2013
- VA Form 21-526ez Fully Developed Claim (Compensation), received April 30, 2013
- Service Treatment Records, received April 23, 2013

DECISION:

1. The character of discharge administrative decision dated May 15, 2014, was properly adjudicated. Recharacterization of determination is not warranted.
2. Your service in the s U.S. Marine Corps service for the period January 26, 2009, to March 15, 2013, is Dishonorable for VA Purposes and is a bar to VA benefits under the provisions of 38 CFR 3.12 (d)(4).
3. You are entitled to health care benefits under Chapter 17, Title 38 U.S.C. and 38 CFR 3.360(a) for any disability determined to be service connected for the period of service from January 26, 2009, to March 15, 2013.

REASONS AND BASES:

According to 38 CFR §3.12(a), if the former service member did not die in service, then pension, compensation, or Dependency and Indemnity Compensation (DIC) is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable (38 U.S.C. 101(2)).

As stated in 38 CFR §3.360(a) and (b), the health care and related benefits authorized by Chapter 17 of Title 38 U.S.C. shall be provided to certain former service members with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty. With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in 38 CFR §3.12(c) applies.

As stated in 38 CFR §3.12(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions:

- (1) Acceptance of an undesirable discharge to escape trial by general court-martial.
- (2) Mutiny or spying.
- (3) An offense involving moral turpitude. This includes, generally, conviction of a felony.

(4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.

(5) Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.

Your United States Marine Corps service for the period January 26, 2009, through March 15, 2013 Under Other Than Honorable Conditions (OTH) is considered to have been under dishonorable conditions for VA purposes and is a bar to VA benefits under the provisions of 38 CFR 3.12(d)(4).

A review of the file was conducted. An informal conference was requested on March 6, 2023. The informal conference was conducted on June 5, 2023. During the informal conference it was requested that a review of 3.301 be conducted along with previous administrative decisions.

CFR 3.301 Line of duty and misconduct reference was reviewed. 3.301(a) Line of Duty. Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs. 3.301(b) Willful misconduct. Disability pension is not payable for any condition due to the veteran's own willful misconduct.

Further review of the Veterans file was completed. An original claim for compensation was received April 30, 2013. A character of discharge due process notification letter was sent on September 4, 2013. You failed to show sufficient reason why the bars to benefits imposed under 38 CFR 3.12 should be set aside in your favor. No response was received an administrative decision was completed on May 15, 2014. The notification letter advised that your military service for the period of January 26, 2009, through March 5, 2013, was not considered honorable for VA purposes. Entitlement to healthcare under 38 USC Chapter 17 for any disability determined to be service connected was granted.

This discharge was not the result of a general or special court-martial's finding of bad conduct, and sanity was not an issue.

Every effort was made to obtain all necessary records for a Character of discharge determination. This decision was made based on all the available evidence of record. The total of these offenses over the span of your military service do not constitute minor offenses, and your service was not "otherwise honest, faithful, and meritorious." Your offenses are deemed to be willful and persistent misconduct under 38 C.F.R. §3.12(d)(4).

It is therefore determined that your discharge from the period of service from January 26, 2009, through March 15, 2013, was under dishonorable conditions for the purpose of eligibility for VA benefits and is therefore considered a bar to benefits under 38 CFR 3.12(d)(4).

You are eligible for health care benefits only for medical conditions found to be service connected under the provisions of Chapter 17, Title 38 U.S.C. for this period of service.

Based on the information listed above, the previous decision regarding your character of service determination was properly adjudicated and recharacterization is not warranted. This decision is made in accordance with all applicable laws and regulations.

FAVORABLE FINDINGS:

You are entitled to health care benefits under Chapter 17, Title 38 USC and 38 CFR §3.360(a) for any disability determined to be service connected from January 26, 2009 through March 15, 2013.

APPLICABLE LAWS AND REGULATIONS:

- 38 C.F.R. §3.1 Definitions.**
- 38 C.F.R. §3.4 Compensation**
- 38 C.F.R. §3.12 Character of discharge**
- 38 C.F.R. §3.103 Procedural due process and other rights**
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims**
- 38 C.F.R. §3.203 Evidence of service**
- 38 C.F.R. §3.354 Determinations of insanity**
- 38 C.F.R. §3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition**
- 38 C.F.R. §3.400 General**
- 38 C.F.R. §3.401 Veterans**
- 38 C.F.R. §3.2500 Review of decisions**
- 38 C.F.R. §3.2501 Supplemental claims**
- 38 C.F.R. §3.2601 Higher-Level Reviews**

References:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs, which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov

Fraud Prevention: Protect Your Benefits

Please contact the VA ***immediately*** at 1-800-827-1000 if you suspect your information is compromised.

- You receive correspondence from VA concerning a claim, and you don't remember filing a claim contact the VA at 1-800-827-1000.
- You receive correspondence requesting a processing fee prior to releasing benefit payments contact the VA at 1-800-827-1000.
- VA may check in with you by phone, email, or text message. The VA will **never ask for personal information via email**. This includes verification of your SSN, address, and/or bank information. If you are unsure about any call, email, or text, confirm details directly with the VA.
- VA **does not threaten** claimants with jail or lawsuits.
- Be cautious of telephone numbers on caller ID. Scammers may change the telephone number (spoofing) to make a call appear to come from a different person or place.
- When in doubt, hang up and call VA directly at 1-800-827-1000, or call your Power of Attorney representative (DAV, VFW, etc.).
- **Do not ignore emails or letters** from the VA notifying you of an update to direct deposit or eBenefits account information. If you don't remember making changes, it could be the first sign your information was compromised.
- Use secure, unique passwords, and two factor identification where available. To establish a more secure logon for Vets.gov and ebenefits.va.gov with two factor identification create an account via ID.me at <https://api.id.me/en/registration/new>
- Monitor your accounts regularly, respond to fraud alerts and report unauthorized transactions promptly.
- To learn more about protecting yourself from fraud, and how to report it visit <https://www.va.gov/oig/hotline/default.asp>, or go to VA.gov and search "Office of Inspector General".
- For more details on how to avoid scams go to <https://www.fcc.gov/veterans-targeted-benefits-scams>
- Download free financial scam awareness resources at <https://www.consumerfinance.gov/about-us/blog/helping-prevent-scams-targeted-veterans/>
- Get up-to-date information on fraud and scams from the Federal Trade Commission <https://public.tableau.com/profile/federal.trade.commission>

OMB Control No. 2900-0886
Respondent Burden: 15 minutes
Expiration Date: 4/30/2024

Department of Veterans Affairs	VA DATE STAMP DO NOT WRITE IN THIS SPACE
---------------------------------------	---

DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM

INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.

PART I - CLAIMANT'S IDENTIFYING INFORMATION

NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.

1. VETERAN'S NAME (First, Middle Initial, Last)

D A V I D		H A M I L L
-----------	--	-------------

2. VETERAN'S SOCIAL SECURITY NUMBER	3. VA FILE NUMBER (If applicable)	4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)
		Month Day Year



--	--	--

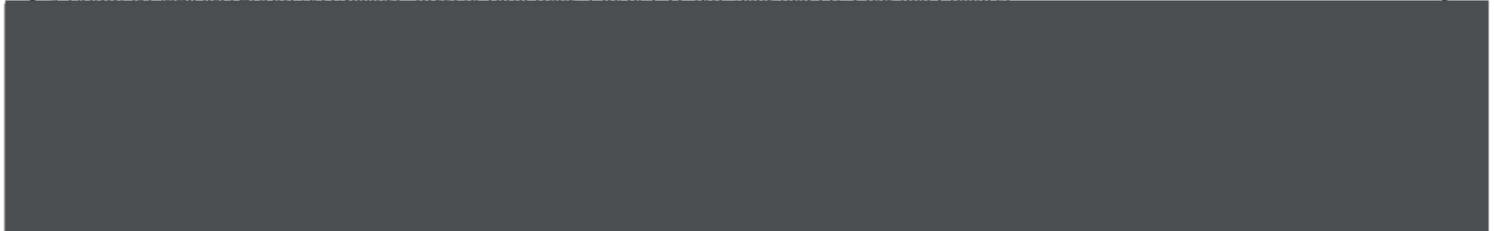
7. CLAIMANT'S NAME (First, Middle Initial, Last) (If other than veteran)

--	--	--

8. CLAIMANT TYPE:

VETERAN
 VETERAN'S SPOUSE
 VETERAN'S CHILD
 VETERAN'S PARENT
 OTHER (Specify) _____

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



11. E-MAIL ADDRESS (Optional)

--

12. BENEFIT TYPE: PLEASE CHECK ONLY ONE (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)

COMPENSATION
 PENSION/DIC/SURVIVORS BENEFITS
 FIDUCIARY
 LIFE INSURANCE
 VETERANS HEALTH ADMINISTRATION
 VETERAN READINESS AND EMPLOYMENT
 EDUCATION
 LOAN GUARANTY
 NATIONAL CEMETERY ADMINISTRATION

PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM

13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR SUPPLEMENTAL CLAIM. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. Include your name and file number on each additional sheet.)

If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in 13A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

13A. SPECIFIC ISSUE(S)	13B. DATE OF VA DECISION NOTICE (MM/DD/YYYY)
IBS [PACT ACT]	05/21/2021
GERD [PACT ACT]	05/21/2021
MIGRAINES [PACT ACT]	05/21/2021
Character of Discharge - Insanity	7/25/2023

PART III - NEW AND RELEVANT EVIDENCE

14. To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your supplemental claim. If you have records in your possession, please attach the records to this form. Please list your name and file number on each page. If you would like VA to obtain **non-federal records**, please review your decision notification letter for the appropriate authorization forms to complete and submit those forms to VA with this request form.

15. DO YOU WANT VA TO GET FEDERAL RECORDS?

LIST BELOW ANY **VA MEDICAL CENTER(S) (VAMC), VA TREATMENT FACILITIES, OR FEDERAL DEPARTMENTS OR AGENCIES** THAT HAVE NEW AND RELEVANT EVIDENCE THAT YOU ARE AUTHORIZING VA TO OBTAIN IN SUPPORT OF YOUR SUPPLEMENTAL CLAIM: *You may attach additional sheets of paper, if necessary. Please list your name and file number on each additional sheet.*

15A. NAME AND LOCATION	15B. DATE(S) OF RECORDS (MM/DD/YYYY)

PART IV - 5103 NOTICE ACKNOWLEDGMENT
(This section applies to Compensation, Pension, DIC, and Accrued benefit claims only)

NOTE: If we issued your decision within the past year, you can skip this section.

16. Find out what evidence you'll need to provide by visiting one these pages on VA.gov:

- Evidence to support a claim for Veterans Disability Compensation and related Compensation benefits: <https://www.va.gov/disability/how-to-file-claim/evidence-needed/>
- Evidence to support a claim for VA pension, DIC, or accrued benefits: <https://www.va.gov/resources/evidence-to-support-va-pension-dic-or-accrued-benefits-claims/>

CERTIFY THAT I have reviewed the notice of evidence that relates to my claim.
 YES NO *(If you check "NO," VA will send the 5103 notice to you via mail.)*

PART V - CERTIFICATION AND SIGNATURE

NOTE: This section is **MANDATORY** and completion is required to process your claim, any omission may delay claim processing time.

VA AUTHORIZED REPRESENTATIVES ONLY: I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature **will not** be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

17A. SIGNATURE OF VETERAN OR CLAIMANT OR VA AUTHORIZED REPRESENTATIVE <i>(Sign in ink)</i> 	17B. DATE SIGNED <i>(MM/DD/YYYY)</i> 07/31/2023
---	--

17C. NAME OF VA AUTHORIZED REPRESENTATIVE *(Please Print)*
YELENA DUTERTE

ALTERNATE SIGNER CERTIFICATION AND SIGNATURE

18. I **CERTIFY THAT** by signing on behalf of the claimant, that I am a court-appointed representative; **OR**, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; **OR**, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; **OR**, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; **AND**, that the claimant is under the age of 18; **OR**, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; **OR**, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

18A. SIGNATURE OF ALTERNATE SIGNER <i>(Sign in ink)</i>	18B. DATE SIGNED <i>(MM/DD/YYYY)</i>
---	--------------------------------------

18C. NAME OF ALTERNATE SIGNER *(Please Print)*

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.



School of Law

June 7, 2024

RE: David, Hamill
[REDACTED]

To Whom It May Concern:

The enclosed supplemental claim includes claims under the PACT Act. Please consider whether Mr. Hamill is eligible for compensation for these conditions related to his exposures in the Gulf.

Under 3.12(d)(4), the VA must consider the attached new evidence, including a statement by Mr. Hamill and servicemembers who can speak to Mr. Hamill's service. The regulations look to see if the conduct was willful and persistent. Here, Mr. Hamill's PTSD caused him to use drugs while in the service, both to cope with the stress and sleep. Further, Mr. Hamill is providing statements from his fellow servicemembers to show his honest, faithful and meritorious service.

Additionally, we request that the VA reconsider the insanity exception to his discharge. Under § 3.354, "[a]n insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides."

As you will see from his statement, Mr. Hamill was experiencing a deviation from his normal method of behavior when he committed the misconduct. The VA has already determined that he suffers from PTSD related to service and it is likely that he was experiencing those same symptoms in service.

Very Respectfully,

Yelena Duterte
Attorney for David Hamill

Veterans Legal Clinic
School of Law
300 S. State Street (MC 300)
Chicago, IL 60604

Phone 312.360.2656
Fax 312.803.1958
Email law-vlsc@uic.edu
Web law.uic.edu

Appx194

Department of Veterans Affairs	VA DATE STAMP DO NOT WRITE IN THIS SPACE
DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM	
INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.	

PART I - CLAIMANT'S IDENTIFYING INFORMATION		
NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.		
1. VETERAN'S NAME (First, Middle Initial, Last)		
D A V I D	H A M I L L	
2. VETERAN'S SOCIAL SECURITY NUMBER	3. VA FILE NUMBER (If applicable)	4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY) Month Day Year



11. E-MAIL ADDRESS (Optional)		
12. BENEFIT TYPE: PLEASE CHECK ONLY ONE (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)		
<input checked="" type="checkbox"/> COMPENSATION	<input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS	<input type="checkbox"/> FIDUCIARY
<input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT	<input type="checkbox"/> EDUCATION	<input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION

PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM

13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR **SUPPLEMENTAL CLAIM**. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. Include your name and file number on each additional sheet.)

If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in 13A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

13A. SPECIFIC ISSUE(S)	13B. DATE OF VA DECISION NOTICE (MM/DD/YYYY)
CHARACTER OF DISCHARGE DETERMINATION & SANITY	04/05/2024
COMPENSATION FOR MENTAL HEALTH	
COMPENSATION FOR IBS	
COMPENSATION FOR GERD	
COMPENSATION FOR MIGRAINES	
COMPENSATION FOR TBI	

PART III - NEW AND RELEVANT EVIDENCE

14. To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your supplemental claim. If you have records in your possession, please attach the records to this form. Please list your name and file number on each page. If you would like VA to obtain **non-federal records**, please review your decision notification letter for the appropriate authorization forms to complete and submit those forms to VA with this request form.

15. DO YOU WANT VA TO GET FEDERAL RECORDS?

LIST BELOW ANY **VA MEDICAL CENTER(S) (VAMC), VA TREATMENT FACILITIES, OR FEDERAL DEPARTMENTS OR AGENCIES** THAT HAVE NEW AND RELEVANT EVIDENCE THAT YOU ARE AUTHORIZING VA TO OBTAIN IN SUPPORT OF YOUR SUPPLEMENTAL CLAIM: *You may attach additional sheets of paper, if necessary. Please list your name and file number on each additional sheet.*

15A. NAME AND LOCATION	15B. DATE(S) OF RECORDS (MM/DD/YYYY)

PART IV - 5103 NOTICE ACKNOWLEDGMENT
(This section applies to Compensation, Pension, DIC, and Accrued benefit claims only)

NOTE: If we issued your decision within the past year, you can skip this section.

16. Find out what evidence you'll need to provide by visiting one these pages on VA.gov:
 • Evidence to support a claim for Veterans Disability Compensation and related Compensation benefits: <https://www.va.gov/disability/how-to-file-claim/evidence-needed/>
 • Evidence to support a claim for VA pension, DIC, or accrued benefits: <https://www.va.gov/resources/evidence-to-support-va-pension-dic-or-accrued-benefits-claims/>

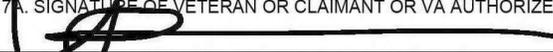
CERTIFY THAT I have reviewed the notice of evidence that relates to my claim.
 YES NO *(If you check "NO," VA will send the 5103 notice to you via mail)*

PART V - CERTIFICATION AND SIGNATURE

NOTE: This section is **MANDATORY** and completion is required to process your claim, any omission may delay claim processing time.

VA AUTHORIZED REPRESENTATIVES ONLY: I certify that the claimant has authorized the undersigned representative to file this supplemental claim on behalf of the claimant and that the claimant is aware and accepts the information provided in this document. I certify that the claimant has authorized the undersigned representative to state that the claimant certifies the truth and completion of the information contained in this document to the best of claimant's knowledge.

NOTE: A POA's signature **will not** be accepted unless at the time of submission of this claim a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual As Claimant's Representative*, indicating the appropriate POA is of record with VA.

17A. SIGNATURE OF VETERAN OR CLAIMANT OR VA AUTHORIZED REPRESENTATIVE <i>(Sign in ink)</i> 	17B. DATE SIGNED <i>(MM/DD/YYYY)</i> 06/07/2024
---	--

17C. NAME OF VA AUTHORIZED REPRESENTATIVE *(Please Print)*
 YELENA DUTERTE

ALTERNATE SIGNER CERTIFICATION AND SIGNATURE

18. I **CERTIFY THAT** by signing on behalf of the claimant, that I am a court-appointed representative; **OR**, an attorney in fact or agent authorized to act on behalf of a claimant under a durable power of attorney; **OR**, a person who is responsible for the care of the claimant, to include but not limited to a spouse or other relative; **OR**, a manager or principal officer acting on behalf of an institution which is responsible for the care of an individual; **AND**, that the claimant is under the age of 18; **OR**, is mentally incompetent to provide substantially accurate information needed to complete the form, or to certify that the statements made on the form are true and complete; **OR**, is physically unable to sign this form.

I understand that I may be asked to confirm the truthfulness of the answers to the best of my knowledge under penalty of perjury. I also understand that VA may request further documentation or evidence to verify or confirm my authorization to sign or complete an application on behalf of the claimant if necessary. Examples of evidence which VA may request include: Social Security Number (SSN) or Taxpayer Identification Number (TIN); a certificate or order from a court with competent jurisdiction showing your authority to act for the claimant with a judge's signature and a date/time stamp; copy of documentation showing appointment of fiduciary; durable power of attorney showing the name and signature of the claimant and your authority as attorney in fact or agent; health care power of attorney, affidavit or notarized statement from an institution or person responsible for the care of the claimant indicating the capacity or responsibility of care provided; or any other documentation showing such authorization.

18A. SIGNATURE OF ALTERNATE SIGNER <i>(Sign in ink)</i>	18B. DATE SIGNED <i>(MM/DD/YYYY)</i>
---	--------------------------------------

18C. NAME OF ALTERNATE SIGNER *(Please Print)*

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.