



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



**VA File Number**



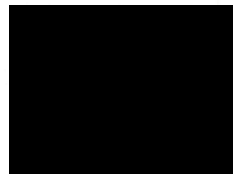
**Represented By:  
FLORIDA DEPARTMENT OF VETERANS AFFAIRS  
Rating Decision  
11/18/2020**

**INTRODUCTION**

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the Air Force from November 3, 1980 to June 12, 1997. You filed a claim for increased evaluation that was received on October 21, 2020. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of major depression, recurrent episode, moderate, PTSD, and panic disorder, which is currently 30 percent disabling, is increased to 70 percent effective August 31, 2020.
2. Evaluation of bilateral hearing loss, which is currently 0 percent disabling, is increased to 40 percent effective August 31, 2020.
3. Evaluation of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome (previously rated as thoracolumbar strain), which is currently 10 percent disabling, is increased to 40 percent effective August 31, 2020.



4. Evaluation of gastroesophageal reflux disease (GERD) and small hiatal hernia (formerly evaluated as gastroenteritis), which is currently 10 percent disabling, is increased to 30 percent effective August 31, 2020.
5. Service connection for left lower extremity radiculopathy, sciatic is granted with an evaluation of 40 percent effective August 31, 2020.
6. Service connection for right lower extremity radiculopathy, sciatic is granted with an evaluation of 40 percent effective August 31, 2020.
7. Service connection for left lower extremity radiculopathy, femoral is granted with an evaluation of 30 percent effective August 31, 2020.
8. Service connection for right lower extremity radiculopathy, femoral is granted with an evaluation of 30 percent effective August 31, 2020.
9. Basic eligibility to Dependents' Educational Assistance is established from August 31, 2020.
10. Evaluation of hypertension, which is currently 10 percent disabling, is continued.
11. Evaluation of bilateral tinnitus, which is currently 10 percent disabling, is continued.
12. A decision on entitlement to compensation for Cervical spine injury is deferred.
13. A decision on entitlement to compensation for sleep apnea secondary to GERD/PTSD is deferred.
14. The claim for an increased evaluation for status post left knee medial meniscus repair (formerly evaluated under DC 5257 as left knee torn medial meniscus) is deferred.
15. Entitlement to Individual Unemployability is deferred.

#### EVIDENCE

- Rating decisions, dated October 27, 2008, and November 2009
- VA Notification Letter dated August 31, 2020, acknowledging receipt of Intent to File on August 31, 2020
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received October 21, 2020
- VA Form 21-0781, Statement In Support Of Claim For Service Connection for Post-Traumatic Stress Disorder (PTSD), received October 21, 2020
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, received October 21, 2020



- Medical Lay Evidence, PTSD Nexus Statement and Rationale, and IU Statement, Frederick W. Nolen, PhD, LLC, dated October 20, 2020, received October 21, 2020
- Medical Lay Evidence, Memo, Craig N. Bash, MD, dated September 28, 2020, received October 21, 2020
- Medical evidence, Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire, Veteran provided dated September 1, 2020, received October 21, 2020
- Medical evidence, Knee and Lower Leg Conditions Disability Benefits Questionnaire, Veteran provided dated September 5, 2020, received October 21, 2020
- Medical evidence, Initial Post Traumatic Stress (PTSD) Disability Benefits Questionnaire, Veteran provided dated October 20, 2020, received October 21, 2020
- Medical evidence, Neck (Cervical Spine) Conditions Disability Benefits Questionnaire, Veteran provided dated September 25, 2020, received October 21, 2020
- Medical evidence, Sleep Apnea Disability Benefits Questionnaire, Veteran provided dated September 23, 2020, received October 21, 2020
- Medical evidence, Esophageal Conditions Disability Benefits Questionnaire, Veteran provided dated September 23, 2020, received October 21, 2020
- Medical evidence, Shoulder and Arm Conditions Disability Benefits Questionnaire, Veteran provided dated September 5, 2020, received October 21, 2020
- Lay evidence, Veteran's statement in support of claim for neck and back issues, bilateral knee injuries, bilateral shoulder injuries, Mental Disorders, and GERD & Sleep Apnea, dated October 1, 2020, received October 21, 2020
- VA Form 21-4138, Statement in Support of Claim, Lay statement from wife, Bonnie L. Archer, dated August 31, 2020, received October 21, 2020
- Lay evidence, Veteran's statement for omission of evidence, rating decision in 1997, dated October 21, 2020, received October 21, 2020
- Personnel record, Orders in support of Operation Restore Hope, dated September 15, 1994, received October 21, 2020
- Private treatment records, Tricare Online, 96th Medical Group, received October 21, 2020, period from July 13, 1997, to October 21, 2020
- Lay Evidence, Article, Lost History: Death, Lies, and Bodywashing, The USA's Secret Way in El Salvador 1981-1992, received October 21, 2020
- Private treatment records, 96th Medical Group, Sleep Disorder Center, sleep study, June 2014, received October 21, 2020
- Private treatment records, Radiology Reports, Bluewater Diagnostic Imaging, period from March 31, 2009, June 9, 2017 and August 25, 2020, received October 21, 2020
- Private treatment records, 96th Med Group, period from May 2001 to February 2019, received October 21, 2020
- Private treatment records, Florida Digestive Health, period from October 3, 2019, received October 21, 2020
- VA Form 21-4138, Statement in Support of Claim, Lay statement from Mark W. Mumaw, dated August 1, 2020, received October 21, 2020
- Medical Evidence, copy of Service Treatment Records, received October 21, 2020, period from December 1982, to November 1998
- VA contract examinations, QTC Medical Services, Inc., dated November 7, 2020 and November 18, 2020
- VA treatment records, VA Medical Center Biloxi, Gulf Coast, period from May 20, 1998, to November 30, 2010

## REASONS FOR DECISION

### 1. Evaluation of major depression, recurrent episode, moderate, PTSD, and panic disorder currently evaluated as 30 percent disabling.

The evaluation of major depression, recurrent episode, moderate, PTSD, and panic disorder is increased to 70 percent disabling effective August 31, 2020. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is August 31, 2020. The increased evaluation has been established from the day VA received your intent to file (ITF) a claim for compensation. (38 CFR 3.155, 38 CFR 3.400)

At your VA examination, you were diagnosed with more than one mental condition, major depression, recurrent episode, moderate, PTSD, and panic disorder. The examiner was unable to differentiate what symptoms that are attributable to each diagnosis due to substantial overlap in the symptoms, therefore the criteria for your mental conditions covers all diagnoses, and cannot be evaluated separately.

We have assigned a 70 percent evaluation for your major depression, recurrent episode, moderate, PTSD, and panic disorder based on:

- Circumlocutory speech
- Suspiciousness
- Depressed mood
- Suicidal ideation
- Disturbances of motivation and mood
- Chronic sleep impairment
- Panic attacks more than once a week
- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Stereotyped speech
- Difficulty in adapting to a worklike setting
- Circumstantial speech
- Anxiety
- Difficulty in establishing and maintaining effective work and social relationships
- Occupational and social impairment with reduced reliability and productivity

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for major depressive disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:

- gross impairment in thought processes or communication
- persistent delusions or hallucinations
- grossly inappropriate behavior
- persistent danger of hurting self or others
- intermittent inability to perform activities of daily living (including maintenance of minimal



personal hygiene)

- disorientation to time or place
- memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

**2. Evaluation of bilateral hearing loss currently evaluated as 0 percent disabling.**

The evaluation of bilateral hearing loss is increased to 40 percent. (38 CFR 4.85)

The effective date of this grant is August 31, 2020. The increased evaluation has been established from the day VA received your intent to file (ITF) a claim for compensation. (38 CFR 3.155, 38 CFR 3.400)

VA examination findings show the left ear with 44 percent speech discrimination. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 20, at 1000 Hz is 40, at 2000 Hz is 50, at 3000 Hz is 75, and at 4000 Hz is 95. The average decibel loss is 65 in the left ear. The right ear shows a speech discrimination of 56 percent. Your right ear Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 20, at 1000 Hz is 40, at 2000 Hz is 55, at 3000 Hz is 85, and at 4000 Hz is 80. The average decibel loss is 65 in the right ear.

An evaluation of 40 percent is assigned because your right ear has a speech discrimination of 56 with an average decibel loss of 65 and your left ear has a speech discrimination of 44 with an average decibel loss of 65. The evaluation for hearing loss is based on objective testing. Higher evaluations are assigned for more severe hearing impairment. (38 CFR 4.85)

**3. Evaluation of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome (previously rated as thoracolumbar strain) currently evaluated as 10 percent disabling.**

The evaluation of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome (previously rated as thoracolumbar strain) is increased to 40 percent disabling effective August 31, 2020. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is August 31, 2020. The increased evaluation has been established from the day VA received your intent to file (ITF) a claim for compensation. (38 CFR 3.155, 38 CFR 3.400)

We have assigned a 40 percent evaluation for your thoracolumbar strain based on:

- Forward flexion of the thoracolumbar spine 30 degrees or less

Additional symptom(s) include:

- X-ray evidence of degenerative arthritis
- Combined range of motion of the thoracolumbar spine not greater than 120 degrees
- Guarding severe enough to result in an abnormal gait or abnormal spinal contour such as

scoliosis, reversed lordosis, or abnormal kyphosis

- Muscle spasm severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis
- 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 50 percent is not warranted for spondylolisthesis unless the evidence shows:

- Unfavorable ankylosis of the entire thoracolumbar spine. (38 CFR 4.71a)

**4. Evaluation of gastroesophageal reflux disease (GERD) and small hiatal hernia (formerly evaluated as gastroenteritis) currently evaluated as 10 percent disabling.**

The evaluation of gastroesophageal reflux disease (GERD) and small hiatal hernia (formerly evaluated as gastroenteritis) is increased to 30 percent disabling effective August 31, 2020. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is August 31, 2020. The increased evaluation has been established from the day VA received your intent to file (ITF) a claim for compensation. (38 CFR 3.155, 38 CFR 3.400)

We have assigned a 30 percent evaluation for your gastroesophageal reflux disease (GERD) and small hiatal hernia (formerly evaluated as gastroenteritis) based on:

- Arm pain
- Dysphagia
- Persistently recurrent epigastric distress
- Pyrosis (Heartburn and/or Reflux)
- Regurgitation
- Shoulder pain
- Substernal pain
- Symptoms productive of considerable impairment of health

A higher evaluation of 60 percent is not warranted for hiatal hernia unless the evidence shows other symptom combinations productive of severe impairment of health or symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia. (38 CFR 4.112, 38 CFR 4.114)

**5. Service connection for left lower extremity radiculopathy, sciatic as secondary to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome.**

Service connection for left lower extremity radiculopathy, sciatic has been established as related



to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome. (38 CFR 3.310)

The effective date of this grant is August 31, 2020. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 40 percent is assigned from August 31, 2020.

We have assigned a 40 percent evaluation for your left lower extremity radiculopathy, sciatic based on:

- Moderately severe incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 60 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is severe with marked muscular atrophy. (38 CFR 4.120, 38 CFR 4.124a)

**6. Service connection for right lower extremity radiculopathy, sciatic as secondary to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome.**

Service connection for right lower extremity radiculopathy, sciatic has been established as related to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome. (38 CFR 3.310)

The effective date of this grant is August 31, 2020. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 40 percent is assigned from August 31, 2020.

We have assigned a 40 percent evaluation for your right lower extremity radiculopathy, sciatic based on:

- Moderately severe incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 60 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is severe with marked muscular atrophy. (38 CFR 4.120, 38 CFR 4.124a)

**7. Service connection for left lower extremity radiculopathy, femoral as secondary to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal**

**stenosis, degenerative scoliosis and intervertebral disc syndrome.**

Service connection for left lower extremity radiculopathy, femoral has been established as related to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome. (38 CFR 3.310)

The effective date of this grant is August 31, 2020. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 30 percent is assigned from August 31, 2020.

We have assigned a 30 percent evaluation for your left lower extremity radiculopathy, femoral based on:

- Severe incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is complete. (38 CFR 4.120, 38 CFR 4.124a)

**8. Service connection for right lower extremity radiculopathy, femoral as secondary to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome.**

Service connection for right lower extremity radiculopathy, femoral has been established as related to the service-connected disability of degenerative disc disease and spondylolisthesis, foraminal stenosis, degenerative scoliosis and intervertebral disc syndrome. (38 CFR 3.310)

The effective date of this grant is August 31, 2020. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 30 percent is assigned from August 31, 2020.

We have assigned a 30 percent evaluation for your right lower extremity radiculopathy, femoral based on:

- Severe incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is complete. (38 CFR 4.120, 38 CFR 4.124a)



**9. 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)

The effective date of this grant is August 31, 2020, the date VA received your Intent to File application, as you submitted a formal claim within one year of that date, and you met the criteria for Basic eligibility to Dependents' Education Assistance. 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, 38 CFR 3.155, 38 CFR 3.400)

**10. Evaluation of hypertension currently evaluated as 10 percent disabling.**

The evaluation of hypertension is continued as 10 percent disabling. Although recent evidence shows some improvement in the condition, sustained improvement has not been definitively established. {38 CFR 3.344}

However, no reexamination will be requested in 18 months to determine if there is sustained improvement. This condition is considered static (service-connected for five years or more), you are over 55 years old, your evaluation is a prescribed scheduled minimum rating, and your combined evaluation would not be affected if the future examination should result in reduced evaluation for one or more conditions. Under these circumstances, VA regulations dictate that no periodic reexamination will be scheduled.

An evaluation of 10 percent is assigned if diastolic pressure is predominantly 100 or more; or systolic pressure is predominantly 160 or more; or as a minimum evaluation for an individual with a history of diastolic pressure predominantly 100 or more requiring continuous medication for control. A higher evaluation of 20 percent is not warranted unless diastolic pressure is predominantly 110 or more; or systolic pressure is predominantly 200 or more. (38 CFR 4.104)

**11. Evaluation of bilateral tinnitus currently evaluated as 10 percent disabling.**

The evaluation of bilateral tinnitus is continued as 10 percent disabling. An increase is not warranted. This is the highest schedular evaluation allowed under the law for tinnitus. (38 CFR 4.87) An increase is not warranted.

An evaluation of 10 percent is continued for recurrent tinnitus.

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head, (38 CFR 4.87)

**12. Compensation for Cervical spine injury.**

The issue of compensation for Cervical spine injury is deferred for the following information: request new VA examination

**13. Compensation for sleep apnea secondary to GERD/PTSD.**

The issue of compensation for sleep apnea secondary to GERD/PTSD is deferred for the following information: request medical opinion

**14. Evaluation of status post left knee medial meniscus repair (formerly evaluated under DC 5257 as left knee torn medial meniscus) currently evaluated as 10 percent disabling.**

The evaluation for status post left knee medial meniscus repair (formerly evaluated under DC 5257 as left knee torn medial meniscus) is deferred for the following: request new VA examination. The private knee DBQ submitted was insufficient for range of motion.

**15. Entitlement to individual unemployability.**

The issue of whether or not you are entitled to Individual Unemployability is deferred for the following: further development

**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](http://www.va.gov).