



DEPARTMENT OF THE ARMY
U.S. ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
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FORT GEORGE G. MEADE, MARYLAND 20755-5125

MAR 15 2023
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tort Claims Division
20-302-T005/T006

Alan Ripka, Esquire
Khawam Ripka, LLP
601 Pennsylvania Ave. NW
South Building, Suite 900
Washington, DC 20004

Claimants: Master Sergeant (MSG) Richard Stayskal and Megan Stayskal, Individually and on behalf of Addisyn Stayskal and Carly Stayskal

Dear Mr. Ripka:

On January 6, 2020, we received your clients' claims against the United States pursuant to 10 U.S.C. § 2733a. The claim contained a demand for a total of \$40,000,000.00 for personal injuries allegedly resulting from a failure to timely diagnose and treat MSG Stayskal's lung cancer at Womack Army Medical Center (WAMC), Fort Bragg, North Carolina on January 27, 2017. The claim further alleges that as a result of the negligence, the cancer was allowed to progress from Stage I to Stage IV.

I regrettably inform you that your clients' claims are denied. On April 26, 2022, we sent you a position letter informing you that two independent expert reviewers had found no causation: no evidence that MSG Stayskal's prognosis or chance of survival was adversely affected by the delay in the diagnosis of his lung cancer. On July 22, 2022, you provided a rebuttal which included 7 expert reviews (4 oncologists, 1 thoracic surgeon, 1 pulmonary disease and critical care specialist, and 1 radiologist). Upon receipt of your rebuttal, we sent the case out for further review to three board-certified oncologists (the original two and a newly contracted third expert). Each of them concluded the standard of care was not met, but MSG Stayskal's cancer had advanced beyond Stage I when he presented in January 2017, and there was no causation.

I must also inform you that the claim of Megan Stayskal, Individually and on behalf of Addisyn Stayskal, and Carly Stayskal is denied because it is a disallowed third-party claim in accordance with 32 C.F.R. 45.12(d) and 32 C.F.R. 45.3(b). The applicable law only authorizes claims by members of the uniformed services. Thus, derivative or other claims from third parties alleging a separate injury as a result of harm to a member of the uniformed services are not permitted. This prohibition includes claims by family members or survivors arising out of the circumstances of personal injury or death of a member.

This is an Initial Determination in accordance with the Department of Defense (DoD) Final Rule implementing the 2020 National Defense Authorization Act (NDAA), Section 731, which became effective on August 26, 2022. If your clients disagree with this Initial Determination, they may file an administrative appeal in accordance with 32 C.F.R. 45.13. Your clients should explain why they disagree with the Initial Determination, but they may not submit additional information in support of the claims unless requested to do so by DoD. An appeal must be received within 90 calendar days of the date of receipt by the claimant of the Initial Determination, unless an extension of time is granted for good cause. If no timely appeal is received, we will issue a Final Determination.

Sincerely,

Nicholas M. Satriano

Nicholas M. Satriano
Supervisory Attorney
Chief, Tort Claims Settlements Division

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

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Washington, DC 20004

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