



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

**VA File Number**

**Represented By:  
CHUCK R PARDUE  
Decision Review Officer Decision  
05/04/2018**

**INTRODUCTION**

The records reflect that the veteran is of the Gulf War Era and Peacetime. He served in the Army from May 5, 1990, to March 5, 1997. A Notice of Disagreement is received in June of 2017 about earlier decisions. Based upon a de novo review of the evidence listed below, the following decisions are rendered on this appeal.

**DECISION**

1. The currently assigned 30 percent evaluation for the service connected residual left knee injury, traumatic arthritis, status post total joint replacement, with surgical scarring is increased to 60 percent effective October 17, 2012.
2. Service connection for residuals of a right knee injury, post-traumatic arthritis is granted with an evaluation of 10 percent effective October 17, 2012.
3. Entitlement to individual unemployability is granted effective February 2, 2015.
4. Basic eligibility to Dependents' Educational Assistance is established from February 2, 2015.

## EVIDENCE

- Private medical evidence from Southeastern Orthopedic Center, Memorial Health University Medical Center, Dr. Don G. Aaron, Dr. Kent E. Woo, dated from December of 2007 through March of 2008.
- VA Form 21-526b Veteran's Supplemental Claim for Compensation, received October 17, 2012
- Medical evidence from the VA Medical Centers in Augusta, GA and Charleston, SC to include the Outpatient Clinic in Savannah, GA dated from April of 1997 through July of 2017.
- Service Treatment Records dated from March, 1989 through March, 1997
- VA examinations dated June of 2016 and July of 2017.
- Private medical evidence to include medical opinions and disability benefits questionnaire for the knees from Dr. Thomas J. Seiter, Jr. dated June to July of 2017.
- VA Form 21-4192, Employment Information from Commercial Truck Service of Columbia, SC dated July of 2017.
- VA Form 21-8940, Veterans Application for Increased Compensation based on Unemployability, received July 19, 2017.
- Negative response received from the Social Security Administration regarding the existence of any medical records.

## REASONS FOR DECISION

### 1. Evaluation for the residual left knee injury, traumatic arthritis, status post total joint replacement, with surgical scarring.

Based upon a de novo review of the medical evidence reviewed as cited, an increased evaluation of 60 percent is warranted from October 17, 2012. A 60 percent evaluation is based on post-prosthesis placement with chronic residuals of severe painful motion and weakness. 60 percent is the highest evaluation warranted as the next higher 100 percent evaluation is only allowed during the 13 months immediately following the surgery for the prosthetic replacement of the knee. The surgical scar on the left knee does not warrant a separate compensable evaluation given that there are no findings that the scarring is not superficial, deep, non-linear, painful, and/or unstable. The grant of a 60 percent evaluation for the left knee fully resolves the appellate issue regarding evaluation; the appellate issue of the effective date will be addressed separately in the Statement of the Case.

### 2. Service connection for residuals of a right knee injury, post-traumatic arthritis.

Service connection for residuals of a right knee injury, post-traumatic arthritis is now established as directly related to military service resolving all reasonable doubt in favor of the veteran. Dr. Seiter provides a medical opinion that the veteran's current right knee arthritis is due to the in-service injuries sustained as with the left knee arthritis. The service treatment records do document injuries and treatment for the right knee. The grant of service connection fully resolves this appellate issue.

Determinations are now rendered on the downstream non-appeal issues of evaluation and effective date.

Service connection is warranted from October 17, 2012, the date of the veteran's reopened claim as such is received greater than one year from the date of the notification of the prior denial on August 04, 1997. An effective date back to March 06, 1997, the date following the veteran's discharge from active military service is specifically sought on this appeal. The veteran did file a claim for compensation for a right knee disability within a year of his military discharge which was denied as the medical evidence reviewed at that time to include a VA examination did not demonstrate any chronic, current disability to include osteoarthritis. X-ray and physical examination of the right knee was normal. The veteran was informed of the denial and the evidence considered on August 04, 1997 which became final on August 04, 1998. An initial reopened claim is not received for any right knee disability until October 17, 2012, the date from which this current appeal is predicated. Therefore, the effective date for service connection is the date of this reopened claim.

An evaluation of 10 percent is assigned from October 17, 2012 for the residuals of a right knee injury, post-traumatic arthritis based on:

- Painful motion of the knee

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.

Additional symptom(s) include:

- Limitation of flexion of 46 to 60 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 applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees.

No weight is assigned to the examination findings of the right knee regarding joint stability testing and a meniscus condition on the disability benefit questionnaire completed by Dr. Seiter in July of 2017 as such is not consistent with the predominant medical evidence to include the objective findings on VA examinations dated June 2016 and July of 2017 as well as treatment reports at the VA Medical Centers. Dr. Seiter states that the veteran has a meniscal condition of the right knee with severe instability, effusion, and locking. However, VA examinations as VA medical reports show no meniscal disability of either a tear and/or dislocation. X-ray examinations, while demonstrating the traumatic arthritis, show no effusion. Furthermore, no instability was demonstrated on testing.

### **3. Entitlement to individual unemployability.**

Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: Provided That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. (Authority: 38 U.S.C. 501)

The veteran does meet the scheduler requirements regarding the above. He last worked on February 01, 2015 as a mechanic. He has a high school education. His knees prevent him from required work-related activities to include standing, walking, or lifting for any productive work. Entitlement to individual unemployability is therefore granted February 02, 2015, the date following the veteran's last date of full-time employment because he is unable to secure or follow a substantially gainful occupation as a result of his bilateral knee service-connected disabilities.

#### **4. 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. Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has total service-connected disabilities based upon individual unemployability that are permanent in nature. Eligibility is established from February 02, 2015, the date of entitlement to IU as the evidence does not indicate improvement in his bilateral knee disabilities to the point where he could successfully return to the work-orce.

#### **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](http://www.va.gov).