DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

INTRODUCTION

The records reflect that you are a Veteran of the Vietnam Era. You served in the Navy from May 1, 1972 to February 1, 1975. The Board of Veterans Appeals remanded the case to our office on April 19, 2023. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability is granted with an evaluation of 70 percent effective October 2, 2014.

2. Service connection for obstructive sleep apnea with insomnia is granted with an evaluation of 50 percent effective October 2, 2014.

3. Service connection for irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia is granted with an evaluation of 30 percent effective October 2, 2014.

4. Service connection for fecal incontinence is granted with an evaluation of 10 percent effective October 2, 2014.

5. Service connection for erectile dysfunction is granted with an evaluation of 0 percent effective October 2, 2014.

6. Entitlement to individual unemployability is granted effective October 2, 2014.

7. Entitlement to special monthly compensation based on loss of use of a creative organ is granted from October 2, 2014.

8. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from October 2, 2014.

EVIDENCE

- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received October 2, 2014
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received October 2, 2014
- VA Examination, Loma Linda VA Medical Center, dated March 14, 2016
- VA Examination, LHI, dated June 17, 2021
- VA Examination, LHI, dated June 21, 2021
- VA Examination, LHI, dated June 23, 2021
- Disability Benefits Questionnaire (DBQ) - Veteran Provided, received October 22, 2021
- VA Examination, VES, dated November 18, 2021
- Disability Benefits Questionnaire (DBQ) - Veteran Provided, received March 20, 2022
- Disability Benefits Questionnaire (DBQ) - Veteran Provided, received April 3, 2022
- VA Examination, LHI, dated April 8, 2022
- Disability Benefits Questionnaire (DBQ) - Veteran Provided, received April 11, 2022
- Board of Veterans' Appeals decision dated April 19, 2023
- Statement in support of claim received April 21, 2023
- Private Medical Records, Dr. Renzo Sanchez Gambetta, received April 21, 2023
- San Diego VA Medical Center records for the period of November 13, 2007 to July 20, 2023
- Albuquerque VA Medical Center records for the period of March 31, 1999 to July 22, 1999
- Long Beach VA Medical Center records for the period of January 18, 2000 to December 11, 2000
- Loma Linda VA Medical Center records for the period of April 23, 2010 to September 17, 2020
- West Los Angeles VA Medical Center records for the period of February 6, 2009 to February 26, 2013
- Palo Alto VA Medical Center records for the period of May 21, 2014 to March 29, 2017

REASONS FOR DECISION

1. Service connection for neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability.

The Board of Veterans' Appeals (BVA) decision of April 19, 2023 determined that entitlement to service connection for neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability is warranted. Please refer to BVA decision of April 19, 2023 for more information as to the reasons and bases for this decision.

The effective date of this grant is October 2, 2014. 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)

Service connection for neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 70 percent is assigned from October 2, 2014.

We have assigned a 70 percent evaluation for your neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability based on:
• Anxiety
• Circumlocutory speech
• Circumstantial speech
• 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
• Forgetting directions
• Forgetting names
• Forgetting recent events
• Impaired abstract thinking
• Inability to establish and maintain effective relationships
• Intermittent inability to perform activities of daily living
• Intermittent inability to perform maintenance of minimal personal hygiene
• Mild memory loss
• Near-continuous depression affecting the ability to function independently, appropriately and effectively
• Near-continuous panic affecting the ability to function independently, appropriately and effectively
• Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood

• Stereotyped speech

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 thrombosis of the brain unless the evidence shows:
• Convalescence. (38 CFR 4.120, 38 CFR 4.124a)

Additionally, 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)

This rating decision represents a total grant of benefits sought on appeal for this issue. As such, this issue is considered resolved in full.

2. Service connection for obstructive sleep apnea with insomnia (claimed as fatigue) as secondary to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability.

The Board of Veterans' Appeals (BVA) decision of April 19, 2023 determined that entitlement to service connection for obstructive sleep apnea with insomnia is warranted. Please refer to BVA decision of April 19, 2023 for more information as to the reasons and bases for this decision.

Service connection for obstructive sleep apnea with insomnia has been established as related to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is October 2, 2014. 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 50 percent is assigned from October 2, 2014.

We have assigned a 50 percent evaluation for your obstructive sleep apnea with insomnia based on:
• Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine

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)

This rating decision represents a total grant of benefits sought on appeal for this issue. As such, this issue is considered resolved in full.

3. Service connection for irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia as secondary to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability.

The Board of Veterans' Appeals (BVA) decision of April 19, 2023 determined that entitlement to service connection for digestive disability is warranted. Please refer to BVA decision of April 19, 2023 for more information as to the reasons and bases for this decision.

Per VA regulations the evaluation of the same disability under different diagnoses is to be avoided. In your case, irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia 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. (38 CFR 4.14)

Service connection for irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia has been established as related to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is October 2, 2014. 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 October 2, 2014.

We have assigned a 30 percent evaluation for your irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia based on:
• Abdominal distress
• Alternating diarrhea and constipation

• Diarrhea
• Severe symptoms

Additional symptom(s) include:
• Disturbances of bowel function

This is the highest schedular evaluation allowed under the law for irritable bowel syndrome. (38 CFR 4.113, 38 CFR 4.114)

If evaluated separately, a noncompensable evaluation would be assigned for your hiatal hernia based on:
• Pyrosis (Heartburn and/or Reflux) (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 10 percent is not warranted for hiatal hernia unless the evidence shows:
• Two or more of the symptoms for the 30 percent evaluation of less severity. (A higher evaluation of 30 percent is not warranted unless there is 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)

A higher evaluation of 60 percent is not warranted unless there are symptoms of pain, vomiting, material weight loss, and hematemesis or melena with moderate anemia, or other symptom combinations productive of severe impairment of health. (38 CFR 4.112, 38 CFR 4.113, 38 CFR 4.114)

This rating decision represents a total grant of benefits sought on appeal for this issue. As such, this issue is considered resolved in full.

4. Service connection for fecal incontinence as secondary to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability.

The Board of Veterans' Appeals (BVA) decision of April 19, 2023 determined that entitlement to service connection for digestive disability is warranted. Please refer to BVA decision of April 19, 2023 for more information as to the reasons and bases for this decision.

Service connection for fecal incontinence has been established as related to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is October 2, 2014. 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 10 percent is assigned from October 2, 2014.

We have assigned a 10 percent evaluation for your fecal incontinence based on:
• Occasional moderate leakage

A higher evaluation of 30 percent is not warranted for impairment of sphincter control unless the evidence shows:
• Occasional involuntary bowel movements, necessitating wearing of pad. (38 CFR 4.114)

This rating decision represents a total grant of benefits sought on appeal for this issue. As such, this issue is considered resolved in full.

5. Service connection for erectile dysfunction as secondary to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability.

Service connection for erectile dysfunction has been established as related to the service-connected disability of neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability. (38 CFR 3.303, 38 CFR 3.310)

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt is to be resolved in favor of the claimant. Based on the evidence and resolving any doubt in your favor, service connection is granted for erectile dysfunction. (38 CFR 3.102, 38 CFR 3.303, 38 CFR 4.3, 38 CFR 4.6)

The effective date of this grant is October 2, 2014. 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 October 2, 2014.

We have assigned a noncompensable evaluation for your erectile dysfunction based on:
• Erectile dysfunction, without penile deformity (38 CFR 4.31)

This is the highest schedular evaluation allowed under the law for erectile dysfunction, with or without penile deformity. (38 CFR 4.115b)

6. Entitlement to individual unemployability.

Total disability will be considered to exist where there is present any impairment of mind and body that is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is unable to secure or follow a substantially gainful occupation because of service-connected disabilities, provided that the Veteran meets the schedular requirements. Specifically, if there is only one such disability, this disability shall be ratable at 60 percent or more; if there are two or more disabilities, there shall be at least one disability that is ratable at 40 percent or more and enough additional disability to bring the combined rating to 70 percent or more. (38 CFR 3.340, 38 CFR 3.341, 38 CFR 4.16)

The effective date of this grant is October 2, 2014. Entitlement to individual unemployability 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)

Entitlement to individual unemployability is granted from October 2, 2014 because you are unable to secure or follow a substantially gainful occupation as a result of your service-connected obstructive sleep apnea with insomnia, peripheral neuropathy of the sciatic nerve of the right lower extremity, peripheral neuropathy of the sciatic nerve of the left lower extremity, irritable bowel syndrome with urgency of bowel, diverticulitis and hiatal hernia, erectile dysfunction, neurological disability, to include organic brain syndrome, toxic encephalopathy, and multiple chemical sensitivity with an acquired psychiatric disability, fecal incontinence. (38 CFR 4.16)

7. 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 a creative organ were met from October 2, 2014. (38 CFR 3.350, 38 CFR 3.400, 38 CFR 3.401)

Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, complete organic aphonia with constant inability to communicate by speech or, in the case of a woman veteran, loss of 25% or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy), or following receipt of radiation treatment of breast tissue.

The effective date of this grant is October 2, 2014. Entitlement 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)

8. 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. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

The effective date of this grant is October 2, 2014, the date the evidence shows that you meet requirements for Dependents' Educational Assistance (DEA). (38 CFR 3.400, 38 CFR 21.3021)

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.