



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

VA File Number

**Represented By:
CHUCK R PARDUE
Rating Decision
04/17/2018**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the Army from February 27, 1990, to February 26, 1994 and from April 1, 2008, to April 11, 2017. You filed a new claim and an increase in disabilities claim for benefits that was received on February 20, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. The decision to deny service connection for allergic rhinitis was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 0 percent effective April 12, 2017.
2. The decision to deny service connection for sinusitis was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 0 percent effective April 12, 2017.
3. Evaluation of cervical radiculopathy, right upper extremity, which is currently 20 percent

disabling, is increased to 40 percent effective February 14, 2018.

4. Evaluation of cervical radiculopathy, left upper extremity, which is currently 20 percent disabling, is increased to 30 percent effective February 14, 2018.

5. Evaluation of costochondritis, left chest (previously evaluated under DC 5099-5010), which is currently 0 percent disabling, is increased to 10 percent effective February 14, 2018.

6. Service connection for tinnitus is granted with an evaluation of 10 percent effective April 12, 2017.

7. Service connection for left leg sciatic radiculopathy secondary to back is granted with an evaluation of 40 percent effective April 12, 2017.

8. Service connection for right leg sciatic radiculopathy secondary to back is granted with an evaluation of 40 percent effective April 12, 2017.

9. Service connection for benign paroxysmal positional vertigo BPPV secondary to PTSD is granted with an evaluation of 30 percent effective April 12, 2017.

10. Service connection for erectile dysfunction secondary to PTSD is granted with an evaluation of 0 percent effective April 12, 2017.

11. Entitlement to special monthly compensation based on loss of use of a creative organ is granted from April 12, 2017.

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

13. The claim for an increased evaluation for posttraumatic stress disorder (also claimed as depression, anxiety, adjustment disorder) is deferred.

14. The claim for an increased evaluation for migraine including migraine variants (also claimed as headaches) is deferred.

EVIDENCE

- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, February 20, 2018
- Private Treatment Records, Dr. Thomas Seiter, received February 20, 2018, dated, dated February 14, 2015
- Disability Benefit Questionnaires, received from Veteran on February 20, 2018, Dr. Thomas Seiter, dated February 14, 2018
- Disability Benefit Questionnaire - Hearing Loss & Tinnitus, QTC, Dr. Karl Rech received on

- March 26, 2018, dated March 20, 2018
- Disability Benefit Questionnaire - Male Reproduction, QTC, Dr. Reginald Brown, received March 26, 2018, dated March 22, 2018
 - Disability Benefit Questionnaire - Peripheral Nerves Conditions, QTC, received March 26, 2018, dated March 22, 2018
 - Disability Benefit Questionnaire - Medical Opinions, QTC, dated March 26, 2018
 - Prior Rating Decision, and all evidence contained therein dated May 27, 2017
 - Disability Benefit Questionnaire, QTC, Dr. Gregory Teel, dated, dated September 12, 2016
 - Service Treatment Records, Received July 28, 2016, for periods from February 27, 1990 through February 26, 1994 and from April 1, 2008 through April 11, 2017
 - Service Treatment Records, Received November 27, 2016, for periods from February 27, 1990 through February 26, 1994 and from April 1, 2008 through April 11, 2017
 - Service Treatment Records, Received May 24, 2017, for periods from February 27, 1990 through February 26, 1994 and from April 1, 2008 through April 11, 2017
 - VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received, received February 14, 2018

REASONS FOR DECISION

1. Whether the decision to deny service connection for allergic rhinitis was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for allergic rhinitis with an evaluation of 0 percent effective April 12, 2017. In the previous rating decision dated May 25, 2017, allergic rhinitis was denied stating that there was a preexisting condition as boxes were checked on the entrance exam dated February 25, 2008. However, the examiner noted on the final page that these boxes were checked in error due to a misunderstanding of what was being asked. Formal diagnosis of allergic rhinitis was given on September 29, 2012 and there is continuous complaints and treatments noted in your service treatment records with medication taken daily.

A noncompensable evaluation is assigned from April 12, 2017. 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.

We have assigned a noncompensable evaluation for your allergic rhinitis 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 allergic rhinitis unless the evidence shows:

- Rhinitis without polyps, but with greater than 50 percent obstruction of the nasal passages on both sides; or complete obstruction of the nasal passages on one side.

2. Whether the decision to deny service connection for sinusitis was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for sinusitis with an evaluation of 0 percent effective April 12, 2017.

In the previous rating decision dated May 25, 2017, sinusitis was denied stating that there was a preexisting condition as boxes were checked on the entrance exam dated February 25, 2008. However, the examiner noted on the final page that these boxes were checked in error due to a misunderstanding of what was being asked. Formal diagnosis of sinusitis was given on or about January 09, 2015 with CT scan evidence on May 21, 2015 and again on September 9, 2016 that confirms the diagnosis.

The effective date of this grant is April 12, 2017. 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.

A noncompensable evaluation is assigned from April 12, 2017.

We have assigned a noncompensable evaluation for your sinusitis based on:

- Sinusitis detected by X-ray only

A higher evaluation of 10 percent is not warranted for ethmoid sinusitis unless the evidence shows:

- One or two incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment; or,
- Three to six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting..

3. Evaluation of cervical radiculopathy, right upper extremity currently evaluated as 20 percent disabling.

The evaluation of cervical radiculopathy, right upper extremity is increased to 40 percent disabling effective February 14, 2018.

The effective date of this grant is February 14, 2018. Entitlement to an increased evaluation has been established from the date the intent to file was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim or intent to file was received.

We have assigned a 40 percent evaluation for your musculospiral, ulnar and median nerves (rated as all radicular group) based on:

- Moderate incomplete paralysis of the major extremity

A higher evaluation of 70 percent is not warranted for paralysis of all radicular nerve groups unless the evidence shows nerve damage is severe.

4. Evaluation of cervical radiculopathy, left upper extremity currently evaluated as 20 percent disabling.

The evaluation of cervical radiculopathy, left upper extremity is increased to 30 percent disabling effective February 14, 2018.

The effective date of this grant is February 14, 2018. Entitlement to an increased evaluation has been established from the date the intent to file was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim or intent to file was received.

We have assigned a 30 percent evaluation for your musculospiral, ulnar and median nerves (rated as all radicular group) based on:

- Moderate incomplete paralysis of the minor extremity

A higher evaluation of 60 percent is not warranted for paralysis of all radicular nerve groups unless the evidence shows nerve damage is severe.

5. Evaluation of costochondritis, left chest (previously evaluated under DC 5099-5010) currently evaluated as 0 percent disabling.

The evaluation of costochondritis, left chest (previously evaluated under DC 5099-5010) is increased to 10 percent disabling effective February 14, 2018.

The effective date of this grant is February 14, 2018. Entitlement to an increased evaluation has been established from the date of the medical evidence showing an increase in disability. When

private medical evidence showing an increase in disability is received within one year of the date of the evidence, the effective date of the increase is the date of the evidence.

We have assigned a 10 percent evaluation for your costochondritis, left chest (previously evaluated under DC 5099-5010) based on:

- A muscle group XXI injury evaluated as moderate which affects respiration

History and complaint:

- Record of consistent complaint of one or more of the cardinal signs and symptoms of muscle disability as defined in 38 CFR §4.56(c)
- Service department record or other evidence of in-service treatment for the wound

A muscle injury is considered moderate when one of the following is found:

- Type of injury consists of a through and through or deep penetrating wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residuals of debridement, or prolonged infection.
- Service department record or other evidence of in-service treatment for the wound. Record of consistent complaint of one or more of the cardinal signs and symptoms of muscle disability (loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement), particularly lowered threshold of fatigue after average use, affecting the particular functions controlled by the injured muscles.
- Objective findings show entrance and (if present) exit scars, small or linear, indicating short track of missile through muscle tissue. Some loss of deep fascia or muscle substance or impairment of muscle tonus and loss of power or lowered threshold of fatigue when compared to the sound side.

A higher evaluation of 20 percent is not warranted for injury to muscles of respiration unless the evidence shows the functional loss is rated as moderately severe or severe.

6. Service connection for tinnitus.

Service connection for tinnitus has been established as directly related to military service.

The effective date of this grant is April 12, 2017. 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.

An evaluation of 10 percent is assigned from April 12, 2017.

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

- Recurrent tinnitus

Although the examiner reported that your tinnitus was less than likely as not due to noise exposure in service, and the opinion was based on the veteran's denial of tinnitus on two previous

occasions, your service treatment records showed a complaint of tinnitus on the Separation Health Assessment which was completed on September 1, 2016. The VA exam dated March 20, 2018 reported a confirmed diagnosis of tinnitus. Therefore, service connection for tinnitus is warranted.

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.

7. Service connection for left leg sciatic radiculopathy secondary to back as secondary to the service-connected disability of lumbosacral strain with lumbar spine degenerative arthritis and disc disease L5-S1 (previously evaluated under degenerative joint disease lumbosacral spine DC 5099-5292) (also claimed as lumbago, osteoporosis and upper back pain between shoulder blades).

Service connection for left leg sciatic radiculopathy secondary to back has been established as related to the service-connected disability of lumbosacral strain with lumbar spine degenerative arthritis and disc disease L5-S1 (previously evaluated under degenerative joint disease lumbosacral spine DC 5099-5292) (also claimed as lumbago, osteoporosis and upper back pain between shoulder blades).

An evaluation of 40 percent is assigned from April 12, 2017.

We have assigned a 40 percent evaluation for your right leg sciatic radiculopathy secondary to back based on:

- Moderately severe incomplete paralysis

A higher evaluation of 60 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is severe with marked muscular atrophy.

8. Service connection for right leg sciatic radiculopathy secondary to back as secondary to the service-connected disability of lumbosacral strain with lumbar spine degenerative arthritis and disc disease L5-S1 (previously evaluated under degenerative joint disease lumbosacral spine DC 5099-5292) (also claimed as lumbago, osteoporosis and upper back pain between shoulder blades).

Service connection for right leg sciatic radiculopathy secondary to back has been established as related to the service-connected disability of lumbosacral strain with lumbar spine degenerative arthritis and disc disease L5-S1 (previously evaluated under degenerative joint disease lumbosacral spine DC 5099-5292) (also claimed as lumbago, osteoporosis and upper back pain between shoulder blades).

An evaluation of 40 percent is assigned from April 12, 2017. 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.

We have assigned a 40 percent evaluation for your right leg sciatic radiculopathy secondary to back based on:

- Moderately severe incomplete paralysis

A higher evaluation of 60 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is severe with marked muscular atrophy.

9. Service connection for benign paroxysmal positional vertigo BPPV secondary to PTSD as secondary to the service-connected disability of posttraumatic stress disorder with generalized anxiety disorder (also claimed as depression, anxiety, adjustment disorder).

Service connection for benign paroxysmal positional vertigo BPPV secondary to PTSD has been established as related to the service-connected disability of posttraumatic stress disorder with generalized anxiety disorder (also claimed as depression, anxiety, adjustment disorder).

An evaluation of 30 percent is assigned from April 12, 2017. 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.

We have assigned a 30 percent evaluation for your benign paroxysmal positional vertigo BPPV secondary to PTSD based on:

- Dizziness and occasional staggering

The medical examiner opined that It is as least as likely than not the BPPV was proximately due to or the result of PTSD. Letter from Thomas Seiter, Jr., MD notes the nexus between the two conditions.

This is the highest schedular evaluation allowed under the law for peripheral vestibular disorder.

10. Service connection for erectile dysfunction secondary to PTSD as secondary to the service-connected disability of posttraumatic stress disorder with generalized anxiety disorder (also claimed as depression, anxiety, adjustment disorder).

Service connection for erectile dysfunction secondary to PTSD has been established as related to the service-connected disability of posttraumatic stress disorder with generalized anxiety disorder (also claimed as depression, anxiety, adjustment disorder).

The effective date of this grant is April 12, 2017. 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.

A noncompensable evaluation is assigned from April 12, 2017.

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

- Erectile dysfunction

The examiner opined that the erectile dysfunction is proximately due to or the result of posttraumatic stress disorder (PTSD).

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.

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 April 12, 2017.

The effective date of this grant is April 12, 2017. The date has been established from the day after your discharge from active duty and service connection was granted for erectile dysfunction and entitlement for the loss of use of a creative organ.

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.

Basic eligibility to Dependents' Educational Assistance is established from April 12, 2017. 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 and the date in which the totality of service connected disabilities manifested to a degree that provided a combined rating of 100% or more.

13. Evaluation of posttraumatic stress disorder (also claimed as depression, anxiety, adjustment disorder) currently evaluated as 30 percent disabling.

The evaluation for posttraumatic stress disorder (also claimed as depression, anxiety, adjustment disorder) is deferred for the following: hearing request.

14. Evaluation of migraine including migraine variants (also claimed as headaches) currently evaluated as 0 percent disabling.

The evaluation for migraine including migraine variants (also claimed as headaches) is deferred for the following: hearing request.

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.