DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

VA File Number

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era and Peacetime. You served in the Air Force from September 5, 1986 to September 5, 1996. You filed a new claim for benefits that was received on September 16, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of bronchitis with asthma (previously rated as bronchitis), which is currently 10 percent disabling, is increased to 30 percent effective December 7, 2018, the day we received your intent to file form.

2. Evaluation of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella), which is currently 10 percent disabling, is continued.

3. Evaluation of right knee degenerative joint disease associated with chondromalacia patella, which is currently 10 percent disabling, is continued.

4. Evaluation of sinus condition, which is currently 0 percent disabling, is increased to 10 percent from December 7, 2018, the day we received your intent to file form.

5. Service connection for arthritis, left hip is denied.

6. Service connection for arthritis, right hip is denied.

7. Service connection for type II diabetes is denied.

8. Service connection for instability, left knee is denied. Service connection for instability, left knee is denied.

9. Service connection for instability, right knee is denied. Service connection for instability, right knee is denied.

10. Service connection for asthma is established effective December 7, 2018, the day we received your intent to file form. This condition will now be rated on combination with your service connected bronchitis.

11. Service connection for radiculopathy, left lower extremity (also claimed as sciatica) as secondary to back condition is denied.

12. Service connection for radiculopathy, right lower extremity (also claimed as sciatica) as secondary to back condition is denied.

EVIDENCE

- Service treatment reports for the period of service from September 5, 1986 to September 5, 1996.
- DD Form 214, Certificate of Release or Discharge from Active Duty.
- Medical evidence submitted by you received on September 16, 2019.
- Intent to file form received on December 7, 2018.
- VA Form 21-4138 (12) received on September 16, 2019.
- VA Form 21-526ez received on September 16, 2019.
- Notification letter dated September 17, 2019.
- VA Form 21-4138 (8) received on September 25, 2019.
- Medical evidence submitted by you received on October 8, 2019.
- VA Form 21-4138 received on October 8, 2019.
- LHI examination dated October 7, 2019.

REASONS FOR DECISION

1. Evaluation of bronchitis with asthma (previously rated as bronchitis) currently

evaluated as 10 percent disabling.

The evaluation of bronchitis with asthma (previously rated as bronchitis) is increased to 30 percent disabling effective December 7, 2018. (38 CFR 4.1, 38 CFR 3.400 and 3.155)

We have assigned a 30 percent evaluation for your bronchitis based on:
• Daily oral bronchodilator therapy

Additional symptom(s) include:
• Forced Expiratory Volume in One Second (FEV-1) greater than 80 percent of predicted value (84%)
• Forced Expiratory Volume in One Second (FEV-1) to Forced Vital Capacity (FEV-1/FVC): 115 (Not considered for compensable evaluation)

When there is a disparity between the results of different Pulmonary Function Tests (PFTs), so that the level of evaluation would differ depending on which test result is used, the test result that the examiner states most accurately reflects the level of disability shall be used. In your case, the examiner has indicated that your FEV-1 most accurately reflects your level of disability. (38 CFR 4.96)

A higher evaluation of 60 percent is not warranted for bronchial asthma unless the evidence shows:
• At least monthly visits to a physician for required care of exacerbations; or,
• FEV-1 to Forced Vital Capacity (FVC) (FEV-1/FVC) of 40 to 55 percent; or,
• Forced Expiratory Volume in One Second (FEV-1) of 40 to 55 percent predicted; or,
• Intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids. (38 CFR 4.96, 38 CFR 4.97)

2. Evaluation of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella) currently evaluated as 10 percent disabling.

The evaluation of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella) is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella) 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)

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. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of extension of the knee unless the evidence shows:
• Limitation of extension of 15 to 19 degrees. (38 CFR 4.71a)

A higher evaluation may be warranted if:
• Flexion is limited to 45 degrees or less; AND,
• Extension is limited to 10 degrees or more. (38 CFR 4.71a)

3. Evaluation of right knee degenerative joint disease associated with chondromalacia patella currently evaluated as 10 percent disabling.

The evaluation of right knee degenerative joint disease associated with chondromalacia patella is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your right knee degenerative joint disease associated with chondromalacia patella 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:
• 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. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of extension of the knee unless the evidence shows:
• Limitation of extension of 15 to 19 degrees. (38 CFR 4.71a)

A higher evaluation may be warranted if:
• Flexion is limited to 45 degrees or less; AND,
• Extension is limited to 10 degrees or more. (38 CFR 4.71a)

4. Evaluation of sinus condition currently evaluated as 0 percent disabling.

The evaluation of sinus condition is continued as 0 percent disabling.

We have assigned a noncompensable evaluation for your sinus condition based on:
• A diagnosed disability with no compensable symptoms (38 CFR 4.31)

A higher evaluation of 10 percent is not warranted for maxillary 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.. (38 CFR 4.97)

5. Service connection for arthritis, left hip as secondary to the service-connected disability of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella).

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that arthritis, left hip is related to the service-connected condition of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella), nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show that your condition resulted from, or was aggravated by, a service-connected disability. (38 CFR 3.303, 38 CFR 3.304) On VA examination dated October 7, 2019, the examiner diagnosed you with degenerative arthritis, left hip. However, the examiner indicated it was less likely as not that your left hip condition was a result of a service connected condition and provided the following rationale, "Unable to confirm a current chronic diagnosis with current available records and/or today's exam. Therefore no nexus or plausible secondary relationship is established." It should be noted, you claimed your right hip condition as a result of your bilateral foot condition. However, your foot conditions are not currently service connected.

Favorable Findings identified in this decision:

You have been diagnosed with a disability. On VA examination dated October 7, 2019, the examiner diagnosed you with degenerative arthritis, left hip.

6. Service connection for arthritis, right hip as secondary to the service-connected disability of right knee degenerative joint disease associated with chondromalacia patella.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that arthritis, right hip is related to the service-connected condition of right knee degenerative joint disease

associated with chondromalacia patella, nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show that your condition resulted from, or was aggravated by, a service-connected disability. (38 CFR 3.303, 38 CFR 3.304) On VA examination dated October 7, 2019, the examiner diagnosed you with degenerative arthritis, right hip. However, the examiner indicated it was less likely as not that your right hip condition was a result of a service connected condition and provided the following rationale, "Unable to confirm a current chronic diagnosis with current available records and/or today's exam. Therefore no nexus or plausible secondary relationship is established." It should be noted, you claimed your right hip condition as a result of your bilateral foot condition. However, your foot conditions are not currently service connected.

Favorable Findings identified in this decision:

You have been diagnosed with a disability. On VA examination dated October 7, 2019, the examiner diagnosed you with degenerative arthritis, right hip.

7. Service connection for type II diabetes as secondary to the service-connected disability of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella).

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that type II diabetes is related to the service-connected condition of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella), nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show that your condition resulted from, or was aggravated by, a service-connected disability. (38 CFR 3.303, 38 CFR 3.304) The evidence does not show that your disease developed to a compensable degree within the specified time period after release from service to qualify for the presumption of service connection. (38 CFR 3.307, 38 CFR 3.309) It should be noted, although you did not specifically claim service connection for diabetes due to obesity caused by low back pain, bilateral hip pain, bilateral knee pain, bilateral ankle pain and bilateral foot pain, you provided an opinion from Dr. John Ellis. Dr. Ellis opined it is more likely than not that your diabetes was caused by weight gain from the previously noted pain in multiple joints which interferes with your exercise regimen.

"Obesity per se is not a "disability" for the purposes of SC under 38 CFR 3.310 for secondary SC. If obesity resulting from a SC disease or injury is found to produce impairment beyond that contemplated by the applicable provisions of the rating schedule, consider an extra-schedular rating under 38 CFR 3.321(b)(1) for SC based on that impairment. Obesity may be an

"intermediate step" between a SC disability and a current disability that may be SC on a secondary basis under 38 CFR 3.310(a). To determine whether obesity is an intermediate step between a SC disability and the development of a current disability that may be SC on a secondary basis, the following criteria must all be satisfied:
•the SC disability must have caused the Veteran to become obese
•the obesity as a result of the SC disability must have been a substantial factor in causing the potential secondary disability, and
•the potential secondary disability would not have occurred but for the obesity caused by the SC disability.

In review of the evidence of record, we have no medical evidence to show the progression of any conditions or treatment from your time of discharge from service. It also appears Dr. Ellis' opinion was based on your history alone as that is the only source he noted in rendering his medical opinion regarding your diabetes. There is no noted medical evidence regarding your diabetes of record or referenced in this decision. Furthermore, there is little if any medical evidence to bridge the gap of time from your discharge from service to 2018 which is the first source of medical evidence noted since your discharge from service. Also, Dr. Ellis attributed your weight gain and subsequent obesity to all the noted joints. However, you are only service connected for your bilateral knees which is only 2 of the 9 major joints or groups of minor joints noted as causation. Furthermore, Dr. Ellis also did not indicated the possibility or probability of incurrence of your diabetes if these joint conditions did not exist. So although the statement of Dr. Ellis is credible given the medical credentials held, his statement is found to carry little weight as there is no medical document used in order to provide this opinion, the opinion is based on your history alone and it makes no mention of whether or not there the possibility or probability that you would have developed diabetes regardless. Therefore, service connection for type II diabetes is denied.

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for degenerative joint disease, bilateral knees.

You have been diagnosed with a disability. Statement from Dr. Ellis dated September 3, 2019 diagnosed you with diabetes mellitus type II.

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for degenerative joint disease, bilateral knees.

You have been diagnosed with a disability. Statement from Dr. Ellis dated September 3, 2019 diagnosed you with diabetes mellitus type II.

8. Service connection for instability, left knee. Service connection for instability, left knee as secondary to the service-connected disability of left knee degenerative joint disease

associated with chondromalacia patella (previously evaluated as chondromalacia patella).

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 instability, left knee is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303)

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that instability, left knee is related to the service-connected condition of left knee degenerative joint disease associated with chondromalacia patella (previously evaluated as chondromalacia patella), nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show a current diagnosed disability. The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. On VA examination, the examiner indicated there was no current pathology of any instability to the left knee and indicated it was less likely as not that you have instability to the right knee as a result of your service connected right knee condition.

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for left knee degenerative joint disease.

9. Service connection for instability, right knee. Service connection for instability, right knee as secondary to the service-connected disability of right knee degenerative joint disease associated with chondromalacia patella.

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 instability, right knee is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303)

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that instability, right knee is related to the service-connected condition of right knee degenerative joint disease associated with chondromalacia patella, nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show a current diagnosed disability. The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. On VA examination, the examiner indicated there was no current pathology of any instability to the right knee and

indicated it was less likely as not that you have instability to the right knee as a result of your service connected right knee condition.

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for right knee degenerative joint disease.

10. Service connection for asthma.

Service connection for asthma is established effective December 7, 2018, the day we received your intent to file form. This condition will now be rated on combination with your service connected bronchitis since is it considered pyramiding to assign a separate evaluation for these co-existing respiratory condition. (38 CFR 3.400, 3.155, 3.303 and 4.14)

11. Service connection for radiculopathy, left lower extremity (also claimed as sciatica) as secondary to back condition.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that back condition is related to service. Therefore, service-connection for radiculopathy, left lower extremity (also claimed as sciatica) on a secondary basis to this condition cannot be established. There is also no evidence showing radiculopathy, left lower extremity (also claimed as sciatica) was incurred in or aggravated by military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show that your condition resulted from, or was aggravated by, a service-connected disability. (38 CFR 3.303, 38 CFR 3.304) Medical statement from Dr. John Ellis dated September 3, 2019 diagnosed you with radiculopathy, left lower extremity. Dr. Ellis also indicated this condition was a result of your currently diagnosed back condition. However, you are not currently service connected for your back condition.

Favorable Findings identified in this decision:

The claimed issue is secondary to the primary nonservice-connected disability. You are diagnosed with degenerative arthritis and strain, lumbar spine which is currently not service connected.

You have been diagnosed with a disability. Medical statement from Dr. John Ellis dated September 3, 2019 diagnosed you with radiculopathy, left lower extremity.

12. Service connection for radiculopathy, right lower extremity (also claimed as sciatica) as secondary to back condition.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that back condition is related to service. Therefore, service-connection for radiculopathy, right lower extremity (also claimed as sciatica) on a secondary basis to this condition cannot be established. There is also no evidence showing radiculopathy, right lower extremity (also claimed as sciatica) was incurred in or aggravated by military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304) Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The evidence does not show that your condition resulted from, or was aggravated by, a service-connected disability. (38 CFR 3.303, 38 CFR 3.304) Medical statement from Dr. John Ellis dated September 3, 2019 diagnosed you with radiculopathy, right lower extremity. Dr. Ellis also indicated this condition was a result of your currently diagnosed back condition. However, you are not currently service connected for your back condition.

Favorable Findings identified in this decision:

The claimed issue is secondary to the primary nonservice-connected disability. You are diagnosed with degenerative arthritis and strain, lumbar spine which is currently not service connected.

You have been diagnosed with a disability. Medical statement from Dr. John Ellis dated September 3, 2019 diagnosed you with radiculopathy, right lower extremity.

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.