



January 4, 2018

The Board of Veterans' Appeals remanded your appeal on June 22, 2016. We made a decision on your entitlement to VA benefits.

Dear Mr.

This letter will guide you through the information you should know and steps you may take now that VA has made a decision about your benefits.

Your benefit information:

- Basic eligibility to Dependents' Educational Assistance is established from July 5, 2016.
- Entitlement to individual unemployability is granted effective July 5, 2016.
- Evaluation of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia), which is currently 10 percent disabling, is increased to 20 percent effective August 21, 2017. A 10 percent evaluation is assigned effective September 14, 2017.
- Evaluation of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia), which is currently 10 percent disabling, is increased to 20 percent effective August 21, 2017. A 10 percent evaluation is assigned effective September 14, 2017.
- Service connection for left knee instability is granted with an evaluation of 20 percent effective August 21, 2017. A noncompensable evaluation is assigned from September 14, 2017.
- Service connection for right knee instability is granted with an evaluation of 20 percent effective August 21, 2017. A noncompensable evaluation is assigned from September 14, 2017.

See **Rating Decision** to find out why we made this decision.

We have included with this letter:

1. Explanation of Payment
2. Additional Benefits
3. Where to Send Written Correspondence
4. VA Form 4107
5. VA Form 21-0958
6. Rating Decision

Contact information:

Web: www.vets.gov
Phone: 1-800-827-1000
TDD: 711
To send questions online: visit <https://iris.va.gov>

Social Media:

Twitter: @VAVetBenefits
Facebook: www.facebook.com/VeteransBenefits

Your representative:

You appointed **CHUCK R PARDUE** as your accredited representative. They have also received a copy of this letter.

They can help you with any questions you have about your claim.

If you or someone you know is in crisis, call the Veterans Crisis Line at 1-800-273-8255 and press 1.

File Number:

Please Take Action:

Important Information

If VA receives evidence establishing continued unemployability within one year of the date of this notification letter your entitlement to individual unemployability may be restored from the date of reduction.

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason
\$3,068.90	Aug 1, 2016	Individual Unemployability Adjustment, Change in Spouse Status, Compensation Rating Adjustment
\$3,078.11	Dec 1, 2016	Cost of Living Adjustment
\$3,181.65	Sep 1, 2017	Compensation Rating Adjustment, Special Monthly Compensation Adjustment
\$3,181.65	Sep 14, 2017	Compensation Rating Adjustment
\$3,245.28	Dec 1, 2017	Cost of Living Adjustment

You should receive your first payment within 7-10 days of this notice.

See **Explanation of Payment** for more details about your payment.

Your payment will be directed to the financial institution and account number that you specified. To confirm when your payment was deposited, please contact your financial institution.

If this account is no longer open,

please notify us immediately.

Evidence Considered

In making our decision, in addition to the evidence listed in the Rating Decision, we considered the following evidence:



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

VA File Number

**Represented By:
CHUCK R PARDUE
Decision Review Officer Decision
12/15/2017**

INTRODUCTION

The records reflect that you are a Veteran of the Peacetime. You served in the Navy from May 1, 1986, to June 10, 1988. The Board of Veterans Appeals remanded the case to our office on June 22, 2016. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

- 1. Evaluation of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia), which is currently 10 percent disabling, is increased to 20 percent effective August 21, 2017. A 10 percent evaluation is assigned effective September 14, 2017.**
- 2. Evaluation of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia), which is currently 10 percent disabling, is increased to 20 percent effective August 21, 2017. A 10 percent evaluation is assigned effective September 14, 2017.**
- 3. Service connection for left knee instability is granted with an evaluation of 20 percent effective August 21, 2017. A noncompensable evaluation is assigned from September 14, 2017.**

4. Service connection for right knee instability is granted with an evaluation of 20 percent effective August 21, 2017. A noncompensable evaluation is assigned from September 14, 2017.

5. Entitlement to individual unemployability is granted effective July 5, 2016.

6. Basic eligibility to Dependents' Educational Assistance is established from July 5, 2016.

EVIDENCE

- Claim received June 26, 2012 (VA Form 21-526b)
- Appointment list received July 3, 2012, November, 2012, and January 9, 2013
- Documentation of right knee injection from Augusta VA Medical Center, dated August 24, 2012
- Treatment records from Medical College of Georgia Emergency and Express Care services, dated November 18, 2012
- Appointment letter from Augusta VA Medical Center dated November 20, 2012
- Statement from Dr. Raymond Kostromin dated February 13, 2013
- Your statement received March 15, 2013
- Statement in support of claim received March 22, 2013 (VA Form 21-4138)
- Knee and lower leg conditions examination dated March 28, 2013, performed by QTC services
- Rating decision dated April 4, 2013
- Notice of disagreement to include your statement received April 15, 2013, July 11, 2013, and October 17, 2013
- Your statement dated November 6, 2013
- Statement in support of claim received December 6, 2013 (VA Form 21-4138)
- Statement of the Case dated February 24, 2014
- Appeal to Board of Veterans' Appeals received April 16, 2014 (VA Form 9)
- Knee and lower leg conditions examination dated July 13, 2015, performed by QTC services
- Rating decision dated August 4, 2015
- Employee Out-Processing Checklist from AHNTech dated November 18, 2013
- Statement in support of claim received May 13, 2016 (VA Form 21-4138)
- Statement in support of claim received May 31, 2016 (VA Form 21-4138)
- BVA remand dated June 22, 2016
- Veteran's Application for Increased Compensation based on Unemployability, received August 17, 2016 (VA Form 21-8940)
- Treatment records from the Social Security Administration received November 1, 2016
- Knee and lower leg conditions examination dated November 1, 2016, performed at Augusta VA Medical Center
- Rating decision dated December 17, 2016
- Employment information in connection with claim for disability benefits from Antech Incorporated (VA Form 21-4192)
- Supplemental Statement of the Case dated June 21, 2017
- Statement from Dr. Thomas Seiter Jr. dated August 21, 2017
- Knee and lower leg conditions disability benefits questionnaire dated August 21, 2017, performed by Dr. Thomas Seiter

- Knee and lower leg conditions examination dated September 14, 2017, performed by Augusta VA Medical Center, dated September 14, 2017
- Progress notes from Augusta VA Medical Center dated January, 2012 to November, 2017

REASONS FOR DECISION

1. Evaluation of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia) currently evaluated as 10 percent disabling.

After the Board of Veterans' Appeals provided a remand on June 22, 2016, a supplemental statement of the case was issued on June 21, 2017. Since then, we have received additional evidence resulting in the evaluations below.

The evaluation of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia) is increased to 20 percent disabling effective August 21, 2017, the date of the knee and lower leg conditions disability benefits questionnaire you submitted. This is the date entitlement arose.

The evaluation of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia) is increased to 20 percent disabling effective August 21, 2017.

We have assigned a 20 percent evaluation for your degenerative joint disease of the left knee based on:

- Limitation of flexion of 16 to 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.

This is the highest schedular evaluation allowed under the law for degenerative arthritis.

Additionally, 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.

An evaluation of 10 percent is assigned from September 14, 2017, the date of the knee and lower leg conditions examination performed at Augusta VA Medical Center supporting a 10 percent evaluation.

We have assigned a 10 percent evaluation for your degenerative joint disease of the left knee 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. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10

percent is assigned)

Additional symptom(s) include:

- X-ray evidence of degenerative arthritis
- 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 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 flexion of the knee unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees.

2. Evaluation of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia) currently evaluated as 10 percent disabling.

After the Board of Veterans' Appeals provided a remand on June 22, 2016, a supplemental statement of the case was issued on June 21, 2017. Since then, we have received additional evidence resulting in the evaluations below.

The evaluation of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia) is increased to 20 percent disabling effective August 21, 2017, the date of the knee and lower leg conditions disability benefits questionnaire you submitted. This is the date entitlement arose.

The evaluation of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia) is increased to 20 percent disabling effective August 21, 2017.

We have assigned a 20 percent evaluation for your degenerative joint disease of the right knee based on:

- Limitation of flexion of 16 to 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.

This is the highest schedular evaluation allowed under the law for degenerative arthritis.

Additionally, 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.

An evaluation of 10 percent is assigned from September 14, 2017, the date of the knee and lower leg conditions examination performed at Augusta VA Medical Center supporting a 10 percent evaluation.

We have assigned a 10 percent evaluation for your degenerative joint disease of the right knee based on:

- Limitation of flexion of 31 to 45 degrees

Additional symptom(s) include:

- 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 flexion of the knee unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees.

3. Service connection for left knee instability as secondary to the service-connected disability of degenerative joint disease of the left knee (previously diagnosed and rated as chondromalacia).

Service connection for left knee instability has been established as related to the service-connected disability of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia).

An evaluation of 20 percent is assigned from August 21, 2017, the date of the knee and lower leg conditions disability benefits questionnaire you submitted.

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

- Moderate instability

Additional symptom(s) include:

- X-ray evidence of degenerative arthritis

Additionally, a higher evaluation of 30 percent is not warranted for impairment of the knee unless the evidence shows:

- Severe instability; or,
- Severe recurrent subluxation.

A noncompensable evaluation is assigned from September 14, 2017, the date of the knee and lower leg conditions examination performed at Augusta VA Medical Center which did not find any instability. A noncompensable evaluation is assigned unless there is recurrent subluxation or lateral instability of the knee which is slight.

4. Service connection for right knee instability as secondary to the service-connected disability of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia).

Service connection for right knee instability has been established as related to the service-connected disability of degenerative joint disease of the right knee (previously diagnosed and rated as chondromalacia).

An evaluation of 20 percent is assigned from August 21, 2017, the date of the knee and lower leg conditions disability benefits questionnaire you submitted.

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

- Moderate instability

Additional symptom(s) include:

- X-ray evidence of degenerative arthritis

Additionally, a higher evaluation of 30 percent is not warranted for impairment of the knee unless the evidence shows:

- Severe instability; or,
- Severe recurrent subluxation.

A noncompensable evaluation is assigned from September 14, 2017, the date of the knee and lower leg conditions examination performed at Augusta VA Medical Center which did not find any instability. A noncompensable evaluation is assigned unless there is recurrent subluxation or lateral instability of the knee which is slight.

5. Entitlement to individual unemployability.

Entitlement to individual unemployability is granted because you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities, namely your service connected disabilities of degenerative joint disease of the left knee, degenerative joint disease of the right knee and associated lumbar spine degenerative disc disease and arthritis and depressive disorder. The evidence shows that you are unable to secure or follow any substantially gainful occupation, especially in radar operations and maintenance at your last place of employment,

Anhtech Incorporated. The effective date is July 5, 2016, the date you met the schedular requirements for individual unemployability.

6. 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 you currently have a total service-connected disability, permanent in nature. The effective date is July 5, 2016, the date your service connected disabilities were considered permanent and total.

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.