



**Submission of Documents to
Department Of Veterans Affairs**

**Board Of Veterans Appeals
Litigation & Support Division
P.O. Box 27063
Washington, D.C 20038**

FAX: (844) 678-8979

Please index this submission as one .pdf

| | | | |
|--------------------------|----------------|-------------|---------------|
| Veteran: | [REDACTED] | VSC: | VBAROANOKE314 |
| C-File or SSN: | CSS [REDACTED] | | |
| Street Address: | [REDACTED] | | |
| City, State, Zip: | [REDACTED] | | |

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|--------------|-----------|--------------|-------------------------------|
| Date: | 3/25/2023 | ATTN: | Litigation and Support Intake |
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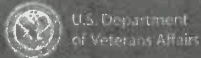
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| From: | Gordon A. Graham | Exclusive Contact Requested |
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Type of Document Submitted:

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|-------------------------------------|--|
| <input type="checkbox"/> | Request for Board Hearing at VA Central Office in D.C.(Rule 703) |
| <input type="checkbox"/> | Request for Advancement of the Docket (Rule 902) |
| <input type="checkbox"/> | Request for Copy of Hearing Transcript (Rule 712) |
| <input type="checkbox"/> | Submission of New and Relevant Evidence associated with the Instant Appeal |
| <input checked="" type="checkbox"/> | VAF 10182 NOTICE OF DISAGREEMENT (BVA Review) (Direct) |
| <input type="checkbox"/> | Motion for Reconsideration (Rule1002) |
| <input checked="" type="checkbox"/> | Other 14 pages of Legal Brief in support of Appeal |

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| Number of Pages Submitted (NOT including this cover sheet): | Fifteen (15) Pages |
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VA Directive 6609, NOVEMBER 9, 2007: NOTICE! Access to Veterans records is limited to Authorized Personnel Only. Information may not be disclosed unless permitted pursuant to 38 CFR 1.500-1.599. The Privacy Act contains provisions for criminal penalties for knowingly and willingly disclosing information from the file unless properly author



DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)

PART I - PERSONAL INFORMATION

| | | |
|---|--|---|
| [REDACTED] | | |
| 4. IF I AM NOT THE VETERAN, MY NAME IS (First, middle initial, last) | | 5. MY DATE OF BIRTH (If I am not the Veteran) |
| 6. MY PREFERRED MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) | | <input type="checkbox"/> I AM EXPERIENCING HOMELESSNESS |
| [REDACTED] | | |
| 7. MY PREFERRED TELEPHONE NUMBER (Include Area Code) (253) 313- 5377 (law office) | 8. MY PREFERRED E-MAIL ADDRESS gordon.graham@va.gov | 9. MY REPRESENTATIVE'S NAME Gordon A. Graham |

PART II - BOARD REVIEW OPTION (Check only one)

10. A Veterans Law Judge will consider your appeal in the order in which it is received, depending on which of the following review options you select. (For additional explanation of your options, please see the attached information and instructions.)
- 10A. Direct Review by a Veterans Law Judge: I do not want a Board hearing, and will not submit any additional evidence in support of my appeal. (Choosing this option often results in the Board issuing its decision most quickly.)
 - 10B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will submit to the Board with my VA Form 10182 or within the 90 days of the Board's receipt of my VA Form 10182. (Choosing this option will extend the time it takes for the Board to decide your appeal.)
 - 10C. Hearing with a Veterans Law Judge: I want a Board hearing and the opportunity to submit additional evidence in support of my appeal that I will provide within 90 days after my hearing. I want the hearing type below: (Choosing this option will extend the time it takes for the Board to decide your appeal.)
 - Central Office Hearing (I will attend in person in Washington, DC)
 - Videoconference Hearing (I will go to a Regional Office)
 - Virtual Telehearing (I will attend using an internet-connected device) (Important: Provide your e-mail address and Representative in Part I)

PART III - SPECIFIC ISSUE(S) TO BE APPEALED TO A VETERANS LAW JUDGE AT THE BOARD

11. Please list each issue decided by VA that you would like to appeal. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision and the area of disagreement (e.g., service connection, disability evaluation, or effective date of award).
- Check here if you are including a request for an extension of time to file the VA Form 10182 due to good cause and then attach additional sheets explaining why you believe there is good cause for the extension.
 - Check here if you are appealing a denial of benefits by the Veterans Health Administration (VHA).

| A. Specific Issue(s) | B. Date of Decision |
|---|---------------------|
| Entitlement to Aid and Attendance of another under 38 CFR §3.350(b)(3) based on diagnosed factual need under §3.351(c)(3) | 02/21/2023 |
| Entitlement to a higher rating for the comorbidities of Post Traumatic Stress Disorder and bipolar 1 disorder with alcohol use disorder in remission under §4.130 DC 9411 | 02/21/2023 |
| | |
| | |
| | |

C. Additional Issue(s)

- Check here if you attached additional sheets. Include the Veteran's last name and the file number. Fourteen (14) Pages

PART IV - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

| | |
|--|------------------------------|
| 12. SIGNATURE (Appellant or appointed representative) (Ink signature)  | 13. DATE SIGNED 3/25/2023 |
|--|------------------------------|

Gordon A. Graham VA #39029 POA E1P



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

March 25, 2023

[REDACTED]
Re: Rating Decision of February [REDACTED], 2023

Extra Pages for VAF 10182

Appellant, through counsel, now files his Notice of Disagreement with the February 21, 2023, AMA rating decision (RD). As there appears to be some confusion with the intercurrent history of the claim, and, due to the Veteran's unfamiliarity with the VA adjudication process, this representative wishes to provide the Trier of fact with a brief history of his claims stream to better aid in understanding it. All dates are the 'received date' in VBMS.

In addition, the Claimant has never had adequate legal representation throughout the pendency of his claims. Although aides from veterans' service organizations provide invaluable assistance to claimants seeking to find their way through the labyrinthine corridors of the veterans' adjudicatory system, they are "not generally trained or licensed in the practice of law." **Cook v. Brown**, 68 F.3d 447, 451 (Fed.Cir.1995). While this representative is an accredited VA Agent,

he, too, is not licensed to practice law which requires the Board, at a minimum, construe this appeal sympathetically. See **Comer v. Peake**, 552 F.3d 1362,1369 (Fed. Cir.2009) ("The VA disability compensation system is not meant to be a trap for the unwary, or a stratagem to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him.").

History of the Claim

7/16/2013-- Veteran files original VAF 21-526c pre-discharge compensation claim for, inter alia, sleep disturbances, insomnia, low back condition, OCD, sensitivity to light and adjustment disorder with anxiety and depressed mood.

9/23/2013-- Veteran released from active duty.

3/27/2014-- RD grants service connection (SC) for, inter alia, adjustment disorder at 0% with effective date of 9/23/2013.

12/16/2014-- Veteran timely files what can only be read as a Notice of Disagreement with his original claim ratings- i.e., to substantially appeal, inter alia, his insomnia/sleep disturbances and increase in rating from the now-SC anxiety disorder.

5/25/2015-- RD grants SC for sleep disturbance/insomnia at 50% with incorrect date of entitlement of 12/16/2014 rather than 9/23/2013 date of original claim.

7/10/2015-- RD grants compensable rating for PTSD at 30% effective 4/15/2014 and 70% effective 12/16/2014 rather than date of claim of 9/23/2013.

12/22/2015-- RD grants Earlier effective date of 3/27/2014 for DC 9411(PTSD) at 70% and DC 6847 (OSA) at 50% based on VONAP (VDC) application online rather than date of claim of 9/23/2013.

4/01/2016-- Veteran files for, inter alia, TDIU.

4/28/2016--RD grants, inter alia, TDIU and Chapter 35 DEA benefits.

9/06/2017-- RD proposes to discontinue TDIU and Chapter 35 DEA unless, or until submittal of VAF 21-4140 within 60 days.

3/02/2018-- TDIU and Chapter 35 DEA benefits rescinded due to failure to timely file VAF 21-4140.

5/15/2018--Veteran files for SC for, inter alia, migraine headaches, arthritis due to trauma and bipolar disorder.

6/18/2018-- VHA Psych review DBQ authored by [REDACTED], Psy.D, endorses comorbidity of bipolar disease with PTSD; Section 4 (for VA rating purposes) records passive suicidal ideation with impaired impulse control such as irritability with periods of violence.

11/16/2018-- RD grants SC for comorbidity of PTSD-Bipolar 1 disorder with confirmed and continued evaluation of 70% based on, inter alia, unprovoked irritability with periods of violence and passive suicidal ideation.

6/24/2019--Veteran requests admission to psychiatric inpatient treatment at Northport, NY VAMC for homicidal ideations.

6/28/2019-- Veteran discharged from psychiatric ward and granted one month FMLA leave of absence.

12/01/2019-- Medical Treatment records from Govt. Facility record Veteran's progress following mental breakdown.

12/01/2019-- (document dated 7/26/2019) Veteran requests return to old job at VAMC and voluntary downgrade of GS rating from 6 to 5 due to mental conditions.

12/11/2019-- CAPRI records detail mental breakdown and 6/2019 admittance as inpatient to VAMC with homicidal/suicidal ideations.

1/17/2020-- DBQ Psychiatric PTSD review in person by Arlene M. Broska, Ph.D, records, inter alia, that Veteran is intermittently unable to keep himself normally clean and presentable due to his depression-e.g., "get out of bed, shower and shave".

1/24/2020-- RD grants, inter alia, headaches at 50% and restores Chapter 35 DEA benefits. RD also confirms and continues PTSD/Bipolar one disorder

at 70% and denies entitlement to SMC at the (I) rate for the aid and attendance of another. Veteran fails to timely appeal and claim becomes final.

6/19/2021-- DBQ Psych PTSD Review via Video Telehealth by [REDACTED] [REDACTED] Ph.D., records "recent incident" where Veteran reported extreme depression and he "shut himself in his room, listening to music, thinking about suicide, using cannabis and drinking."

7/03/2021--RD, inter alia, confirms and continues 70% rating for comorbidities of PTSD with bipolar 1 disorder. Once again, the Veteran fails to timely appeal and the claim became final.

10/26/2022-- Veteran files claim to reopen, inter alia, entitlement to SMC for the aid and attendance of another and an increase in his SC depressive disorder(s).

2/21/2023-- RD denies entitlement to, inter alia, total rating for PTSD with bipolar one disorder and entitlement to aid and attendance of another. This appeal ensues.

Legal Landscape

Because the symptoms enumerated in §4.130 are not an exhaustive list, VA must consider "all the evidence of record that bears on occupational and social impairment," and then "assign a disability rating that most closely reflects the level of social and occupational impairment a veteran is suffering."

Mauerhan v. Principi, 16 Vet.App. 436, 440-41 (2002). See also **Warren v. McDonald**, 28 Vet. App. 194, 197, (2016) (Mauerhan stands for the proposition that a Veteran only needs most, but not all symptoms of a given disability to attain a higher level of disability).

See also **Bankhead v. Shulkin**, 29 Vet.App. 10, 22 (2017) (requiring VA to "engage in a holistic analysis" of the claimant's symptoms to determine the proper disability rating).

The U.S. Court of Appeals for the Federal Circuit has explained that evaluation under § 4.130 is "symptom driven," meaning that "symptom[s] should be the fact finder's primary focus when deciding entitlement to a given disability rating" under that regulation. " **Vazquez-Claudio v. Shinseki**, 713 F.3d 112, 116-17 (Fed. Cir. 2013).

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

In **White v. Illinois**, 502 U.S. 346, 355-56 (1992) the Court held statements made for medical diagnosis or treatment has been deemed by the Court to be exceptionally trustworthy because the declarant has a strong motive to tell the truth to receive a proper diagnosis or treatment.

"The government's interest in veterans cases is not that it shall win, but rather that justice shall be done, that all veterans so entitled receive the benefits due to them." **Barrett v. Nicholson**, 466 F.3d 1038, 1044 (Fed.Cir.2006); see also **Jaquay v Principi**, 304 F.3d at 1280 (2002) (The VA disability compensation system is not meant to be a trap for the unwary, or a stratagem to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him. To the contrary, the VA "has the affirmative duty to assist claimants by informing veterans of the benefits available to them and assisting them in developing claims they may have.)"

The "fair process doctrine" as an obligation placed on VA to provide claimants fair process in the adjudication of their claims. This may include processes not required by statute or regulation if the principle of fair process requires an additional process because "it is implicitly required when viewed

against [the]underlying concepts of procedural regularity and basic fair play of the VA benefits adjudicatory system." **Smith v. Wilkie**, 32 Vet.App.332,337 (2020).

See **Saunders v. Wilkie**, 886 F.3d 1356, 1362–63 (Fed. Cir. 2018) "We have recognized that the word "disability" refers to a "functional impairment, rather than the underlying cause of the impairment."

See **Turco v. Brown**, 9 Vet. App. 224 (eligibility for special monthly compensation by reason of regular need for aid and attendance requires that at least one of the factors set forth in VA regulation is met, but not all).

Clemons v. Shinseki, 23 Vet. App. 1, 5 (2009) held a claimant "[does] not file a claim to receive benefits only for a particular diagnosis, but for the affliction his . . . condition, whatever that is, causes him." Consequently, VA "should construe a claim based on the reasonable expectations of the non-expert, self-represented claimant and the evidence developed in processing that claim," taking into consideration "the claimant's description of the claim; the symptoms the claimant describes; and the information the claimant submits or that the Secretary obtains in support of the claim." VA commits error "when it fail[s] to weigh and assess the nature of the current condition the appellant suffer[s] when determining the breadth of the claim before it." **Id.** at 6.

See **Arneson v. Shinseki**, 24 Vet.App. 379, 387 (2011) ("In the claimant-friendly world of veterans benefits, 'the importance of systemic fairness and the appearance of fairness carries great weight.'" (quoting **Hodge v. West**, 155 F.3d 1356, 1363 (Fed. Cir. 1998))).

Akles v. Derwinski, 1 Vet.App. 118, 121 (1991) held that the RO "should have inferred from the veteran's request for an increase in benefits . . . a request for [SMC] whether or not it was placed in issue by the veteran.



§4.126 Evaluation of disability from mental disorders states:

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

In *Buie v. Shinseki*, 24 Vet.App. 242, 250 (2010), the Court held that[w]henver a veteran has a total disability rating, schedular or extraschedular, based on multiple disabilities and the veteran is subsequently awarded service connection for any additional disability or disabilities, VA's duty to maximize benefits requires VA to assess all of the claimant's disabilities without regard to the order in which they were service connected to determine whether any combination of the disabilities establishes entitlement to [SMC] under section 1114. This duty to maximize encompasses all SMCs and requires VA render a decision which grants every benefit that can be 'supported in law while protecting the interests of the Government.

Analysis

The January 24, 2020, Rating Decision

As a prelude (as noted above in history of the claim), in June 2018, Dr. [REDACTED] Psy.D, diagnosed the Veteran with the comorbidity of bipolar disease with PTSD; Section 4 of the DBQ (for VA rating purposes) endorsed suicidal ideation with impaired impulse control such as unprovoked irritability with periods of violence. Under relevant legal and behavioral history, Dr. Heinze recorded "He reports periods of promiscuous/unsafe sex secondary to bipolar disorder manic episodes." This would ostensibly seem to fall into the category of

grossly inappropriate behavior for VA ratings purposes, but certainly grossly impaired judgement.

The January 2020 rating decision occurred subsequent to the Appellant's May 2019 attempted suicide and request to be admitted to the VA's psychiatric ward based on active homicidal ideations in June 2019. For his own safety and others, it was determined that he should be admitted to the Northport VAMC where he was currently employed in the anesthesiology department. Thus, it can be said that the Secretary had constructive possession of the CAPRI records showing the Veteran's voluntary admission to a government psychiatric facility due to non-compliance with medication management-i.e., Lithium 300mg.

The Court in **Turner v. Shulkin**, 29 Vet. App. 207 (2018), held that for purposes of finality VA treatment records dated during the appeal period are considered in VA's possession even if these records are not physically associated with the claims file until many years after the regional office (RO) issued a rating decision if the RO had sufficient knowledge of the existence of the records within the one-year appeal period.

Subsequent to his discharge on June 28, 2019, he was determined to be unemployable and eligibility to Chapter 35 DEA benefits was restored. He was also granted FMLA leave for an extended period due to his disability. He was unsuccessful by any measure to this day.

Notably, the January 2020 RD denied an increase to his PTSD with the comorbidity of Bipolar one manic disorder. The RD cited a higher evaluation of a schedular rating (i.e., 100%) was not warranted for the PTSD unless the evidence showed total occupational and social impairment due to such symptoms as, inter alia, grossly inappropriate behavior, persistent danger of hurting oneself or others or the intermittent inability to perform activities of everyday living (including maintenance of minimal personal hygiene).

However, the January 17, 2020, DBQ Psychiatric PTSD review authored by [REDACTED] Ph.D, upon which the January 24, 2020, rating decision was based, unequivocally recorded, inter alia, that the Veteran was intermittently unable to keep himself normally clean and presentable due to his depression- e.g., "get out of bed, shower and shave". In Section 5. Behavioral Symptoms, Dr. Broska stated "The veteran has bipolar disorder which consists of alternating symptoms of depression and mania/hypomania. The frequency and severity of his symptoms varies, and the neglect of his appearance/hygiene occurs when he is severely depressed." Dr. [REDACTED] also stated the Veteran's PTSD etiology was the triggering cause of his recurring depression.

Most notably, the January 2020 RD denied entitlement to the aid and attendance of another despite the finding of medical fact that the Veteran suffered the intermittent inability to keep himself normally clean and presentable. *Akles supra*. The Veteran failed to appeal and the decision became final with regards to the increase in PTSD/Bipolar 1-but not necessarily for the ancillary entitlement to SMC for aid and attendance based on VA's policy to consider special monthly compensation where applicable. *Id.* at 121.

The February 21, 2023 Rating Decision

On October 26, 2022, the Veteran filed his AMA supplemental claim to reopen, inter alia, entitlement to an increase in his rating for his PTSD with bipolar one manic disorder as well as entitlement to SMC for the aid and attendance of another based on his major depressive disorder(s). Several months later, the Appellant reached out to this representative for legal assistance and conceded his mental condition rendered him incapable of even pro se representation.

A PTSD Psych Review of the Appellant via Video Telehealth was conducted on November 30, 2022 (VBMS entry of 12/01/2022). The author, [REDACTED] Ph.D., endorsed having reviewed the VA e-folder. On page 2 of the DBQ, #2B. Current Diagnoses Relevant to the Understanding or Management of the Mental Health Disorder (*to include TBI*)', Dr. Johnson failed

to note Appellant's service-connected chronic insomnia, prostrating headaches and other painful musculoskeletal disabilities which are all a matter of record.

In **Monzingo v. Shinseki**, 26 Vet.App. 97, 105 (2012) the Court held "Although "[t]here is no requirement that a medical examiner comment on every favorable piece of evidence in a claims file" to render an adequate opinion, a medical examination report or opinion must "sufficiently inform the Board of a medical expert's judgment on a medical question and the essential rationale for that opinion." In other words, the examiner must provide "not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two." **Nieves-Rodriguez v. Peake**, 22 Vet.App. 295, 301 (2008)."

Nieves-Rodriguez also held "It should now be obvious that a review of the claims file cannot compensate for lack of the reasoned analysis required in a medical opinion. It is the factually accurate, fully articulated, sound reasoning for the conclusion, not the mere fact that the claims file was reviewed, that contributes probative value to a medical opinion." **Nieves-Rodriguez supra**.

From the recorded history of the claim, in its entirety, it can be readily ascertained the Veteran's level of disability has gradually been noted to have increased by subsequent psychologists to include a factual need for the aid and attendance of another to not only help the Appellant keep himself ordinarily clean and presentable, but also to provide care or assistance on a regular basis to preclude the persistent danger of hurting self or others. Medication management is paramount.

The Secretary's own regulation, §4.126, specifically states "The rating agency shall assign an evaluation based on **all the evidence of record** that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination." Here, in the instant case, this requirement is glaringly absent. Over the last five years, the Appellant has evinced symptomatology and actions

which clearly demonstrate entitlement to a total rating for his PTSD with bipolar one disorder. Appellant has further stated he is not always compliant with his medications which, in the case of the Lithium, causes him to engage in risky sexual behaviors which endanger both himself and his partners.

In *Jones supra*, the Court held that the veteran is entitled to a rating based upon his unmedicated condition – that is, the higher disability evaluation – if the effects of medication are not explicitly mentioned under the applicable diagnostic code of the rating schedule condition. A longitudinal review of the regulations (§4.125-§4.130) fails to identify any usage of ameliorating medications which might mask the degree of disability having a bearing on the applications of the ratings criteria from 0% to 100%. It is presumed the Secretary knows how to write his regulations as he incorporates usage of medications numerous times in the application of his VA Schedule of Rating Disabilities (VASRD)- see, e.g., DC 7913 (insulin) or DC 7825 (corticosteroids).

In the instant case, the Veteran's past failures to religiously take his Lithium medication for the diagnosed bipolar one disorder have already been demonstrated to produce manic and hypomanic reactions which provokes grossly inappropriate behavior, a persistent danger of hurting himself or others, and the intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene).

The VBMS clearly and convincingly shows the Appellant has filed for numerous disabilities or increases for his already-service connected diseases over the last ten years. Most, if not all, of the new claims are already rated as maximum schedular. In addition, the Veteran filed for VA Pension in a recent 2022 claim. This representative, in order to conserve scarce judicial resources, has filed requests to withdraw or cancel these claims as no benefit can accrue to him. Due to these demonstrated issues with his memory, it further suggests a need for the aid and attendance of another.



The Appellant has been forced to move to Virginia to obtain interim aid and attendance of his [REDACTED] as de facto caregivers. Until now, his pro se attempts, and those of his Veterans Service Organization, at trying to obtain this benefit from the VA have been unavailing. Disturbingly, from a longitudinal review of the efolder, nowhere in the four corners of the file can there be discerned any involvement by the American Legion following certification of their Power of attorney on December 16, 2014.

Relief Requested

Appellant seeks a total schedular rating under either DC 9411 or DC 9432 with an effective date of October 26, 2022- the earliest date it can be ascertained entitlement arose. He freely concedes he has no medical training that would help to better diagnose his predicament. To quote **Clemons supra**, VA commits error "when it fail[s] to weigh and assess the nature of the current condition the appellant suffer[s] when determining the breadth of the claim before it." When put in proper focus, reasonable minds can only concur that Appellant's entitlement to total occupational and social impairment due to the comorbidities of PTSD with bipolar one disorder is patently obvious on its face.

§4.2 Interpretation of examination reports captures the essence of the problem before the Trier of fact. "Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described. It is the responsibility of the rating specialist to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present."

§4.10 Functional impairment states:

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity.

A charitable interpretation of the evidence of record is that somehow, over the last nine years, §4.10's requirement has escaped the attention of later reviewers such that the Appellant's accelerated descent into mental disability hasn't been adequately appreciated due to a failure to interpret reports of examination in the light of his whole recorded history.

Appellant likewise seeks entitlement to the aid and attendance of another under §3.350(b)(3) as demonstrated by the clear and unmistakable diagnosis of a factual need for same as early as January 17, 2020. While the Secretary has conflated the two identifiable mental disorders of PTSD and Bipolar one disorder into one disability, their symptomatology is still readily distinguishable from one another. The bipolar one disorder alone, in the absence of strict medication management, provokes grossly inappropriate behavior, self-harm and neglect of personal appearance and hygiene.

Appellant feels the appeal is in equipoise and asks for the time-honored pro-Veteran canon of statutory construction most recently espoused in ***Henderson v. Shinseki***, 562 U.S. 428,441 (2011) ("We have long applied the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.").

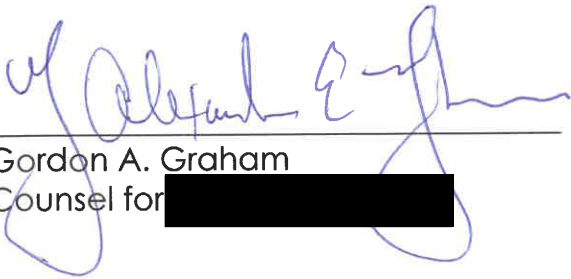
The pro-Veteran canon instructs that provisions providing benefits to veterans should be liberally construed in the veterans' favor, with any interpretative doubt resolved to their benefit. See, e.g., **King v. St. Vincent's Hosp.**, 502 U.S. 215, 220 (1991).

The Supreme Court first articulated this canon in **Boone v. Lightner** to reflect the sound policy that we must "protect those who have been obliged to drop their own affairs to take up the burdens of the nation." 319 U.S. 561, 575 (1943). This same policy underlies the entire veterans benefit scheme.

Barrett v. Principi, 363 F.3d 1316, 1320 (Fed. Cir. 2004) held ("[T]he veterans benefit system is designed to award entitlements to a special class of citizens, those who risked harm to serve and defend their country. This entire scheme is imbued with special beneficence from a grateful sovereign."

Appellant asks for no more-but certainly no less than his due as promised by Congress.

Respectfully submitted,



Gordon A. Graham
Counsel for [REDACTED]