

Claimant;

Claimant File #

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We respectfully request the VA review this claim for revision based on a Clear and Unmistakable Error, under provisions of 38 U.S.C. § 7111(a) regarding the decision dated 04/27/2019.

The veteran was denied service connection for *RESECTION OF LARGE INTESTINE* ([Section 4.114](#), diagnostic code 7329) and *RESIDUAL PAINFUL SCARRING; STATUS POST LEFT HEMICOLECTOMY* (diagnostic code 7804 and 7801). The decision letter states; *"This condition neither occurred in nor was caused by service"*. It further states; *"Your service treatment records do not contain complaints, treatment, or diagnosis for this condition"*.

1. The Veteran served in the Marine Corps from 6 Sep 85 - 5 Sep 89.

The surgical procedure occurred on 28 Jun 87 at Bethesda Naval hospital after the Veteran was transferred from NSF Thurmont/ Camp David and admitted to the ICU for a urgent GI bleed. This procedure included an Exploratory Laparotomy and Left Hemicolectomy and was performed by Surgeon S. Swartz, LT MC USNR.

The failure of the VA to recognize that 28 Jun 87 is in fact during the time period of the Veteran's active duty service is a CLEAR and UNMISTAKABLE ERROR.

2. The Veteran provided the VA with detailed copies of the Veteran's service treatment records including his emergency care & treatment (Form 558), the Operation Report (Form 516), Tissue examination report (Form 515), Active duty inpatient disposition (Form 900), Medical record Narrative summary (Form 502), and Chronological record of Medical Care (Form 600). **These records detail the complaints, treatments, and diagnosis of the claimed condition** and were submitted to the VA three separate times on 03-02-17, 04-06-18 and again on 01-25-19 as well as being attached to this CUE notification. These records were cited as having been reviewed in making this decision and in the denial notification it specifically states; *"All of the medical records were reviewed"*.

The statement that *"Your Service treatment records do not contain complaints, treatment, or diagnosis for this condition"* is blatantly false and a CLEAR and UNMISTAKABLE ERROR.

3. In the DBQ completed by Christa Conologue, ARNP on 04/12/19 she identified that the Veteran had a resection of his SMALL intestine. This is a CUE as the Veteran's STRs clearly show he had a **hemicolectomy** which is a resection of the LARGE intestine and the Veterans STRs were personally handed to the examiner at the time of the C&P. **Statements made in this DBQ are clearly and undebatably erroneous as the Veteran never had a resection of his small intestine and the DBQ also omits relevant and important symptoms identified by the Veteran during the exam.** A resection of the small intestine is identified as a Duodenectomy, a Jejunectomy, or a Ileectomy. The veteran has never had any of these procedures, nor are there any STR's in which these procedures are ever mentioned that would have led the examiner to believe they may have taken place.

The inability of the examiner to differentiate between the small and large intestine, or unfamiliarity with common medical terminology after being handed a copy of the Veteran's STR's raises serious questions as to her competency and qualifications.

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4. In the DBQ Medical Opinion completed by Patricia Memon, PA-C she stated that the Veteran had intestinal issues and an Exploratory Laparotomy in 1982 prior to entering service and that there was no evidence in the Veteran's STR consistent with any intestinal issues or a partial colectomy. **This is a CUE as the statements made in this opinion are completely erroneous.**

**** The ENLISTMENT physical completed 28 Oct 1984 shows NO scarring, NO abdominal issues, NO stomach or intestinal issues, NO prior hospitalizations and NO prior surgeries.***

****The Emergency Care and treatment record in Veterans STRs dated 26 June 1987 and completed at NSF Thurmont, which clearly states "No history of rectal bleeding in past. No family history of rectal cancer. "***

**** The DISCHARGE physical completed 24 May 1989 shows a 12"/.5" midline abdominal scar, Intestinal issues, Colon Polyps, Hospitalization at Bethesda Naval Hospital AND surgery in June 1987.***

All of the above cited details as well as the multitude of other submitted documents show that there IS in fact a plethora of information in the Veteran's STRs consistent with intestinal issues and a Hemicolectomy occurring while in service. The negligence of the author of this medical opinion in failing to accurately document these facts of record show that this medical opinion is **based upon an inaccurate factual premise** and therefore should be afforded no probative value. (See Reonal v. Brown, 5 Vet. App. 458, 461 (1993)). The Veteran had NO prior surgical procedures, intestinal issues, or hospital admissions prior to 1987 and the Large intestine resection WAS documented in the Veteran's STRs on nearly 2 dozen different documents.

Assigning any probative value to this opinion based upon inaccurate factual premises was a CLEAR and UNMISTAKABLE ERROR that was prejudicial to the decision in this claim.

5. The Veteran submitted an Independent Medical Opinion/ Nexus statement from Dr. Robert Ferreira on 08-09-18 which was conspicuously absent from the list of evidence cited in making this decision. This statement is at least in equipoise as to whether or not the resection of his large intestine WITH ongoing symptoms occurred during his active duty military service. Furthermore, having accurately reviewed both the Veteran's medical records and being the treating Primary Care Physician for the veteran, this opinion is the only valid medical opinion rendered to date.

The failure of the VA to consider this IMO as evidence is rendering the decision was a CLEAR and UNMISTAKABLE ERROR.

**** ACCURATE AND THOROUGH REVIEW OF THE VETERAN'S SERVICE TREATMENT RECORDS AND THE INDEPENDENT MEDICAL OPINION/ NEXUS STATEMENT WOULD HAVE RESULTED IN A MANIFESTLY DIFFERENT OUTCOME.**

The VA's failure to consider and evaluate material facts of record in the evidence that the VA has in their possession altered the outcome of the decision cited above.

Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law. (38 CFR § 4.6)