



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Decision Review Operation Center**



VA File Number



**Represented By:
DISABLED AMERICAN VETERANS
Rating Decision
04/10/2019**

INTRODUCTION

As a result of the enactment of the Veterans Appeals Improvement and Modernization Act of 2017 (Public Law 115-55), the Department of Veterans Affairs (VA) is required to change its current appeals process. Under the authority of Public Law 115-55, VA created the Rapid Appeals Modernization Program (RAMP) to provide Veterans with the earliest possible resolution of their claims. You have chosen to participate in RAMP, and you selected to have your claim reviewed under the Higher-Level Review lane option.

The records reflect that you are a veteran of the Gulf War Era, Peacetime and Vietnam Era. You served in the Air Force from July 12, 1973, to August 9, 1973 and the Army from June 18, 1977, to June 18, 1981 and from October 1, 1982, to September 30, 1998. We have received your request for higher-level review on December 6, 2018. Based on the review and the evidence listed below, we have made the following decisions.

DECISION

1. Evaluation of right elbow epicondylitis (non-dominant) with limited pronation, which is currently 10 percent disabling, is increased to 20 percent effective July 10, 2018.



2. Evaluation of left knee instability with pain, which is currently 10 percent disabling, is continued.
3. Evaluation of residuals, right wrist injury (minor), which is currently 0 percent disabling, is increased to 10 percent effective July 10, 2018.
4. Evaluation of left knee degenerative joint disease with painful motion, which is currently 10 percent disabling, is continued.
5. Entitlement to a separate evaluation for right elbow epicondylitis with limited forearm extension is granted with an evaluation of 10 percent effective July 10, 2018.
6. Entitlement to a separate evaluation for right elbow epicondylitis with limited forearm flexion is granted with an evaluation of 0 percent effective July 10, 2018.

EVIDENCE

- VA contract (VES) examinations of knees, wrist and elbow conducted July 31, 2018
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received July 10, 2018
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received July 10, 2018.
- Temple VAMC Outpatient Treatment Records for the period January 16, 2013 to August 8, 2018
- Private medical record as well as disability benefits questionnaires (knee, wrist and elbow) from Craig Bash, MD received October 4, 2108

REASONS FOR DECISION

1. Evaluation of right elbow epicondylitis (non-dominant) with limited pronation currently evaluated as 10 percent disabling.

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating (specified under 38 C.F.R. §§ 4.1, 4.7).

Regarding your right elbow epicondylitis, we have separately evaluated the various ranges of motion to grant the highest potential evaluation. For your limited pronation, we have assigned an evaluation of 20%. The VA contract examiner noted that due to pain he could not test you. Your private DBQ from Dr. Bash shows range of motion with pain and we have used this to assign



your evaluation(s).

We have assigned an effective date of July 10, 2018, the date we received your claim.

We have assigned a 20 percent evaluation for your right elbow epicondylitis (dominant) based on:

- Limitation of pronation: motion lost beyond last quarter of arc, the hand does not approach full pronation

Additional symptom(s) include:

- Limitation of supination beyond 30 degrees
- Supination beyond 30 degrees

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 30 percent is not warranted for impaired supination and pronation of forearm unless the evidence shows:

- Loss of (bone fusion): hand fixed in supination or hyperpronation. (38 CFR 4.124a) Insert Evaluation Builder criteria

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5213)

2. Evaluation of left knee instability with pain currently evaluated as 10 percent disabling.

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating. (specified under 38 C.F.R. §§ 4.1, 4.7).

The evaluation of left knee degenerative joint disease with instability is continued as 10 percent disabling as the current evidence fails to show your condition warrants a higher evaluation. Your



VA examiner noted that you report the following difficulties with your left knee: standing; squatting; any motion when attempting to flex the joint; and sitting at rest. He also noted that you are unable to participate in meaningful range of motion testing due to reported pain. Your VA treatment records include recent radiology reports dated July 12, 2018 were normal. You utilize a knee brace for your left knee. Although you were unable to complete the examination in full due to pain, the evidence does not show any worsening of the condition, therefore we are continuing your current evaluation.

You do have a knee brace and limited walking as well as a gait that is described as limping. Your x-ray was normal at the VA Medical Center in 2018. The evidence does not show you instability, however there is no indication of improvement.

An evaluation of 10 percent is granted if the record shows recurrent subluxation or lateral instability of the knee which is slight. A higher evaluation of 20 percent is not warranted unless there is evidence of moderate subluxation or lateral instability of the knee.

Favorable findings identified in this decision:

none

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5257)

3. Evaluation of residuals, right wrist injury (minor) currently evaluated as 0 percent disabling.

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating (specified under 38 C.F.R. §§ 4.1, 4.7).

Regarding your right wrist injury residuals, we have assigned an evaluation of 10%. The VA contract examiner noted that due to pain he could not test you. Your private DBQ from Dr. Bash shows range of motion with pain and we have used this to assign your evaluation(s).



We have assigned an effective date of July 10, 2018, the date we received your claim.

We have assigned a 10 percent evaluation for your residuals, right wrist injury (non-dominant/minor) based on:

- Limited motion of the wrist: dorsiflexion less than 15 degrees

Additional symptom(s) include:

- Painful motion of the wrist (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 wrist, the minimum compensable evaluation of 10 percent is assigned.)
- ~~Palmar flexion limited, but not in line with forearm~~

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.

This is the highest schedular evaluation allowed under the law for limited motion of the wrist.

Additionally, a higher evaluation of 20 percent is not warranted for ankylosis of the wrist unless the evidence shows:

- Favorable ankylosis in 20 degrees to 30 degrees of dorsiflexion. (38 CFR 4.124a)

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5214, 5215)

4. Evaluation of left knee degenerative joint disease currently evaluated as 10 percent disabling (to include consideration of limited flexion and extension of the knee).

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating. (specified under 38 C.F.R. §§ 4.1, 4.7).

The evaluation of left knee degenerative joint disease is continued as 10 percent disabling as the



current evidence fails to show your condition warrants a higher evaluation. Your VA examiner noted that you report the following difficulties with your left knee: standing; squatting; any motion when attempting to flex the joint; and sitting at rest. He also noted that you are unable to participate in meaningful range of motion testing due to reported pain. You experience pain on flexion and extension. Your VA treatment records include recent radiology reports dated July 12, 2018 were normal. You utilize a knee brace for your left knee. Although you were unable to complete the examination in full due to pain, the evidence does not show any worsening of the condition, therefore we are continuing your current evaluation.

Your knee is not shown to be ankylosed (there is movement albeit painful motion) and the VAMC records show motion of flexion to 80 degrees and extension limited to 110 degrees, but does not show measurement with a goniometer and is not expressed in a manner showing more severe limited motion. You do have a knee brace and limited walking as well as a gait that is described as limping. Your x-ray was normal at the VA Medical Center in 2018. The evidence does not show you have extension limited to at least 10 degrees along with limited flexion of 45 degrees to warrant separate evaluations.

An evaluation of 10 percent is granted for leg flexion which is limited to 45 degrees. A higher evaluation of 20 percent is not warranted unless evidence demonstrates leg flexion which is limited to 30 degrees.

An evaluation of 10 percent is granted whenever extension of the leg is limited to 10 degrees. A higher evaluation of 20 percent is not warranted unless extension of the leg is limited to 15 degrees. (38 CFR 4.71a)

Favorable findings identified in this decision:

none

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5260, 5261)

5. Entitlement to a separate evaluation for right elbow epicondylitis with limited forearm extension.

The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the



evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating (specified under 38 C.F.R. §§ 4.1, 4.7).

Regarding your right elbow epicondylitis, we have separately evaluated the various ranges of motion to grant the highest potential evaluation. For your limited extension of the forearm, we have assigned an evaluation of 10%. The VA contract examiner noted that due to pain he could not test you. Your private DBQ from Dr. Bash shows range of motion with pain and we have used this to assign your evaluation(s).

We have assigned an effective date of July 10, 2018, the date we received your claim.

We have assigned a 10 percent evaluation for your right elbow epicondylitis (dominant) based on:

- Painful motion of the elbow (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 elbow, the minimum compensable evaluation of 10 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 20 percent is not warranted for limited extension of the forearm unless the evidence shows:

- Extension is limited to 75-99 degrees. (38 CFR 4.124a)

Additionally, a higher evaluation of 20 percent is not warranted for forearm flexion limited to 100 degrees and extension limited to 45 degrees unless the evidence shows:

- Flexion is limited to 100 degrees or less and extension is limited to 45 degrees or more. (38 CFR 4.124a)

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5207)

6. Entitlement to a separate evaluation for right elbow epicondylitis with limited forearm flexion.



The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. An increase in the evaluation assigned for a disability is warranted when the average impairment in earning capacity resulting from such diseases and injuries in civil occupations has increased and the disability picture meets the criteria required for a higher rating (specified under 38 C.F.R. §§ 4.1, 4.7).

Regarding your right elbow epicondylitis, we have separately evaluated the various ranges of motion to grant the highest potential evaluation. For your limited pronation, we have assigned an evaluation of 0%. While there is painful motion, you may only be evaluated once for painful motion in the range of motion of the elbow and you have an evaluation based on painful extension. The VA contract examiner noted that due to pain he could not test you. Your private DBQ from Dr. Bash shows range of motion with pain and we have used this to assign your evaluation(s).

We have assigned an effective date of July 10, 2018, the date we received your claim.

We have assigned a noncompensable evaluation for your right elbow epicondylitis (non-dominant) based on:

- Flexion limited to 101-110 degrees (38 CFR 4.31)

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 10 percent is not warranted for limited flexion of the forearm unless the evidence shows:

- Flexion is limited to 91-100 degrees;

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §4.1 Essentials of evaluative rating.
- 38 C.F.R. §4.7 Higher of two evaluations.
- 38 C.F.R. §4.10 Functional impairment.
- 38 C.F.R. §4.40 Functional loss.
- 38 C.F.R. §4.45 The joints.
- 38 C.F.R. §4.59 Painful motion.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (5206)

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.

