



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**

[REDACTED]
VA File Number
[REDACTED]

**Represented By:
DISABLED AMERICAN VETERANS
Rating Decision
05/13/2019**

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era. You served in the Army from February 11, 1969, to November 15, 1971. You filed a claim for increased evaluation that was received on February 25, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of Type II diabetes mellitus, which is currently 60 percent disabling, is continued.
2. Evaluation of diabetic peripheral neuropathy, right lower extremity (sciatic nerve), which is currently 20 percent disabling, is continued.
3. Evaluation of diabetic peripheral neuropathy, left lower extremity (sciatic nerve), which is currently 20 percent disabling, is continued.
4. Evaluation of diabetic dermopathy, which is currently 10 percent disabling, is continued.



5. Entitlement to individual unemployability is granted effective December 1, 2018.
6. Basic eligibility to Dependents' Educational Assistance is established from December 1, 2018.
7. Service connection for chronic obstructive pulmonary disease (COPD) is denied.
8. Entitlement to a temporary total disability evaluation based on hospitalization for a service connected disability in excess of 21 days is denied.
9. Entitlement to specially adapted housing is not established.
10. Entitlement to automobile or other conveyance and adaptive equipment or adaptive equipment only is not established.

EVIDENCE

- DD Form 214, Certificate of Release or Discharge from Active Duty
- Service Treatment Records, from February 11, 1969 (enlistment examination) through November 15, 1971 (separation examination), received in VA on August 27, 2015
- VA Form 21-0966, Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC, received in VA on January 2, 2019
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received in VA on February 25, 2019
- VA Form 21-4502, Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 3901-3904), received in VA on February 25, 2019
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received in VA on February 25, 2019
- VA letters concerning your claim, dated February 26, 2019 and March 6, 2019
- VA Form 27-0820, Report of General Information, received in VA on March 12, 2019
- Social Security Administration Medical Records received in VA on March 19, 2019
- Statement from Dr. C. Bash received in VA on April 6, 2019
- VA letter concerning your claim, dated April 12, 2019
- Hospital report, Maywood Acres Healthcare, from November 8, 2018 through December 1, 2018, received in VA on April 22, 2019
- Hospital Report, Providence Tarzana Medical Center, from October 30, 2018 through November 4, 2018, received in VA on April 23, 2019
- VA contract examination, VES, dated April 26, 2019
- VAMC (Veterans Affairs Medical Center) treatment records, West Los Angeles, California VA Medical Center, from June 5, 2018 through May 10, 2019

REASONS FOR DECISION

- 1. Evaluation of Type II diabetes mellitus currently evaluated as 60 percent disabling.**



The evaluation of Type II diabetes mellitus is continued as 60 percent disabling.

An evaluation of 60 percent is granted if insulin, restricted diet, and regulation of activities are required with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated. A higher evaluation of 100 percent is not warranted unless the record shows that more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) are required with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated. (38 CFR 4.119)

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The findings on VA examination would warrant a 20 percent evaluation for your Type II diabetes mellitus based on:

- Oral hypoglycemic agent required

Additional symptom(s) include:

- Restricted diet

A higher evaluation of 40 percent is not warranted for diabetes mellitus unless the evidence shows:

- Diabetes requiring insulin, restricted diet, and regulation of activities. (38 CFR 4.119)

However, per VA regulations (38 CFR 3.327), a reexamination is not required if a veteran is over the age of 55. While the cited medical evidence, to include your recent VA examination, shows some improvement in this condition, a future examination will not be requested since you are over age 55.

2. Evaluation of diabetic peripheral neuropathy, right lower extremity (sciatic nerve) currently evaluated as 20 percent disabling.

The evaluation of diabetic peripheral neuropathy, right lower extremity (sciatic nerve) is continued as 20 percent disabling.

We have assigned a 20 percent evaluation for your diabetic peripheral neuropathy, right lower extremity (sciatic nerve) based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.124a)



We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

3. Evaluation of diabetic peripheral neuropathy, left lower extremity (sciatic nerve) currently evaluated as 20 percent disabling.

The evaluation of diabetic peripheral neuropathy, left lower extremity (sciatic nerve) is continued as 20 percent disabling.

We have assigned a 20 percent evaluation for your diabetic peripheral neuropathy, left lower extremity (sciatic nerve) based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.124a)

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

4. Evaluation of diabetic dermopathy currently evaluated as 10 percent disabling.

The evaluation of diabetic dermopathy is continued as 10 percent disabling.

An evaluation of 10 percent is granted for evidence of dermatitis or eczema involving at least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy including but not limited to corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, psoralen with long-wave ultraviolet-A light (PUVA), or other immunosuppressive drugs required for a total duration of less than 6 weeks over the past 12-month period. A higher evaluation of 30 percent is not warranted unless there is evidence of dermatitis or eczema involving 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy including but not limited to corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, psoralen with long-wave ultraviolet-A light (PUVA), or other immunosuppressive drugs required for a total duration of 6 weeks or more, but not constantly, during the past 12-month period. (38 CFR 4.118)

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

5. Entitlement to individual unemployability.

Entitlement to individual unemployability is granted because you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. (38 CFR 4.16)
Based on a combination of your service connected diabetes mellitus-related disabilities, entitlement to Individual Unemployability benefits is provided effective December 1, 2018, the



date we reduced you from 100 percent disabling to 80 percent disabling, since you filed your claim shortly after said reduction.

6. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. (38 USC Ch. 35, 38 CFR 3.807)

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows you currently have a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807) Entitlement is provided effective the date we granted entitlement to individual unemployment benefits, December 1, 2018.

7. Service connection for chronic obstructive pulmonary disease (COPD) as a result of exposure to herbicides.

Under the authority granted by the Agent Orange Act of 1991, VA has determined that presumption of service connection based on exposure to herbicides used in Vietnam is not warranted for any conditions other than those for which VA has found a positive association between the condition and such exposure. VA has determined that a positive association exists between exposure to herbicides and the subsequent development of the following conditions: AL amyloidosis; chloracne or other acneform disease consistent with chloracne; type 2 diabetes (also known as type II diabetes mellitus or adult-onset diabetes); Hodgkin's disease; ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction, atherosclerotic cardiovascular disease including coronary artery disease, including coronary spasm, and coronary bypass surgery, and stable, unstable and Prinzmetal's angina); all chronic B-cell leukemias (including but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia); multiple myeloma; non-Hodgkin's lymphoma; Parkinson's disease; early-onset peripheral neuropathy; porphyria cutanea tarda (PCT); prostate cancer; respiratory cancers (cancer of the lung, bronchus, larynx, or trachea); and soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma). PCT, chloracne, and early-onset peripheral neuropathy are required to become manifest to a compensable degree within one year from last exposure. (38 CFR 3.307, 38 CFR 3.309)

There is no basis in the available evidence of record to establish service connection for chronic obstructive pulmonary disease (COPD). This condition did not happen in military service, nor was it aggravated or caused by service. (38 CFR 3.303, 38 CFR 3.304)

Favorable Findings identified in this decision:



You were exposed to herbicides in the form of Agent Orange during military service based on your service in Vietnam.

You have been diagnosed with a disability. Your private and VA treatment reports confirm you are diagnosed with COPD.

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. There was no continuity of symptoms from service to the present. (38 CFR 3.303) Your condition is not one of the chronic diseases that VA presumes is related to your military service. (38 CFR 3.307, 38 CFR 3.309)

8. Entitlement to a temporary total disability evaluation based on hospitalization for a service connected disability in excess of 21 days.

A review of the private medical records shows that you were hospitalized for a variety of factors, primarily pneumonia and kidney disease. You are not service connected for these conditions; as such, entitlement to a temporary total disability evaluation based on hospitalization for a service connected disability in excess of 21 days is denied.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Department of Veterans Affairs or an approved hospital for a period in excess of 21 days or hospital observation at Department of Veterans Affairs expense for a service-connected disability for a period in excess of 21 days. You do not meet this criteria. (38 CFR 4.29)

Favorable Findings identified in this decision:

You were hospitalized for 21 days or more.

9. Entitlement to specially adapted housing.

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) may be extended when the veteran is permanently disabled from one of the following conditions which is the result of injury or disease incurred in or aggravated during active military service, or for which the veteran is entitled to receive compensation under 38 U.S.C. 1151: the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity; the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; the loss or loss of use of one lower extremity together with the loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; the loss or loss of use of both upper



extremities such as to preclude use of the arms at or above the elbow; or full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk. Entitlement to special housing assistance is not established because a qualifying disability is not found. {38 CFR 3.809}

Favorable Findings identified in this decision:

None

You do not meet the above-cited criteria for a grant of this benefit.

10. Entitlement to automobile or other conveyance and adaptive equipment or for adaptive equipment only.

A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance and of basic entitlement to necessary adaptive equipment will be made when the veteran has one of the following conditions which is the result of injury or disease incurred or aggravated during active military service: loss or permanent loss of use of one or both feet; loss or permanent loss of use of one or both hands; permanent impairment of vision of both eyes with central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye; for adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips. Entitlement to automobile or adaptive equipment is not established because you do not meet these requirements. (38 CFR 3.808)

Favorable Findings identified in this decision:

None

You do not meet the above-cited criteria for a grant of this benefit.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.

