

Sample Letter to Medical Expert Requesting A Medical Opinion

Dear Doctor,

I write to you on behalf of Joe Jones, a Vietnam veteran who may be entitled to VA benefits if we can show that his current back condition, spinal stenosis, is linked to an incident in his military service. The last time we talked, you indicated that you would be willing to review his records and provide me with a medical opinion that, if favorable, could be used to support his claim.

We believe that the tremendous amount of walking Mr. Jones experienced as a foot soldier, combined with the numerous instances of trauma to his back, either caused or aggravated his back condition. According to some general medical information I was able to obtain from the website of the NYU Department of Neurosurgery, trauma can be a factor in the creation or aggravation of spinal stenosis or spondylosis. I have enclosed a copy of that report for your information.

The standard of proof that Mr. Jones must meet is very liberal. The law requires the VA to give the benefit of the doubt to veterans seeking VA benefits. Therefore, if a medical expert determines that "it is at least as likely as not" that Mr. Jones's current back condition is linked to an incident (or incidents) in his service, the VA will have to service-connect his back condition and pay Mr. Jones compensation benefits. **"At least likely as not" means a 50 percent or greater chance that his current condition is due to his military service.**

Attached to this letter, you will find a Disability Benefits Questionnaire (DBQ). This form assists the VA in determining whether a veteran's condition is service-connected and the severity the condition. **Please fill out this DBQ when completing your examination report.**

For your convenience, I will summarize Mr. Jones's service treatment records (STRs). I am also attaching a copy of these records and copies of records in his VA claims file. I have marked relevant pages in these records with a yellow Post-it note for your review.

SERVICE TREATMENT RECORDS

- Mr. Jones was inducted into the Army in July 1969. His induction examination was normal, except the examiner noted "limited lumbar motion, tender over left sacroiliac joint."
- He served from July 1969 to January 1972. His military occupational specialty (MOS) was rifleman (a soldier whose job was to aim and fire his weapon at the enemy).
- The Army awarded him the Purple Heart Medal and three Bronze Stars. He took part in the following military campaigns: ... He was wounded in action (right arm shell fragment wound) on August 16, 1971.
- On several occasions during service, Mr. Jones was treated for painful feet. His bilateral foot complaints were variously diagnosed as: bilateral trench feet (pain in feet caused by cold, damp conditions), bilateral pes cavus (high longitudinal arch), and bilateral pes planus (flat feet).

- His separation examination revealed no musculoskeletal defects. (Mr. Jones informs me that this was a cursory examination—if a service member complained of in-service disability at this examination, he was kept in service for several more months so the military could examine him.)

INJURIES TO HIS BACK THAT OCCURRED DURING COMBAT WITH THE ENEMY

According to Mr. Jones, while he was engaged in combat with the enemy, he hurt his back (suffered trauma) on several occasions:

1. In March 1971, when he was wounded by a shell fragment during the battle of xxx—he fell heavily onto his back. Subsequently, he suffered from severe back pain.
2. In the summer of 1971, he suffered trauma to his back when he was catapulted from the top of a truck cab into a ditch. He states that he was riding on the cab of a truck when the truck on which he was riding swerved to avoid enemy fire. The truck's maneuver sent him flying into the ditch. He landed heavily on his back. An officer offered him some help but there was no first aid station established to treat injured soldiers. Mr. Jones tells me that this trauma hurt his back and caused considerable pain, but he felt it was his duty to continue traveling to the front with the other members of his unit.
3. In September 1971, Mr. Jones and another soldier captured fourteen North Vietnamese soldiers. The incident was written up in a local newspaper. Mr. Jones states that when he threw the grenade that forced the enemy to surrender, he slipped and fell heavily on his back. Again, this trauma to his back caused significant pain. He did not seek treatment for this injury because he was at the front, there was fighting almost every day, and he felt obligated to stay with the other members of his fighting unit.

AFTER SERVICE

- After his discharge from the military in January 1972, Mr. Jones informs me that he suffered almost continuous pain in his lower back. The back pain, while persistent, was not enough to force him to seek treatment. According to Mr. Jones's family, he is a stoic. He seems to think that it is a sign of weakness to complain about pain.
- In 1989, Mr. Jones was treated for and diagnosed with spinal stenosis. A February 13, 1989, MRI from xxxxxx provided an impression of severe spinal stenosis from L2 to the sacrum, which is worse at the L2-3, L3-4 and L4-5 levels. A copy of this medical report, signed by Stephen Smith, M.D., is enclosed with this letter.
- In April 1989, a medical report from Michael Black, M.D., to Stanley Rubin, M.D., indicated that Mr. Jones had back problems for years and, for no apparent reason, he developed significant pain in August 1988. Mr. Jones was advised to consider surgery. My client did not have the surgery. He continues to have back pain.

ADDITIONAL INFORMATION

There are some things you should know in order to make this an informed opinion, including information on the various theories that are potentially part of this claim:

1. **The Standard:** Title 38, United States Code, § 5107(b), provides: “When, after consideration of all evidence and material of record ... there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant.” See 38 C.F.R. § 3.102. **Essentially, this means that if the evidence is nearly equally balanced, Mr. Jones wins. Therefore, I will phrase my questions to you so that you can respond to “Is it at least as likely as not.”**

2. **The Law and Lay Statements:**
 - The law requires that, in the case of any veteran who engaged in combat with the enemy, the VA accept as true the statement of the veteran about what happened to the veteran during combat with the enemy, unless there is clear and convincing evidence to the contrary.

 - Mr. Jones’s statements about what happened to him during service are connected to incidents that occurred when he was engaged in combat with the enemy. **Therefore, for the purposes of your medical opinion, please accept his statements as proven facts.**

3. **Direct Service Connection:**
 - In order to prevail on the issue of service connection there must be:
 1. medical evidence of a current disability;
 2. medical evidence, or in some cases lay evidence, of in-service occurrence or aggravation of a disease or injury; and,
 3. medical evidence of a nexus between an in-service disease or injury and the current disability.

4. **Preexisting Injury or Disease:**
 - A veteran is presumed sound upon his or her entry to service “when examined, accepted, and enrolled for service, except as to defects, infirmities, or disorders noted at the time of the examination, acceptance, and enrollment.” 38 U.S.C. § 1111.

 - This presumption of soundness can only be rebutted if there is clear and unmistakable evidence that the condition preexisted the veteran’s service and that the condition was not aggravated by his or her service. Clear and unmistakable evidence means that it is undebatable.

 - The presumption of soundness will not apply if the veteran is seeking service-connected disability benefits for the same injury or disability that is noted on the entrance examination report. *Lichtenfels v. Derwinski*, 1 Vet. App. 484 (1991).

 - Under 38 U.S.C. § 1153, a preexisting injury or disease will be considered to have been aggravated by active military, naval, air, or space service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

- The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy will establish aggravation of a disability. *Jensen v. Brown*, 19 F.3d 1413 (Fed. Cir. 1994); see 38 C.F.R. § 3.306(b)(2).
- In order to deny claims by a combat veteran who alleges an increase in a disability during combat with the enemy, the VA must either show that the increase in severity was caused by the natural progression of the condition or find that there is clear and convincing evidence showing that the incident alleged by the combat veteran did not occur.

5. **Secondary Service Connection:**

- Service connection may be granted for a disability found to be proximately due to, or the result of, a service-connected disease or injury. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition. 38 C.F.R. § 3.310(a); *Harder v. Brown*, 5 Vet. App. 183, 187-89 (1993).

QUESTIONS

After reviewing Mr. Jones's service treatment records, the records in his VA claims file, and the records of his treatment in 1989, **please answer the following questions with detailed rationale:**

1. For each diagnosis of the back and assuming that trauma to Mr. Jones's back occurred during combat:
 - a. **Is it at least as likely as not (50 percent or greater probability)** that his current back condition is related to in-service back trauma, including the three combat incidents in 1971? **If yes, please provide a detailed rationale that includes a discussion of his continuous post-service back pain.**
2. His July 1969 service entrance examination noted "limited lumbar motion-tender over left sacroiliac joint."
 - a. Please state whether any of Mr. Jones's current back diagnoses are the same as or related to "limited lumbar motion-tender over left sacroiliac joint." **Please provide detailed rationale.**
 - b. If they are NOT the same, **is there clear and unmistakable evidence (it is undebatable)** that his current back condition preexisted his military service? **Please provide detailed rationale.**
 - c. If there was a preexisting back condition, **is it at least as likely as not (50 percent or greater probability)** that the in-service trauma to his back that resulted in increased back symptoms, aggravated the preexisting back condition beyond its natural progression? **Please provide detailed rationale.**
 - d. If so, **is it at least as likely as not (50 percent or greater probability)** that the back condition that was aggravated in service is linked to the current back condition? **Please provide detailed rationale.**

3. Mr. Jones's STRs show several instances of treatment for pain in the feet. This was attributed in service to pes cavus, pes planus, and trench foot. Mr. Jones is currently service-connected for bilateral trench feet.
- a. **Is it at least as likely as not (50 percent or greater probability) that the bilateral foot pain is connected to the current back condition? Please provide detailed rationale.**
 - b. **Is it at least as likely as not (50 percent or greater probability) that his service-connected bilateral trench feet caused his back condition? Please provide detailed rationale.**
 - c. **Is it at least as likely as not (50 percent or greater probability) that his service-connected bilateral trench feet aggravated (worsened) his back condition? Please provide detailed rationale.**

Thank you for your assistance. It is important to me to try and help Mr. Jones as best as I can. In your response, please note that you reviewed the information in Mr. Jones's claims file. If there is additional information that you think might be helpful or if you need clarification of anything, please feel free to contact me at any time. I can be reached at xxx-xxx-xxxx or at xxxxx@xxx.com.

Sincerely,

Advocate