

**Supplemental  
Statement of the Case**

*Department of Veterans Affa.  
Appeals Management Center*

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05/01/2013

NAME OF VETERAN

STEVEN P. MASSONG

VA FILE NUMBER

[REDACTED]

SOCIAL SECURITY NR

POA

American Legion

has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal. (Authority: 38 U.S.C. 7105(d)(3))

**DECISION:**

Entitlement to compensation under 38 U.S.C.A. § 1151 for right leg peripheral artery disease status post forefoot amputation and partial scrotoectomy, due to alleged negligence on the part of VA medical professionals in performing femoral artery bypass graft surgery on July 14, 2005 is denied.

**REASONS AND BASES:**

As noted, the Board of Veterans' Appeals (BVA) remanded your case for additional development. To date, all remand directives have been followed.

You reiterated your contentions during the personal hearing held May 16, 2012. The transcript of this hearing was reviewed and it is noted that no additional evidence was submitted during the time this hearing was held.

We reviewed and considered the cited Tort Claim paperwork. It is noted that a settlement payment was made to you in the amount of \$50,000 for your Medical Malpractice Claim: Administrative Tort Claim. It is also noted that you received this payment for "alleged retention of foreign object, sponge, after colon surgery requiring additional surgery to remove foreign object." This evidence fails to show any evidence that supports you have a disability as a result of negligence on the part of VA medical professionals in performing femoral artery bypass graft surgery on July 14, 2005.

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We reviewed and considered your VA treatment records and packet of evidence from Loma Linda VAHCS. These records <sup>are</sup> negative for objective evidence that supports you have a disability as a result of negligence on the part of VA medical professionals in performing femoral artery bypass graft surgery on July 14, 2005. These records contain duplicates, which have previously been reviewed and considered.

We received a negative response from the Loma Linda VAMC for investigative/incidents reports for your surgery on July 14, 2005. We called you on March 1, 2013 asking you if you had these records in your possession. You reported you did not have a copy of these records in your possession. So, we prepared a formal finding of unavailability memorandum on March 5, 2013 based on the unavailability of these records. No further development was conducted.

In the absence of evidence of wrongdoing or negligence, compensation under the provisions of 38 U.S.C.A. 1151 (West 2002) is denied.

POGO redacted information to protect the personal privacy of certain individuals. Any additional markings and margin notes were in copies that POGO received.