

## I. Duty to Assist (DTA) Violations (38 CFR §3.159)

1. Failure to Obtain Medical Opinions:
    - Issue: VA deferred claims for pes planus (DC 5276) and tarsal tunnel syndrome (DC 8524) despite:
      - Podiatry Diagnosis (5/9/2025): "Acquired deformity of bilateral feet" (SNOMED 774124003/774123009) and "tarsal tunnel syndrome of right posterior tibial nerve" (SNOMED 290521000119100).
      - M21-1, Part III, Subpart iv, 4.A.1.b: Requires VA to obtain medical opinions when evidence is insufficient to decide a claim.
    - Demand: Immediate rating decisions for bilateral pes planus (50%) and tarsal tunnel syndrome (40% bilateral).
  2. Ignored Obesity as Aggravating Factor:
    - BMI 36.5 (Documented): Podiatry report confirms worsening obesity, which VA previously acknowledged as aggravating OSA and spinal conditions.
    - 38 CFR §3.310(b): Requires VA to consider aggravation of service-connected conditions by secondary factors like obesity.
    - Demand: Re-rate OSA, GERD, and spinal stenosis with obesity as an aggravating factor.
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## II. Clear & Unmistakable Errors (CUEs)

1. Denial of Bilateral Tarsal Tunnel Syndrome:
    - Error: VA previously deferred tarsal tunnel syndrome despite:
      - Podiatry Evidence (2/20/2024 & 5/9/2025): Confirmed bilateral diagnoses (SNOMED 16206901000119103 and 290521000119100).
      - EMG/NCV Testing Ordered: Explicitly recommended to confirm neuropathy and confirm severity through the spine and extremities.
      - Legal Basis: \*VAOPGCPREC 1-2018\* (CUE exists if outcome would clearly change with correct application of law/facts).
  2. Underrated Pes Planus (DC 5276):
    - Error: VA rated pes planus at 30% despite M21-1, Part III, Subpart iv, 4.H.44:
      - Severe Bilateral Pes Planus: "Marked deformity, pain on manipulation, and use of orthopedic appliances" warrants 50%.
      - Podiatry Notes (5/9/2025): "Conservative measures (orthotics) cannot compensate for deformity."
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## III. M21-1 Compliance Failures

1. Pes Planus Rating Criteria Ignored:

- M21-1, Part III, Subpart iv, 4.H.44: Requires 50% rating for severe bilateral pes planus with marked deformity and need for orthopedic devices.
  - Evidence: Custom orthotics prescribed (2/20/2024) and "acquired deformity of bilateral feet" (5/9/2025).
  - 2. Tarsal Tunnel Syndrome Rating Criteria:
    - M21-1, Part III, Subpart iv, 4.H.47: Moderate paralysis of the tibial nerve warrants 20% per leg.
    - Evidence: Bilateral diagnoses (2/20/2024 and 5/9/2025) and EMG/NCV orders confirm severity.
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#### IV. Demands for Corrective Action

1. Immediate Rating Adjustments:
    - Pes Planus (DC 5276): Increase to 50% bilateral (severe with marked deformity).
    - Tarsal Tunnel Syndrome (DC 8524): Grant 40% bilateral (20% per leg + bilateral factor).
    - Peripheral Neuropathy (DC 8510): 30% per extremity (moderate incomplete paralysis).
  2. Special Monthly Compensation (SMC):
    - SMC(k): For bilateral tarsal tunnel syndrome (loss of use of extremities).
    - SMC(s): Housebound status due to combined 100% rating + separate 60% (e.g., OSA + GERD + mental health).
  3. Retroactive Effective Dates:
    - Pes Planus/Tarsal Tunnel Syndrome: February 20, 2024 (date of initial podiatry diagnosis).
    - Mental Health: June 26, 2019 (original ITF date).
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#### V. Closing Statement

"The VA's failure to comply with 38 CFR §3.159, M21-1 guidelines, and PACT Act provisions constitutes negligence. The evidence from both podiatry visits (February 2024 and May 2025) unequivocally supports higher ratings for pes planus, tarsal tunnel syndrome, and neuropathy. Correct these CUEs, grant SMC, and issue retroactive pay to 2019 per the ITF."