DEPARTMENT OF VETERANS AFFAIRS

January 7, 2020

Dear Paul Sturgeon:

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

Statement of the Case

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

What You Need To Do

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, *Appeal to the Board of Veterans' Appeals*, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

When You Need To Do It

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. **If we do not hear from you within this period, we will close your case.** If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, *Appeal to Board of Veterans' Appeals*.

Hearings

You may have a hearing before we send your case to the BVA. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. VA will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may **also** have a hearing before the BVA, as noted on the enclosed VA Form 9, *Appeal to the Board of Veterans' Appeals*. **Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.**

Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA's website at http://www.va.gov/ogc/accreditation.asp. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BVA will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.com/.
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate

If you	Here is what to do.
	address listed on the attached *Where to Send Your Written Correspondence* chart, below.

If you are looking for general information about benefits and eligibility, you should visit our web site at https://www.va.gov or search the Frequently Asked Questions (FAQs) at https://iris.custhelp.com/.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized Veterans' Service Organizations and/or representatives. Veterans' Service Organizations, which are recognized or approved to provide services to the Veteran community, can also help you with any questions.

Thank you for your service,

Regional Office Director

Regional Office Director

Enclosure(s): VA Form 20-0998
Where to Send Written Correspondence
VA Form 9

ISSUE:

1. Entitlement to a separate compensable evaluation for right index finger tenosynovitis.

2. Entitlement to a separate compensable evaluation for the right thumb degenerative arthritis, previously combined with the evaluation of the right index and long finger.

3. Entitlement to a separate compensable evaluation for right long finger tenosynovitis.

EVIDENCE:

- Review of service medical records for the period of March 30, 1978 to June 30, 1995.
- Review of records Hampton VAMC
- Review of treatment records Fort. Eustis Pain Management
- Intent to file claim received May 26, 2018
- Review of JLV records received May 16, 2019

ADJUDICATIVE ACTIONS:

07/19/2018	Claim received.
07/31/2018	VA examination conducted at VA contract.
09/24/2018	Claim considered based on all the evidence of record.
10/02/2018	Claimant notified of decision.
08/01/2019	De Novo Review election received from appellant.
08/01/2019	Notice of Disagreement received.
08/08/2019	Appeal Election Letter sent to the appellant.
11/11/2019	VA examination conducted at VA contract.
01/07/2020	De Novo Review performed based on all the evidence of record.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the

Department of Veterans Affairs which govern entitlement of all veteran benefits.

38 USC Section 5107 (03/02) - Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.
(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

§3.2600 - Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by an Adjudication Officer, Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.
(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under §3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))

§3.102 (New) - Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

§3.104 (05/2001) - Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §3.105 and §3.2600 of this part.
(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001]

§3.159 (New) - Department of Veterans Affairs assistance in developing claims.

(a) Definitions. For purposes of this section, the following definitions apply:
(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence.

(1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim. VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot pay or provide any benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. (Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. (Authority: 38 U.S.C. 5102(b), 5103A(3))

(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. (Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions.

(i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured. (Authority: 38 U.S.C. 5103A(d))

(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A(a)(2))

(e) Duty to notify claimant of inability to obtain records.

(1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA. (Authority: 38 U.S.C. 5103A(b)(2))

(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a))

§19.32 - Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be

reactivated. (Authority: 38 U.S.C. 7105(d)(3))

§20.302 Rule 302. (07/08) - Time limit for filing...

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant,or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed. (Authority: 38 U.S.C. 7105(b)(1))
(b) Substantive Appeal.

(1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(2) Special rule in certain cases where additional evidence is submitted. Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with §19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period. (Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

(c) Response to Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal. (Authority: 38 U.S.C. 7105(d)(3))

§20.305 Rule 305. - Computation of time limit for filing.

(a) Acceptance of postmark date. When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) Computation of time limit. In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation. (Authority: 38 U.S.C. 7105)

§3.400 - General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (Authority: 38 U.S.C. 5110(a))

(2) Disability compensation:

(i) Direct service connection (§3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(o) Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-71, 89 Stat. 395; §§3.109, 3.156, 3.157):

(1) General. Except as provided in paragraph (o)(2) of this section and §3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) Disability compensation. Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.

§4.59 - Painful motion

With any form of arthritis, painful motion is an important factor of disability, the facial expression, wincing, etc., on pressure or manipulation, should be carefully noted and definitely related to affected joints. Muscle spasm will greatly assist the identification. Sciatic neuritis is not uncommonly caused by arthritis of the spine. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. Crepitation either in the soft tissues such as the tendons or ligaments, or crepitation within the joint structures should be noted carefully as points of contact which are diseased. Flexion elicits such manifestations. The joints involved should be tested for pain on both active and passive motion, in weight-bearing and nonweight-bearing and, if possible, with the range of the opposite undamaged joint.

§4.71a (5228) (effective 08-26-02) - Schedule of ratings-musculoskeletal system

5228 Thumb, limitation of motion:	Major	Minor
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	10	10
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	0	0

§4.71a (5228) (effective 08-26-02) - Schedule of ratings-musculoskeletal system

5228 Thumb, limitation of motion:	Major	Minor
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the	10	10

fingers
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers 0 0

§4.71a (5229) (effective 08-26-02) - Schedule of ratings-musculoskeletal system

5229 Index or long finger, limitation of motion: Major Minor
With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees 10 10
With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees 0 0

(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion

(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (i.e., amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level

(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations

§4.71a (5003) - Schedule of ratings-musculoskeletal system

5003 Arthritis, degenerative (hypertrophic or osteoarthritis):

Degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved (DC 5200 etc.). When however, the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. In the absence of limitation of motion, rate as below:

With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups, with occasional incapacitating exacerbations 20

With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups 10

Note (1): The 20 pct and 10 pct ratings based on X-ray findings, above, will not be combined with ratings based on limitation of motion.

Note(2): The 20 pct and 10 pct ratings based on X-ray findings, above, will not be utilized in rating conditions listed under diagnostic code 5013 to 5024, inclusive.

§4.40 - Functional loss.

Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It is essential that the examination on which ratings are based adequately portray the anatomical damage, and the functional loss, with respect to all these elements. The functional loss may be due to absence of part, or all, of the necessary bones, joints and muscles, or associated structures, or to deformity, adhesions, defective innervation, or other pathology, or it may be due to pain, supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking the motion. Weakness is as important as limitation of motion, and a part which becomes painful on use must be regarded as seriously disabled. A little used part of the musculoskeletal system may be expected to show evidence of disuse, either through atrophy, the condition of the skin, absence of

normal callosity or the like.

§4.45 - The joints

As regards the joints the factors of disability reside in reductions of their normal excursion of movements in different plants. Inquiry will be directed to these considerations:

(a) Less movement than normal (due to ankylosis, limitation or blocking, adhesions, tendon-tie-up, contracted scars, etc.).

(b) More movement than normal (from flail joint, resections, nonunion of fracture, relaxation of ligaments, etc.).

(c) Weakened movement (due to muscle injury, disease or injury of peripheral nerves, divided or lengthened tendons, etc.).

(d) Excess fatigability.

(e) Incoordination, impaired ability to execute skilled movements smoothly.

(f) Pain on movement, swelling, deformity or atrophy of disuse. Instability of station, disturbance of locomotion, interference with sitting, standing and weight-bearing are related considerations. For the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints; multiple involvements of the interphalangeal, metacarpal and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. The lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

A complete review of all evidence submitted with the initial claim as well as evidence submitted during the appeal process has been accomplished. Under 38 CFR §3.2600, the above noted issues have been re-adjudicated based on a de novo review of the evidence contained in the claims folder.

DECISION:

1. Entitlement to a separate compensable evaluation for right index finger tenosynovitis is granted with an evaluation of 10 percent effective May 26, 2018. Entitlement to an evaluation above the 10 percent assigned evaluation is not established.

2. Entitlement to a separate compensable evaluation for the right thumb degenerative arthritis, previously combined with the evaluation of the right index and long finger is established. Entitlement to an evaluation above the 10 percent assigned evaluation is not established. A separate compensable 10 percent evaluation for the right thumb is assigned from May 26, 2018.

3. Entitlement to a separate compensable evaluation for right long finger tenosynovitis is granted with an evaluation of 10 percent effective May 26, 2018. Entitlement to an evaluation above the 10 percent assigned evaluation is not established.

REASONS AND BASES:

1. Entitlement to a separate compensable evaluation for right index finger tenosynovitis is granted with an evaluation of 10 percent effective May 26, 2018. This date is based on the date your intent to file claim was received by the VA. The grant of a separate 10 percent evaluation for your index finger is considered as a partial grant of the benefit sought on appeal. Entitlement to an evaluation above the 10 percent assigned evaluation is not established.

We received your notice of disagreement regarding entitlement to a separate evaluation for painful motion of the right index finger. Your VA contract examination dated July 31, 2018 does confirm painful motion of the index finger. Under 38 CFR 4.59 criteria a separate evaluation is allowed for the index finger based on painful motion of this digit. The diagnosis for this finger is tenosynovitis. Report of symptoms by you note knuckle pain with difficulty squeezing the hand. Occasional stiffness with swelling is reported by you. Range of motion is affected by your finger disability. Your examination notes a gap of 5cm from the finger to the palm. There is no ankylosis of the finger, either favorable or unfavorable. There is a gap in extension of more than 30 degrees.

Your additional VA examination dated November 11, 2019 does not confirm disability findings which support an evaluation greater than the 10 percent evaluation allowed, in fact, the range of motion criteria and gap index is noted as significantly improved from your July 2018 examination.

Your allowed evaluation for this disability is 10 percent based on painful motion with gap of

extension and 5cm from finger tip to palm. A higher evaluation is not supported as you do not meet the objective medical or clinical criteria to support a higher evaluation. Loss of use of the hand is not met.

Service connection for right index finger tenosynovitis has been established as directly related to military service.
An evaluation of 10 percent is assigned from May 26, 2018.

An evaluation of 10 percent is assigned for limitation of motion of the index or long finger with a gap of one inch (2.5 cm) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees.

We have allowed consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint.

The provisions 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 unless the evidence shows:
• Amputation of the index finger without metacarpal resection, at proximal interphalangeal joint or proximal thereto; or,
• Amputation of the long, ring or middle finger with metacarpal resection (more than one-half the bone lost); or,
• Amputation of the thumb at distal joint or through distal phalanx; or,
• Favorable ankylosis involving the index finger and any other finger; or,
• Favorable ankylosis involving the long, ring and little fingers; or,
• Limited motion of the thumb: with a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers; or,
• Unfavorable ankylosis involving the long and little fingers; or,
• Unfavorable ankylosis involving the long and ring fingers; or,
• Unfavorable ankylosis involving the ring and little fingers; or,
• Unfavorable ankylosis involving the thumb. (38 CFR 4.71a)

Because the hand allows multiple digits to be combined into a single diagnostic code, it is necessary to include all possible higher digit-combination criteria.

2. Entitlement to a separate compensable evaluation for the right thumb degenerative arthritis, previously combined with the evaluation of the right index and long finger is established. Entitlement to an evaluation above the 10 percent assigned evaluation is not established.

A separate compensable 10 percent evaluation for the right thumb is assigned from May 26, 2018. This date is based on the date your intent to file claim was received by the VA. The grant of a separate 10 percent evaluation for the right thumb is considered as a partial grant of the benefit sought on appeal.

We received your notice of disagreement regarding entitlement to a separate evaluation for your right thumb, separate from your index and long finger. Your VA contract examination dated July 31, 2018 does confirm painful motion of the thumb with degenerative arthritis. Under 38 CFR 4.59 criteria a separate evaluation is allowed for the thumb based on painful motion of this digit. Report of symptoms by you note knuckle pain with difficulty squeezing the hand. Occasional stiffness with swelling is reported by you. Range of motion is affected by your thumb disability. Your examination notes a gap of 3cm from the thumb to the palm. There is no ankylosis of the thumb, either favorable or unfavorable. There is a gap in extension of more than 30 degrees.

Your additional VA examination dated November 11, 2019 does not confirm disability findings which support an evaluation greater than the 10 percent evaluation allowed, in fact, the range of motion criteria and gap index is noted as significantly improved from your July 2018 examination.

An evaluation of 10 percent is assigned from May 26, 2018.

We have allowed consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint.

We have assigned a 10 percent evaluation for your right thumb degenerative arthritis based on:
• Limited motion: with gap of one to two inches (2.5-5.1 cm.) of the thumb
• Painful motion of the thumb

A higher evaluation of 20 percent is not warranted unless the evidence shows:
• Amputation of the index finger without metacarpal resection, at proximal interphalangeal joint or proximal thereto; or,
• Amputation of the long, ring or middle finger with metacarpal resection (more than one-half the bone lost); or,
• Amputation of the thumb at distal joint or through distal phalanx; or,
• Favorable ankylosis involving the index finger and any other finger; or,
• Favorable ankylosis involving the long, ring and little fingers; or,
• Limited motion of the thumb: with a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers; or,
• Unfavorable ankylosis involving the long and little fingers; or,
• Unfavorable ankylosis involving the long and ring fingers; or,
• Unfavorable ankylosis involving the ring and little fingers; or,

• Unfavorable ankylosis involving the thumb.

Additionally, 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.

Because the hand allows multiple digits to be combined into a single diagnostic code, it is necessary to include all possible higher digit-combination criteria.

3. Entitlement to a separate compensable evaluation for right long finger tenosynovitis is granted with an evaluation of 10 percent effective May 26, 2018. This date is based on the date your intent to file claim was received by the VA. The grant of a separate 10 percent evaluation for your index finger is considered as a partial grant of the benefit sought on appeal. Entitlement to an evaluation above the 10 percent assigned evaluation is not established.

We received your notice of disagreement regarding entitlement to a separate evaluation for painful motion of the right long finger. Your VA contract examination dated July 31, 2018 does confirm painful motion of the long finger. Under 38 CFR 4.59 criteria a separate evaluation is allowed for the long finger based on painful motion of this digit. The diagnosis for this finger is tenosynovitis. Report of symptoms by you note knuckle pain with difficulty squeezing the hand. Occasional stiffness with swelling is reported by you. Range of motion is affected by your finger disability. Your examination notes a gap of 1cm from the finger to the palm. There is no ankylosis of the finger, either favorable or unfavorable. There is a gap in extension of more than 30 degrees.

Your additional VA examination dated November 11, 2019 does not confirm disability findings which support an evaluation greater than the 10 percent evaluation allowed, in fact, the range of motion criteria and gap index is noted as significantly improved from your July 2018 examination.

Your allowed evaluation for this disability is 10 percent based on painful motion with gap of extension. A higher evaluation is not supported as you do not meet the objective medical or clinical criteria to support a higher evaluation. Loss of use of the hand is not met.

Service connection for right long finger tenosynovitis has been established as directly related to military service.

An evaluation of 10 percent is assigned from May 26, 2018.

We have assigned a 10 percent evaluation for your right long finger based on:
• Limited motion: with extension limited by more than 30 degrees

We have allowed consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint.

The provisions 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 unless the evidence shows:
• Amputation of the index finger without metacarpal resection, at proximal interphalangeal joint or proximal thereto; or,
• Amputation of the long, ring or middle finger with metacarpal resection (more than one-half the bone lost); or,
• Amputation of the thumb at distal joint or through distal phalanx; or,
• Favorable ankylosis involving the index finger and any other finger; or,
• Favorable ankylosis involving the long, ring and little fingers; or,
• Limited motion of the thumb: with a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers; or,
• Unfavorable ankylosis involving the long and little fingers; or,
• Unfavorable ankylosis involving the long and ring fingers; or,
• Unfavorable ankylosis involving the ring and little fingers; or,
• Unfavorable ankylosis involving the thumb.

Because the hand allows multiple digits to be combined into a single diagnostic code, it is necessary to include all possible higher digit-combination criteria.

On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act), creating a modernized review system for claims and appeals. The modernized appeals system took effect on February 19, 2019, and provides streamlined choices for seeking review of your VA claim decision. You are eligible to opt-in to this new process based on your receipt of this Statement of the Case or Supplemental Statement of the Case. If you continue to disagree with our decision, please refer to the enclosed fact sheet for a more thorough explanation of your decision review options and submission deadlines should you decide to opt-in. If you wish to remain in the legacy process, please follow the instructions above regarding actions required to request further review of your appeal.

PREPARED BY S.McBride DRO

APPROVED BY