DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

VA File Number

Represented By:
N.C. DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
Rating Decision
04/29/2021

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 decisions on your claim.

DECISION

1. Evaluation of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) and vertigo, which is currently 50 percent disabling, is increased to 70 percent effective January 8, 2021.

2. Evaluation of irritable bowel syndrome associated with TBI with gastroesophageal reflux disease (previously rated as gastro-esophageal reflux disease), which is currently 10 percent disabling, is increased to 30 percent effective January 8, 2021.

3. Service connection for erectile dysfunction associated with TBI is granted with an evaluation of 0 percent effective January 8, 2021.

4. Service connection for scar, laceration to crown of head associated with TBI is granted with an evaluation of 0 percent effective January 8, 2021.

5. Entitlement to special monthly compensation based on loss of use of creative organ is granted from January 8, 2021.

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 [illegible] dated 01-25-13
- Statement from [illegible] 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 [illegible] 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 [illegible] Medical Center ([illegible]) includes [illegible] CBOC, for the period July 30, 2015 to February 11, 2021
- Rating Decision, received March 1, 2021
- VA Examination, PSYCH Mental Disorders, VES, received April 27, 2021
- VA Examination, GU Male Reproductive System, VES, received April 28, 2021
- VA Examination, GI Intestinal, VES, received April 29, 2021
- VA Examination, AUDIO Ear, VES, received April 29, 2021
- VA Examination, NEURO Headaches, VES, received April 29, 2021
- VA Examination, Scars, VES, received April 29, 2021

REASONS FOR DECISION

1. Evaluation of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) and vertigo currently evaluated as 50 percent disabling.

The evaluation of major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) and vertigo is increased to 70 percent disabling effective January 8, 2021. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is January 8, 2021. Entitlement to an increased evaluation has been established from the date the claim was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim was received. (38 CFR 3.400)

We have assigned a 70 percent evaluation for your major depressive disorder (also claimed as anxiety) with traumatic brain injury (TBI) based on:
- Anxiety
- Chronic sleep impairment
- Depressed mood
- Difficulty in adapting to a worklike setting
- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Difficulty in establishing and maintaining effective work and social relationships
- Disturbances of motivation and mood
- Impaired judgment
- Impairment of short- and long-term memory
- Mild memory loss
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Panic attacks (less than weekly)
- Panic attacks (weekly)
- Suspiciousness

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for a mental disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:
- Gross impairment in thought processes or communication
- Persistent delusions or hallucinations
- Grossly inappropriate behavior
- Persistent danger of hurting self or others
- Intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- Disorientation to time or place
- Memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38

CFR 4.126, 38 CFR 4.130)

Under alternate rating criteria an overall 10 percent evaluation is assigned for your traumatic brain injury with vertigo 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)

2. Evaluation of irritable bowel syndrome associated with TBI with gastroesophageal reflux disease (previously rated as gastro-esophageal reflux disease) currently evaluated as 10 percent disabling.

The evaluation of irritable bowel syndrome associated with TBI with gastroesophageal reflux disease (previously rated as gastro-esophageal reflux disease) is increased to 30 percent disabling effective January 8, 2021. (38 CFR 4.1, 38 CFR 3.400)

Per 38 CFR §4.14, the evaluation of the same disability under different diagnoses is to be avoided. In your case, 7319: irritable bowel syndrome associated with TBI, 7346: gastroesophageal reflux disease (GERD) are evaluated based on the same manifestation of

symptoms, and a single rating has been assigned under the diagnostic code that reflects your predominant disability.

The effective date of this grant is January 8, 2021. Entitlement to an increased evaluation has been established from the date the claim was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim was received. (38 CFR 3.400)

Service connection for irritable bowel syndrome associated with traumatic brain injury 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 VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)

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

We have assigned a 30 percent evaluation for your irritable bowel syndrome associated with traumatic brain injury based on:
• Abdominal distress
• Diarrhea

Additional symptom(s) include:
• Frequent episodes of bowel disturbance

This is the highest schedular evaluation allowed under the law for irritable bowel syndrome. (38 CFR 4.114)

Under alternate rating criteria your condition warrants a 10 percent evaluation for your GERD based on:
• Dysphagia
• Persistently recurrent epigastric distress
• Pyrosis (Heartburn and/or Reflux)
• Regurgitation
• 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. (38 CFR 4.114)

3. Service connection for erectile dysfunction associated with TBI.

Service connection for erectile dysfunction associated with TBI 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 VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)

A noncompensable evaluation is assigned from January 8, 2021.

We have assigned a noncompensable evaluation for your erectile dysfunction associated with TBI based on:
• Erectile dysfunction (38 CFR 4.31)

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 20 percent is not warranted for penile deformity with loss of erectile power unless the evidence shows:
• Deformity with loss of erectile power. (38 CFR 4.115b)

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. (38 CFR 4.20)

4. Service connection for scar, laceration to crown of head associated with TBI.

Service connection for scar, laceration to crown of head associated with TBI 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 VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)

A noncompensable evaluation is assigned from January 8, 2021.

We have assigned a 0 percent evaluation for your scar, laceration to crown of head based on:
• Scar / Area of the head, face or neck with no compensable symptoms

Additional symptom(s) include:
• Scar 1 Location: Head, face, or neck
• Scar 1 type: scar
• Scar 1: Skin hypo-pigmented

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

Your first scar/area has a length of 2 cm and a width of 0.5 cm for a total area of 1 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s), scar(s) due to other causes, or other disfigurement of the head, face, or neck unless the evidence shows:
• One characteristic of disfigurement. (38 CFR 4.118)

The eight characteristics of disfigurement, for purposes of evaluation under 38 CFR §4.118 are: scar 5 or more inches (13 or more cm) in length; scar at least one-quarter inch (0.6 cm) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches (39 cm^2); skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 cm^2); underlying soft tissue missing in an area exceeding six square inches (39 cm^2); and, skin indurated and inflexible in an area exceeding six square inches (39 cm^2). The characteristic(s) of disfigurement may be caused by one scar or by multiple scars; the characteristic(s) required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation. A characteristic of disfigurement, even if present in more than one scar, is only counted once for evaluation purposes.

5. Entitlement to special monthly compensation based on loss of use.

Entitlement to special monthly compensation is warranted in this case because criteria regarding loss of use of creative organ were met from January 8, 2021. (38 CFR 3.350, 38 CFR 3.400, 38 CFR 3.401)

} Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (k) and 38 CFR 3.350(a) on account of loss of use of a creative organ from January 8, 2021.

The effective date of this grant is January 8, 2021. Entitlement to an increased evaluation has been established from the date the claim was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim was received. (38 CFR 3.400)

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.