

## I. Violations of 38 CFR

1. 38 CFR §3.159 (Duty to Assist):
    - Failure to Obtain Aggravation Opinion for Pes Planus:
      - VA deferred pes planus (left) despite podiatry reports and gait analysis (April 2025) showing bilateral severity and mobility limitations.
      - Evidence: Podiatry report, MRI (2019), and service-connected left ankle sprain (DC 5271).
    - Ignored Secondary Nexus for Migraines:
      - Migraines (DC 8100) denied despite nexus to tinnitus (DC 6260) and cervical spine degeneration (DC 5242).
      - Evidence: Neurology DBQ (April 2025), medication log linking NSAID use to migraines.
  2. 38 CFR §3.310 (Secondary Service Connection):
    - VA failed to grant migraines as secondary to tinnitus and cervical DDD, violating regulatory requirements for secondary conditions.
  3. 38 CFR §3.155 (Intent to File):
    - Original ITF filed in 2019 (referenced in Sept. 2024 letter, Page 14: VA Form 21-526EZ received Jan. 2020)
    - Effective dates for granted conditions (e.g., ventricular arrhythmias) should align with 2019 ITF under 38 CFR § 3.155(b).
    - Mental health effective date incorrectly set to July 3, 2023, despite ITF dating back to June 26, 2019 (OSA diagnosis date).
    - Demand: Correct effective date to June 26, 2019, per ITF rules.
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## II. Negligence & Duty to Assist (DTA) Failures

1. C&P Examiner Errors:
  - Ignored Evidence:
    - i. Medical opinions (e.g., March 2025 DBQ Addendum for foot conditions) were dismissed without justification in the proposed pes planus reduction.
    - ii. TERA memoranda (October 9, 2024) acknowledged exposure but examiners failed to apply presumptive linkage under the PACT Act.
    - iii. Dizziness was denied despite medical evidence linking it to service-connected ventricular arrhythmias (Page 15 of Sept. 2024 letter).
  - No opinion provided on TERA (asbestos) exposure aggravating pseudofolliculitis barbae, which is proven aggravated via no shave chit throughout service, yet the requirement to shave.
  - Examiners ignored evidence linking migraines to tinnitus and cervicalgia.
2. Failure to Consider TERA Exposure (PACT Act):
  - Skin condition (pseudofolliculitis barbae) denial overlooked TERA exposure (asbestos) as a contributing factor.

- Pseudofolliculitis barbae denial ignored in-service shaving requirements as aggravating factor under 38 CFR § 3.310.
  - Evidence: Dermatology opinion (April 2025), service records confirming MOS-related exposure.
  - 3. Inadequate Development of Radiculopathy/Neuropathy Claims:
    - EMG/NCV studies (February 2024) confirmed bilateral neuropathy, yet VA deferred claims pending "clarification."
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### III. Clear and Unmistakable Errors (CUEs)

1. Mental Health Effective Date (38 CFR §3.400):
  - CUE in assigning July 3, 2023, effective date despite ITF from June 2019. Retroactive pay owed for 49 months (June 2019–July 2023).
  - Legal Basis: \*VAOPGCPREC 3-2003\* (ITF preserves effective date).
2. Migraines Denial:
  - CUE in ignoring secondary nexus to tinnitus (DC 6260) under 38 CFR §3.310.
3. Increase Ventricular Arrhythmias to 30%:
  - Current 10% rating ignores “continuous medication” and workload limitations (Page 18 of Sept. 2024 letter)
  - Examiners dismissed TERA-related medical literature (e.g., asbestos and cardiovascular disease) for dizziness secondary to arrhythmias. Ignoring medical evidence and lay statements.

### IV. Demands for Corrective Action

1. Rating Increases:
    - Migraines (DC 8100): 50% rating (prostrating attacks 2–3 times monthly).
    - Pes Planus (DC 5276): 50% bilateral rating (severe with marked deformity). 38 CFR § 3.105(a)
    - Radiculopathy (DC 8510-8610): 30% per extremity (moderate paralysis).
  2. Special Monthly Compensation (SMC):
    - SMC(k): For bilateral tarsal tunnel syndrome (40% bilateral rating).
    - Loss of Use of Creative Organ:
      - i. Demand that the VA review all prior evidence for SMC-K under 38 U.S.C. § 1114(k).
    - SMC(s): Housebound status (combined 100% + 60% separate ratings).
  3. Backpay Recalculation:
    - Retroactive pay to June 26, 2019 (ITF date) for all granted conditions.
    - Estimated Backpay: approx \$226,756+/- what's been paid out.
  4. Correct Effective Dates:
    - Mental health: June 26, 2019.
    - Migraines, pes planus, neuropathy: June 2019 (date of diagnosis/ITF).
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## V. Evidence Highlighted

1. New Evidence Submitted:
    - Podiatry report (April 2025) confirming bilateral pes planus.
    - Neurology DBQ (April 2025) linking migraines to tinnitus.
    - EMG/NCV results (April 2025) showing neuropathy progression.
  2. Prior Evidence Ignored:
    - ITF acknowledgment from 2019.
    - MRI (2019) for cervical/lumbar DDD. Current MRIs (2024)
    - TERA memorandum (October 2024) conceding toxic exposure.
    - Medical literature linking TERA exposures to conditions.
    - C&P exam reports showing ignored evidence.
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## VI. Closing Statement

- Demand:
  1. Rescind proposed pes planus reduction and retain 30% rating.
  2. Re-rate deferred/denied claims with proper TERA and secondary linkage.
  3. Award SMC-K with retroactive pay.
  4. Correct effective dates to 2019 ITF for all granted conditions.
  5. Comply with DTAs for deferred claims.
- Next Steps: Escalation to BVA or federal court if unresolved.
- Action Requested: Written response within 30 days confirming corrective action.

"The VA's failure to comply with 38 CFR, DTAs, and PACT Act provisions has resulted in prolonged financial and emotional hardship. I demand immediate correction of CUEs, proper SMC eligibility review, and full backpay to 2019. All deferred claims must be adjudicated with the evidence already on file."