

DEPARTMENT OF VETERANS AFFAIRS Veterans Benefits Administration Regional Office

Represented By: VIRGINIA DEPARTMENT OF VETERANS SERVICES Rating Decision 11/05/2018

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era and Peacetime. You served in the Navy from June 11, 1975, to May 22, 1979 and from March 10, 1988, to February 29, 2000. You filed a claim for increased evaluation that was received on June 15, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

- Service connection for tinnitus is granted with an evaluation of 10 percent effective December 29, 2017.
- 2. Service connection for obstructive sleep apnea is granted with an evaluation of 50 percent effective December 29, 2017.
- Service connection for left knee anterior cruciate ligament rupture with tearing of the medial meniscus with osteoarthritis is granted with an evaluation of 10 percent effective December 29, 2017.

- 4. Evaluation of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee), which is currently 10 percent disabling, is continued.
- 5. Evaluation of gastroesophageal reflux disorder, which is currently 10 percent disabling, is continued.
- 6. Service connection for lumbar degenerative disc disease, disc rupture is denied.
- 7. No clear and unmistakable error is found in the VA Rating Decision dated February 15, 2001.
- 8. No clear and unmistakable error is found in the VA Rating Decision dated September 2, 2008.
- A decision on entitlement to compensation for asthma is deferred.
- 10. A decision on entitlement to compensation for cervical spine degenerative disc disease is deferred.
- 11. A decision on entitlement to compensation for hemorrhoids is deferred.
- 12. A decision on entitlement to compensation for irritable bowel syndrome is deferred.
- 13. A decision on entitlement to compensation for plantar fasciitis, bilateral is deferred.
- 14. A decision on entitlement to compensation for sinusitis with retention cyst is deferred.
- The claim for an increased evaluation for allergic rhinitis is deferred.

EVIDENCE

- Service treatment and personnel records for the veteran's period of service dated from June 11, 1975, to May 22, 1979 and from March 10, 1988, to February 29, 2000
 VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors
- Pension and/or DIC, received December 29, 2017
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, received June 15, 2018, with attached statements, medical evidence, and lay
- VAMC (Veterans Affairs Medical Center) treatment records, Richmond, from May 7, 2018 through July 5, 2018
- VA letter concerning your claim, dated July 27, 2018
- Medical evidence, lay statement, and medical articles received on July 30, 2018
- Lay statements received August 2, 2018
- VA contract examination, dated August 4, 2018

- Medical evidence received from Tricare on August 22, 2018
- VA Form 21-4138, Statement in Support of Claim, received August 29, 2018, with attached statement and lay statement
- VA letter concerning your claim, dated August 30, 2018
- VA contract examination, dated October 10, 2018
- VA contract examination, dated October 30, 2018
- Rating Decision, dated February 15, 2001
- VA contract examination, dated May 8, 2000
- Rating Decision, dated September 2, 2008
- Report from Mary Washington Hospital dated August 22 2007
- Reports from Stafford Primary Care Associates dated July 19 2007 to December 27
- 2007

REASONS FOR DECISION

1. Service connection for tinnitus.

Service connection for tinnitus has been established as directly related to military service.

An evaluation of 10 percent is assigned from December 29, 2017, the date your Intent to File was received.

We have assigned a 10 percent evaluation for your tinnitus based on:

· Recurrent tinnitus

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.

2. Service connection for obstructive sleep apnea as secondary to the service-connected disability of gastroesophageal reflux disorder.

Service connection for obstructive sleep apnea has been established as related to the serviceconnected disability of gastroesophageal reflux disorder.

An evaluation of 50 percent is assigned from December 29, 2017, the date your Intent to File was received.

We have assigned a 50 percent evaluation for your obstructive sleep apnea based on:
• Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine

A higher evaluation of 100 percent is not warranted for sleep apnea syndromes unless the

- · Carbon dioxide retention; or,
- · Chronic respiratory failure; or,
- Cor pulmonale; or,
- Tracheostomy required.
- 3. Service connection for left knee anterior cruciate ligament rupture with tearing of the medial meniscus with osteoarthritis as secondary to the service-connected disability of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee).

Service connection for left knee anterior cruciate ligament rupture with tearing of the medial meniscus with osteoarthritis has been established as related to the service-connected disability of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee).

An evaluation of 10 percent is assigned from December 29, 2017, the date your Intent to File was received.

We have assigned a 10 percent evaluation for your left knee anterior cruciate ligament rupture with tearing of the medial meniscus with ostcoarthritis based on:

 Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10 percent is assigned)

Additional symptom(s) include:

· X-ray evidence of degenerative arthritis

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for degenerative arthritis unless the evidence shows:

 X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations.

Additionally, a higher evaluation of 20 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees.
- 4. Evaluation of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee) currently evaluated as 10 percent disabling.

The evaluation of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and ostcoarthritis (previously rated as surgical repair of medial meniscus tear, right knee) is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your surgical repair of medial meniscus tear, right knee based on:

 Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10 percent is assigned)

Additional symptom(s) include:

X-ray evidence of degenerative arthritis

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for degenerative arthritis unless the evidence shows:

 X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations.

Additionally, a higher evaluation of 20 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

Limitation of flexion of 16 to 30 degrees.

Evaluation of gastroesophageal reflux disorder currently evaluated as 10 percent disabling.

The evaluation of gastroesophageal reflux disorder is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your gastroesophageal reflux disorder based on:

- Pyrosis (Heartburn and/or Reflux)
- Regurgitation
- Shoulder pain
- Substernal pain

A higher evaluation of 30 percent is not warranted for hiatal hernia unless the evidence shows persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health.

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.



6. Service connection for lumbar degenerative disc disease, disc rupture as secondary to the service-connected disability of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee).

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 lumbar degenerative disc disease, disc rupture is related to the service-connected condition of complex tear of the right knee medial and lateral meniscus, popliteal cyst, and osteoarthritis (previously rated as surgical repair of medial meniscus tear, right knee), nor is there any evidence of this disability during military service.

The VA contract examiner concluded that the claimed condition is less likely than not (less than 50 percent probability) proximately due to or the result of your service connected condition. The examiner concluded that your degenerative arthritis of the spine, intervertebral disc syndrome, and bilateral lower extremity radiculopathy is less likely than not proximately due to or the result of your surgical repair of medial meniscus tear, right knee. The examiner stated that you had and MRI of the lumbar spine with and without contrast, on 03/25/2018 that was performed due to back pain. The examiner noted that you state that you fell on 09/2015 due to your right knee meniscus tear repair with residual pain and weakness. The examiner noted that the MRI of lumbar back noted dated 03/25/2018, noted stable degenerative changes of the lumbar spine and mild neural foraminal narrowing

bilaterally at L3-4, L4-5, and L5-S1. The examiner stated that you back pain occurred over two years after the fall in 2015. The examiner stated that there is no evidence of back pain after the fall on 09/2015. The examiner stated that therefore, your lumbar degenerative disc disease with disc rupture is less likely than not proximately due to or the result of your surgical repair of medial meniscus tear, right knee. The examiner stated that a nexus has not been established.

The medical opinion we received from the VA Medical Center was more persuasive than your private physician's opinion because it was based on a thorough review of your relevant military and /or personal history and contained a more convincing rationale.

7. Whether or not the VA Rating Decision dated February 15, 2001, contains a clear and unmistakable error in the denial of entitlement to service connection for sinusitis with retention cyst.

Clear and unmistakable errors are errors which are undebatable, so it can be said reasonable minds could only conclude the previous decision was fatally flawed at the time it was made. A determination there was clear and unmistakable error must be based on the record and the law which existed at the time of the prior decision. Once a determination is made there was a clear and unmistakable error in a prior decision which would change the outcome, then the decision must be revised to conform to what the decision should have been.

The examiner from the VA contract examination dated May 8, 2000, noted that your sinuses were not tender and x-rays of your sinuses were normal at that time. No diagnosis of sinusitis was made based upon this VA contract examination.



No clear and unmistakable error is found in the Rating Decision dated February 15, 2001, as the denial of service connection for sinusitis with retention cyst was made based upon VA contract examination on May 8, 2000 containing no evidence of a chronic disability of your sinuses at that time.

8. Whether or not the VA Rating Decision dated September 2, 2008, contains a clear and unmistakable error in the denial of entitlement to service connection for sleep apnea (to include symptoms of fatigue, tiredness, irritability, and headaches),

Clear and unmistakable errors are errors which are undebatable, so it can be said reasonable minds could only conclude the previous decision was fatally flawed at the time it was made. A determination there was clear and unmistakable error must be based on the record and the law which existed at the time of the prior decision. Once a determination is made there was a clear and unmistakable error in a prior decision which would change the outcome, then the decision must be revised to conform to what the decision should have been.

No clear and unmistakable error is found in the Rating Decision dated February 15, 2001, as the denial of service connection for sleep apnea (to include symptoms of fatigue, tiredness, irritability, and headaches), as there was no available medical evidence of record at that time showing that your sleep apnea was secondary to any of your service connected disabilities, or that it began during or was caused by your military service.

Compensation for asthma.

The issue of compensation for asthma is deferred for the following information: we will request further information from the VA contract examiner that examined you.

10. Compensation for cervical spine degenerative disc disease.

The issue of compensation for cervical spine degenerative disc disease is deferred for the following information: we will request further information from the VA contract examiner that examined you.

11. Compensation for hemorrhoids.

The issue of compensation for hemorrhoids is deferred for the following information: we will request that you be scheduled for a VA examination.

12. Compensation for irritable bowel syndrome.

The issue of compensation for irritable bowel syndrome is deferred for the following information: we will request further information from the VA contract examiner that examined you.

13. Compensation for plantar fasciitis, bilateral.

The issue of compensation for plantar fasciitis, bilateral is deferred for the following information: we will request that you be scheduled for a VA examination.

14. Compensation for sinusitis with retention cyst.

The issue of compensation for sinusitis with retention cyst is deferred for the following information: we will request that you be scheduled for a VA examination.

15. Evaluation of allergic rhinitis currently evaluated as 0 percent disabling.

The evaluation for allergic rhinitis is deferred for the following: we will request that you be scheduled for a VA examination.

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.