DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

CHARLES [redacted]

VA File Number
[redacted]

Represented By:
GORDON A GRAHAM
Rating Decision
04/08/2020

INTRODUCTION

The records reflect that you are a Veteran of the Peacetime and Vietnam Era. You served in the Marine Corps from July 22, 1969 to July 21, 1972 and the Army from June 24, 1974 to July 18, 1979. We received a Notice of Disagreement from you on March 6, 2020 about one or more of our earlier decisions. On April 1, 2020 a rating decision was issued. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. A clear and unmistakable error is found in the effective date assigned for Hepatitis C and a 40 percent evaluation is established from July 19, 2017.

2. A clear and unmistakable error is found in the effective date for headaches and an evaluation of 30 percent is established from July 19, 2017.

3. A clear and unmistakable error is found in the effective date for liver transplant and af 30 percent evaluation is established from July 19, 2017.

4. A clear and unmistakable error is found in the effective date for diabetes mellitus, type II and a 20 percent evaluation is established from July 19, 2017.

5. A clear and unmistakable error is found in the effective date for autonomic dysreflexia and an evaluation of 10 percent is established from July 19, 2017.

6. A clear and unmistakable error is found in the effective date for residual scar and an evaluation of 0 percent is established from July 19, 2017.

EVIDENCE

- Service Personnel Records, from July 22, 1969 to July 21, 1972 and from June 24, 1974 to July 18, 1979
- Service Treatment Records, from July 22, 1969 to July 21, 1972
- Private treatment records, Loma Linda University Hospital, from January 1985 to March1985
- VA medical records, Central Arkansas VAMC, from January 2011 to January 2020
- Private treatment records, Vanderbilt University Medical Center, from May 2012 to July2012
- VA medical records, Tennessee Valley (Nashville) VAMC from May 2012 to March 2020
- Lay statement from [redacted] received February 12, 2014
- Rating Decision, dated March 6, 2014
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received April 7, 2015 with attached statement
- Medical treatment records received from you on April 7, 2015, multiple treatment providers
- Memorandum of Unavailability of Army Service Treatment Records, dated July 29, 2015
- VA Respiratory Examination, Central Arkansas VAMC, dated April 8, 2016
- Medical Opinion Disability Benefit Questionnaire, Fayetteville VAMC, dated June 13, 2016
- Medical Opinion Disability Benefit Questionnaire, Anchorage VAMC, dated June 20, 2016
- Rating Decision, dated August 1, 2016
- Correspondence/Hepatitis C risk factors statement received September 5, 2019
- Hepatitis Disability Benefit Questionnaire, QTC Medical Services, dated January 2, 2020with Medical Opinion
- Statement of the Case, dated January 13, 2020
- Curriculum vitae, Dr. M. [redacted], received February 24, 2020
- Medical Opinion from Dr. [redacted], dated February 7, 2020
- VA Form 21-0995, Decision Review Request: Supplemental Claim, received March 6, 2020with attached statement from attorney
- Rating Decision, dated March 26, 2020

REASONS FOR DECISION

1. Whether the effective date assigned for Hepatitis C was clearly and unmistakably erroneous.

[redacted]

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection on a direct basis for Hepatitis C with an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 40 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 40 percent evaluation for your Hepatitis C based on:
• Anorexia
• Daily fatigue
• Malaise
• Minor weight loss

Additional symptom(s) include:
• Continuous medication

A higher evaluation of 60 percent is not warranted for hepatitis c unless the evidence shows daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly or incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12- month period, but not occurring constantly. (38 CFR 4.114)

2. Whether the effective date assigned for headaches was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection on a direct basis for headaches with an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 30 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 30 percent evaluation for your headaches based on:
• Characteristic prostrating attacks occurring on an average once a month over last several months

A higher evaluation of 50 percent is not warranted for migraine unless the evidence shows very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability. (38 CFR 4.120, 38 CFR 4.124a)

3. Whether the effective date assigned for liver transplant was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection on a direct basis for liver transplant with an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 30 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 30 percent evaluation for your liver transplant based on:
• Minimum post-operative evaluation

Higher evaluations are based on more severe levels of impairment. (38 CFR 4.114)

[redacted]

4. Whether the effective date assigned for diabetes mellitus, type II was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection on a direct basis for diabetes mellitus with an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 20 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 20 percent evaluation for your diabetes, steroid induced based on:
• Insulin required

Additional symptom(s) include:
• Restricted diet

A higher evaluation of 40 percent is not warranted for diabetes mellitus unless the evidence shows:
• Diabetes requiring insulin, restricted diet, and regulation of activities. (38 CFR 4.119)

5. Whether the effective date assigned for autonomic dysreflexia was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection for autonomic dysreflexia with

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an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 10 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 10 percent evaluation for your autonomic dysreflexia based on:
• Occasional dizziness

A higher evaluation of 30 percent is not warranted for peripheral vestibular disorder unless the evidence shows occasional staggering. (38 CFR 4.87)

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related. (38 CFR 4.20)

6. Whether the effective date assigned for residual scar was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was a clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, the effective date is changed because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

Rating decision dated April 1, 2020 granted service connection for residual scar with an effective date based on the receipt of the supplemental claim dated March 6, 2020. The claim has ultimately changed based on the theories of entitlement. At first, the claims were based on VA negligence under 38 USC 1151. While benefits could not be granted under 38 USC 1151, the direct service connection theory was incorporated into the claim as of July 19, 2017. Based on the continuously pursued claim under appeal through 38 USC 1151, combined with the fact that the theory of entitlement changed on July 19, 2017 to direct service connection, a 0 percent evaluation is established from the date entitlement arose, which is July 17, 2019, the date we received a claim for direct service connection. (38 CFR 3.2500, 38 CFR 3.400)

We have assigned a 0 percent evaluation for your residual scar based on:
• Anterior trunk: area or areas less than 144 square inches (929 sq. cm.) (Not associated with underlying soft tissue damage)

Additional symptom(s) include:
• Scar 1 Location: Anterior trunk
• Scar 1 type: scar

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

Your first scar/area has a length of 34 cm and a width of 1 cm for a total area of 34 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (anterior trunk) unless the evidence shows:
• Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck that are associated with underlying soft tissue damage (entire body) unless the evidence shows:
• Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.). (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (entire body) unless the evidence shows:
• Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

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.

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