



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

[REDACTED]

VA File Number

[REDACTED]

**Represented By:
TEXAS VETERANS COMMISSION
Rating Decision
08/06/2024**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from November 17, 2018, to March 11, 2020, and from May 11, 2020, to June 9, 2021. You filed an original disability claim that was received on June 10, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for migraine including migraine variants (claimed as headaches) is granted with an evaluation of 30 percent effective June 10, 2021.
2. Service connection for bilateral hearing loss (also claimed as hearing loss, sensorineural) is granted with an evaluation of 20 percent effective June 10, 2021.
3. Service connection for degenerative disc disease of the lumbar spine (claimed as back sprain, low back sprain, back injury, low back condition) is granted with an evaluation of 20 percent effective June 10, 2021.

4. Service connection for left lower extremity radiculopathy, sciatic nerve, is granted with an evaluation of 20 percent effective June 10, 2021.
5. Service connection for right lower extremity radiculopathy, sciatic nerve, is granted with an evaluation of 20 percent effective June 10, 2021.
6. Service connection for tinnitus (claimed as ears-ringing, ringing in ears) is granted with an evaluation of 10 percent effective June 10, 2021.
7. Service connection for bilateral plantar fasciitis is denied.
8. Service connection for chronic fatigue syndrome (claimed as fatigue) is denied.
9. Service connection for eye (vision) is denied.
10. Service connection for head injury is denied.
11. Service connection for left ankle strain status post Achilles repair (claimed as ankle sprain) is denied.
12. Service connection for neck sprain is denied.
13. Service connection for obstructive sleep apnea is denied.
14. Service connection for right ankle degenerative arthritis (claimed as ankle sprain) is denied.
15. Service connection for scars (head, face, or neck) is denied.
16. Service connection for shin splints is denied.
17. A decision on entitlement to compensation for generalized anxiety disorder with persistent depressive disorder and insomnia disorder (claimed as sleep disturbances, stress, stress disorder) is deferred.
18. A decision on entitlement to compensation for left knee pain injury (claimed as bilateral knee pain injury) is deferred.
19. A decision on entitlement to compensation for right knee pain injury (claimed as bilateral knee pain injury) is deferred.

EVIDENCE

- QTC Addendum dated July 2, 2024, regarding sleep disturbance contention
- VA Form 27-0820, Report of General Information, dated June 27, 2024, documenting conversation with Veteran regarding his complaint regarding his C&P examination
- VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, received June 27, 2024
- Subsequent development letter dated June 10, 2024, regarding scheduled examinations
- Complaint regarding C&P examination received May 30, 2024
- VA Form 27-0820, Report of General Information, dated May 8, 2024, documenting conversation with Veteran who is responding to subsequent development letter of May 7, 2024
- Subsequent development letter dated May 7, 2024, regarding scheduled examinations and request for contention clarification
- 5103 Notice Response received March 23, 2024
- Toxic Exposure Risk Activity Memorandum dated February 9, 2024
- Notification letter dated September 21, 2023, regarding claim submission failure letter
- DD Form 214, Certificate of Release or Discharge from Active Duty, received October 27, 2023, for your periods of service dated November 17, 2018, to March 11, 2020, and May 11, 2020, to June 9, 2021
- Individual Longitudinal Exposure Record uploaded into claims file on October 27, 2023, and February 9, 2024
- Service treatment records received January 8, 2024, and July 18, 2024 (JLV), for your periods of service dated November 17, 2018, to March 11, 2020, and May 11, 2020, to June 9, 2021
- Service personnel records received October 27, 2023, for your periods of service dated November 17, 2018, to March 11, 2020, and May 11, 2020, to June 9, 2021
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received March 23, 2021, and June 28, 2024
- Letter dated June 14, 2023, acknowledging receipt of intent to file on June 14, 2023
- VA Form 21-4138, Statement in Support of Claim, received January 8, 2024, regarding back condition
- VA Form 21-4138, Statement in Support of Claim, received January 10, 2024, regarding mental health
- Treatment records, Victor Poletajev, M.A., D.C., received January 8, 2024, and June 15, 2024, for various periods of service
- Disability Benefits Questionnaires (DBQs) with Medical Opinions, QTC (contractor), dated May 15, 2024, May 21, 2024, May 28, 2024, May 30, 2024, June 20, 2024,
- Central Texas VA Medical Center treatment records for the period June 11, 2021, to February 25, 2022
- Letter dated June 20, 2024, acknowledging receipt of intent to file on June 20, 2024

REASONS FOR DECISION

1. Service connection for migraine including migraine variants (claimed as headaches).

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

The effective date of this grant is June 10, 2021. 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)

An evaluation of 30 percent is assigned from June 10, 2021.

We have assigned a 30 percent evaluation for your migraine including migraine variants based on:

- Characteristic prostrating attacks occurring on an average once a month over last several months

A higher evaluation of 50 percent is not warranted for migraines unless the evidence shows:

- Very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability. (38 CFR 4.120, 38 CFR 4.124a)

2. Service connection for bilateral hearing loss (also claimed as hearing loss, sensorineural).

Service connection for bilateral hearing loss has been granted because this condition, which existed prior to military service, permanently worsened as a result of service. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.306) The preservice percentage is normally deducted before assigning any service-connected evaluation less than 100 percent. Since the preservice percentage is zero, no deduction is necessary. (38 CFR 3.322, 38 CFR 4.22)

The effective date of this grant is June 10, 2021. Service connection has been established from the day after your discharge from active duty. When a claim of aggravated service connection is received within one year of discharge from active duty, the effective date is the day after discharge. (38 CFR 3.400)

An evaluation of 20 percent is assigned from June 10, 2021.

We have assigned a 20 percent evaluation for your bilateral hearing loss based on:

- Objective testing described below (38 CFR 4.85)

VA examination findings show the left ear with 50 percent speech discrimination. Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 40, at 1000 Hz is 45, at 2000 Hz is 45, at 3000 Hz is 55, and at 4000 Hz is 55. The average decibel loss is 50 in the left ear. Your right ear shows a speech discrimination of 68 percent. Your right ear Decibel (dB) loss at the puretone threshold of 500 Hertz (Hz) is 35, at 1000 Hz is 40, at 2000 Hz is 40, at 3000 Hz is 50, and at 4000 Hz is 50. The average decibel loss is 45 in the right ear.

An evaluation of 20 percent is assigned because your right ear has a speech discrimination of 68 with an average decibel loss of 45 and your left ear has a speech discrimination of 50 with an average decibel loss of 50. (38 CFR 4.85)

Higher evaluations are based on more severe levels of hearing impairment. (38 CFR 3.385, 38 CFR 4.85, 38 CFR 4.86)

3. Service connection for degenerative disc disease of the lumbar spine (claimed as back sprain, low back sprain, back injury, low back condition).

Service connection for degenerative disc disease of the lumbar spine has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is June 10, 2021. 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)

An evaluation of 20 percent is assigned from June 10, 2021.

We have assigned a 20 percent evaluation for your degenerative disc disease of the lumbar spine based on:

- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees

Additional symptom(s) include:

- Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees
- Painful motion

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 40 percent is not warranted for diseases and injuries of the thoracolumbar spine unless the evidence shows:

- Favorable ankylosis of the entire thoracolumbar spine; or,
- Forward flexion of the thoracolumbar spine 30 degrees or less. (38 CFR 4.71a)

4. Service connection for left lower extremity radiculopathy, sciatic nerve, as secondary to the service-connected disability of degenerative disc disease of the lumbar spine.

Service connection for left lower extremity radiculopathy, sciatic nerve, has been established as related to the service-connected disability of degenerative disc disease of the lumbar spine. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is June 10, 2021. 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)

An evaluation of 20 percent is assigned from June 10, 2021.

We have assigned a 20 percent evaluation for your left lower extremity radiculopathy, 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 4.120, 38 CFR 4.124a)

5. Service connection for right lower extremity radiculopathy, sciatic nerve, as secondary to the service-connected disability of degenerative disc disease of the lumbar spine.

Service connection for right lower extremity radiculopathy, sciatic nerve, has been established as related to the service-connected disability of degenerative disc disease of the lumbar spine. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is June 10, 2021. 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)

An evaluation of 20 percent is assigned from June 10, 2021.

We have assigned a 20 percent evaluation for your right lower extremity radiculopathy, 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 4.120, 38 CFR 4.124a)

6. Service connection for tinnitus (claimed as ears-ringing, ringing in ears).

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

The effective date of this grant is June 10, 2021. 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)

An evaluation of 10 percent is assigned from June 10, 2021.

We have assigned a 10 percent evaluation for your tinnitus based on:

- Recurrent

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)

7. Service connection for bilateral plantar fasciitis.

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 bilateral plantar fasciitis is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for bilateral plantar fasciitis is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for bilateral plantar fasciitis is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

8. Service connection for chronic fatigue syndrome (claimed as fatigue).

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 chronic fatigue syndrome is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for chronic fatigue syndrome is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for chronic fatigue syndrome is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

For the claimant's claimed condition of fatigue, there is no diagnosis because there Veteran's fatigue is a symptom and result of obstructive sleep apnea. There is no diagnosis of chronic fatigue syndrome.

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.

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

9. Service connection for eye (vision).

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 eye (vision) is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Refractive errors are due to anomalies in the shape and conformation of the eye structures, and are generally of congenital or developmental origin. Defects of form or structure of the eye that are of congenital or developmental origin may not be considered as disabilities or service-connected on the basis of incurrence or aggravation beyond natural progress during service. The fact that a Veteran was supplied with glasses for correcting refractive error (such as astigmatism, myopia, hyperopia, and presbyopia) is not, in itself, considered indicative of aggravation by service that would warrant compensation. (38 CFR 3.303, 38 CFR 4.9)

Your VA examiner indicated that there is no pathology to warrant a diagnosis.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Favorable Findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records indicate myopia and astigmatism.

10. Service connection for head injury.

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 head injury is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for head injury is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for head injury is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

11. Service connection for left ankle strain status post Achilles repair (claimed as ankle sprain).

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303)

Service connection for left ankle strain status post Achilles repair is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Favorable Findings identified in this decision:

You have been diagnosed with a disability. During your VA examination, you were given a post-service diagnosis of left ankle strain status post Achilles repair.

12. Service connection for neck sprain.

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 neck sprain is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for neck sprain is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for neck sprain is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

13. Service connection for obstructive sleep apnea.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303)

Service connection for obstructive sleep apnea is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for obstructive sleep apnea is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

Your VA examiner opined that the claimed condition is less likely than not (likelihood is less than approximately balanced or nearly equal) incurred in or caused by the claimed in-service injury, event, or illness. Rationale is that after review of the Veteran medical records, there were no findings of complaints, treatment, or diagnosis of sleep apnea during service years. Due to the lack of evidence found, a negative opinion is given at this time.

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.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Favorable Findings identified in this decision:

You have been diagnosed with a disability. During your VA examination, you were given a post-service diagnosis of obstructive sleep apnea.

14. Service connection for right ankle degenerative arthritis (claimed as ankle sprain).

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303)

A disability which began in service or was caused by some event in service must be considered "chronic" before service connection can be granted. Although there is a record of treatment in service for right ankle pain, no permanent residual or chronic disability subject to service connection is shown by the service medical records or demonstrated by evidence following service. Therefore, service connection for right ankle degenerative arthritis is denied. (38 CFR 3.303)

For the claimed condition, your VA examiner has opined that it is less likely than not (likelihood is less than approximately balanced or nearly equal) incurred in or caused by the claimed in-service injury, event, or illness. Veteran has claimed right ankle sprain as being directly related to military service. Based on review of the available evidence, it is less likely than not that the claimed condition is due to service as there is a lack of substantiating evidence supporting a nexus between the current diagnosis of degenerative arthritis, right ankle, and military service. Without chronicity during service or after service, a post-service event, illness, or injury is considered to be a more likely etiology.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Favorable Findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records indicate treatment of acute right ankle pain while you were on active service.

You have been diagnosed with a disability. During your VA examination, you were given a post-service diagnosis of right ankle degenerative arthritis.

15. Service connection for scars (head, face, or neck).

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 scars (head, face, or neck) is denied because the medical evidence of record fails to show that this disability has been

clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for scars (head, face, or neck) is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for scars (head, face, or neck) is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Favorable Findings identified in this decision:

You have been diagnosed with a disability. Your VA examiner reported that the only scar found was on your left ankle as a result of left ankle status post Achilles repair.

16. Service connection for shin splints.

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 shin splints is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for shin splints is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection for shin splints is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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.

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

17. Compensation for generalized anxiety disorder with persistent depressive disorder and insomnia disorder (claimed as sleep disturbances, stress, stress disorder).

The issue of compensation for generalized anxiety disorder with persistent depressive disorder and insomnia disorder is deferred for the following information: Direct medical opinion

18. Compensation for left knee pain injury (claimed as bilateral knee pain injury).

The issue of compensation for left knee pain injury is deferred for the following information: Medical examination with direct medical opinion

19. Compensation for right knee pain injury (claimed as bilateral knee pain injury).

The issue of compensation for right knee pain injury is deferred for the following information: Medical examination with direct medical opinion

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.