

FORMAL CLAIM SUBMISSION: REBUTTAL OF VA DECISION

Veteran: Jamar D. Little | VA File Number: 360 78 2144

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1. Rebuttal to Proposed Severance of Service Connection for Pes Planus (30%)

Decision Contested: April 22, 2025, Rating Decision proposing severance of service connection for pes planus (left foot).

Legal Basis:

- 38 CFR § 3.306: Aggravation of a pre-existing condition during service is compensable.
- CUE Standard (38 CFR § 3.105(a)): Error must be "undebatable" and based on the record at the time of the original decision.

Evidence:

- MEPS Documentation (June 2006): DD Form 2808 notes pre-existing pes planus.
- Service Treatment Records (STRs): Documented worsening symptoms (e.g., arch collapse, chronic pain) due to prolonged standing/marching.
- DBQ Addendum (April 18, 2025): Confirms "marked pronation" and chronic pain, satisfying 30% under DC 5276.
- Medical Literature: Studies linking flat feet to altered biomechanics and secondary conditions (e.g., plantar fasciitis).

Argument:

The VA's retroactive reinterpretation violates *Cook v. Principi*, 318 F.3d 1334 (Fed. Cir. 2002), which prohibits relitigating claims based on unchanged evidence. The original grant correctly applied 38 CFR § 3.303 (direct service connection).

Demand: Withdraw proposed severance; retain 30% rating.

2. Demand for Increased Rating (30%) for Ventricular Arrhythmias

Decision Contested: May 1, 2025, Rating Decision granting 10% for ventricular arrhythmias.

Legal Basis:

- 38 CFR § 4.104 (DC 7011): 30% requires "continuous medication" and "MET of 5–7 with symptoms."
- 38 U.S.C. § 5103A: Duty to Assist (DTA) requires VA to obtain all relevant evidence.

Evidence:

- Private Cardiology Records (Dates): Document syncope, fatigue, and MET limitations.
- Lay Statements (VA Form 21-4138, Sept. 23, 2024): Corroborate symptoms dismissed by the examiner.
- Medication Logs: Continuous use of beta-blockers (e.g., metoprolol).

Argument:

The VA ignored *Nieves v. Principi*, 22 Vet. App. 295 (2009), by failing to obtain a complete medical opinion. The examiner's assertion that the Veteran "denied symptoms" contradicts evidence.

Demand: Increase rating to 30% effective February 15, 2024, with retroactive pay.

3. Adjudication of Deferred Conditions

Conditions Deferred:

- Left/right radiculopathy (arm/leg)
- Peripheral neuropathy

Legal Basis:

- 38 U.S.C. § 5103A: VA must clarify ambiguities without deferring claims indefinitely.

Evidence:

- ION Medical Records (2024): EMG/NCS confirming nerve damage.
- VA Form 21-4138 (Sept. 20, 2024): Describes radiating pain and numbness.

Demand: Expedite decisions using existing evidence.

4. Secondary Conditions Requiring Service Connection

Legal Basis:

- 38 CFR § 3.310(a): Secondary service connection for disabilities proximately due to service-connected conditions.

Secondary Conditions and Nexus:

Condition	Primary SC Disability	Evidence
Anxiety/Depression	Pes planus, chronic pain, medications	Mental Health DBQ (June 2, 2023)
Sleep Apnea	Gabapentin-induced obesity	Sleep study (June 3, 2019)
Cervicalgia/Radiculopathy	Altered gait from pes planus	MRI (June 6, 2019)
GERD/Esophageal Stricture	Toxic Exposure (AFFF)	Endoscopy (March 3, 2024)

Demand: Adjudicate all secondaries with proper nexus opinions.

5. Criticisms of C&P Examinations and Rater Errors

Failures Identified:

- Inadequate DBQ for Arrhythmias: Examiner omitted syncope, violating M21-1, III.iv.3.A.1.b.
- Ignored TERA Link: Dismissed medical literature tying migraines/cardiac issues to asbestos/fuel exposure (Shedden v. Principi).

- Polypharmacy Side Effects: Gabapentin-induced obesity/sleep apnea not addressed.
- Demand: Order new exams compliant with M21-1 or review prior exam results.
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6. Request for Corrective Action

1. Retain pes planus at 30% or increase to 50%, and increase arrhythmias to 30%.
 2. Adjudicate all deferred/secondary conditions.
 3. Award retroactive benefits effective March 16, 2024 (pes planus) and February 15, 2024 (arrhythmias).
 4. Remand for DTA compliance to obtain missing evidence.
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Conclusion

The VA's errors constitute gross negligence under 38 U.S.C. § 5103A. Immediate correction is demanded to rectify harm caused by delayed benefits and procedural violations.

Respectfully submitted,

Jamar D. Little

CC: National Association of County Veterans Service Officers