Memorandum

Department of Veterans Affairs

Date: April 6, 2020

From: DROC-DC, Washington, DC 397

Subj: Requesting an administrative review for entitlement to individual unemployability (IU) Benefits on an extra-schedular basis under 38 CFR 4.16 (b) prior to July 10, 2009.

To: Director, Compensation Service

Background Information:

Lemuel C. Bray, C[redacted]
Veteran served Honorably from January 5, 1961 through July 19, 1974, in the U.S. Navy.

Statement of Issue:

We are requesting a review for entitlement to IU benefits on an extra-schedular basis prior to July 10, 2009. This review is directed by a BVA remand.

Discussion:

Service connection has been established for nine conditions prior to July 10, 2009. Left facial fracture with traumatic brain injury has been evaluated at Opercent disabling effective July 20, 1974, 40 percent disabling from July 10, 2009. Mixed organic personality syndrome with depression has been evaluated at 30 percent disabling effective October 11, 1984, 100 percent disabling effective May 8, 1993 to June 10, 1993 (38 CFR 4.29), then 30 percent diabling effective June 11, 1993. Hearing loss bilateral has been evaluated at 20 percent disabling effective October 11, 1984. Cervical spine has been evaluated at 10 percent effective January 11, 2010, 20 percent disabling from February 24, 2020. Tinnitus has been evaluated at 10 percent disabling effective December 10, 1989. Fracture, left wrist has been evaluated at Opercent effective July 20, 1974. Fracture right ankle has been evaluated at Opercent effective July 20, 1974. Tonsillectomy has been evaluated at Opercent disabling effective July 20, 1974. Facial scar has been evaluated at Opercent disabling effective July 10, 2009. Neuropathy, maxillary and mandibular divisions of CN5 has been evaluated at Opercent disabling effective July 10, 2009. The combined evaluation for compensation was 0 percent effective July 20, 1974, 40 percent effective October 11, 1984, 50 percent effective December 10, 1989, 100 percent effective May 8, 1993 (38 CFR 4.29), 30 percent effective June 10, 1993, 50 percent effective June 11, 1993, 70 percent

effective July 10, 2009 and 80 percent effective February 24, 2020. BVA remanded this issue on May 11, 2017, and directed that the case be referred for entitlement to JU benefits on an extra-schedular basis prior to July 10, 2009.

Veteran last worked full time on September 15, 1985, as a Bookeeper. Veteran completed 12 years of grade school and four years of college.

Veterans Social Security Administration records note that the Veteran is entitled to benefits effective Septenber 14, 1990, due to a primary diagnosis of back syndrome and a secondary disagnosis of cerebral trauma.

Private mental evaluation conducted on March 27, 2020, shows that a medical professional opined that it is at least as likely as not that the Veteran's service connected mixed organic brain syndrome with depression resulted in gross impairment in the capacity to meaningfully seek out, attain and retain competitive gainful employment between June 1987 and July 2009.

The medical professional further opined in regards to occupational impairment that it is more likely than not that the claimant's symptoms cause impairment in interpersonal relatedness. The medical professional opined that these symptoms impact you ability to work cooperatively with co-workers, supervisors, and the public to moderate/severe extent.

The medical professional opined that it is more likely than not that the claimant's symptoms interfere with attentaion, concentration, and memory. As a result the medical professional opined that these symptoms impact the Veterans ability to understand and follow instructions, retain instructions, communicate effectively, and solve technical or mechanical problems to a severe extent.

The medical professional opined that it is more likely than not that the Veteran;s symptoms interfere with motivation and drive. As a result the medical professional opine that these symptoms impact the Veteran's ability to maintain task persistence and pace, the ability to arrive to work on time, and the ability to work a regular schedule without excessive absences to a sever extent.

The medical professional opined that it is not possible, without resorting to mere speculation, to separate out the occupational impairment specific to the service-connected mixed organic personality syndrome with depression from the impairment due to the service-connected traumatic brain injury.

The medical professional concluded that the Veteran's had substantial impairment in work prior to terminating full-time work and receiving disability compensation in 1985. The medical professional stated thtat the Veteran has had no work of any kind since

1990. Between 1987 and 1990, the part-time work he did was described by a vocational expert as akin to a sheltered workshop versus competititive employment and this was substantiated by the statement written by the Veteran's employer at the time. Both documented the degree of accommodation and the gross impairment present was wholly inconsistent with any reasonable application of the defeinition of gainful employment. The medical professional further stated that records were provided documented numerous psychiatric hospitalizations during the period in question, from 1987 to 2009. The medical professional stated that such a pattern of multiple psychiatric hospitalizations at the most pragmatic level is inconsistent with sustaine competitive gainful employment due to extended periods of absenteeism which must naturally occur during impatient hospitalizations.

The medical professional further opined that given that the evidence for and against the Veteran's contention was found to be in relative equipoise, it is their medical opinion that the Veterans's records, at least as likely as not, support the Veteran's contention of gross impairment in competitive gainfulemployment during the 1987 to 2009 period.

It is the established policy of the Department of Veterans Affairs that all Veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. The available evidence supports the Veteran's contention that his service connected disabilities or a combination of the effects of the disabilities prevents all types of gainful activity prior to July 10, 2009.

Recommendation: Grant entitlement to IU benefits on an extra-schedular basis, effective September 16, 1985, which is the day after the Veteran last worked full time.

April 6, 2020

Signature of author of this referral letter
GRB
Printed name