



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office



VA File Number



Rating Decision
03/06/2020

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era. You served in the Army from May 12, 2006 to April 2, 2009 and from January 18, 2019 to April 17, 2019. You filed an original disability claim that was received on October 1, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for sleep apnea with cpap is granted with an evaluation of 50 percent effective April 18, 2019.
2. Service connection for bilateral hearing loss is granted with an evaluation of 20 percent effective April 18, 2019.
3. Service connection for left shoulder bicipital and rotator cuff tendonitis status post rotator cuff repair (major) is granted with an evaluation of 20 percent effective April 18, 2019.
4. Service connection for bilateral pes planus with plantar fasciitis is granted with an evaluation of 10 percent effective April 18, 2019.



5. Service connection for degenerative arthritis cervical spine claimed as cervical paraspinal neck is granted with an evaluation of 10 percent effective April 18, 2019.
6. Service connection for lumbosacral strain with degenerative arthritis claimed as lower back condition and thoracic paraspinal pain is granted with an evaluation of 10 percent effective April 18, 2019.
7. Service connection for tinnitus claimed as ringing in the ears is granted with an evaluation of 10 percent effective April 18, 2019.
8. Service connection for hypertension is granted with an evaluation of 0 percent effective April 18, 2019.
9. Service connection for sinus arrhythmia claimed as heart condition is granted with an evaluation of 0 percent effective April 18, 2019.
10. Service connection for tension headaches is granted with an evaluation of 0 percent effective April 18, 2019.
11. Service connection for rash above eye lid neck face is denied.
12. A decision on entitlement to compensation for bilateral knee condition second from bilateral plantar is deferred.

EVIDENCE

- DD Form 214, Certificate of Release or Discharge from Active Duty, received April 25, 2019
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received April 26, 2019
- VA letter concerning your claim, (We received your intent to file on April 11, 2019), dated April 26, 2019
- Service Treatment Records from May 2006 to April 2009 and from January 2019 to April 2019
- Service Personnel Records from May 2006 to April 2009 and from January 2019 to April 2019
- Lay Evidence, Sophia Lee dated May 15, 2019, received October 1, 2019
- Private Treatment Records (you submitted), Pacific Sleep Tech, conducted April 18, 2017 received October 1, 2019
- Radiology Report (you submitted), from December 28, 2018 through October 1, 2019
- Copies of Service Treatment Records, Tripler Army Medical Center, (you submitted), October 1, 2019
- Memorandum/letter concerning your claim, Burn Pit Health Hazards, October 1, 2019
- Private Treatment Records (you submitted), Hawaii Dermatology, from August 17, 2017



- through October 1, 2019
- Disability Benefit Questionnaire, (foot) Private, dated July 27, 2019 received October 1, 2019
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, October 1, 2019
- VAMC (Veterans Affairs Medical Center) treatment records, Honolulu VA Healthcare System, from March 27, 2017 through February 21, 2020
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received November 12, 2019
- VA letter concerning your claim, (We received your intent to file on November 12, 2019), dated November 12, 2019
- VA Form 21-4138, Statement in Support of Claim, received January 21, 2019
- Disability Benefit Questionnaires (private), Dr. Craig Bash (undated), received January 21, 2020
- VA Form 21-4138, Statement in Support of Claim, received January 24, 2020
- Physician's Statement in Support of Service Connection, Craig N. Bash, M.D., received January 24, 2020 and January 27, 2020
- Your written statements (Lay Evidence), from January 27, 2020 through January 29, 2020
- VA contract examination reports, QTC, conducted January 25, 2020 through January 28, 2020, received February 11, 2020

REASONS FOR DECISION

1. Service connection for sleep apnea with cpap.

Service connection for sleep apnea with cpap has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 50 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 50 percent evaluation for your sleep apnea with cpap based on:

- Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine

A higher evaluation of 100 percent is not warranted for sleep apnea syndromes unless the evidence shows:

- Carbon dioxide retention; or,
- Chronic respiratory failure; or,
- Cor pulmonale; or,
- Tracheostomy required. (38 CFR 4.96, 38 CFR 4.97)

2. Service connection for bilateral hearing loss.

We have granted your claim for bilateral hearing loss. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.385)



The effective date of this grant is April 18, 2019. Service connection has been established from the day after your discharge from active duty. When a claim of service connection is received within one year of discharge from active duty, the effective date is the day after discharge. (38 CFR 3.400)

Service connection is warranted because your service treatment records show that your hearing loss began in-service. In addition, you had military acoustic trauma as evidenced by a significant puretone threshold shift in-service and your hearing loss has been linked to that acoustic trauma. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.385)

Your VA examiner opined that it is at least as likely as not that your hearing loss is due to military noise exposure.

VA examination findings show the left ear with 66 percent speech discrimination. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 25, at 1000 Hz is 25, at 2000 Hz is 25, at 3000 Hz is 25, and at 4000 Hz is 20. The average decibel loss is 24 in the left ear. The right ear shows a speech discrimination of 64 percent. Your right ear Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 25, at 1000 Hz is 25, at 2000 Hz is 35, at 3000 Hz is 35, and at 4000 Hz is 40. The average decibel loss is 34 in the right ear.

An evaluation of 20 percent is assigned because your right ear has a speech discrimination of 64 with an average decibel loss of 34 and your left ear has a speech discrimination of 66 with an average decibel loss of 24. The evaluation for hearing loss is based on objective testing. Higher evaluations are assigned for more severe hearing impairment. (38 CFR 4.85)

An evaluation of 20 percent is assigned from April 18, 2019.

3. Service connection for left shoulder bicipital and rotator cuff tendonitis status post rotator cuff repair (major).

Service connection for left shoulder bicipital and rotator cuff tendonitis status post rotator cuff repair (major) has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 20 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 20 percent evaluation for your left shoulder injury based on:

- Limited motion of the arm at shoulder level
- Painful motion of the shoulder. (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the arm at the shoulder, the minimum compensable evaluation of 20 percent is assigned)

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown* and



Mitchell v. Shinseki, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 30 percent is not warranted for limitation of motion of the arm unless the evidence shows:

- Limited motion of the arm midway between the side and shoulder level. (38 CFR 4.69, 38 CFR 4.71a)

4. Service connection for bilateral pes planus with plantar fasciitis.

Service connection for bilateral pes planus with plantar fasciitis has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 10 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 10 percent evaluation for your bilateral plantar fasciitis based on:

- Pain on use of the feet
- Pain on use of the feet, accentuated
- Weight-bearing line over or medial to great toe

A higher evaluation of 20 percent is not warranted for acquired flat foot unless the evidence shows unilateral involvement with severe symptoms; objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities. (38 CFR 4.57, 38 CFR 4.71a)

Additionally, a higher evaluation of 30 percent is not warranted for acquired flat foot unless the evidence shows bilateral involvement with severe symptoms; objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities. (38 CFR 4.57, 38 CFR 4.71a)

5. Service connection for degenerative arthritis cervical spine claimed as cervical paraspinal neck.

Service connection for degenerative arthritis cervical spine claimed as cervical paraspinal neck has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 10 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 10 percent evaluation for your cervical paraspinal neck based on:

- Combined range of motion of the cervical spine greater than 170 degrees but not greater than 335 degrees
- Forward flexion of the cervical spine greater than 30 degrees but not greater than 40 degrees
- Guarding not resulting in abnormal gait or abnormal spinal contour
- Muscle spasm not resulting in abnormal gait or abnormal spinal contour



Additional symptom(s) include:

- Painful motion upon examination

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown and Mitchell v. Shinseki*, have been considered and are not warranted.

A higher evaluation of 20 percent is not warranted for degenerative arthritis of the spine unless the evidence shows:

- Combined range of motion of the cervical spine not greater than 170 degrees; or,
- Forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees; or,
- Muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for degenerative arthritis of the spine unless the evidence shows:

- X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations. (38 CFR 4.71a)

6. Service connection for lumbosacral strain with degenerative arthritis claimed as lower back condition and thoracic paraspinal pain.

Service connection for lumbosacral strain with degenerative arthritis claimed as lower back condition and thoracic paraspinal pain has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 10 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 10 percent evaluation for your lower back condition based on:

- Muscle spasm not resulting in abnormal gait or abnormal spinal contour

Additional symptom(s) include:

- Combined range of motion of the thoracolumbar spine within normal range
- Forward flexion of the thoracolumbar spine within normal range
- Painful motion upon examination

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown and Mitchell v. Shinseki*, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for degenerative arthritis of the spine unless the evidence shows:

- Combined range of motion of the thoracolumbar spine not greater than 120 degrees; or,
- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60



degrees; or,

- Muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for degenerative arthritis of the spine unless the evidence shows:

- X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations. (38 CFR 4.71a)

PLEASE NOTE: The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be service-connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service connected evaluation and the evaluation of the same manifestation under different diagnoses are to be avoided. (38 CFR 4.14)

7. Service connection for tinnitus claimed as ringing in the ears.

Service connection for tinnitus claimed as ringing in the ears has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 10 percent is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a 10 percent evaluation for your ringing in the ears based on:

- Recurrent tinnitus

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head.

This is the highest schedular evaluation allowed under the law for tinnitus. (38 CFR 4.87)

8. Service connection for hypertension.

Service connection for hypertension has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from April 18, 2019. (3.400)

We have assigned a noncompensable evaluation for your hypertension based on:

- Diastolic pressure predominantly 90 or more (38 CFR 4.31)

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a



compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 10 percent is not warranted for hypertensive vascular disease unless the evidence shows:

- A history of diastolic pressure predominantly 100 or more and there is a requirement for continuous medication for control; or,
- Diastolic pressure predominantly 100 or more; or,
- Systolic pressure predominantly 160 or more. (38 CFR 4.104)

9. Service connection for sinus arrhythmia claimed as heart condition.

Service connection for sinus arrhythmia claimed as heart condition has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a noncompensable evaluation for your heart condition based on:

- A diagnosed disability with no compensable symptoms (38 CFR 4.31)

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 10 percent is not warranted for ventricular arrhythmias unless the evidence shows:

- Continuous medication is required; or,
- Workload of greater than seven METs but not greater than ten METs results in dyspnea, fatigue, angina, dizziness, or syncope. (38 CFR 4.100, 38 CFR 4.104)

One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. (38 CFR 4.104)

10. Service connection for tension headaches.

Service connection for tension headaches has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from April 18, 2019. (38 CFR 3.400)

We have assigned a noncompensable evaluation for your headaches based on:

- A diagnosed disability with no compensable symptoms (38 CFR 4.31)

A higher evaluation of 10 percent is not warranted unless there are characteristic prostrating attacks averaging one in 2 months over last several months. (38 CFR 4.124a)



11. Service connection for rash above eye lid neck face.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. Service connection for rash above eye lid neck face is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303)

We received your medical evidence which discusses the symptoms of your medical condition. However, the evidence does not show a current diagnosed disability. The examiner reported there is no diagnosis because the condition has resolved. The examiner provided this rationale: "no evidence of eczema or any skin rash on examination."

While you submitted positive medical evidence to support your claim, we found other medical evidence more persuasive because it is better supported in its rationale and conclusions. (38 CFR 4.6)

Service connection for rash above eye lid neck face is denied.

Favorable findings identified in this decision:

Service treatment records

12. Compensation for bilateral knee condition second from bilateral plantar.

The issue of compensation for bilateral knee condition second from bilateral plantar is deferred for the following information: clarification

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.

