DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

JAMES MURPHY

VA File Number

Represented By:
JOHN-PAUL GUSTAD
Rating Decision
12/11/2019

INTRODUCTION

The records reflect that you are a veteran of the Peacetime. You served in the Army from April 24, 1985 to March 15, 1988. You filed a claim for increased evaluation that was received on December 20, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

I. Evaluation of Scheue1mann's kyphosis, dorsolumbar spine (also claimed as ankylosing spondylitis, osteoarthritis, intervertebral disc disorder, multi-disc degeneration, and chronic low back pain), which is currently 40 percent disabling, is continued.

2. Evaluation of left foot peripheral neuropathy, which is currently 10 percent disabling, is continued.

3. Evaluation ofright foot peripheral neuropathy, which is currently 10 percent disabling, is continued.

4. Evaluation of tinnitus, which is currently 10 percent disabling, is continued.

5. Evaluation of migraine headaches (also claimed as visual color changes, ocular migraines), which is currently 0percent disabling, is continued.

6. Evaluation of bilateral hearing loss, which is currently 0percent disabling, is continued.

7. Entitlement to individual unemployability is denied.

EVIDENCE

- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received December 20, 2018
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received December 20, 2018
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, December 20, 2018
- Medical Treatment Records - Furnished by SSA, December 20, 2018
- VA Form 21-22a, Appointment of Individual as Claimant's Representative, received December 26, 2018
- 5103 Notice Acknowledgement, December 28, 2018
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received November 4, 2019
- Request for Application, November 8, 2019
- SSA Profile and Benefit Data, November 13, 2019
- Subsequent Development Letter, November 14, 2019
- Request for Application, November 14, 2019
- Subsequent Development Letter, November 14, 2019
- Initial Private 3rd Party Letter, 21-4192, November 14, 2019
- Medical Treatment Record- Government Facility SSA, November 19, 2019
- VA 21-4142a General Release for Medical Provider Information, November 22, 2019
- VA 21-4142 Authorization for Release of Information, November 27, 2019
- VA Examination Report of No Show, dated December 3, 2019

REASONS FOR DECISION

***1.* Evaluation of Scheuermann's kyphosis, dorsolumbar spine (also claimed as ankylosing spondylitis, osteoarthritis, intervertebral disc disorder, multi-disc degeneration, and chronic low back pain) currently evaluated as 40 percent disabling.**

The evaluation of Scheuermann's kyphosis, dorsolumbar spine (also claimed as ankylosing spondylitis, osteoarthritis, intervertebral disc disorder, multi-disc degeneration, and chronic low back pain) is continued as 40 percent disabling.

The criteria for rating diseases and injuries of the spine apply with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. An evaluation of 40 percent is granted for forward flexion of the thoracolumbar spine of 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine. A higher evaluation of 50 percent is not warranted unless there is unfavorable ankylosis of the entire thoracolumbar spine. (38 CFR 4.71a)

We have been informed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

2. Evaluation of left foot peripheral neuropathy currently evaluated as 10 percent disablin2.

The evaluation of left foot peripheral neuropathy is continued as 10 percent disabling.

An evaluation of 10 percent is assigned for incomplete paralysis below the knee which is mild. **A higher evaluation of 20 percent is not warranted unless there is evidence of incomplete paralysis below the knee which is moderate. (38 CFR 4.120, 38 CFR 4.124a)**

We have been informed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

3. Evaluation of ri2ht foot peripheral neuropathy currently evaluated as 10 percent disablin2.

The evaluation of right foot peripheral neuropathy is continued as 10 percent disabling.

An evaluation of 10 percent is assigned for incomplete paralysis below the knee which is mild. A higher evaluation of 20 percent is not warranted unless there is evidence of incomplete paralysis below the knee which is moderate. (38 CFR 4.120, 38 CFR 4.124a)

We have been informed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

4. Evaluation of tinnitus currently evaluated as 10 percent disabling.

The evaluation of tinnitus is continued as 10 percent disabling.

An evaluation of 10 percent is granted for recurrent tinnitus. (38 CFR 4.87)

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head.

This is the highest schedular evaluation allowed under the law for tinnitus.

We have been informed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

5. Evaluation of migraine headaches (also claimed as visual color changes, ocular migraines) currently evaluated as Opercent disabling.

The evaluation of migraine headaches (also claimed as visual color changes, ocular migraines) is continued as 0 percent disabling.

We have assigned a noncompcnsablc evaluation for your migraine headaches (also claimed as visual color changes, ocular migraines) based on:

- **Less frequent attacks (38 CFR 4.31)**

A higher evaluation of 10 percent is not warranted unless there are characteristic prostrating attacks averaging one in 2 months over last several months. (38 CFR 4.124a)

Wc have been informed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

6. Evaluation of bilateral hearin loss currently evaluated as ODercent disabling.

The evaluation of bilateral hearing loss is continued as Opercent disabling.

The evaluation for hearing loss is based on objective testing. Higher evaluations are assigned for more severe hearing impairment. (38 CFR 4.85, 38 CFR 4.86, 38 CFR 4.87)

We have been info'm ed that you have missed the VA examination scheduled in support of your claim. There is no information presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

7. Entitlement to individual unemployability.

Entitlement to individual unemployability is denied because you have not been found unable to secure or follow a substantially gainful occupation as a result of service connected disabilities. Service connected disabilities currently evaluated as 60 percent do not meet the schedular requirements for entitlement to individual unemployability. 38 CFR 4.16 provides that individual unemployability may be granted where there is one disability evaluated as 60 percent disabling, or two or more disabilities, one of which is 40 percent with a combined evaluation of 70 percent or more. **These percentage standards are set aside only when the evidence clearly and factually shows the veteran has been rendered unemployable solely due to service connected disabilities regardless of their individual and combined percentages.** Such cases are submitted to the Director of the Compensation and Pension Service for extra-schedular consideration. This case has not been submitted for extra-schedular consideration because the evidence fails to show you are unemployable due to service connected disabilities. (38 CFR 4.16)

We have been informed that you have missed the VA examination scheduled in support of your claim. There is no infonnation presently indicating good cause for absence on the scheduled appointment date. As a result, medical evidence that could have been used to support your claim was not available to us. (38 CFR 3.655)

Please notify us when you are ready to report for an examination, or you may submit a disability benefits questionnaire (DBQ) which must be completed and signed by a health care provider.

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.