

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

VA File Number

**Represented By:
CHUCK R PARDUE
Rating Decision
03/20/2018**

INTRODUCTION

The records reflect that you are a veteran of the Peacetime. You served in the Navy from July 18, 1977, to September 16, 1981. You filed a new claim for benefits that was received on February 19, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for thoracolumbar spine intervertebral disc syndrome (IVDS) is granted with an evaluation of 40 percent effective March 9, 2016.
2. Service connection for left knee strain is granted with an evaluation of 20 percent effective March 9, 2016.
3. Service connection for anxiety disorder/depressive disorder secondary to chronic pain is granted with an evaluation of 70 percent effective May 10, 2017.
4. Service connection for obstructive sleep apnea (OSA) is granted with an evaluation of 50

percent effective May 10, 2017.

5. Service connection for benign paroxysmal positional vertigo is granted with an evaluation of 30 percent effective January 31, 2018.

6. Service connection for left lower extremity radiculopathy (also claimed as sciatica) is granted with an evaluation of 20 percent effective March 9, 2016.

7. Service connection for right knee strain is granted with an evaluation of 20 percent effective March 9, 2016.

8. Service connection for right lower extremity radiculopathy (also claimed as sciatica) is granted with an evaluation of 20 percent effective March 9, 2016.

9. Service connection for erectile dysfunction secondary to depression is granted with an evaluation of 0 percent effective January 31, 2018.

10. Service connection for hypertension secondary to depression is granted with an evaluation of 0 percent effective January 31, 2018.

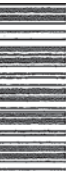
11. Entitlement to special monthly compensation based on loss of use of a creative organ is granted from January 31, 2018.

12. Basic eligibility to Dependents' Educational Assistance is established from May 10, 2017.

13. The previous denial of service connection for posttraumatic stress disorder (PTSD) is confirmed and continued.

EVIDENCE

- DD Form 214, Certificate of Release or Discharge from Active Duty, from July 18, 1977 through September 16, 1981
- Service treatment records/military personnel records for your period of service dated July 18, 1977 to September 16, 1981
- VA Form 21-526EZ Veteran's Fully Developed Claim, received March 9, 2016
- Letter dated March 31, 2016, informing Veteran of exclusion from the Fully Developed Claims Process and additional evidence needed.
- Photocopy of select service treatment records, received from you on March 9, 2016.
- Treatment reports from the Syracuse VA Medical Center, dated August 6, 2014 to May 13, 2015.
- Letter dated June 2, 2016, requesting you to verify current address.
- VA Form 21-0820 Report of General Information, dated June 3, 2016
- Formal finding of a lack of information required to corroborate stressors associated with a claim for service connection for PTSD, dated June 22, 2016.



- VA Form 21-0820 Report of General Information, dated June 27, 2016
- VA Form 21-4138, Statement in Support of Claim, received August 22, 2016
- VA Form 21-0820 Report of General Information, dated August 25, 2016
- Letter dated August 29, 2016, informing Veteran of examination pending scheduling at private medical facility.
- VA Form 21-4138, Statement in Support of Claim, received August 31, 2016
- Treatment reports from the Buffalo VA Medical Center, dated January 9, 2015 to June 1, 2016.
- Treatment reports from the North Florida VA Health Care System, dated June 1, 2016 to September 15, 2016.
- VA Back and Knee examinations with medical opinions received September 8, 2016
- Rating Decision, dated October 3, 2016
- VA Form 21-0820 Report of General Information, dated October 25, 2016
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, May 10, 2017
- VA Form 21-0781, Statement In Support Of Claim For Service Connection for Post-Traumatic Stress Disorder (PTSD), received May 10, 2017
- VA letter concerning your claim, dated May 23, 2017
- Private treatment notes (mental health with medications) from Wekiva Springs dated January 2017, received May 10, 2017
- VAMC Syracuse, NY (Veterans Affairs Medical Center) treatment records, from August 6, 2014 through January 16, 2017
- VAMC Gainesville, FL (Veterans Affairs Medical Center) treatment records, from August 22, 2016 through June 27, 2017
- VAMC Fayetteville, NC (Veterans Affairs Medical Center) treatment records, from December 9, 2002 through July 23, 2003
- Memorandum of Formal Finding on a Lack of Information Required to Verify Stressors in Connection to a Post Traumatic Stress Disorder Claim, dated July 6, 2017
- Rating Decision, dated July 6, 2017
- Intent to File a Claim for Compensation received January 31, 2018
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, February 19, 2018
- Disability Benefits Questionnaire (DBQ) - Veteran Provided (Peripheral Nerves, Male Reproductive Organ, Ear Conditions, Knee and Lower Leg, Sleep Apnea, Hypertension, Back) dated January 23, 2018 and January 31, 2018 completed by Dr. Thomas Seiter received February 19, 2018
- Disability Benefits Questionnaire (DBQ) - Veteran Provided (Mental Disorder) completed by Patrick Weichert, Ph.D. received February 19, 2018
- Correspondence letter from Thomas Seiter, MD letter dated January 23, 2018 received February 19, 2018
- VA Form 21-0820 Report of General Information, dated March 3, 2018 - We have been unable to obtain records from Fayetteville/Wilmington CBOC for the period January 1, 2017 through December 31, 2017. We have determined that these records do not exist. We will now make a decision based on the evidence of record.
- VA Form 21-0820 Report of General Information, dated March 3, 2018 - We have been unable to obtain records from Jacksonville FL/Gainesville VA Medical Center for the period January 1, 2005 through August 21, 2016. We have determined that these records do not exist. We will now make a decision based on the evidence of record.

- VA Form 21-0820 Report of General Information, dated March 3, 2018 - We have been unable to obtain records from Syracuse VA Medical Center for the period January 1, 2014 through August 5, 2014. We have determined that these records do not exist. We will now make a decision based on the evidence of record.

REASONS FOR DECISION

1. Service connection for thoracolumbar spine intervertebral disc syndrome (IVDS).

Service connection for thoracolumbar spine intervertebral disc syndrome (IVDS) has been established as directly related to military service.

An evaluation of 40 percent is assigned from March 9, 2016. An effective date of March 9, 2016 is assigned as this is the date we received your original claim for this condition.

We have assigned a 40 percent evaluation for your thoracolumbar spine intervertebral disc syndrome (IVDS) based on:

- Forward flexion of the thoracolumbar spine 30 degrees or less

Additional symptom(s) include:

- With no incapacitating episodes during the past 12 months
- 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 intervertebral disc syndrome (ivds) unless the evidence shows:

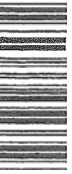
- Unfavorable ankylosis of the entire thoracolumbar spine.

Additionally, a higher evaluation of 60 percent is not warranted for intervertebral disc syndrome (ivds) unless the evidence shows:

- Intervertebral disc syndrome (IVDS) with incapacitating episodes having a total duration of at least six weeks during the past 12 months.

2. Service connection for left knee strain.

Service connection for left knee strain has been established as directly related to military service.



An evaluation of 20 percent is assigned from March 9, 2016. An effective date of March 9, 2016 is assigned as this is the date we received your original claim for this condition.

We have assigned a 20 percent evaluation for your left knee strain based on:

- Limitation of flexion of 16 to 30 degrees

Additional symptom(s) include:

- Painful motion of the knee

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 were applied based on additional joint limitation.

A higher evaluation of 30 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 15 degrees or less.

3. Service connection for anxiety disorder/depressive disorder secondary to chronic pain as secondary to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS) and bilateral knee strain.

Service connection for anxiety disorder/depressive disorder secondary to chronic pain has been established as related to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS).

An evaluation of 70 percent is assigned from May 10, 2017. An effective date of May 10, 2017 is assigned as this is the date we received your original claim for this condition.

We have assigned a 70 percent evaluation for your anxiety disorder/depressive disorder secondary to chronic pain based on:

- Forgetting names
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Depressed mood
- Suicidal ideation
- Impaired judgment
- Mild memory loss
- Impaired impulse control
- Chronic sleep impairment
- Difficulty in adapting to work
- Impairment of short- and long-term memory
- Flattened affect
- Difficulty in adapting to a worklike setting
- Unprovoked irritability with periods of violence
- Suspiciousness

- Disturbances of motivation and mood
- Retention of only highly learned material
- Forgetting recent events
- Forgetting to complete tasks
- Difficulty in understanding complex commands
- Impaired abstract thinking
- Panic attacks (weekly)
- Difficulty in adapting to stressful circumstances
- Anxiety
- Difficulty in establishing and maintaining effective work and social relationships
- Forgetting directions

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation.

A higher evaluation of 100 percent is not warranted for generalized anxiety 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.

4. Service connection for obstructive sleep apnea (OSA) as secondary to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

Service connection for obstructive sleep apnea (OSA) has been established as related to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

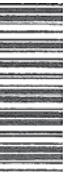
An evaluation of 50 percent is assigned from May 10, 2017. An effective date of May 10, 2017 is assigned as this is the date you were entitled to service connection for anxiety disorder/depressive disorder.

We have assigned a 50 percent evaluation for your obstructive sleep apnea (OSA) based on:

- Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine

A higher evaluation of 100 percent is not warranted for sleep apnea syndromes unless the evidence shows:

- Carbon dioxide retention; or,
- Chronic respiratory failure; or,
- Cor pulmonale; or,
- Tracheostomy required.



5. Service connection for benign paroxysmal positional vertigo as secondary to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

Service connection for benign paroxysmal positional vertigo has been established as related to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

An evaluation of 30 percent is assigned from January 31, 2018. An effective date of January 31, 2018 is assigned as this is the date we received your intent to file a claim for compensation and your formal application was received within a year.

An evaluation of 30 percent is assigned for findings of dizziness with occasional staggering.

6. Service connection for left lower extremity radiculopathy (also claimed as sciatica) as secondary to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS).

Service connection for left lower extremity radiculopathy (also claimed as sciatica) has been established as related to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS).

An evaluation of 20 percent is assigned from March 9, 2016. An effective date of March 9, 2016 is assigned as this is the date we received your original claim for your back condition and this condition is found to be a secondary complication of your back.

We have assigned a 20 percent evaluation for your left lower extremity radiculopathy (also claimed as sciatica) based on:

- Moderate incomplete paralysis

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe.

7. Service connection for right knee strain as secondary to the service-connected disability of left knee strain.

Service connection for right knee strain has been established as related to the service-connected disability of left knee strain.

An evaluation of 20 percent is assigned from March 9, 2016. An effective date of March 9, 2016 is assigned as this is the date we received your original claim for this condition.

We have assigned a 20 percent evaluation for your right knee strain based on:

- Limitation of flexion of 16 to 30 degrees

Additional symptom(s) include:

- Painful motion of the knee

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 were applied based on additional joint limitation.

A higher evaluation of 30 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 15 degrees or less.

8. Service connection for right lower extremity radiculopathy (also claimed as sciatica) as secondary to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS).

Service connection for right lower extremity radiculopathy (also claimed as sciatica) has been established as related to the service-connected disability of thoracolumbar spine intervertebral disc syndrome (IVDS).

An evaluation of 20 percent is assigned from March 9, 2016. An effective date of March 9, 2016 is assigned as this is the date we received your original claim for your back condition and this condition is found to be a secondary complication of your back.

We have assigned a 20 percent evaluation for your right lower extremity radiculopathy (also claimed as sciatica) based on:

- Moderate incomplete paralysis

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe.

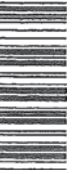
9. Service connection for erectile dysfunction secondary to depression as secondary to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

Service connection for erectile dysfunction secondary to depression has been established as related to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

A noncompensable evaluation is assigned from January 31, 2018. An effective date of January 31, 2018 is assigned as this is the date we received your intent to file a claim for compensation and your formal application was received within a year.

We have assigned a noncompensable evaluation for your erectile dysfunction secondary to depression based on:

- Erectile dysfunction



Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 20 percent is not warranted for penile deformity with loss of erectile power unless the evidence shows:

- Deformity with loss of erectile power.

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related.

10. Service connection for hypertension secondary to depression as secondary to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

Service connection for hypertension secondary to depression has been established as related to the service-connected disability of anxiety disorder/depressive disorder secondary to chronic pain.

A noncompensable evaluation is assigned from January 31, 2018. An effective date of January 31, 2018 is assigned as this is the date we received your intent to file a claim for compensation and your formal application was received within a year.

We have assigned a noncompensable evaluation for your hypertension secondary to depression based on:

- A diagnosed disability with no compensable symptoms

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 10 percent is not warranted for hypertensive vascular disease unless the evidence shows:

- A history of diastolic pressure predominantly 100 or more and there is a requirement for continuous medication for control; or,
- Diastolic pressure predominantly 100 or more; or,
- Systolic pressure predominantly 160 or more.

11. Entitlement to special monthly compensation based on loss of use.

Entitlement to special monthly compensation is warranted in this case because criteria regarding loss of use of a creative organ were met from January 31, 2018.

An effective date of January 31, 2018 is assigned as this is the date you met the schedular

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requirement for this benefit.

12. 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.

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has a total service-connected disability, permanent in nature.

An effective date of May 10, 2017 is assigned as this is the date you met the schedular requirements for this benefit.

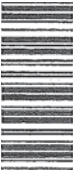
13. Service connection for posttraumatic stress disorder (PTSD).

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 posttraumatic stress disorder (PTSD) is denied since this condition neither occurred in nor was caused by service.

Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with 38 CFR 4.125(a); a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred.

We received your medical evidence which discusses the symptoms of your medical condition. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Rating Decision dated July 6, 2017 reconsidered your previous denial of PTSD by Rating Decision dated October 3, 2016 based on receipt of your VA Form 21-0781 (received on May 10, 2017). However, VA was unable to corroborate combat or any other in-service stressor. You did not respond to our letter dated May 23, 2017 requesting additional evidence of your stressful event in service. A formal finding memorandum by the Joint Services Records Research Coordinator (JSRRC) was unable to corroborate that you experienced a stressful event in service because you did not provide information necessary to determine your claim further. Therefore, Rating Decision dated July 6, 2017 confirmed and continued the previous denial of PTSD. We have not found that you experienced a stressful event in service, including fear of hostile military or terrorist activity.



On February 19, 2018 we received your VA Form 21-0781 but it merely contained the same stressor information that you had already provided to us on May 10, 2017. We received and reviewed the Mental Disability Benefit Questionnaire completed by Patrick Weichert, Ph.D and additional commentary provided by Dr. Thomas Seiter. Although the two attempted to provide a link of a current diagnosis of PTSD to you military service we have not been able to corroborate and verify a stressor due to military service. The evidence does not support a change in our prior decision. Therefore, we are confirming the previous denial of this claim.

If the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, the Veteran's lay statement alone may establish the occurrence of the stressor. The available evidence is not sufficient to confirm that the Veteran actually engaged in combat with the enemy. Receipt of an award or medal related to combat or other documentation of combat has not been established. When determining whether to grant service connection for PTSD, VA considers all potential in-service stressors reported by the Veteran or raised by the evidence. The stressors can include combat, non-combat, fear of hostile military or terrorist activity, or personal assault. VA was unable to corroborate combat or any other in-service stressor.

The claim for service connection for posttraumatic stress disorder (PTSD) is considered reopened. However, the evidence continues to show this condition was not incurred in or aggravated by military service.

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.

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