Ok Outlaws and your law officers (your spouses)! Let’s get on the information wagon:

**First Step:**

Obtain your records. I am referring to Military, VA, and Private medical records as well as your training records from the military. To get your military medical and training records you will need to complete a SF 180 (see attached) and send it in. Page 3 gives you the address. It should take approximately 90 days to get them back. If you have not received them after that time call your congressman. The VA records can be retrieved by completing the 21 4138 (see attached for wording). You should also get an account with my health evet. In order to have the required access you will need to get the premium account. Your private records can be gathered by you from your doctor.

**Second Step:**

If you already filed a claim and it is pending review or currently have an appeal pending, we will need to talk about what you will need to gather. Simply call me and we will discuss. If you have nothing claimed or you need to open a new claim, you can do this two ways: A.) File a 21-0966 intent to file (ITF) B.) File a 21-526 with the conditions, but please talk to me prior to filing, so we can ensure the verbiage is correct.

**Third Step:**

If you filed a claim in the past and were denied, you had one year from the date on the rating decision to file a Notice of Disagreement NOD. If you failed to do so you will need new and material evidence to reopen that condition/claim. This will normally (normally=95-99%) require you to see a private doctor and get a NEXUS letter (see attached).

**Fourth Step:**

If you are service connected (VA approved your claim) and that condition or medications for it have caused a secondary condition, we need to get an ITF turned in to save your filing date. Example: Your right knee is service connected and now your left knee is injured because you over-compensated due to right knee pain.

**Last Step:**

It is very sad to acknowledge this, but VA doctors will not always be truthful with you. Do not believe everything they tell you; the only thing that matters is what they write in your chart. If you do not check the notes 72 hours after seeing a VA doctor, shame on you. If you go to a Compensation and Pension exam, same thing. These contractors will diagnose your condition but rarely state it is service connected or state the true severity (they will low ball you).

**Additional Info:**

Some of you may meet the requirement for Individual Unemployable. You will need a private doctor to state so and rationalize it. I am available via email sherman@allgavesome.org or 863-327-3570

**Some things that you should become smart on:**

38 CFR (VA Regulation)

<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=38:1.0.1.1.5#se38.1.4_1130>

M21-1 (how the VA adjudicates the CFR) <http://www.benefits.va.gov/warms/M21_1MR.asp>

DBQ (what VA doctors use to examine you and what you should be taking to your private doctors) <http://www.benefits.va.gov/compensation/dbq_listbydbqformname.asp>

This is an example of a letter that a Vet and I drafted and sent to the VA in response to his claim denial:

Issue: Headaches

In your letter you continue to address that I do not meet requirements for an increase to 50%. Your nurse practitioner examination states that my migraines are prostrating (defined as: to cast (oneself) face down on the ground in humility, submission, or adoration, to lay flat, as on the ground, to throw down level with the ground, to overthrow, overcome, or reduce to helplessness, to reduce to physical weakness or exhaustion) and occur at least once a month and can last up to a week. Your examiner also stated my condition effects my ability to work. Who would hire a person that may be out of work for a week or more every month?

Remember, the Court has held that a claim for an increased rating is generally well-grounded when an appellant indicates that he has suffered an increase in disability. *See* J*ohnston v. Brown*, 10 Vet.App. 80, 84 (1997); *Proscelle v. Derwinski*, 2 Vet.App. 629, 631-32 (1992).

I am also submitting statements about the effects of my conditions, these letters are from people that see me and work with me on a daily bases and wrote them based on personal observation or experience. Reminder, the M21-1MR, Part IV, subpart ii, Chapter 1, Section E states:

 *A lay statement that is based on personal observation or experience is credible if the*

1. person making the statement is/was in a position to know the facts attested to
2. statement is sufficiently specific to address the facts, and
3. Statement is not contradicted by evidence of record that is more credible.

By the way, how can a doctor who seen me for 25 minutes remark on how often and the severity of my headaches. Especially when he noted that I had an increase in medications 2/2017. In light of that, I remind you In *Olson v. Principi*, 3 Vet.App. 480, 482 (1992), the Court held that where the evidence does not adequately evaluate the current state of the condition, the VA must provide a new examination. Therefore, I am submitting a DBQ from my doctor that addresses the severity of my condition. Let me remind you of The United States Court of Appeals for Veteran’s Claims (COURT) has held that the VA cannot rely only upon evidence it considers to be favorable to its position. It must base its decision upon all the evidence of record [Smith **v.** Derwinski, 2 Vet.App. 137, 141 [(1992) (citing Willis v. Derwinski, 1 Vet.App. 63, 66 (1990)]. It seems to me that the examiner marked what she wanted to so I would get the lower disability rating.

I would also note that there is an inferred claim for Unemployability. In***Romeo v. Brown***, 5 Vet.App. 388, 396 (1993), the United States Court of Appeals for Veteran’s Claims (Court) held that where there was evidence in the claims file that the veteran could not engage in gainful employment, there inferred a claim for individual unemployability (IU) and the Board of Veterans’ Appeals (BVA) should have considered whether the veteran was entitled to a total disability rating based on IU. In *Friscia*, the court specifically stated that, where the VA has merely offered its own opinion regarding whether a veteran is unemployable as a result of a service connected disability, the VA has the duty to supplement the record by obtaining an examination which includes an opinion on what effect the appellant’s service connected disability has upon his ability to work. *Friscia*, at 297, citing 38 U.S.C.A. § 5107(a); 38 C.F.R. §§ 3.103(a), 3.326, 3.327, 4.16(a); *Beaty,* at 538; and *Obert v. Brown*, 5 Vet.App. 30, 33 (1993).

I submit that the preponderance of the evidence supports granting the benefits sought. At the very least, an approximate balance of positive and negative evidence, which does not adequately prove or disprove a claim, is present to cause a reasonable doubt to exist. Therefore, I point to 38 C.F.R. § 3.102 which provides that when a reasonable doubt exists "regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant." In the exercise of his functions, rating officers must not allow their personal feelings to intrude. Fairness and courtesy must at all times be shown to applicants by employees whose duties bring them in contact with claimants.