

DEPARTMENT OF VETERANS AFFAIRS  
CLAIMS INTAKE CENTER  
PO BOX 4444  
JANESVILLE, WI 53547-4444

13 NOVEMBER 2019

To whom it may concern:

This is a claim of clear and Unmistakable Error under provisions of 38 USC 5109(a). I respectfully request the VA to call a clear and unmistakable error on part of the June 29, 2009 decision and correct it. In the decision letter dated June 29, 2009 my appeal was closed before one year was up.

From the June 29, 2009 decision -

"You were previously denied service connection for Individual Unemployability. You were notified of the decision on July 22, 2008. The appeal period for that decision has expired and the decision is now final." The date for the July 22, 2008 decision to be closed should be July 21, 2009. This is three weeks into the future.

You have violated the tenets of basic VA case law within 38 CFR 4.6:

38 CFR 4.6 - Evaluation of evidence - stated in part -

"... 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."

There is nothing "equitable and just" about closing a decision before the one year time period is up.

The VA's decision to close my appeal before the one year period was up has altered the outcome with a decision that is legally wrong and manifested a decision that is highly detrimental to me.

Respectfully submitted,

[REDACTED]  
[REDACTED]





DEPARTMENT OF VETERANS AFFAIRS

Regional Office  
210 Franklin Road S.W.  
Roanoke VA 24011-2204

FILE

202

June 29, 2009

[REDACTED]  
[REDACTED]  
[REDACTED]

In reply, refer to:

314/213PRE/CBT

File Number: [REDACTED]  
[REDACTED]

**IMPORTANT -- reply needed**

Dear [REDACTED]:

We are working on your claim for:

- **individual unemployability**

This letter tells you what we will do with your claim and what you can do to help us. Please read the enclosure to this letter entitled, "Veteran Claims Assistance Act (VCAA)." The enclosure explains how we obtain evidence related to your claim and the legal requirements for supporting your claim.

**What Do We Still Need from You?**

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*

- As we consider your claim, you may submit evidence showing that your service-connected Lumbosacral strain, Chronic adjustment disorder with mixed emotional features associated with Lumbosacral strain, Injury cervical spine with limitation of motion, Radiculopathy of right upper extremity associated with injury cervical spine with limitation of motion, Headaches associated with injury cervical spine with limitation of motion have **increased** in severity.
- **You were previously denied service connection for Individual Unemployability.** You were notified of the decision on July 22, 2008. The appeal period for that decision has expired and the decision is now final. In order for us to reopen your claim, we need new and material evidence. Your claim was previously denied because you have not been found unable to secure or follow a substantially gainful occupation as a result of service connected disabilities. Therefore, the evidence you submit must be new and relate to this fact.

EP-020  
SD:08/22/09  
CBT



File Number: [REDACTED]

- You may be entitled to compensation at the **100 percent rate** if you are unable to secure and follow a substantially gainful occupation because of your service-connected disabilities. **If you believe you qualify, complete, sign, and return the enclosed VA Form 21-8940, Veterans Application for Increased Compensation Based on Unemployability.**
- **Ask your last employer to complete and return the enclosed VA Form 21-4192, Request for Employment Information.**
- Send us any treatment records related to your claimed condition(s). This includes reports or statements from doctors, hospitals, laboratories, medical facilities, mental health clinics, x-rays, physical therapy records, surgical reports, etc. These should include the dates of treatment, findings, and diagnoses. If you want us to try to obtain any doctor, hospital or medical reports on your behalf, please complete and return the attached *VA Form 21-4142, Authorization and Consent to Release Information.*
- If you have received treatment at a Department of Veterans Affairs (VA) facility or treatment authorized by VA, please tell us the dates and places of treatment. We will then obtain the necessary records if you give us enough information to locate them.
- You may also send us your own statement, or statements from people who have witnessed how your claimed disabilities affect you. All statements submitted on your behalf should conclude with the following certification: "I hereby certify that the information I have given is true to the best of my knowledge and belief."
- We have enclosed a "VCAA Notice (Response)." We encourage you to return this document, as it may expedite a decision on your claim.

**Where Should You Send What We Need?**

Please send what we need to this address:

Department of Veterans Affairs  
Regional Office  
210 Franklin Road S.W.  
Roanoke VA 24011-2204



## How Soon Should You Send What We Need?

We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you, we may make a decision on your claim after 30 days. However, you have up to one year from the date of this letter to submit the information and evidence necessary to support your claim. If we decide your claim before one year from the date of this letter, you will still have the remainder of the one-year period to submit additional information or evidence necessary to support your claim.

## What Have We Received?

- Your claim for benefits, which we received on June 15, 2009.
- Statement from veteran to support his claim.

## What Have We Done?

- Request for Examination
- Printed medical records from VAMC Winston Salem from August 5, 2008 to June 15, 2009.

## Important Information

We asked the VA medical facility nearest you to schedule you for an examination in connection with your claim. They will notify you of the date, time, and place of the examination. If you can't keep the appointment or want to be re-scheduled, contact the medical facility on the appointment notice as soon as possible.

When a claimant, without good cause, fails to report for an examination or reexamination, the claim shall be rated based on the evidence of record, or even denied. Examples of good cause include, but are not limited to, illness or hospitalization, death of a family member, etc.

## 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, [REDACTED] 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.
- Send us an inquiry using the Internet at <https://iris.va.gov>.
- Write to us at the address at the top of this letter.



File Number: [REDACTED]  
[REDACTED]

We look forward to resolving your claim in a fair and timely manner.

Sincerely yours,

*D. Svirsky*

D. Svirsky

Veterans Service Center Manager

Enclosures: VA Form 21-4192  
VA Form 21-4138  
VA Form 21-4142 (2)  
VA Form 21-8940  
Veterans Claims Assistance Act (VCAA)  
What the Evidence Must Show - Individual Unemployability  
What the Evidence Must Show - New and Material Evidence  
VCAA Notice Response  
What the Evidence Must Show - Claim For Increase  
Diagnostic Code Rating Criteria

cc: DISABLED AMERICAN VETERANS