DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

[redacted]

VA File Number
[redacted]

Represented By:
VIRGINIA DEPARTMENT OF VETERANS SERVICES
Rating Decision
04/20/2021

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from July 27, 2007 to May 23, 2008. The Board of Veterans Appeals made their decision on your appeal on April 19, 2021. We have implemented their decision based on the evidence listed below.

DECISION

1. Service connection for obstructive sleep apnea is granted with an evaluation of 50 percent effective November 21, 2019.

2. Basic eligibility to Dependents' Educational Assistance is established from December 11, 2019.

EVIDENCE

- Sleep study consult, Salem VAMC, conducted on August 4, 2008

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- Service Treatment Records, received on June 16, 2014, November 16, 2018, and January 21, 2019, for active duty periods of service from February 21, 2007 to June 23, 2007 and from July 27, 2007 to May 23, 2008
- Sleep Apnea Disability Benefit Questionnaire, Salem VA Medical Center, conducted March 27, 2019
- Medical Opinion Disability Benefit Questionnaire, QTC, conducted April 26, 2019, and received on August 21, 2019
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received November 21, 2019
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received December 4, 2019
- VA Form 21-4138, Statement in Support of Claim, received December 4, 2019
- Rating Decision, dated January 9, 2020
- Rating Decision Notification Letter dated January 13, 2020
- VA Form 10182 Decision Review Request: Board Appeal (Notice of Disagreement) received on January 14, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, Salisbury, for the period January 14, 2020 to January 14, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, Salem, for the period July 15, 2008 to March 30, 2021
- Board of Veterans' Appeals Decision, dated April 19, 2021

REASONS FOR DECISION

1. Service connection for obstructive sleep apnea.

The Board of Veterans Appeals made their decision on your appeal on April 19, 2021. We have implemented their decision.

A direct grant of service connection requires 1) medical evidence of a current disability, 2) evidence of the incurrence or aggravation of a disease or injury in active military service, and 3) medical evidence of a nexus (link) between the current disability and the in-service disease or injury (38 CFR 3.303, 38 CFR 3.304).

Service connection for obstructive sleep apnea has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

Service connection for obstructive sleep apnea is granted with an evaluation of 50 percent effective November 21, 2019.

An evaluation of 50 percent is assigned from November 21, 2019. This is based on the date we received your intent to file a clam for compensation, followed by receipt of your claim for this issue, which was received within one year of the date we received your intent to file. Furthermore, you continuously pursued this issue (38 CFR 3.155(b), 38 CFR 3.400, 38 CFR 3.2500).

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 (38 CFR 4.97)

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

• Carbon dioxide retention; or,
• Chronic respiratory failure; or,
• Cor pulmonale; or,
• Tracheostomy required. (38 CFR 4.96, 38 CFR 4.97)

2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. (38 USC Ch. 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is established from December 11, 2019, as the evidence shows you currently have a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 3.155(b), 38 CFR 3.400, 38 CFR 3.2500).

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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