OMB Approved No. 2900-0877
Respondent Burden: 5 Minutes
Expiration Date: 10/31/2023

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

DOCUMENT EVIDENCE SUBMISSION

INSTRUCTIONS: Read the Privacy Act and Respondent Burden on Page 2 before completing this form. This form is used for the submission of additional documentation or evidence in support of a claim. For more information, contact us at https://iris.custhelp. va.gov, or call us toll-free at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal relay number is 711. VA forms are available at www.va.gov/vaforms .

SECTION I: VETERAN'S IDENTIFICATION INFORMATION

NOTE: You may complete the form online or by hand. If completing by hand, print neatly and legibly in ink, and completely fill in each applicable circle to help expedite processing of the form.

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

2. SOCIAL SECURITY NUMBER	3. VA FILE NUMBER (If applicable)	4. DATE OF BIRTH (MM-DD-YYYY)
[redacted]	[redacted]	[redacted]

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

No. & Street [redacted]

Apt./Unit Number City [redacted]

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

6. TELEPHONE NUMBER (Include Area Code)
[redacted]

Enter International Phone Number (If applicable)

7. E-MAIL ADDRESS ☑ I agree to receive electronic correspondence from VA in regards to my claim.
[redacted]

SECTION II: CLAIMANT'S IDENTIFICATION INFORMATION (If other than veteran)

8. CLAIMANTS NAME (First, Middle Initial, Last)

9. SOCIAL SECURITY NUMBER	10. VA FILE NUMBER (If applicable)	11. DATE OF BIRTH (MM-DD-YYYY)

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

No. & Street

Apt./Unit Number City

State/Province Country US ZIP Code/Postal Code

13. TELEPHONE NUMBER (Include Area Code)

Enter International Phone Number (If applicable)

14. E-MAIL ADDRESS ☐ I agree to receive electronic correspondence from VA in regards to my claim.

SECTION III: DOCUMENT/EVIDENCE TYPE YOU ARE SUBMITTING

15. IS THIS FORM BEING SUBMITTED IN RESPONSE TO A REQUEST YOU RECEIVED FROM VA?

☐ YES ☑ NO

SOCIAL SECURITY NUMBER

16. IDENTIFY THE DOCUMENT(S) OR EVIDENCE YOU ARE SUBMITTING TO SUPPORT YOUR ESTABLISHED CLAIM.

NOTE: You may select one or more type(s), depending on the type of documentation/evidence being provided with this form.

☐ BIRTH CERTIFICATE	☐ DEATH CERTIFICATE
☐ DEPENDENCY INFORMATION	☐ DIVORCE DECREE
☐ FINANCIAL INFORMATION	☐ MARRIAGE CERTIFICATE
☐ MEDICAL TREATMENT RECORDS	☐ COURT PAPERS/DOCUMENTS
☐ MILITARY PERSONNEL RECORDS	☐ SERVICE TREATMENT RECORDS

☐ LAY STATEMENT (Describe)

☑ OTHER (Describe)

Form 4138: DBQ Election, Duty to Assist Waiver, and C&P Decline Notice

SECTION IV: CERTIFICATION AND SIGNATURE

I CERTIFY THAT I have filled this form out completely and that it is true and correct to the best of my knowledge and belief.

17A. VETERAN/CLAIMANT'S SIGNATURE (REQUIRED)	17B. DATE SIGNED (MM-DD-YYYY)
[redacted]	[redacted]

SECTION V: THIRD-PARTY SIGNATURE
(Valid only if requester has an authorized third-party)

I CERTIFY THAT the veteran/claimant has authorized me as the undersigned representative and certifies that the information contained in this document is true and complete to the best of the veteran/claimant's knowledge. **NOTE**: A third-party signature ***will not*** be accepted unless a valid VA Form 21-0845, *Authorization to Disclose Personal Information to a Third-Party*, is of record or attached to this request. A third-party may be a family member or other designated person who is not a Power of Attorney, agent, or fiduciary.

18A. THIRD-PARTY SIGNATURE	18B. DATE SIGNED (MM-DD-YYYY)

SECTION VI: POWER OF ATTORNEY (POA) SIGNATURE
(Valid only if requester has an authorized POA representation)

I CERTIFY THAT the veteran/claimant has authorized me as the undersigned representative and certifies that the information contained in this document is true and complete to the best of veteran/claimant's knowledge.

NOTE: A POA's signature will not be accepted unless 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, is of record or attached to this request.

19A. POA/AUTHORIZED REPRESENTATIVE SIGNATURE	19B. DATE SIGNED (MM-DD-YYYY)

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 fraudulent receipt of any document to which you are not entitled.

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., 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) as 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. Your obligation to respond is voluntary.

RESPONDENT BURDEN: This information will let us help you in support of or response to your claim. We estimate that you will need an average of 5 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.

DBQ Election, Duty to Assist Waiver, & C&P Decline Notice to VA Regional Office

OMB Control No. 2900-0075
Respondent Burden: 15 minutes
Expiration Date: 06/30/2024

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

STATEMENT IN SUPPORT OF CLAIM

INSTRUCTIONS: Before completing this form, read the Privacy Act and Respondent Burden on page 2. Use this form to submit a statement to support a claim. For more information, contact us at https://iris.custhelp.va.gov, or call us toll-free at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal relay number is 711. VA forms are available at www.va.gov/vaforms. After completing the form, mail to: **Department of Veterans Affairs, Evidence Intake Center, P.O. Box 4444, Janesville, WI, 53547-4444.**

SECTION I: VETERAN/BENEFICIARY'S IDENTIFICATION INFORMATION

NOTE: You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and insert one letter per box to help expedite processing of the form.

1. VETERAN/BENEFICIARY'S NAME *(First, Middle Initial, Last)*
[redacted]

2. VETERAN'S SOCIAL SECURITY NUMBER [redacted]

3. VA FILE NUMBER *(If applicable)* [redacted]

4. VETERAN'S DATE OF BIRTH [redacted]

5. VETERAN'S SERVICE NUMBER *(If applicable)*

6. TELEPHONE NUMBER *(Include Area Code)* [redacted]

7. E-MAIL ADDRESS *(Optional)* [redacted]

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

No. & Street [redacted]

Apt./Unit Number

City [redacted]

State/Province [redacted]

Country

ZIP Code/Postal Code [redacted]

SECTION II: REMARKS

(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

DBQ Election, Duty to Assist Waiver, and C&P Decline Notice for 526EZ and 0995 claims signed 02/10/2022.

- I ELECT TO USE PRIVATE DBQs IN LIEU OF REPORTING FOR C&P EXAMS.
- I WAIVE ANY PART OF VA's "DUTY TO ASSIST" (38 USC 5103A(d)) RESULTING IN C&Ps.
- I DECLINE TO REPORT FOR ANY C&P EXAMS.
- I WAIVE TELEPHONE CONFIRMATION OF THIS ELECTION.

- I request compliance with M21-1 IV.i.2.C.1.d: "If the examination facility cancels a pending examination request based on a Veteran's election to submit a privately prepared disability benefits questionnaire (DBQ) in lieu of reporting for a clinical appointment, then follow guidance as it appears in [IV.i.2.C.1.e]."

- This DBQ election is not a "refusal" to attend C&Ps nor does it trigger the denial provisions of 38 CFR 3.655 and M21-1 IV.i.2.G which are based on "failing to report." M21-1 IV.i.2.C.1.d restricts VA's definition of "failure to report" to an actual "No Show" for a C&P appointment. I am not a "No Show" and I am not "refusing to attend" or "failing to report." I am merely exercising my choice under VA policy to use private DBQs instead of C&P exams to provide the medical information for my claim.

- Federal statute requires VA to weigh private DBQs equally with C&Ps (38 USC 5101 as amended by Pub. L. 116 315, title II, 2006(d), Jan. 5, 2021, 134 Stat. 4976). This equal status is now expressed most explicitly by the policy regarding increased rating claims: "Do not routinely request an examination if a disability benefits questionnaire, completed by a private or VA physician, was submitted" (M21-1 IV.i.1.B.1.g). However, this same principle applies to all types of claims.

(continued on next page)

SECTION II: REMARKS *(Continued)*

(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

- I submitted DBQs that are adequate for rating my claim. M21-1 V.ii.1.A.3.j allows that "A statement from any physician can be accepted for rating purposes without further examination if it is otherwise sufficient for rating purposes" and has a proper diagnosis. This policy derives from 38 CFR 3.326 which makes a similar declaration. Further, my DBQs meet the definition of "competent medical evidence" (38 CFR 3.159(a) (1)). If my DBQs are insufficient in any way, then VA must contact me or my private physician for correction (38 USC 5101). It is improper to send a private DBQ to a C&P examiner for clarification when they did not write it in the first place. Such action could only be construed as an effort to "develop to deny" by VA.

- Congress has declared its support for Veterans using private medical evidence to support their VA claims because it "properly protects veterans" (38 USC 5101). Consideration should be given to the DBQs I have submitted with my claim. They are sufficient for rating purposes, and they make C&Ps unnecessary.

- VA cannot "develop to deny" a claim. Since I have already submitted a complete package of private evidence, any further development with C&Ps would violate VA policy: "Decision makers may not arbitrarily or capriciously refuse to assign weight to a claimant's evidence or develop with the purpose of obtaining evidence to justify a denial of the claim" (M21-1 V.ii.3.B.1.a). This prohibition was emphasized in a law review article published by the BVA: "additional evidence should not be procured for the sole purpose of denying the veteran's claim" (1 Veterans L. Rev. 94 (2009)). Even CAVC has strongly affirmed this policy: "Because it would not be permissible for VA to undertake such additional development if a purpose was to obtain evidence against an appellant's case, VA must provide an adequate statement of reasons or bases for its decision to pursue further development where such development reasonably could be construed as obtaining additional evidence for that purpose" (Mariano v Principi, 17 Vet. App. 312 (2003)).

- VA cannot arbitrarily minimize or deny benefits. Rather, the official policy is to "award benefits where supported under the facts and law or when the evidence is in relative equipoise or balance while denying only when we must under the facts and law that require it" (M21-1 V.ii.1.A.6.b). I request application of this policy to my claim and the private medical evidence I have submitted. According to the facts and the law, my claim can be decided without C&Ps. I request that VA simply proceed with a decision on my claim based on the evidence already in its possession.

SECTION III: DECLARATION OF INTENT

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

9. SIGNATURE OF VETERAN/BENEFICIARY (Required)	10. DATE SIGNED
[redacted]	[redacted]

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.

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., 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) as 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. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identity your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 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.

M21-1 IV.i.2.C.1.d and e

Election of DBQ in lieu of C&P

IV.i.2.C.1.d. Continued EP Control When Examinations Are Rescheduled

Regional office (RO) personnel must maintain EP control over claims in which the examination facility or contract examination vendor of jurisdiction reschedules an appointment or directs resubmission of an examination request, to include by way of a request for clarification.

Note: Contract examination vendors use clarification requests with a variety of narrative reason values to denote examination appointment scheduling irregularities. The ***only*** such reason value that may be appropriately considered equivalent to a failure to report for examination, thus warranting application of procedures discussed in **M21-1, Part IV, Subpart i, 2.G**, is *No Show*.

Use the table below to determine what actions to take when examination scheduling issues arise.

If the ...	Then ...
examination facility cancels a pending examination request based on a Veteran's election to submit a privately prepared disability benefits questionnaire (DBQ) in lieu of reporting for a clinical appointment	follow guidance as it appears in **M21-1, Part IV, Subpart i, 2.C.1.e**.

IV.i.2.C.1.e. DBQs and Examination Cancellations

Use the table below to handle cases when notified that a scheduled examination(s) has been canceled because the claimant intends on submitting a DBQ completed by a private provider.

Note: RO personnel must attempt to contact the claimant via telephone prior to making a rating decision.

If telephone contact is ...	Then ...
successful	• document the call on ***VA Form 27-0820, Report of General Information***, and • inform the Veteran he/she has 30 days to provide the DBQ.

M21-1 V.ii.1.A.6.b

VA has no policy to minimize or deny benefits

V.ii.1.A.6.b. Decision-Making in a Non-Adversarial System	An ***adversarial system*** involves advocates representing contrary positions before an impartial decision maker. The VA system is ***non-adversarial***. There is no advocate on behalf of VA opposing claims and no policy to minimize or deny benefits. Decision makers are expected to be impartial and liberally apply VA's pro-Veteran policies, procedures, and regulations in accordance with any applicable VA guidance. VA's policy is to award benefits where supported under the facts and law or when the evidence is in relative equipoise or balance while denying only when we must under the facts and law require it. ***Reference***: For more information on the attitude of the rating officers, see **38 CFR 4.23**.

38 USC 5101

Congress: DBQs protect Veteran benefits

(i) replace the forms as described in paragraph (1)(A);

(ii) publish such replacement pursuant to subparagraph (A) of section 5101(d)(1), as added by subsection (a)(2); and

(iii) update the details under subparagraph (B) of such section.

(B) REPORTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF VETERANS AFFAIRS.—If the Secretary replaces the forms under subparagraph (A), the Inspector General of the Department of Veterans Affairs shall, not later than one year after the date that the Secretary replaces such forms and not less frequently than once each year thereafter until the date that is three years after the date on which the Secretary replaces such forms, submit to Congress a report on the process that replaced such forms that ascertains whether the process properly protects veterans.

(4) LIMITATION.—The Secretary may not discontinue the use of the disability benefit questionnaire forms described in paragraph (1)(A) until a replacement form or process is implemented.

(e) RULE OF CONSTRUCTION.—Nothing in this section or section

38 USC 5101

DBQ clarifications from Veteran not C&P

(a) IN GENERAL.—Section 5101 of title 38, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

"(d)(1) The Secretary shall publish in a central location on the internet website of the Department—

"(A) the disability benefit questionnaire forms of the Department for the submittal of evidence from non-Department medical providers regarding a disability of a claimant, including any form or process that replaces any such disability benefit questionnaire form; and

"(B) details about the process used by the Department for submittal of evidence described in subparagraph (A).

"(2) Subject to section 6103 of this title, if the Secretary updates a form described in paragraph (1)(A), the Secretary shall—

"(A) accept the previous version of the form filed by a claimant if—

"(i) the claimant provided to the non-Department medical provider the previous version of the form before the date on which the updated version of the form was made available; and

"(ii) the claimant files the previous version of the form during the one-year period following the date the form was completed by the non-Department medical provider;

"(B) request from the claimant (or from a non-Department medical provider if the claimant has authorized the provider to share health information with the Secretary) any other information that the updated version of the form requires; and

"(C) apply the laws and regulations required to adjudicate the claim as if the claimant filed the updated version of the form.

"(3) The Secretary may waive any interagency approval process required to approve a modification to a disability benefit questionnaire form if such requirement only applies by reason of the forms being made public.".

(b) REPORTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF VETERANS AFFAIRS.—Not less frequently than once each year through 2023, the Inspector General of the Department of Veterans Affairs shall submit to Congress a report on the findings of the Inspector General with respect to the use of the forms published under section 5101(d)(1) of such title, as added by subsection (a).

38 USC 5101

DBQs equal to C&Ps

38 USC 5101 note.

(c) INITIAL FORM.—The Secretary of Veterans Affairs shall begin carrying out section 5101(d)(1) of such title, as added by subsection (a), by publishing, as described in such section, the form described in such section that was in effect on January 1, 2020.

38 USC 5101 note.

(d) ALTERNATE PROCESS.—

(1) ASSESSMENT AND REPORT.—

(A) IN GENERAL.—Subject to paragraph (2), not later than 180 days after the date of the enactment of this act, the Secretary shall—

(i) assess the feasibility and advisability of replacing disability benefit questionnaire forms that are used by non-Department medical providers to submit to the Secretary evidence regarding a disability of a claimant for benefits under laws administered by the Secretary, with another consistent process that considers evidence equally, whether provided by a Department or a non-Department medical provider;

M21-1 IV.i.1.B.1.g

DBQs sufficient for increase

IV.i.1.B.1.g. Increased Evaluation Claims

In a claim for increase in the evaluation of an SC condition, do not apply the **38 CFR 3.159(c)(4)** standard. There is no prescribed standard for evidence that must be present prior to requesting an examination in a typical claim for increase. If a claim for increase is received, regardless of whether a statement of worsening is received or whether an examination for the claimed condition was completed within the last year, request an examination for the claimed condition ***except*** in the following circumstances.

- Do not routinely request an examination if a disability benefits questionnaire, completed by a private or VA physician, was submitted.

M21-1 V.ii.1.A.3.j

DBQs accepted for rating

V.ii.1.A.3.j. Statements From Physicians as Acceptable Evidence for Rating Purposes Without Further Examination

A statement from any physician can be accepted for rating purposes without further examination if it

- is otherwise sufficient for rating purposes, and
- includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities.

Examples: Diagnostic techniques generally accepted by medical authorities include

- pathological studies
- x-rays, and
- appropriate laboratory tests.

38 CFR 3.326

DBQs accepted for rating

(b) Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination. However, monetary benefits to a former prisoner of war will not be denied unless the claimant has been offered a complete physical examination conducted at a Department of Veterans Affairs hospital or outpatient clinic.

(c) Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination.

(Authority: 38 U.S.C. 5107(a))

CROSS REFERENCE: Failure to report for VA examination. See §3.655.

[60 FR 52864, Oct. 11, 1995, as amended at 66 FR 45632, Aug. 29, 2001; 84 FR 170, Jan. 18, 2019]

M21-1 IV.i.1.A.1.b and c

DBQs make C&Ps unnecessary

IV.i.1.A.1.b. Regulatory Standard for Finding an Examination or Medical Opinion Necessary

The regulatory criteria for finding an examination or medical opinion necessary under the duty to assist are in **38 CFR 3.159(c)(4)**.

A medical opinion or examination is necessary when there is *not* sufficient medical evidence of record to make a decision on the claim, *and*

- there is competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability
- the evidence establishes that the Veteran
  - suffered an event, injury, or disease in service, *or*
  - has a disease or symptoms of a disease listed in **38 CFR 3.309**, **38 CFR 3.313**, **38 CFR 3.316**, **38 CFR 3.317**, or **38 CFR 3.318** manifesting during an applicable presumptive period, and
- the evidence indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

IV.i.1.A.1.c. Reviewing Evidence Before Determining an Examination Is Necessary

An examination or opinion is only necessary under **38 CFR 3.159(c)(4)** when there is ***not*** sufficient medical evidence of record to make a decision on the claim.

38 CFR 3.326 similarly provides that an examination is authorized when medical evidence accompanying the claim is not adequate for rating purposes. To illustrate the principle, the regulation adds that any hospital report, any government or private institution examination report, or statement from a private physician can be used to decide a claim without an examination if adequate for rating purposes.

These provisions together mean that some review of the available medical evidence is required before deciding whether an examination or opinion is necessary.

38 CFR 3.159

DBQs makes C&Ps unnecessary

(4) *Providing medical examinations or obtaining medical opinions.* (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an

38 USC 5103A

DBQs makes C&Ps unnecessary

CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall treat an examination or opinion as being necessary to make a decision on a claim for purposes of paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(e) REGULATIONS.—The Secretary shall pre-

C&P after DBQ is "developing to deny"

M21-1 V.ii.3.B.1.a

V.ii.3.B.1.a. When Development to Obtain Additional Evidence May Be Needed	Development to obtain additional evidence such as a medical examination or other records may be needed if • it would provide a more complete picture of a question at issue, or • if the evidence of record is questionable or conflicting. ***Note***: Decision makers may not arbitrarily or capriciously refuse to assign weight to a claimant's evidence or develop with *the purpose* of obtaining evidence to justify a denial of the claim. Instead, decision makers must be able to support the determination that development is needed.

1 Veterans L. Rev. 94 (2009)

In more recent cases, the Court has continued to espouse the principle that the Board has discretion in determining the extent of necessary evidentiary development for service-connection claims; however, additional evidence should not be procured for the sole purpose of denying the veteran's claim. In *Shoffner v. Principi*, the veteran filed a service connection claim for a heart condition. In support of his claim, he submitted private medical letters indicating that if his in-service pneumonia was viral then his heart condition was possibly related to his pneumonia.[165]

Mariano v Principi 17 Vet. App. 312 (2003)

Finally, with respect to this December 1998 VA examination, the Court notes that it is not at all clear from the record on appeal (ROA) why VA concluded, in light of the unrebutted evidence then of record, that it was necessary to obtain that medical opinion. Because it would not be permissible for VA to undertake such additional development if a purpose was to obtain evidence against an appellant's case, VA must provide an adequate statement of reasons or bases for its decision to pursue further development where such development reasonably could be construed as obtaining additional evidence for that purpose. *See* 38 U.S.C. § 7104(d)(1).

Final page of document package

ATTENTION

VA Evidence Intake Center:

Maintain this package
as a single document in VBMS.
Do not separate this package
into multiple documents.