



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

VA File Number

**Represented By:
CHUCK R PARDUE
Rating Decision
04/10/2018**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the Army from September 15, 1983, to January 31, 1995. You filed a claim for increased evaluation that was received on February 16, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of post traumatic stress disorder (PTSD), which is currently 70 percent disabling, is increased to 100 percent effective February 19, 2018.
2. Evaluation of left knee instability, which is currently 0 percent disabling, is increased to 30 percent effective February 16, 2018.
3. Evaluation of right knee instability, which is currently 0 percent disabling, is increased to 30 percent effective February 16, 2018.
4. Evaluation of status post right knee arthroscopy for medial meniscus tear with arthritis

(previously rated as DC:5010), which is currently 10 percent disabling, is increased to 20 percent effective February 16, 2018.

5. Evaluation of left knee degenerative joint disease (previously rated under DC: 5010), which is currently 10 percent disabling, is increased to 20 percent effective February 16, 2018.

6. Service connection for scar, right ankle is granted with an evaluation of 0 percent effective February 19, 2018.

7. Basic eligibility to Dependents' Educational Assistance is established from February 16, 2018.

8. Evaluation of Status post open reduction internal fixation right ankle with DJD, which is currently 10 percent disabling, is continued.

9. Evaluation of Tinnitus, which is currently 10 percent disabling, is continued.

10. Evaluation of Recurrent hemorrhoids, status post hemorrhoidectomy, which is currently 10 percent disabling, is continued.

11. A decision on entitlement to compensation for Sleep apnea is deferred.

EVIDENCE

- Private Treatment Records from Thomas J. Seiter, Jr., M.D received on, February 16, 2018
- Disability Benefit Questionnaire: Sleep Apnea, Knee and Lower Leg Conditions conducted by Thomas J. Seiter, Jr., M.D. on, February 16, 2018
- Section (§) 5103 Notice Response, received February 16, 2018
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received February 16, 2018
- Pardue & Associates, P.C. document from Chuck R. Pardue received on, February 16, 2018
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received, February 19, 2018
- Section (§) 5103 Notice Response, received February 19, 2018
- Augusta VAMC (Veterans Affairs Medical Center) treatment records, for periods, from October 16, 1997 through February 27, 2018
- Service Personnel Records, received March 3, 2018 for periods, from September 15, 1983 through January 31, 1995
- Disability Benefit Questionnaire: PTSD REVIEW conducted by Patrick D. Weichert, Ph.D on, March 28, 2018
- Disability Benefit Questionnaire: PSYCH PTSD Review, Ankle Conditions and GEN SURG Rectum & Anus (including hemorrhoids) conducted by Augusta VAMC on, March 20, 2018

REASONS FOR DECISION

1. Evaluation of post traumatic stress disorder (PTSD) currently evaluated as 70 percent disabling.

The evaluation of post traumatic stress disorder (PTSD) is increased to 100 percent disabling effective February 19, 2018. An increased evaluation is established from the date we received your claim for increase.

We have assigned a 100 percent evaluation for your post traumatic stress disorder (PTSD) based on:

- Forgetting names
- Depressed mood
- Suicidal ideation
- Near-continuous depression affecting the ability to function independently, appropriately and effectively
- Impaired judgment
- Mild memory loss
- Impaired impulse control
- Chronic sleep impairment
- Memory loss for own name
- Difficulty in adapting to work
- Inability to establish and maintain effective relationships
- Impairment of short- and long-term memory
- Flattened affect
- Difficulty in adapting to a worklike setting
- Circumlocutory speech
- Unprovoked irritability with periods of violence
- Memory loss for own occupation
- Suspiciousness
- Disturbances of motivation and mood
- Retention of only highly learned material
- Forgetting recent events
- Forgetting to complete tasks
- Near-continuous panic affecting the ability to function independently, appropriately and effectively
- Difficulty in understanding complex commands
- Panic attacks more than once a week
- Obsessional rituals which interfere with routine activities
- Total occupational and social impairment
- Difficulty in adapting to stressful circumstances
- Neglect of personal appearance and hygiene
- Circumstantial speech
- Anxiety
- Difficulty in establishing and maintaining effective work and social relationships
- Memory loss for names of close relatives
- Forgetting directions

The overall evidentiary record shows that the severity of your disability most closely

approximates the criteria for a 100 percent disability evaluation.

This is the highest schedular evaluation allowed under the law for posttraumatic stress disorder.

There is no evidence of record that shows that you are unable to manage your financial affairs.

2. Evaluation of left knee instability currently evaluated as 0 percent disabling.

The evaluation of left knee instability is increased to 30 percent disabling effective February 16, 2018. An increased evaluation is established from the date we received your claim for increase.

An evaluation of 30 percent is granted for recurrent subluxation or lateral instability of the knee which is severe.

3. Evaluation of right knee instability currently evaluated as 0 percent disabling.

The evaluation of right knee instability is increased to 30 percent disabling effective February 16, 2018. An increased evaluation is established from the date we received your claim for increase.

An evaluation of 30 percent is granted for recurrent subluxation or lateral instability of the knee which is severe.

4. Evaluation of status post right knee arthroscopy for medial meniscus tear with arthritis (previously rated as DC:5010) currently evaluated as 10 percent disabling.

The evaluation of status post right knee arthroscopy for medial meniscus tear with arthritis (previously rated as DC:5010) is increased to 20 percent disabling effective February 16, 2018. An increased evaluation is established from the date we received your claim for increase.

We have assigned a 20 percent evaluation for your status post right knee arthroscopy for medial meniscus tear with arthritis 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.

5. Evaluation of left knee degenerative joint disease (previously rated under DC: 5010) currently evaluated as 10 percent disabling.

The evaluation of left knee degenerative joint disease (previously rated under DC: 5010) is increased to 20 percent disabling effective February 16, 2018. An increased evaluation is established from the date we received your claim for increase.

We have assigned a 20 percent evaluation for your Left knee degenerative joint disease 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.

6. Service connection for scar, right ankle.

Service connection for scar, right ankle has been established as directly related to military service.

A noncompensable evaluation is assigned from February 19, 2018. Service connection has been established from the day VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim.

#1: A scar, located on your right lower extremity, measures 0.7 in² (4.5 cm²) superficial and linear. The scar is neither painful nor unstable.

#2: A scar, located on your right lower extremity, measures 0.1 in² (0.8 cm²) superficial and linear. The scar is neither painful nor unstable.

We have assigned a noncompensable evaluation for your scar, right ankle based on:

- One or more linear scars

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}

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable.

A higher evaluation is not warranted unless scars are considered disabling because of limitation of function of the affected part.

7. 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.

The effective date is February 16, 2018. The effective date of this grant is February 16, 2018, this is the date a permanent and total evaluation was assigned.

Please note: Permanent and total disability issue has been addressed with the grant of Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

8. Evaluation of Status post open reduction internal fixation right ankle with DJD currently evaluated as 10 percent disabling.

The evaluation of Status post open reduction internal fixation right ankle with DJD is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your Status post open reduction internal fixation right ankle with DJD based on:

- Moderate limitation of motion of the ankle based on dorsiflexion less than 15 degrees

Additional symptom(s) include:

- Painful motion of the ankle (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 ankle, the minimum compensable evaluation of 10 percent is assigned.)

- X-ray evidence of degenerative arthritis

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 20 percent is not warranted for degenerative arthritis 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.

Additionally, a higher evaluation of 20 percent is not warranted for limitation of motion of the ankle unless the evidence shows:

- Marked limitation of motion of the ankle based on dorsiflexion less than 5 degrees or plantar flexion less than 10 degrees.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

9. Evaluation of Tinnitus currently evaluated as 10 percent disabling.

The evaluation of Tinnitus is continued as 10 percent disabling.

This is the highest schedular evaluation allowed under the law for tinnitus.

10. Evaluation of Recurrent hemorrhoids, status post hemorrhoidectomy currently evaluated as 10 percent disabling.

The evaluation of Recurrent hemorrhoids, status post hemorrhoidectomy is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your Recurrent hemorrhoids, status post hemorrhoidectomy based on:

- Evidence of frequent recurrences

Additional symptom(s) include:

- Mild symptoms
- Moderate symptoms

A higher evaluation of 20 percent is not warranted for hemorrhoids unless the evidence shows hemorrhoids with persistent bleeding and with secondary anemia, or with fissures.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

11. Compensation for Sleep apnea.

The issue of compensation for Sleep apnea is deferred for the following information: Until sleep apnea exam has been conducted and determines if the veteran will be service connected.

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.