



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



VA File Number



**Decision Review Officer Decision
08/05/2020**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from June 4, 1996 to February 16, 2004. We received your Substantive Appeal on February 15, 2020. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for degenerative disc disease (claimed as neck condition) is granted with an evaluation of 10 percent effective September 6, 2017.
2. Service connection for bladder hemorrhage/chronic hematuria (claimed as genitourinary condition, previously rated as a renal cyst) is granted with an evaluation of 0 percent effective September 6, 2017.

EVIDENCE

- VA Form 9, Appeal to Board of Veterans' Appeals, received on February 15, 2020
- Medical opinion, Dr. Craig N. Bash, M.D., dated December 31, 2019
- Your correspondence received on March 23, 2020



- VA Form 27-0820, Report of General Information, dated May 1, 2020
- VA Form 20-0995, Decision Review Request: Supplemental Claim (no SOC/SSOC opt-in), received on June 12, 2020
- VA letter sent to you dated June 22, 2020
- Treatment reports from the Dallas VA Medical Center from September 11, 2019 through July 17, 2020
- Service treatment records for your period of service from June 4, 1996 to February 16, 2004
- Results from VA examinations dated September 20, 2018; to include medical opinion dated October 18, 2018
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received September 6, 2017
- Private treatment records received September 5, 2018 from Avero Diagnostics for the period of October 17, 2013 to November 19, 2013
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, September 5, 2018
- Private treatment records received September 5, 2018 from Spine Team Texas for the period of June 28, 2018 to August 30, 2018
- VA Form 21-0958, Notice of Disagreement, received August 1, 2019, with letter, duplicate service treatment records and duplicate private treatment records

REASONS FOR DECISION

1. Service connection for degenerative disc disease (claimed as neck condition).

Based upon receipt of your timely VA Form 9, in response to the Statement of the Case (SOC) dated December 19, 2019, your claim for service connection for degenerative disc disease (claimed as a neck condition) remains processed under the legacy appeals program.

After issuance of your SOC, we received a private medical opinion, from Dr. Craig Bash, in support of your claim. Dr. Bash opined this condition is at least as likely as not caused by or a result of your military service.

Review of your service treatment records document treatment for upper back pain in October 1997, following weight training and wrestling. These records show you exhibited full range of motion and you were placed on light duty for 3 days. Private treatment reports from 2018, document additional treatment for neck pain and a diagnosis of cervical spondylosis.

We reviewed and considered your recent VA treatment reports. These records document your reports of chronic neck pain. X-rays from 2019, show mild straightening of cervical lordosis with no significant degenerative changes.

Aside from documented medical evidence, you have reported experiencing and observing neck/upper back pain since your time in the military.

A diagnosis of degenerative disc disease of the cervical spine was maintained at your VA



examination. Range of motion testing revealed deficits. No radiculopathy was identified at this examination.

The VA examiner opined this condition is less likely than not caused by or a result of your military service. The examiner noted from their perspective, there was no evidence of any injury to your neck in your service treatment records.

In support of your claim, as discussed, you submitted an opinion from a private provider. Also, as previously indicated, Dr. Bash stated that it is at least as likely as not this condition was caused by or a result of your military service. Dr. Bash indicated that medical literature has documented that heavy lifting and load carrying can cause trauma to the spine and result in spinal disease. Dr. Bash noted, also confirmed from your service records, you were an infantryman and sniper while in the Marines. Based on your duties in this capacity, it can be assumed you engaged in long marches with heavy packs, strenuous physical training, and other demanding duties consistent with your military occupation. Dr. Bash also maintained that a review of the medical evidence associated with your claim, to include the VA examination results and related opinion, do not provide another more plausible etiology for your degenerative disc disease.

Your service treatment records document treatment and injury to your upper back/neck. By way of your lay testimony and both private and VA treatment reports, a continuity of medical treatment has been demonstrated. Furthermore, an adequately supported medical opinion exists which supports the notion that your degenerative disc disease of the cervical spine is the result of trauma which was likely the result of inservice injury and strenuous/demanding physical activity consistent with the demands of your military service.

There is an equal amount of medical evidence both for an against your claim. Therefore, a state of equipoise is held to exist. The law stipulates that in such cases, reasonable doubt will be afforded to the veteran. (38 CFR 3.102)

Service connection for degenerative disc disease (claimed as neck condition) 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 September 6, 2017, the date your intent to file was received. (38 CFR 3.155, 3.400)

We have assigned a 10 percent evaluation for your degenerative disc disease (claimed as neck condition) 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

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. Although there was additional loss of range of motion with repetitive movements, these changes did not rise to the next higher level of disability.

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)

This decision represents a complete grant of benefits as sought on appeal for this condition.

2. Service connection for bladder hemorrhage/chronic hematuria (claimed as genitourinary condition, previously rated as a renal cyst).

Based upon receipt of your timely VA Form 9, in response to the Statement of the Case (SOC) dated December 19, 2019, your claim for service connection for renal parapelvic cyst with hematuria (claimed as genitourinary condition) remains processed under the legacy appeals program.

After issuance of your SOC, we received a private medical opinion, from Dr. Craig Bash, in support of your claim. Dr. Bash opined this condition is at least as likely as not caused by or a result of your military service.

Review of your service treatment records document treatment for hematuria in August 2000. These records show you underwent an intravenous pyelogram, administered in an attempt to identify the cause of your hematuria. Private treatment reports from 2013, document additional treatment for hematuria. A resultant cystoscopy at the time revealed evidence of a renal parapelvic cyst. No stones, lesions, or tumors were evident.

We reviewed and considered your recent VA treatment reports. These records document a continued assessment of micro hematuria confirmed by cystoscopy. These records document your indication that you would check back with your primary care physician in a year to repeat urine testing and then decide about cystoscopy.

Aside from documented medical evidence, you have reported experiencing and observing blood



in your urine since your time in the military.

Results from your VA examination do not document or indicate you experience any renal dysfunction, urolithiasis, or urinary tract infections. Your history of a parapelvic renal cyst from 2013 was noted. The examiner indicated that hematuria can be a symptom of a renal cyst; but, it was indicated you have not followed up to confirm the existence of a cyst since 2013. Furthermore, the examiner noted that cysts can resolve without incident.

The VA examiner opined this condition is less likely than not caused by or a result of your military service. The examiner noted that the intravenous pyelogram did not result in the cyst discovered in 2013; noting, this procedure is not evasive. The VA examiner did not provide any indication as to the etiology or cause of your hematuria.

In support of your claim, as discussed, you submitted an opinion from a private provider. Also, as previously indicated, Dr. Bash stated that it is at least as likely as not this condition was caused by or a result of your military service. Dr. Bash indicated that medical literature has documented that strenuous training can cause trauma in the urinary/bladder area resulting in hematuria. Dr. Bash stated that such literature included discussion of hematuria from marching long distances, termed march hemoglobinuria. Dr. Bash noted, also confirmed from your service records, you were an infantryman and sniper while in the Marines. Based on your duties in this capacity, it can be assumed you engaged in long marches with heavy packs, strenuous physical training, and other demanding duties consistent with your military occupation. Dr. Bash also maintained that a review of the medical evidence associated with your claim, to include the VA examination results and related opinion, do not provide another more plausible etiology for your recurrent hematuria, which he diagnosed as a bladder hemorrhage.

Typically, hematuria is considered a laboratory finding. However, in your case, such finding was initially presented during service. By way of your lay testimony and both private and VA treatment reports, a continuity of medical treatment has been demonstrated. Furthermore, an adequately supported medical opinion exists which supports the notion that your bladder hemorrhage/hematuria is the result of trauma which was likely the result of strenuous physical activity consistent with the demands of your military service.

There is an equal amount of medical evidence both for and against your claim. Therefore, a state of equipoise is held to exist. The law stipulates that in such cases, reasonable doubt will be afforded to the veteran. (38 CFR 3.102)

Service connection for bladder hemorrhage/chronic hematuria (claimed as genitourinary condition, previously rated as a renal cyst) has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from September 6, 2017, the date your intent to file was received. (38 CFR 3.155, 3.400)

We have assigned a noncompensable evaluation for your renal parapelvic cyst with hematuria



(claimed as genitourinary condition) based on:

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

A higher evaluation of 30 percent is not warranted for chronic renal disease unless the evidence shows:

- Albumin constant or recurring with hyaline and granular casts or red blood cells; or,
- Hypertension at least 10 percent disabling under diagnostic code 7101; or,
- Slight edema; or,
- Transient edema. (38 CFR 4.115a, 38 CFR 4.115b)

This decision represents a complete grant of benefits as sought on appeal for this condition.

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.

