

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
11/17/1997	12/02/2006	Marine Corps	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	2		None

JURISDICTION: Claim for Increase Received 07/11/2022

ASSOCIATED CLAIM(s): 020; New/Increase; 07/11/2022

SUBJECT TO COMPENSATION (1.SC)

9413 OTHER SPECIFIED TRAUMA AND STRESSOR RELATED DISORDER
Service Connected, Gulf War, Incurred
Static Disability
10% from 03/17/2014
30% from 01/05/2022

5237 LUMBOSACRAL STRAIN (PREVIOUSLY RATED AS LOW BACK STRAIN)
Service Connected, Gulf War, Incurred
Static Disability
10% from 12/03/2006, Confirmed and Continued Evaluation
Original Date of Denial: 01/14/2008

6260 TINNITUS
Service Connected, Gulf War, Incurred-COMBAT

10% from 12/03/2006

7804 RIGHT SHOULDER CYST REMOVAL RESIDUALS
Service Connected, Gulf War, Incurred
Static Disability
10% from 12/03/2006, Confirmed and Continued Evaluation
Original Date of Denial: 01/14/2008

6522 ALLERGIC RHINITIS [Gulf War Presumptive 3.320/Particulate Matter]

N41YE3UE



Service Connected, Gulf War, Presumptive
Static Disability
10% from 08/10/2022

7802 STATUS POST RIGHT THUMB LACERATION WITH RESIDUALS
Service Connected, Gulf War, Incurred
Static Disability
0% from 01/05/2022

COMBINED EVALUATION FOR COMPENSATION :

30% from 12/03/2006
50% from 01/05/2022

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSCPeacetime)

5237 NECK CONDITION SECONDARY BACK CONDITION ASSOCIATED WITH
LUMBOSACRAL STRAIN (PREVIOUSLY RATED AS LOW BACK STRAIN)
Not Service Connected, Not Incurred/Caused by Service

5260 LEFT SHOULDER CONDITION
Not Service Connected, Not Aggravated by Service

5260 RIGHT KNEE CONDITION
Not Service Connected, Not Incurred/Caused by Service

5260-5261 LEFT KNEE INJURY RESIDUALS
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 01/14/2008
6100 BILATERAL HEARING LOSS
Not Service Connected, Peacetime, Hearing Normal for VA Purposes

Original Date of Denial: 01/14/2008
6201 RESIDUALS OF EAR INFECTION
Not Service Connected, Peacetime, Not Incurred/Caused by Service



Original Date of Denial: 01/14/2008

6599-6511 SINUSITIS
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 01/14/2008

7820 LEFT LEG INSECT BITE RESIDUALS
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 01/14/2008

8100 HEADACHES
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/12/2015

8520 RIGHT LEG RADICULOPATHY SECONDARY TO BACK ASSOCIATED WITH
LUMBOSACRAL STRAIN (PREVIOUSLY RATED AS LOW BACK STRAIN)
Not Service Connected, No Diagnosis

8520 LEFT LEG RADICULOPATHY SECONDARY TO BACK ASSOCIATED WITH
LUMBOSACRAL STRAIN (PREVIOUSLY RATED AS LOW BACK STRAIN)
Not Service Connected, Not Incurred/Caused by Service

8850-5025 FIBROMYALGIA [Environmental Hazard in Gulf War/Undiagnosed Illness]
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/12/2015

8866-6602 UPPER RESPIRATORY CONDITION/TROUBLE BREATHING [Environmental
Hazard in Gulf War/Undiagnosed Illness]
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/12/2015

8885-8515 PERIPHERAL NEUROPATHY, RIGHT HAND AND ARM [Environmental Hazard in
Gulf War/Undiagnosed Illness]
Not Service Connected, Peacetime, No Diagnosis



Original Date of Denial: 02/12/2015

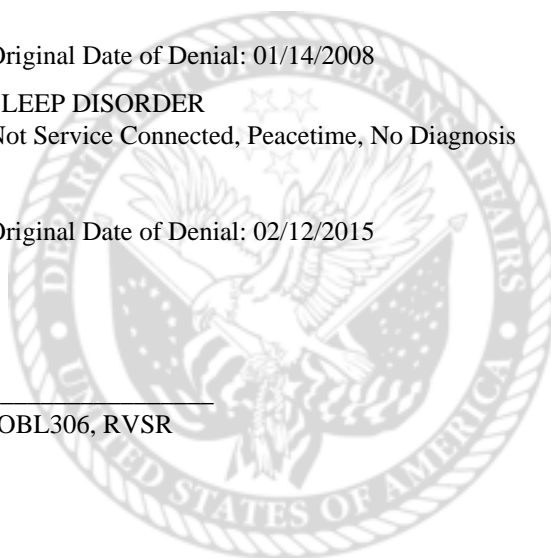
9411 POST TRAUMATIC STRESS DISORDER [PTSD/Medical/Veteran Evidence]
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 01/14/2008

9499-9435 SLEEP DISORDER
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/12/2015

eSign: certified by VSCSNOBL306, RVSR





**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**

**Represented By:
ANDREW J MCKEOWN
Rating Decision
01/17/2023**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from November 17, 1997 to December 2, 2006. You filed a claim for increased evaluation and a claim for new benefits that was received on July 11, 2022. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for allergic rhinitis is granted with an evaluation of 10 percent effective August 10, 2022.
2. Evaluation of lumbosacral strain (previously rated as low back strain) which is currently 10 percent disabling, is continued.
3. Evaluation of right shoulder cyst removal residuals, which is currently 10 percent disabling, is continued.
4. Service connection for left leg radiculopathy secondary to back is denied.



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5. Service connection for neck condition secondary back condition is denied.
6. Service connection for right leg radiculopathy secondary to back is denied.
7. Service connection for left shoulder condition is denied.
8. Service connection for right knee condition is denied.

EVIDENCE

- Service Personnel Records received on May 1, 2014 for the period of November 17, 1997 to December 2, 2006
- Service Treatment Records received on December 1, 2006 and May 1, 2014 for the period of November 17, 1997 to December 2, 2006
- VAMC (Veterans Affairs Medical Center), Indianapolis treatment records, for the period October 31, 2007 to November 17, 2007
- VAMC (Veterans Affairs Medical Center), San Antonio, TX treatment records, for the period February 26, 2007 to December 20, 2021
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received January 5, 2022
- VA Letter Concerning Your Claim, dated January 7, 2022
- Correspondence from McKeown Law, LLP, July 11, 2022
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received July 11, 2022
- VA Letter Concerning Your Claim, dated July 15, 2022
- VA contract examination, Shoulder and Arm Condition conducted by Veterans Evaluation Services, September 22, 2022 with addenda dated October 20, 2022 and December 7, 2022
- VA contract examination Scars/Disfigurement conducted by Logistics Health Incorporated., September 12, 2022
- VA contract examination, Scars/Disfigurement conducted by Veterans Evaluation Services, September 22, 2022
- VA contract examination, Back (Thoracolumbar Spine) Conditions conducted by Logistics Health Incorporated July 28, 2022
- VA contract examination, Hand and Finger Conditions conducted by Logistics Health Incorporated (LHI) July 28, 2022
- VA contract examination, Sinusitis/Rhinitis and other conditions of the Nose, Throat, Larynx and Pharynx conducted by Logistics Health Incorporated July 28, 2022
- VA contract examination, Shoulder and Arm Conditions conducted by Logistics Health Incorporated July 28, 2022
- VA contract examination, Neck (Cervical Spine) Conditions conducted by Logistics Health Incorporated, July 28, 2022
- VA contract examination, Knee and Lower Leg Conditions Logistics Health Incorporated, July 28, 2022
- Rating Decision, dated August 26, 2022
- VA Letter Concerning Your Claim, dated August 30, 2022



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- Rhinitis with polyps. (38 CFR 4.97)

2. Evaluation of lumbosacral strain (previously rated as low back strain) currently evaluated as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition has not increased in severity sufficiently to warrant a higher evaluation.

The evaluation of lumbosacral strain (previously rated as low back strain) is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your lumbosacral strain based on:

- Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees
- Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees

Additional symptom(s) include:

- 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 diseases and injuries of the thoracolumbar spine unless the evidence shows:

- Combined range of motion of the thoracolumbar spine not greater than 120 degrees; or,
- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or,
- Muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. (38 CFR 4.71a)

3. Evaluation of right shoulder cyst removal residuals currently evaluated as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition has not increased in severity sufficiently to warrant a higher evaluation.

Although recent evidence shows some improvement in the condition, sustained improvement has not been definitively established. {38 CFR 3.344}

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,



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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 previously assigned a 10 percent evaluation for your right shoulder cyst removal residuals 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)

4. Service connection for left leg radiculopathy secondary to back.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that left leg radiculopathy secondary to back is related to the service-connected condition of lumbosacral strain (previously rated as low back strain), nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.310)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for left leg radiculopathy secondary to back is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304)

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that your claimed disability is related to a service-connected disability, nor is there any evidence that your claimed



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disability was incurred during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The VA medical opinion found no link between your diagnosed medical condition and your service connected condition lumbosacral strain. The VA examiner opined that, your left leg radiculopathy is a separate entity entirely from your lumbosacral strain and unrelated to it

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. ^{N41YE3UE} You are currently service connected for lumbosacral strain.

You have been diagnosed with a disability. VA Back Conditions examination dated July 28, 2022 shows diagnosis of radiculopathy (sciatica), left lower extremity.

5. Service connection for neck condition secondary back condition.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that neck condition secondary back condition is related to the service-connected condition of lumbosacral strain, nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.310)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for neck condition secondary back condition is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304)

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. The VA examiner opined that, your neck condition is a separate entity entirely from your low back strain and unrelated to it.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that your claimed



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disability is related to a service-connected disability, nor is there any evidence that your claimed disability was incurred during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

The VA medical opinion found no link between your diagnosed medical condition and your service connected condition lumbosacral strain.

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for lumbosacral strain.

You have been diagnosed with a disability. VA Neck Conditions examination dated July 28, 2022 shows diagnosis of cervical strain.

6. Service connection for right leg radiculopathy secondary to back.

Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show that right leg radiculopathy secondary to back is related to the service-connected condition of lumbosacral strain (previously rated as low back strain), nor is there any evidence of this disability during military service. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.310)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. Service connection for right leg radiculopathy secondary to back is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for right leg radiculopathy secondary to back is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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)

The evidence does not show a current diagnosed disability. (38 CFR 3.159, 38 CFR 3.303)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304)

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition.



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Service connection may be granted for a disease or injury which resulted from a service-connected disability or was aggravated thereby. The evidence does not show a current clinical diagnosis of your claimed disability that is related to a service-connected disability, nor is there any evidence that your claimed disability was incurred during military service. (38 CFR 3.303, 38 CFR 3.306, 38 CFR 3.310)

Favorable Findings identified in this decision:

The claimed primary disability is service-connected. You are currently service connected for lumbosacral strain.

7. Service connection for left shoulder condition.

The evidence shows that left shoulder condition existed prior to service. There must be objective evidence of worsening of a preexisting condition in order to establish service connection by aggravation. There is no evidence that the condition permanently worsened as a result of service. (38 CFR 3.303, 38 CFR 3.304, 38 CFR 3.306)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for left shoulder condition is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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)

The evidence does not show that your condition, which existed prior to service permanently worsened as a result of service. (38 CFR 3.306)

The evidence does not show an event, disease or injury in service. (38 CFR 3.303, 38 CFR 3.304)

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition.

We did not find a link between your medical condition and military service. (38 CFR 3.303)

The VA medical opinion found no link between your diagnosed medical condition and military service.

Favorable Findings identified in this decision:



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The claimed issue existed prior to military service. Enlistment examination dated June 11, 1998 for service period November 17, 1997 to December 2, 2006 shows fractured left clavicle displaced due to motor vehicle accident.

You have been diagnosed with a disability. VA Shoulder and Arm Conditions examination dated July 28, 2022 shows diagnosis of left shoulder strain.

8. Service connection for right knee condition.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for right knee condition is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304)

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)

While your service treatment records reflect complaints, treatment, or a diagnosis similar to that claimed, the medical evidence supports the conclusion that a persistent disability was not present in service. (38 CFR 3.303, 38 CFR 3.304)

There was no continuity of symptoms from service to the present. (38 CFR 3.303)

We did not find a link between your medical condition and military service. (38 CFR 3.303)

The VA medical opinion found no link between your diagnosed medical condition and military service. The VA examiner opined that, the right knee pain noted in service was acute only.

Favorable Findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Service treatment records for service period November 17, 1997 to December 2, 2006 shows small laceration right knee, pain right knee and right knee contusion chronic.

You have been diagnosed with a disability. VA Knee and Lower Leg Conditions examination dated July 28, 2022 shows diagnosis of right knee strain.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the



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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.

