DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

VA File Number

Represented By:
N.C. DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
Rating Decision
03/01/2021

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the from July 14, 1980 to September 30, 2010. We received your supplemental claim on January 8, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for temporomandibular joint (TMJ) disorder is granted with an evaluation of 10 percent effective January 8, 2021.

2. Service connection for migraine including migraine variants as secondary to the service-connected disability of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) is granted with an evaluation of 30 percent effective January 8, 2021.

3. Evaluation of major depressive disorder (also claimed as anxiety) with service connection for traumatic brain injury (TBI), which is currently 50 percent disabling, is continued.

EVIDENCE

- Service Treatment Records from July 14, 1980 through September 30, 2010
- VA Form 21-526c, "Pre-Discharge Compensation Claim" received June 11, 2010
- Notice of failure to report for VA Compensation and Pension examination dated August 13, 2010
- Rating Decision, received March 23, 2011
- Notification Letter, received March 28, 2011
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC received 12-09-18
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits received 01-10-19
- Treatment from Patient dated 01-25-13
- Statement from received 01-10-19 04-29-19
- Disability Bennefit Questionnaire Mental Disorders (Other Than PTSD) And Eating Disorders), received May 4, 2019, conducted May 1, 2019
- Rating Decision, received May 23, 2019
- Notification Letter, received May 31, 2019
- Correspondence (AMA), received December 23, 2020
- Medical Treatment Records, received January 8, 2021
- Correspondence, received January 8, 2021
- VA Form 21-4138, Statement in Support of Claim (multiple statements), received January 8, 2021
- Correspondence, received January 8, 2021
- VA Form 20-0995 Supplemental Claim Application, received January 8, 2021
- Medical Treatment Records from VA Clinic, received January 12, 2021
- Disability Benefits Questionnaire Initial Evaluation Of Residuals Of Traumatic Brain Injury (I TBI), received February 8, 2021
- Disability Benefits Questionnaire Headache (including Migraine Headaches), received February 8, 2021
- Disability Benefits Questionnaire Temporomandibular Disorders (TMDs), received February 26, 2021
- VA Outpatient Treatment Reports from Hampton VA Medical Center (VAMC) includes CBOC, for the period July 30, 2015 to February 11, 2021

REASONS FOR DECISION

1. Service connection for temporomandibular joint (TMJ) disorder.

Service connection for temporomandibular joint (TMJ) disorder has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is January 8, 2021. Service connection has been established from the day we received your supplemental claim. (38 CFR 3.155, 38 CFR 3.400, 38 CFR 3.2501)

An evaluation of 10 percent is assigned from January 8, 2021.

We have assigned a 10 percent evaluation for your temporomandibular joint (TMJ) disorder based on:
• 34 millimeters (mm) of maximum unassisted vertical opening
• Painful motion of the jaw

Additional symptom(s) include:
• X-ray evidence of degenerative arthritis without evidence of limited or painful motion

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 are not warranted.

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. (38 CFR 4.71a, 38 CFR 4.150)

Additionally, a higher evaluation of 20 percent is not warranted for limited motion of temporomandibular articulation unless the evidence shows:
• 29 millimeters (mm) of maximum unassisted vertical opening without dietary restrictions to all mechanically altered food; or,
• 34 millimeters (mm) of maximum unassisted vertical opening with dietary restrictions to soft and semi-solid foods. (38 CFR 4.71a, 38 CFR 4.150)

2. Service connection for migraine including migraine variants as secondary to the service-connected disability of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI).

Although not claimed by you service connection for migraine including migraine variants has been established as related to the service-connected disability of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI). (38 CFR 3.310)

The effective date of this grant is January 8, 2021. Service connection has been established from the day we received your supplemental claim. This condition was not claimed, but is considered within the scope of the condition under review. (38 CFR 3.400, 38 CFR 3.155)

An evaluation of 30 percent is assigned from January 8, 2021.

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

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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. Evaluation of major depressive disorder (also claimed as anxiety) with service connection for traumatic brain injury (TBI) currently evaluated as 50 percent disabling.

The examiner could not differentiate the symptoms from your major depressive disorder and traumatic brain injury (TBI), therefore, separate evaluations would not be warranted. Based on examination findings a 10 percent evaluation would be warranted for your TBI and a 50 percent evaluation would be warranted for your major depressive disorder. We are continuing the higher 50 percent evaluation for your major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI), as this is the better overall evaluation. (38 CFR 4.14)

Please Note: the evaluations of the same manifestations under different diagnoses are to be avoided, as this would by pyramiding. A single rating will be assigned under the diagnosis which reflects the predominant disability. In this case the predominant disability is your major depressive disorder. Pyramiding is prohibited by the law that governs the VA. (38 CFR 4.14)

The evaluation of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) is continued as 50 percent disabling.

An examination will be ordered for your mental condition in order to better ascertain your current level of disability.

We have continued your 50 percent evaluation for your major depressive disorder (also claimed as anxiety) based on:
- Anxiety
- Chronic sleep impairment
- Depressed mood
- Difficulty in adapting to stressful circumstances
- Difficulty in establishing and maintaining effective work and social relationships
- Disturbances of motivation and mood
- Occupational and social impairment with reduced reliability and productivity

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 50 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 70 percent is not warranted for a mental disorder unless the evidence shows occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as:
- Suicidal ideation
- Obsessional rituals which interfere with routine activities
- Speech intermittently illogical, obscure, or irrelevant
- Near-continuous panic or depression affecting the ability to function independently,

appropriately and effectively
• Impaired impulse control (such as unprovoked irritability with periods of violence)
• Spatial disorientation
• Neglect of personal appearance and hygiene
• Difficulty in adapting to stressful circumstances (including work or a worklike setting)
• Inability to establish and maintain effective relationships. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

The rating schedule contains ten important facets of TBI related to cognitive impairment and subjective symptoms. It provides criteria for levels of impairment for each facet, as appropriate, ranging from 0 to 3, and a 5th level, the highest level of impairment, labeled "total." However, not every facet has every level of severity. The Consciousness facet, for example, does not provide for an impairment level other than "total" since any level of impaired consciousness would be totally disabling. A 100 percent evaluation will be assigned if "total" is the level of evaluation for one or more facets. If no facet is evaluated as "total," the overall percentage evaluation will be assigned based on the level of the highest facet as follows: 0 = noncompensable; 1 = 10 percent; 2 = 40 percent; and 3 = 70 percent. For example, a 70 percent evaluation will be assigned if 3 is the highest level of evaluation for any facet.

A level of severity of "1" has been assigned for your Memory, Attention, Concentration, Executive Functions Facet based on:
• A complaint of mild loss of memory (such as having difficulty following a conversation, recalling recent conversations, remembering names of new acquaintances, or finding words, or often misplacing items), attention, concentration, or executive functions, but without objective evidence on testing. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Judgement Facet based on:
• Normal. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Social Interaction Facet based on:
• Social interaction is routinely appropriate. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Orientation Facet based on:
• Always oriented to person, time, place, and situation. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Motor Activity (with intact motor and sensory system) Facet based on:
• Motor activity normal. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Visual Spatial Orientation Facet based on:
• Normal. (38 CFR 4.124a)

A level of severity of "1" has been assigned for your Subjective Symptoms Facet based on:
• Three or more subjective symptoms that mildly interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples of findings that might be

seen at this level of impairment are: intermittent dizziness, daily mild to moderate headaches, tinnitus, frequent insomnia, hypersensitivity to sound, hypersensitivity to light. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Communication Facet based on:
• Able to communicate by spoken and written language (expressive communication), and to comprehend spoken and written language. (38 CFR 4.124a)

A 10 percent for traumatic brain injury is based on the highest level of severity of "1". (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for traumatic brain injury (TBI) unless the evidence shows:
• Inability to communicate either by spoken language, written language, or both, more than occasionally but less than half of the time, or to comprehend spoken language, written language, or both, more than occasionally but less than half of the time. Can generally communicate complex ideas; or,
• Moderately impaired judgment. For complex or unfamiliar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, although has little difficulty with simple decisions; or,
• Objective evidence on testing of mild impairment of memory, attention, concentration, or executive functions resulting in mild functional impairment; or,
• Motor activity mildly decreased or with moderate slowing due to apraxia; or,
• One or more neurobehavioral effects that frequently interfere with workplace interaction, social interaction, or both but do not preclude them; or,
• Occasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation; or,
• Social interaction is frequently inappropriate; or,
• Three or more subjective symptoms that moderately interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples of findings that might be seen at this level of impairment are: marked fatigability, blurred or double vision, headaches requiring rest periods during most days; or,
• Moderately impaired. Usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions, and judging distance. Has difficulty using assistive devices such as GPS (global positioning system). (38 CFR 4.120, 38 CFR 4.124a)

Additionally, a higher evaluation of 100 percent is not warranted for traumatic brain injury (TBI) unless the evidence shows:
• Persistently altered state of consciousness, such as vegetative state, minimally responsive state, coma under the consciousness facet. (38 CFR 4.120, 38 CFR 4.124a)

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.