GRAHAM, GORDON A., VBASEAT

To: [redacted] McDonough, Denis

Subject: Veteran [redacted]

[redacted] File [redacted]

Dear Ms. [redacted] et al,

It is with great sadness that I find myself having to write this, but as a Veteran's advocate, I would be remiss if I allow this travesty to pass. In addition, I think the Secretary would be appalled to think any claimant could be subjected to over thirty c&p examinations, diagnosed with loss of use of both the upper and lower extremities by VA clinicians- only to be told he is not entitled to the benefits he seeks. Mitchel v. McDonald comes to mind: "Cases must be decided on the law as we find it, not on the law as we would devise it".

My problem lies with a rating which was issued this morning on the above-named Veteran. A brief explanation is in order. AO exposure has been conceded. The new claim for loss of use of the bilateral upper and lower extremities was filed on 7/25/2021. It has been pending for 589 days. Strangely, the most probative medical opinions yet were not even bookmarked for review by the 1/30/2023 ACE addendum clinician. Worse, a requested probative addendum c&p exam conducted on 2/14/2023 is not even in the evidence of record.

In 2012, Mr. [redacted] was diagnosed in the private community with Parkinson's Disease. He subsequently lost his FAA pilot's license- and his job. His health vis-à-vis Parkinson's continues to progressively deteriorate as conceded by all doctors involved. He can no longer walk unassisted without falling down.

On a 5/14/2019 DBQ, Mr. [redacted] was diagnosed with Parkinson's disease in all four extremities by a VA clinician. This is a determination medical in nature and a positive finding of fact. Document title in VBMS is DBQ-{0693D185-8C53-4B7B-8FF8-8CED284B646F}-4378765_3_2_DBQ_15035.

Mr. [redacted] was rated on 6/05/2019 for **Progressive** Parkinson's disease in all four extremities. At the time he was rated, he had not filed for the *additional disability* of DM II. His disabilities in all four extremities have all been described and confirmed as due to the tremors and rigidity associated with Parkinson's. Until now.

A 7/12/2019 Medical opinion determined Mr. [redacted] disabilities of the upper and lower extremities are explicity due to Parkinson's and not PN.

A RD issued on 7/19/2019 specifically diagnosed Mr. [redacted] with Parkinson's of the bilateral lower extremities and awarded ratings for both. PN of the bilateral lower extremities was diagnosed but denied. The favorable findings of fact diagnosed Mr. [redacted] with PN of the lower extremities in addition to his diagnosis of Parkinson's of the lower extremities with no

etiology ascribed to his Parkinson's whatsoever. The RD further announced Parkinson's of the lower extremities is service connected. There has never been a consensus change or revision in the diagnosis.

A 6/10/2020 DBQ diagnosed the Veteran with PN of the lower extremities due to diabetic neuropathy *in addition to* his SC Parkinson's tremors and muscle rigidity. The same DBQ specifically confirmed the Veteran had no PN of the upper extremities.

A 6/12/2020 RD granted DM II with PN to the lower extremities as a **comorbidity** with his SC Parkinson's disease only. There is no pyramiding as DM II is an endocrinological disability involving a different bodily system separate and distinct from the neurologic disability of Parkinson's as a finding of fact in the 7/12/2019 RD. The RD announced " Service connection for left lower extremity (and right lower extremity) **impairment has been established as related to the service-connected disability of Parkinson's disease with bradykinesia, tremors, muscle rigidity,and stiffness of the right upper extremity and diabetes mellitus type II.** (38 CFR §3.310) The 6/12/2020 Code sheet confirms and continues the SC of the lower extremities as due to the **comorbidities** of Parkinson's and diabetes and the SC for the upper extremities as due solely to Parkinson's alone.

The 8/24/2020 Code sheet continues to show the comorbidity of Parkinson's and DM II as SC for the lower extremities and the SC for the upper extremities as due solely to Parkinson's.

The Code Sheet of 10/26/2020 confirms and continues the award of 70% and 60% SC for the **progressive** disease process of Parkinson's of the upper extremities only. The Code sheet also notes 40% bilaterally for the lower extremities due to DC 8599-8520 for the bilateral **comorbidities** of both Parkinson's and DM II.

A 9/22/2021 DBQ ACE review of the records for Parkinson's suddenly diagnoses a miraculous improvement of what the Secretary considers a progressive, debilitating disease (Parkinson's) with no tremor symptomatology of the right upper and lower extremities, mild tremors in the left upper and lower extremities, and no longer any muscle rigidity in any or the four extremities whatsoever.

A 4/25/2022 RD shows a reduction in the upper extremity SC ratings for the progressively **worsening** disease of Parkinson's. The 4/25/2022 Code sheet now states the left lower extremity is no longer even SC for Parkinson's but solely for PN secondary to DM II.

The 6/07/2022 Code sheet reflects the Right lower extremity is still SC for Parkinson's at 40%, the left lower extremity is SC due solely to DM II at 40%, and the bilateral upper extremities showing *marked improvement* of the SC Parkinson's- something medical experts say is impossible-nay, unheard of. Nowhere in the four corners of the claims file can there be found an in-person diagnosis of resolving Parkinson's disease. In point of fact, Mr. [redacted] Parkinson's extremities disabilities improved so much that his major depressive disorder was increased to 100% including an SMC award of entitlement for the need of aid and attendance of another (SMC at the L rate).

A 9/22/2022 Code sheet suddenly shows both lower extremities solely afflicted with peripheral neuropathy due to DM II and no longer SC for Parkinson's disease with tremors and muscle rigidity confirmed and diagnosed repeatedly for over ten years.

An 11/01/2022 DBQ of an in-person c&p records severe tremors due to Parkinson's in all four extremities as well as moderate muscle rigidity in all four quadrants.

An 11/15/2022 Medical opinion addendum clearly and unmistakably reiterates a medical diagnosis of loss of use of bilateral upper and lower extremities due solely to Parkinson's disease symptomatology. This diagnosis is supported by peer-reviewed cites to medical literature (Nieves-Rodriguez v. Peake).

A 12/08/2022 request for clarification is the crux of the problem. How can a disease such as Parkinson's be mapped and rated geographically as to which extremity is affected versus DM II PN? Does it really matter? The Veteran is connected for both diseases.

Please review the Veteran's electronic folder(s) and state that it was reviewed in your report.
the 10/06/2022 and 11/15/2022 medical opinions are in conflict with evidence of record. Examiner opines loss
of use of upper and/or lower extremities are due to Parkinson's disease (tremors) in combination with peripheral
neuropathy of bilateral upper and lower extremities. please note, the upper and/or lower extremities are serviceconnected due to separate primary conditions. the upper extremities are associated with Parkinson's disease and the lower extremities are due to diabetic peripheral radiculopathy

A 1/30/2023 addendum series of medical opinions only states there is no involvement of PN of the upper extremities but doesn't change an established diagnosis of bilateral upper and lower loss of use of extremities. However, none of the five addendum opinions discuss the probative 11/01/2022 diagnosis of severe tremors in all four quadrants nor the clarification addendum of 11/15/2022. The two opinions above are never mentioned.

The Veteran attended a 2/14/2023 c&p examination. There is no record in VBMS of this c&p examination which was ordered to resolve the disparity of the 1/30/2023 opinion as to loss of use.

Mr. [redacted]' SC rating for Parkinson's of the right lower extremity was established as 40% effective 4/19/2017. It became a protected rating as of 4/18/ 2022 under §3.344(c) so the reduction to 20% on 5/19/2022 is void ab initio. In addition, there has been no medical finding of fact that the Parkinson's is no longer SC for the right or left lower extremity. As of 11/15/2022, the bilateral upper lower extremities are both diagnosed as loss of use due to Parkinson's. There certainly has been no finding of fact that Mr. [redacted] can sustain any of these alleged improvements under the ordinary conditions of life.

Ms. [redacted], please inform the raters that I am prepared to elevate this to the Office of Administrative Review as a due process violation. Failing that, we will file an Extraordinary Writ of Mandamus with the Federal Circuit under Cushman vs. Shinseki as misfeasance/malfeasance for tampering with the official evidence of record. Mr. [redacted] has been diagnosed with loss of use of both the uppers and lowers via an in person examination. All the ACE reviews in the world cannot change or ignore that diagnosis. Mr. [redacted] is forced to use a wheelchair to ambulate due to the severity of his condition. His wife has credibly testified to that fact. The presumption of regularity presumes VA examiners and their subcontractor clinicians are capable and correctly diagnose disabilities. (Sickels v. Shinseki).

It is immaterial which disease process causes Mr. [redacted] to lose the use of his lower or upper extremities as long as they both are SC. He is presumed SC for both under Nehmer herbicide exposure- and indeed has already been diagnosed with both. This doesn't involve §4.14. This claim makes a mockery of the entire purpose of the AMA process.

It is with great misgivings that I add the Secretary to be notified but as the head of his Agency, he is entitled to know how his meager resources are being deployed-or abused. Here, his scarce judicial resources have been squandered recklessly and needlessly. As a proud Vietnam Veteran, I have been an advocate for other Vietnam Veterans for over 15 years. Never have I witnessed such adversarial conduct clearly intended to manifestly change the outcome to the detriment of the Veteran. We, myself included, represent the Veterans Administration in the public's eye. Our behavior should be above reproach.

Please be so kind as to advise us of how you would like to proceed.

Very Respectfully,

Gordon A. Graham
Counsel for [redacted]
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service-connected disability of Parkinson's disease with bradykinesia, tremors, muscle rigidity, and stiffness of the right upper extremity and diabetes mellitus type II. (38 CFR 3.310)