



**BOARD OF VETERANS' APPEALS**  
**FOR THE SECRETARY OF VETERANS AFFAIRS**  
**WASHINGTON, DC 20038**

Date: April 19, 2021

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Appellant:

A Veterans Law Judge at the Board of Veterans' Appeals made a decision on your appeal.

If you're satisfied with the decision, you don't have to do anything.

**What's in the Board decision?**

Your Board decision tells you which issue(s) were decided in your appeal. It explains the evidence, laws, and regulations the Veterans Law Judge considered when making their decision and identifies any findings that are favorable to you.

If your decision letter includes a "Remand" section, this means the judge is sending one or more issues in your appeal to your local VA office to correct an error the judge identified while reviewing your case. If an issue is remanded, it hasn't been decided and it can't be appealed yet. You'll receive a decision from the local VA office after they review the issue again.

**What if I disagree with the decision?**

If you disagree with the judge's decision, you can continue your appeal. See the letter included after your Board decision to learn more about the decision review options available to you.

**What if I have questions?**

If you have any questions or would like more information, please contact your representative (if you have one) or visit [va.gov/decision-reviews/get-help](https://va.gov/decision-reviews/get-help). To track the status of your appeal, visit [va.gov/claim-or-appeal-status/](https://va.gov/claim-or-appeal-status/).

Sincerely yours,

N. Tann  
Executive Director  
Office of Appellate Support

Enclosures (2)  
CC: Virginia Department of Veterans Services





# BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

S [REDACTED]

Docket No. 200114-60475

Represented by  
Virginia Department of Veterans Services

DATE: April 19, 2021

## ORDER

New and relevant evidence having been submitted, the application to readjudicate a previously denied claim of entitlement to service connection for sleep apnea is granted.

Entitlement to service connection for sleep apnea is granted.

## FINDINGS OF FACT

1. New evidence was received after the April 2013 denial that is relevant to the issue of entitlement to service connection for sleep apnea.
2. The Veteran's sleep apnea began during active service.

## CONCLUSIONS OF LAW

1. New and relevant evidence sufficient to readjudicate the claim for service connection for sleep apnea has been received. AMA, Pub. L. No. 115-55, § 101(35), 131 Stat. 1105, 1105; 38 C.F.R. § 3.2501.
2. The criteria for service connection for sleep apnea are met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.



## REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from February 2007 to June 2007, and from July 2007 to May 2008.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a January 2020 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

In the January 2020 VA Form 10182, Decision Review Request: Board Appeal, the Veteran elected the Hearing docket.

Therefore, the Board may only consider the evidence of record at the time of the agency of original jurisdiction (AOJ) decision on appeal, as well as any evidence submitted by the Veteran or his representative at the hearing or within 90 days following the hearing. 38 C.F.R. § 20.302(a).

### New and Relevant Evidence

#### 1. Whether new and relevant evidence has been submitted to readjudicate a previously denied claim of entitlement to service connection for sleep apnea

VA will readjudicate a claim if new and relevant evidence is presented or secured. 38 C.F.R. § 3.156 (d). "Relevant evidence" is evidence that tends to prove or disprove a matter at issue. 38 C.F.R. § 3.2501 (a)(1).

The question in this case is whether the Veteran submitted evidence after the prior final denial of his claim for service connection for sleep apnea in the legacy system, and if so, whether that evidence is new and relevant to his claim.

The Board finds the Veteran submitted new evidence after the prior final April 2013 rating decision in the legacy system that is relevant to his claim. The Veteran submitted lay statements from friends he served with, and provided testimony at the August 2020 Board hearing. The Veteran and his friends discussed the Veteran's snoring, fatigue, and sleep habits during service. The Board finds that



this evidence is new and relevant to his claim, and readjudication of the claim is warranted.

### Service Connection

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303 (a). Service connection requires: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004); see also *Caluza v. Brown*, 7 Vet. App. 498 (1995). Service connection may also be granted for any disease diagnosed after discharge when the evidence establishes that the disease was incurred in service. 38 C.F.R. § 3.303 (d).

In rendering a decision on appeal, the Board must analyze the credibility and probative value of all medical and lay evidence of record, account for the evidence which it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. 38 U.S.C. § 1154 (a); *Buchanan v. Nicholson*, 451 F.3d 1331 (Fed. Cir. 2006); *Gilbert v. Derwinski*, 1 Vet. App. 49, 57 (1990).

When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Board must resolve reasonable doubt in favor of the Veteran. 38 U.S.C. § 5107; 38 C.F.R. § 3.102; *Gilbert*, 1 Vet. App. 49. To deny a claim on its merits, the evidence must preponderate against the claim. *Aleman v. Brown*, 9 Vet. App. 518 (1996).

## 2. Entitlement to service connection for sleep apnea

The Veteran asserts that he is entitled to service connection for sleep apnea.

The Board concludes that the Veteran has a current disability that began during active service. 38 U.S.C. §§ 1110, 1131, 5107(b); *Holton v. Shinseki*, 557 F.3d 1363, 1366 (Fed. Cir. 2009); 38 C.F.R. § 3.303(a).



An August 2008 sleep study shows the Veteran was diagnosed with sleep apnea. The study report noted that snoring and snorting were observed as the Veteran slept. An August 2008 Post-Deployment Health Assessment report shows the Veteran reported having problems with sleeping and feeling tired. The examining physician noted that the Veteran was getting help for sleep apnea. Thus, the question becomes whether the current disability is related to service. On this question there is evidence in favor of and against the claim.

The evidence against the claim includes an August 2019 VA medical opinion that states the Veteran's sleep apnea is not related to his military service. However, the examiner failed to discuss or consider the 2008 sleep study that confirmed a diagnosis of sleep apnea within three months of service separation when formulating his opinion. The Board finds the medical opinion is inadequate, and affords it no probative weight.

(Continued on the next page)



The evidence in favor of the claim includes lay statements and medical records. In addition to the August 2008 medical records discussed above, current VA medical records show the Veteran requires the use of a continuous positive airway pressure (CPAP) machine for his sleep apnea. Lay statements submitted in January 2019 and February 2019 from friends who served with the Veteran in Iraq detail that the Veteran often fell asleep while on duty, including while driving, and that he snored and gasped for air while sleeping at night. In January 2019 and February 2020 lay statements and at the August 2020 Board hearing, the Veteran explained that he began having sleep difficulties and constant fatigue while deployed to Iraq during active service. The Veteran explained that he often slept through alarms, dozed off while driving and during drills, and was informed by other soldiers that he snored and stopped breathing during the night. The Veteran is competent to report symptoms he experienced, as it is personal knowledge gained through his senses. *Layno v. Brown*, 6 Vet. App. 465, 469 (1994).

The Board finds the evidence to be in favor of the Veteran's claim that his currently diagnosed sleep apnea began during active service. Accordingly, after resolving all doubt in favor of the Veteran, the Board finds that service connection for sleep apnea is warranted. 38 U.S.C. § 5107; 38 C.F.R. § 3.102.

Cynthia M. Bruce

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Cynthia M. Bruce  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

N. Miller, Associate Counsel

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*