



**BOARD OF VETERANS' APPEALS**  
FOR THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON, DC 20038

Date: May 28, 2024



Dear Appellant:

The Board of Veterans' Appeals made a decision on your appeal.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will contact you regarding next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached for additional options.
Remand	Additional development is needed. VA will contact you regarding next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

**Outbound Operations**  
Office of the Clerk of the Board  
Board of Veterans' Appeals

Enclosures (1)  
CC: The American Legion



# BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

Represented by  
The American Legion

DATE: May 28, 2024

## ISSUES

Entitlement to a rating in excess of 40 percent for right (major) carpal tunnel syndrome.

Entitlement to a rating in excess of 20 percent, prior to August 12, 2020, and in excess of 30 percent thereafter for left (minor) carpal tunnel syndrome.

## ORDER

Entitlement to a 70 percent rating for right carpal tunnel syndrome is granted.

Entitlement to a 60 percent rating for left carpal tunnel syndrome is granted.

## FINDINGS OF FACT

1. The Veteran is right hand dominant.
2. During the entire appeals period, the Veteran has suffered from severe incomplete paralysis of the ulnar and median nerves of the right upper extremity (dominant); symptoms of pain; numbness and tingling.



3. During the entire appeals period, the Veteran has experienced severe incomplete paralysis of the ulnar and median nerves of the left upper extremity (minor); symptoms of pain; numbness and tingling.

### **CONCLUSIONS OF LAW**

1. The criteria for a 70 percent rating, but no higher, for service-connected right (dominant) carpal tunnel syndrome have been met for the entire appeals period. 38 U.S.C. § 1155, 5107; 38 C.F.R. §§ 4.71a, 4.124a, Diagnostic Code 8513.
2. The criteria for a 60 percent rating, but no higher, for service-connected left (minor) carpal tunnel syndrome have been met for the entire appeals period. 38 U.S.C. § 1155, 5107; 38 C.F.R. §§ 4.71a, 4.124a, Diagnostic Code 8513.

### **REASONS AND BASES FOR FINDINGS AND CONCLUSIONS**

The Veteran had active service from November 1990 to June 1991.

This matter comes before the Board of Veteran's Appeals (Board) on appeal from a December 2020 rating decision issued by the Department of Veterans Affairs (VA) Regional Office (RO).

In the January 2021 VA Form 10182, Decision Review Request: Board Appeal, the Veteran elected the Direct Review docket. Therefore, the Board may only consider the evidence of record at the time of the agency of original jurisdiction (AOJ) decision on appeal. 38 C.F.R. § 20.301.

- 1. Entitlement to a rating in excess of 40 percent for right carpal tunnel syndrome**
- 2. Entitlement to a rating in excess of 20 percent, prior to August 12, 2020, and in excess of 30 percent thereafter for left carpal tunnel syndrome**



The Veteran contends that he is entitled to a 70 percent rating for right carpal tunnel syndrome and a 40 to 60 percent rating for left carpal tunnel syndrome because his symptoms are severe. *See* December 2020 High Level Review (HLR) Informal Conference Worksheet; January 2021 VA Form 10182. For the reasons explained below, the Board finds that increased ratings are warranted.

Prior to 2020, the Veteran was rated 30 percent disabling under Diagnostic Code 8516 incomplete paralysis of the right ulnar nerve (claimed as ulnar tunnel syndrome, carpal tunnel syndrome and neuropathy).

In the July 2020 rating decision, the RO granted entitlement to service connection for left carpal tunnel syndrome (median nerve) and assigned a 20 percent rating under Diagnostic Code 8515, effective April 7, 2020. The RO also granted a 40 percent rating, effective March 20, 2020 under Diagnostic Code 8513 (all radicular groups) for right carpal tunnel syndrome.

A December 2020 rating decision changed the Veteran's left carpal tunnel syndrome from Diagnostic Code 8515 (median nerve) to Diagnostic Code 8513 (all radicular groups).

Diseases of the Peripheral Nerves are divided into radicular groups: Upper (fifth and sixth cervicals, including shoulder elbow movements), Middle (including rotation of arm, flexion of elbow and extension of wrist) and Lower (including muscles of hand, wrist and fingers).

Under 38 C.F.R. § 4.124a, Diagnostic Code 8511, ratings are available for impairment associated with paralysis of the middle radicular group.

Under 38 C.F.R. § 4.124a, Diagnostic Code 8512, ratings are available for impairment associated with paralysis of the lower radicular group.

Under 38 C.F.R. § 4.124a, Diagnostic Code 8513, ratings are available for impairment associated with paralysis of all radicular groups. For impairment of all radicular groups manifesting in incomplete paralysis to a mild degree warrants a 20 percent rating for both major and minor upper extremities; 40 and 30 percent rating are available for a moderate degree of incomplete paralysis for the major and



minor upper extremities, respectively; 70 and 60 percent ratings are available for a severe degree of incomplete paralysis for the major and minor upper extremities, respectively; and 90 and 80 percent ratings are available for complete paralysis. 38 C.F.R. § 4.124a, Diagnostic Code 8513. Diagnostic Codes 8613 (neuritis) and 8713 (neuralgia) rate disability of the lower radicular group with similar criteria and ratings.

Under 38 C.F.R. § 4.124a, Diagnostic Code 8515, ratings are available for impairment associated with paralysis of the median nerve. For incomplete paralysis of the median nerve to a mild degree warrants a 10 percent rating for both the dominant (major) and non-dominant (minor) upper extremities; 30 percent and 20 percent ratings are available for a moderate degree of incomplete paralysis for the major and minor upper extremities, respectively; 50 and 40 percent ratings are available for a severe degree of incomplete paralysis for the major and minor upper extremities, and 70 and 60 percent ratings are available for complete paralysis (the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (ape hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanx of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances) for the major and minor upper extremities, respectively. 38 C.F.R. § 4.124a, Diagnostic Code 8515. Diagnostic Codes 8615 (neuritis) and 8715 (neuralgia) rate disability of the median nerve with similar criteria and ratings.

Under 38 C.F.R. § 4.124a, Diagnostic Code 8516, ratings are available for impairment associated with paralysis of the ulnar nerve. For incomplete paralysis of the ulnar nerve to a mild degree warrants a 10 percent rating for both the major and minor upper extremities; 30 and 20 percent ratings are available for a moderate degree of incomplete paralysis for the major and minor upper extremities, respectively; 40 and 30 percent ratings are available for a severe degree of incomplete paralysis for the major and minor upper extremities, respectively; and 60 and 50 percent ratings are available for complete paralysis (the "griffin claw" deformity, due to flexor contraction of ring and little fingers, atrophy very marked



in dorsal interspace and thenar and hypothenar eminences; loss of extension of ring and little fingers cannot spread the fingers (or reverse), cannot adduct the thumb; flexion of wrist weakened) for the major and minor upper extremities, respectively. 38 C.F.R. § 4.124a, Diagnostic Code 8516. Diagnostic Codes 8615 (neuritis) and 8715 (neuralgia) rate disability of the ulnar nerve with similar criteria and ratings.

The words “mild,” “moderate,” and “severe,” as used in the various Diagnostic Codes, are not defined in the Rating Schedule. Regulations provide that ratings for peripheral neurological disorders are to be assigned based upon the relative impairment of motor function, trophic changes, or sensory disturbance. 38 C.F.R. § 4.120. Consideration is also given for loss of reflexes, pain, and muscle atrophy. *See* 38 C.F.R. §§ 4.123, 4.124.

The term “incomplete paralysis” indicates a degree of lost or impaired function substantially less than the type of picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating is for the “mild,” or at most, the “moderate” degree. The disability ratings for the peripheral nerves are for unilateral involvement; when bilateral, the ratings combine with application of the bilateral factor. 38 C.F.R. § 4.124a, Note at Diseases of the Peripheral Nerves. The Note to 38 C.F.R. § 4.124a establishes a maximum disability rating for conditions that are wholly sensory, as opposed to a minimum disability rating for conditions that are more than wholly sensory. *See Miller v. Shulkin*, 28 Vet. App. 376 (2017).

38 C.F.R. § 4.124a provides, in a “Note” following rating provisions of upper extremity nerve disability ratings, that combined nerve injuries should be rated by reference to the major involvement, or if sufficient in extent, the radicular group ratings should be considered.

VA treatment records indicate that the Veteran has been treated for carpal tunnel syndrome and distal median nerve entrapment.

In July 2020, the Veteran was afforded a VA peripheral nerves examination where the examiner noted that the Veteran was right hand dominant and had a diagnosis of “severe carpal tunnel syndrome.” Under Section III (Symptoms), the examiner



noted that the Veteran experienced: moderate constant pain of the bilateral upper extremities; severe intermittent pain, paresthesias and numbness of the bilateral upper extremities. Under Section X (Nerves Affected and Severity Evaluation), the examiner noted that the Veteran experienced: severe incomplete paralysis of the median nerve, bilaterally and severe incomplete paralysis of the right ulnar nerve. The examiner noted that the Veteran used a brace constantly.

In an August 2020 Disability Benefits Questionnaire (DBQ), the clinician noted that the Veteran experienced severe incomplete paralysis of the median and ulnar nerves, bilaterally.

In November 2020, the Veteran was afforded a VA peripheral nerves examination where the examiner noted similar symptoms as noted in July 2020, with the exception of the addition of the presence of severe incomplete paralysis of the left ulnar nerve and severe incomplete paralysis of the lower radicular group.

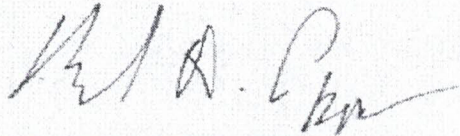
As the Veteran has multiple nerve parts affected (median and ulnar), the Board finds that the Veteran should be rated under Diagnostic Code 8513 for all radicular groups, bilaterally. Diagnostic Code 8513 also provides the highest ratings for diseases of the peripheral nerves.

Here, the Board has credited the Veteran's lay statements as well as the medical evidence (private medical evidence and VA examination reports) regarding the severity of the Veteran's nerve disabilities. In that regard, the Board finds that the evidence indicates that the Veteran's consistently experienced severe incomplete paralysis of the median and ulnar nerves, bilaterally. There is also evidence that the Veteran experiences symptoms of pain, numbness and tingling.

Based on these symptoms, the Board finds that the Veteran experiences severe incomplete paralysis of his median and ulnar nerves of his bilateral upper extremities. The Veteran has consistently reported symptoms which the Board finds rises to the level of severe incomplete paralysis bilaterally during the entire period on appeal. This finding entitles the Veteran to an increased rating of 70 percent for his right upper extremity disability (major) and a 60 percent rating for his left upper extremity disability (minor) as they are currently only rated as moderate incomplete paralysis.



The next higher disability rating under Diagnostic Code 8513 contemplates complete paralysis, which has not been shown in this case for either the left or right upper extremities. Furthermore, as the Board has granted the requested ratings in this current decision, the Board finds that the appeal has been satisfied. But see, *AB v. Brown*, 6 Vet. App. 35 (unless a veteran expresses a desire for a specific rating for a service-connected disability, he/she is presumed to be seeking the maximum benefit permitted under the regulations).



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Michael A. Pappas  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

L. Baskerville

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*