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STATEMENT FOR THE VETERANS COMMISSION

This (BOX) is my VA file and this (Sheaf of papers) is that portion of my file necessary to decide my case. The difference is the cause of a roughly six hundred and forty thousand case backlog and tens if not hundreds of thousands of Veterans being intentionally cheated out of some or all of their earned benefits by the VAROs.

My presentation today is not about me even though I will use the facts of my case as well as two other cases of which I personally know the facts and know those facts to be true.

I reenlisted in the Army in August of 1964 to become a career officer and pilot. I suffered a back injury in late 1964 that medically disqualified me from OCS and Flight School. I was diagnosed with Degenerative Disc Disease of the L-4, L-5 by 3 Orthopaedic Specialists and given a permanent very restrictive (No running, jumping, calisthenics, lifting over 15 pounds, standing over 30 minute or marching over 30 minutes without 5 minutes rest) Class III physical profile (Record Pg 63 &64). The x-rays showed a definite narrowing of the disc space at L-4, L-5 (Record Pg 51, 11/25/64). I was treated on a continuing basis with narcotics (Darvon) for the pain (Record Pg 56, 11/25/64 Record Pg 68, 3/10/65 &6/3/65, Record Pg 100, VA physical 7/21/67). The Army then tried to kill me off by sending me to Nam. While in Nam I applied for OCS and a copy of the EKG (Record Pg 82-85) and hearing test (Record Pg 70) are in my medical file even though the physical as well as all of the medical documents showing the narcotics being dispensed to me, for a period of two years, are missing from my file. I thought that if they would require me to fly combat missions every third day they would not say no to my application for OCS and Flight School. I was wrong.

Upon being released from active duty in June of 1967 I applied to the VA for disability benefits. The Rating Officer at the VARO claimed that my exit physical (Record Pg 80) did not show a back injury even though it was on the physical. The VA did a C&P physical in July of 1967 using a GP and he claimed that there was nothing wrong with me. The Rating Officer also claimed that the record did not show that I had been treated for the injury in the last two years. The VA, in

answer to my claim that two years of medical records had been removed from my file, says that because the records are not in the file they never existed. The VARO, for 40 years, has refused to answer the question of why part of an OCS physical is in the file while the rest is missing and why the record shows me being prescribed narcotics for the pain before I left for Nam and still being prescribed narcotics for the pain when I was given the C&P physical. The Rating Officer simply ignored the evidence and denied my claim in August of 1967.

I disagreed with the decision and was given a second physical in November of 1967. The findings were Recurrent Lower Back Strain with minimal disability (Record Pg 119, 11/30/67). The x-rays showed "the lower dorsal and lumbar spine are completely straightened in the recumbent position" (Record PG 117 11/30/67). The VARO, BVA, Court of Appeals for the Federal District and the US Supreme Court refuse to give me a reason why there was never a decision on service connection for this diagnosis.

The VARO claims they sent me a Statement of the Case with my right to appeal and I say that I never got any additional paperwork. The VARO claims the decision became final based on the evidence of record.

In late 1989 with the passage of the COVA law I decided to try and reopen my case. I went to a civilian Orthpaedic specialist on 3/12/90 to be checked for both my back injury and a left shoulder problem I believed connected to the back injury (Record Pg 131). The x-ray showed minimal narrowing of the L-4 L-5 and L-5 S-1 disc spaces. I went to Leo Dougherty with the NYS Veterans Office and he advised me that I was most likely wasting my time but sent for my records. He could not believe what the VA had done in my case and we proceeded to have the case reopened on 4/20/90 (Record Pg 134) based on both a New and Material Evidence and CUE claim. The Buffalo, NY VARO denied service connection on both issues on 12/13/90 (Record Pg 162). The Buffalo VARO never commented on the left shoulder problem.

We filed an appeal on 11/13/90. The Statement of the Case dated 2/5/91 failed to make any reference to the 11/30/67 VA physical with the diagnosis of Recurrent Lower Back Strain, minimal disability (Record Pg 181). The 6/19/91

Supplemental Statement of the Case by the Buffalo VARO illegally tried to use the 11/30/67 VA physical to support the August 67 VARO decision even though it establishes, without question, that a disability existed.

On 7/23/92 the BVA remanded the case back to the Buffalo VARO citing only the New and Material Evidence claim and ignoring the CUE claim. The Buffalo VARO denied the claim again in November of 1993 still ignoring the CUE claim. The claim went before the BVA again in March of 1993. The BVA found that there was New and Material Evidence in the case and granted service connection for a low back disorder on March 3, 1994. The BVA denied CUE in the claim. The VARO and the BVA have never addressed the question of how an active duty injury resulting in a permanent Class III physical profile does not result in a service connected finding by the VA.

The reason for accepting the New and Material Evidence claim is that the VA the only has to pay disability benefits from 1990. If CUE was upheld the VA would be required to pay disability benefits from 1967. The case went back to the Buffalo VARO to determine the percentage of disability. The VARO decided on 10% disability.

I appealed the percentage and we went around and around for about 7 years until in 1998 under threat from the COVA the St. Petersburg, FL VARO awarded me 60 % from 1998 and 40% from 1990. During this time VA physicals were done and as usual they were falsified to show that I had little or no physical problems. A physical done on September 2, 1994 stated “On physical examination he ambulates easily, without and assistive device. His gait appears normal.” I walked into the room using a cane but the doctor’s report is falsified to the above statement. It should be noted that a Veteran will never see the same C&P doctor more than once. I doubt that they could look the Veteran in the eye a second time.

The CUE decision was appealed to the COVA in June of 1994. The COVA remanded the case to the BVA on July 25, 1996 with the following observations. The VARO and the BVA (Record Pg 591-593) denied the very existence of the evidence, did not have an adequate reasons and bases for its decision, was

arbitrary and capricious in its decision and broke the law in its decision. The BVA, again denied service connection and on 3/11/97 The COVA rubber stamped their decision by saying the BVA had a "tenable bases" for its decision. How do you go from a remand for the above reasons to a finding of a "tenable bases" for the decision with nothing changing? The second time around the COVA said the BVA and VARO had a plausible bases for their decision.

During this period of contention, the VA has tried to kill me twice. The first time was to give me an epidural block and let me drive home and the second by failing to remove a medication that, in the end, left me with severe restrictive lung disease with a 60% disability rating just 3 points off of a 100% disability rating. I was given a 60% disability on my Lumbar Spine, 40% disability for unemployability 10% disability on my Thoracic Spine, 20% disability on my Cervical Spine, 10% disability rating on my left shoulder (on appeal for 40%) and 60% disability rating 3 points off 100% for Severe Restrictive Lung Disease for the second time Dr. Yudenfreund of the Orlando, FL pain clinic tried to kill me. I made a complaint to the VA IG that Dr Amin had falsified the Range of Motion numbers on his 11/10/99 C&P physical. The IG wrote me back and said that if I disagreed with the doctor's finding I had to take it up with the VARO. I responded that I disagreed with Dr. Amin making up Range of Motion numbers not any findings. They have ignored me ever since. My IG complaint was in the file given to Dr. Jurbala when he did a forced Range of Motion study on 5/24/01. The first thing Dr. Jurbala said to me was "You're not recording this are you?" He told me that a Veteran had tried to record him a couple of weeks earlier and they were going to send him to jail for the attempt. He then called in a witness to watch him forcefully move my left arm where ever he wanted it to go. He told me my left arm condition was not in anyway related to my back condition. About a month later, apparently to cover his rear end, he called and scheduled me for an MRI of the Cervical Spine. The MRI showed the C5-C6 compressing the nerve going down the left arm. He changed his diagnosis and I was granted service connection as secondary to the Lumbar injury. The VARO ignores requests to cancel hearings when I find out that it adds a couple of years to the process. Letters sent to the VARO dropping the DAV as my rep have been ignored while at the same time on 1/5/06 John Brock from the DAV called, told me he was my rep and then requested I drop my appeal

because I was already at 100% (DAV was dropped, in writing on 4/20/03, on 1/5/06 and again last week). I figure that another 30% of disability only helps me when the VA tries to downgrade my percentage of disability.

JIM ANDREWS CASE

The next case is a friend I had known for 20 years. Jim Andrews served in the Merchant Marine during WW II as an electrician deep in the bowels of the ships. He also served in the Army during the Korean War. He had little respect for the government and even less for the VA. He suffered from Asbestosis for years before making a claim to the VA. By law, his claim had to be recognized as service connected. The only reason Jim made any claim was so that his wife would get her pension after he passed away. The Vermont VARO denied service connection, then granted 0% disability and then granted 10% disability. An appeal for a 30% disability rating was pending when he died. The rating for this disability is linked to the results of a Pulmonary Function Test and the numbers on that test define the percentage of disability. The PFT numbers in this case always required a 30% disability rating. I am very aware of what is required under this disability code as I had to fight the VARO for my rating under the very same code. Jim died and one of the causes of death listed on his death certificate was his service connected disability. The VARO denied his wife her pension and she was going to let them get away with it. I urged her to file an appeal and she was granted he widow's benefits on appeal.

MICHAEL BRADLEY CASE

My son, Michael Bradley, suffered a shoulder injury while serving in the Army. When he was released from active duty in 1992 The VA gave him service connection with a 0% disability. All of the numbers showed that he rated a 20% disability rating but he foolishly refused to appeal the decision. Over the years his shoulder problems have gotten much worse and his wife finally prevailed upon him to reopen his case in September of 2005.

I did the paper work to reopen his case. I had a civilian doctor do a disability workup under Florida workers compensation parameters and he determined the

disability should be rated at 39%. The VA initially rated only one of the disabilities shown on the VA decision papers. They have since asked for info on one other but have done nothing as yet. The shoulder disability is rated by a Range of Motion Study that clearly assigns the percentage of disability. Since these numbers had to be on the original C&P physical, I requested a copy of the physical so that I could enter a claim of CUE in the original decision. Apparently the original C&P physical has disappeared from his record since the VA was asked for the copy more than 2 years ago and a number of times since. I still have not received a copy. The reason it has disappeared is because CUE means the VA must pay from 1992 and that amounts to a substantial amount of money.

ITEMS WE NEED THE COMMISSION ASK CONGRESS TO PASS

1. An office to prosecute claims of missing records, falsified physicals and breaches of the law. This office must have no connection to the VA or CAVC.
2. C&P physicals must be done by the Veterans regular VA doctor who must continue to look the Veteran in the eye for any wrongs they commit against the Veteran in the disability process.
3. Deny the BVA the ability to remand any case. The BVA must be required to make the decision if the VARO gets it wrong.
4. Deny the CAVC the ability to remand any case. The CAVC must be required to make the decision if the BVA gets it wrong.
5. The Court of Appeals for the Federal District must be required to considered the evidence in a VA decision and not be disallowed, by law, from considering the evidence is any decision. The Court must also be denied the ability to remand a case and must be required to make the decision if the CAVC get it wrong.
6. The ability of any court to base a decision on tenable or plausible evidence or scenarios must be made illegal. The only standards of evidence allowed must be a preponderance of the evidence or clear and convincing evidence as required by Title 38 of the US Code.
7. All disability benefits must be paid at the current rate for the percentage of disability. The VA will pay me the 1967 rate when I finally beat them and not at the 2007 rate. This takes away the financial incentive for the VA to stall decisions on benefits.
8. All disability benefits paid, after the fact, must earn interest from the VA at the current federally recognized rate.