

UNITED STATES COURT OF VETERANS APPEALS

No. 97-947

CLUDIE S. BLOUNT,

APPELLANT,

v.

TOGO D. WEST, JR.,

ACTING SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before NEBEKER, *Chief Judge*, and STEINBERG and GREENE, *Judges*.

ORDER

The appellant, Cludie S. Blount, the 98-year-old widow of World War I veteran John A. Blount, appeals, through counsel, a February 20, 1997, decision of the Board of Veterans' Appeals (BVA or Board). On January 26, 1998, the appellant filed out-of-time an unopposed motion to supplement out-of-time the record on appeal (ROA) with the reverse side of Veterans' Administration (now Department of Veterans Affairs) (VA) Form 21-8332a-2 (which sets forth a Notice of Procedural and Appellate rights), dated January 2, 1979, the front side of which is presently contained in the ROA. Record (R.) at 50.

This Court is precluded by statute from including in the ROA any material that was not contained in the "record of proceedings before the Secretary and the Board." 38 U.S.C. § 7252(b); *see Rogozinski v. Derwinski*, 1 Vet.App. 19 (1990) (review in Court shall be on record of proceedings before Secretary and Board). Where "relevant" documents relating to an appellant's claim were within the Secretary's control (for example, records generated by VA or communications received by it) prior to the BVA decision on appeal and could reasonably have been expected to be part of the record before the Secretary and the Board, such documents are "in contemplation of law" constructively part of the record of those proceedings. *Simington v. Brown*, 9 Vet.App. 334, 335 (1996) (per curiam order) (quoting *Bell v. Derwinski*, 2 Vet.App. 611, 612-13 (1992) (per curiam order)); *see also Hulsey v. Principi*, 3 Vet.App. 486, 487 (1992) (per curiam order).

On consideration of the foregoing, it is

ORDERED that the appellant's motion to supplement the record with the reverse side of VA Form 21-8332a-2 is granted. The Clerk of the Court will designate that one page as R. at 50A and attach it to the ROA.

DATED: February 3, 1998

PER CURIAM.