DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

[redacted]

VA File Number
[redacted]

Represented By:
VETERANS OF FOREIGN WARS OF THE US
Rating Decision
08/12/2022

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Navy from April 24, 2002 to November 3, 2006. We received your supplemental claim on August 10, 2021. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for lumbosacral strain with IVDS (claimed as back pain) is granted with an evaluation of 40 percent effective August 10, 2021.

2. Service connection for left lower radiculopathy (femoral nerve) is granted with an evaluation of 20 percent effective August 10, 2021.

3. Service connection for left lower radiculopathy (sciatic nerve) is granted with an evaluation of 20 percent effective August 10, 2021.

4. Service connection for right lower radiculopathy (femoral nerve) is granted with an evaluation

of 20 percent effective August 10, 2021.

5. Service connection for right lower radiculopathy (sciatic nerve) is granted with an evaluation of 20 percent effective August 10, 2021.

6. Service connection for cervical strain with IVDS is granted with an evaluation of 30 percent effective August 10, 2021.

7. Service connection for right upper radiculopathy is granted with an evaluation of 40 percent effective August 10, 2021.

8. Service connection for left upper radiculopathy is granted with an evaluation of 30 percent effective August 10, 2021.

9. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from August 10, 2021.

10. A decision on entitlement to compensation for personality disorder with depression and anxiety is deferred.

11. The claim for an increased evaluation for uvulopalatopharyngoplasty residuals with nasal regurgitation is deferred.

12. A separate evaluation for painful scar remaining soft palate, post UPPP residual is granted with an evaluation of 10 percent effective September 16, 2021.

EVIDENCE

- DD Form 214, Certificate of Release or Discharge from Active Duty, for the period dated April 24, 2002 to November 3, 2006
- Service Treatment and Personnel Records for the period of service dated April 24, 2002 to November 3, 2006, received February 6, 2017 and April 6, 2017
- Rating decision dated June 26, 2017
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received January 24, 2020
- VA Form 21-4138, Statement in Support of Claim, received January 24, 2020
- VA contract examination, VES, conducted December 21, 2020
- Rating decision dated January 14, 2021
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received May 5, 2021
- Rating decision dated May 11, 2021
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received August 10, 2021
- Your Written Statements, received August 10, 2021
- Sinusitis/Rhinitis and Other Conditions of the Nose, Throat, Larynx, and Pharynx Disability

Benefits Questionnaire dated July 11, 2021, received August 10, 2021
- Memo from Craig N. Bash, M.D. dated July 28, 2021, received August 10, 2021
- Neck (Cervical Spine) Conditions Benefits Questionnaire dated July 11, 2021, received August 10, 2021
- Back (Thoracolumbar Spine) Conditions Benefits Questionnaire dated July 11, 2021, received August 10, 2021
- Letter from Jeff Sloyer, MD dated May 24, 2021, received August 10, 2021
- Mental Disorders (Other than PTSD and Eating Disorders) Disability Benefits Questionnaire dated July 19, 2021, received August 10, 2021
- VA letter dated August 20, 2021
- VA contract examinations, VES, conducted September 16, 2021 and September 22, 2021
- Section (§) 5103 Notice Response, received October 7, 2021
- VAMC (Veterans Affairs Medical Center) treatment records, Kansas City VA Medical Center, for the period June 9, 2017 to June 16, 2022

REASONS FOR DECISION

1. Service connection for lumbosacral strain with IVDS (claimed as back pain).

Service connection for lumbosacral strain with IVDS has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

Note: We received the Back Conditions Disability Benefits Questionnaire (DBQ) completed by your private provider on July 11, 2021; however, it was not considered sufficient for rating purposes as the examiner did not fully answer all the questions and provided conflicting information within the report. (38 CFR 4.6)

An evaluation of 40 percent is assigned from August 10, 2021.

We have assigned a 40 percent evaluation for your back pain based on:
• Forward flexion of the thoracolumbar spine 30 degrees or less

Additional symptom(s) include:
• Combined range of motion of the thoracolumbar spine not greater than 120 degrees
• Guarding not resulting in abnormal gait or abnormal spinal contour
• Localized tenderness not resulting in abnormal gait or abnormal spinal contour
• Muscle spasm not resulting in abnormal gait or abnormal spinal contour
• No incapacitating episodes
• 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 were applied based on additional joint limitation.

A higher evaluation of 50 percent is not warranted for diseases and injuries of the thoracolumbar spine unless the evidence shows:
• Unfavorable ankylosis of the entire thoracolumbar spine. (38 CFR 4.71a)

Additionally, a higher evaluation of 60 percent is not warranted for intervertebral disc syndrome unless the evidence shows:
• Incapacitating episodes having a total duration of at least six weeks during the past 12 months. (38 CFR 4.71a)

2. Service connection for left lower radiculopathy (femoral nerve) as secondary to the service-connected disability of lumbosacral strain with IVDS.

Service connection for left lower radiculopathy (femoral nerve) has been established as related to the service-connected disability of lumbosacral strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 20 percent is assigned from August 10, 2021.

We have assigned a 20 percent evaluation for your left lower radiculopathy based on:
• Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 30 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

3. Service connection for left lower radiculopathy (sciatic nerve) as secondary to the service-connected disability of lumbosacral strain with IVDS.

Service connection for left lower radiculopathy (sciatic nerve) has been established as related to the service-connected disability of lumbosacral strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 20 percent is assigned from August 10, 2021.

We have assigned a 20 percent evaluation for your left lower radiculopathy based on:
• Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.120, 38 CFR 4.124a)

4. Service connection for right lower radiculopathy (femoral nerve) as secondary to the service-connected disability of lumbosacral strain with IVDS.

Service connection for right lower radiculopathy (femoral nerve) has been established as related to the service-connected disability of lumbosacral strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 20 percent is assigned from August 10, 2021.

We have assigned a 20 percent evaluation for your right lower radiculopathy based on:
• Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 30 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

5. Service connection for right lower radiculopathy (sciatic nerve) as secondary to the service-connected disability of lumbosacral strain with IVDS.

Service connection for right lower radiculopathy (sciatic nerve) has been established as related to the service-connected disability of lumbosacral strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 20 percent is assigned from August 10, 2021.

We have assigned a 20 percent evaluation for your right lower radiculopathy based on:
• Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.120, 38 CFR 4.124a)

6. Service connection for cervical strain with IVDS.

Service connection for cervical strain with IVDS has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

Note: We received the Neck Conditions Disability Benefits Questionnaire (DBQ) completed by your private provider on July 11, 2021; however, it was not considered sufficient for rating purposes as the examiner did not fully answer all the questions and provided conflicting information within the report. (38 CFR 4.6)

An evaluation of 30 percent is assigned from August 10, 2021.

We have assigned a 30 percent evaluation for your cervical strain based on:
• Forward flexion of the cervical spine 15 degrees or less

Additional symptom(s) include:
• Combined range of motion of the cervical spine not greater than 170 degrees
• Forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees
• Guarding not resulting in abnormal gait or abnormal spinal contour
• Localized tenderness not resulting in abnormal gait or abnormal spinal contour
• Muscle spasm not resulting in abnormal gait or abnormal spinal contour

• No incapacitating episodes
• 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 were applied based on additional joint limitation.

A higher evaluation of 40 percent is not warranted for intervertebral disc syndrome unless the evidence shows:
• Incapacitating episodes having a total duration of at least four weeks but less than six weeks during the past 12 months. (38 CFR 4.71a)

Additionally, a higher evaluation of 40 percent is not warranted for diseases and injuries of the cervical spine unless the evidence shows:
• Unfavorable ankylosis of the entire cervical spine. (38 CFR 4.71a)

7. Service connection for right upper radiculopathy as secondary to the service-connected disability of cervical strain with IVDS.

Service connection for right upper radiculopathy has been established as related to the service-connected disability of cervical strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 40 percent is assigned from August 10, 2021.

We have assigned a 40 percent evaluation for your right upper radiculopathy based on:
• Moderate incomplete paralysis of the major extremity (38 CFR 4.124a)

Although the upper radicular group (fifth and sixth cervicals), lower radicular group and middle radicular group nerves were shown to be affected, only one evaluation is allowable in this case.

This rating is based on the highest rated nerve. (38 CFR 4.14)

A higher evaluation of 70 percent is not warranted for paralysis of all radicular nerve groups unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

8. Service connection for left upper radiculopathy as secondary to the service-connected disability of cervical strain with IVDS.

Service connection for left upper radiculopathy has been established as related to the service-connected disability of cervical strain with IVDS. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is August 10, 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 claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

An evaluation of 30 percent is assigned from August 10, 2021.

We have assigned a 30 percent evaluation for your left upper radiculopathy based on:
• Moderate incomplete paralysis of the minor extremity (38 CFR 4.124a)

Although the upper radicular group (fifth and sixth cervicals), lower radicular group and middle radicular group nerves were shown to be affected, only one evaluation is allowable in this case. This rating is based on the highest rated nerve. (38 CFR 4.14)

A higher evaluation of 60 percent is not warranted for paralysis of all radicular nerve groups unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

9. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35 based on permanent and total disability status.

Eligibility for Dependents' Educational Assistance is derived from a Veteran who was discharged under other than dishonorable conditions; and has permanent and total service-

connected disability(ies); or permanent and total disability(ies) existed at the time of death; or the Veteran died as a result of service-connected disability(ies). Also, eligibility exists for a service member 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 Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is granted as the evidence shows you currently have a totally disabling service-connected disability or disabilities, permanent in nature effective August 10, 2021, the date you met the criteria for this benefit. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021, 38 CFR 3.400, 38 3.2500, 38 CFR 3.2501)

Evidence we have used to grant permanent and total disability status: VA examination dated September 16, 2021 and VA outpatient treatment records

10. Compensation for personality disorder with depression and anxiety.

The issue of compensation for personality disorder with depression and anxiety is deferred for the following information: pending additional development.

11. Evaluation of uvulopalatopharyngoplasty residuals with nasal regurgitation currently evaluated as 0 percent disabling.

The evaluation for uvulopalatopharyngoplasty residuals with nasal regurgitation is deferred for the following: pending clarification of the medical evidence.

12. A separate evaluation for painful scar remaining soft palate, post UPPP residual as secondary to the service-connected disability of uvulopalatopharyngoplasty residuals with nasal regurgitation.

A separate evaluation for painful scar remaining soft palate, post UPPP residual has been established as related to the service-connected disability of uvulopalatopharyngoplasty residuals with nasal regurgitation. (38 CFR 3.303, 38 CFR 3.310)

An effective date of September 16, 2021, is assigned based on the earliest date of diagnosis shown on VA examination. (38 CFR 3.400)

An evaluation of 10 percent is assigned from September 16, 2021.

The law allows additional compensation based on scars, which are painful or unstable even if compensable based on other factors. An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar. If one or more scars are both unstable and painful, 10 percent will be added to the evaluation that is based on the total number of unstable or painful scars. (38 CFR 4.118)

We have assigned a 10 percent evaluation for your painful scar remaining soft palate, post UPPP residual based on:
• One or two scars that are unstable or painful

Additional symptom(s) include:
• Scar 1: Painful

A higher evaluation of 20 percent is not warranted for unstable or painful scars unless the evidence shows:
• One or two scars that are unstable or painful, with at least one scar being both painful and unstable; or,
• Three or four scars that are unstable or painful. (38 CFR 4.118)

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.