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| ACTIVE DUTY | | | |
|-------------|------------|--------------|------------------------|
| EOD | RAD | BRANCH | CHARACTER OF DISCHARGE |
| 07/27/1998 | 12/01/2011 | Marine Corps | Honorable |

| LEGACY CODES | | | |
|----------------|-------------|------------------|------------------|
| ADD'L SVC CODE | COMBAT CODE | SPECIAL PROV CDE | FUTURE EXAM DATE |
| | 1 | | None |

JURISDICTION: Higher Level Review Received 12/07/2022

ASSOCIATED CLAIM(s): 030; Higher-Level Review Rating; 12/07/2022

SUBJECT TO COMPENSATION (1.SC)

5269-5276 BILATERAL PES PLANUS WITH PLANTAR FASCIITIS [PredischARGE Exam]
 Service Connected, Gulf War, Incurred
 Static Disability
 0% from 12/02/2011 (5276)
 30% from 04/20/2022, Earlier Effective Date Granted

5201 ROTATOR CUFF STRAIN, RIGHT SHOULDER [PredischARGE Exam]
 Service Connected, Gulf War, Incurred
 Static Disability
 10% from 12/02/2011 (5201-5024)
 20% from 04/20/2022, Earlier Effective Date Granted

5242 DEGENERATIVE ARTHRITIS, LUMBAR SPINE [PredischARGE Exam]
 Service Connected, Gulf War, Incurred
 Static Disability
 10% from 12/02/2011
 20% from 04/20/2022, Earlier Effective Date Granted

8520 LEFT LEG RADICULOPATHY ASSOCIATED WITH DEGENERATIVE ARTHRITIS, LUMBAR SPINE
 Service Connected, Gulf War, Secondary
 Static Disability
 20% from 04/20/2022, Earlier Effective Date Granted



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8520 RIGHT LEG RADICULOPATHY ASSOCIATED WITH DEGENERATIVE ARTHRITIS, LUMBAR SPINE
Service Connected, Gulf War, Secondary
Static Disability
20% from 04/20/2022, Earlier Effective Date Granted

5201-5024 ROTATOR CUFF STRAIN, LEFT SHOULDER [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
10% from 12/02/2011, Deferred Evaluation

5215-5024 STRAIN, RIGHT WRIST [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
10% from 12/02/2011

5215 LEFT WRIST SPRAIN (CLAIMED AS LEFT WRIST CONDITION)
Service Connected, Gulf War, Incurred
Static Disability
10% from 04/20/2022, Earlier Effective Date Granted

5252 STRAIN, LEFT HIP, LIMITATION OF FLEXION [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
10% from 12/02/2011 (5252-5024)
10% from 04/20/2022, Confirmed and Continued Evaluation

5260 PATELLOFEMORAL SYNDROME, RIGHT KNEE [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
0% from 12/02/2011
10% from 04/20/2022, Earlier Effective Date Granted

5260 PATELLOFEMORAL SYNDROME, LEFT KNEE [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
0% from 12/02/2011
10% from 04/20/2022, Earlier Effective Date Granted

6260 TINNITUS
Service Connected, Gulf War, Incurred
Static Disability
10% from 04/20/2022, Earlier Effective Date Granted

5229 RIGHT HAND STRAIN (CLAIMED AS RIGHT HAND CONDITION)
Service Connected, Gulf War, Incurred
Static Disability



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10% from 09/28/2022, Difference of Opinion

5229 LEFT HAND STRAIN (CLAIMED AS LEFT HAND CONDITION)
Service Connected, Gulf War, Incurred
Static Disability
10% from 09/28/2022, Difference of Opinion

5251 STRAIN, LEFT HIP, LIMITATION OF EXTENSION
Service Connected, Gulf War, Incurred
Static Disability
0% from 04/20/2022, Earlier Effective Date Granted

5253 STRAIN, LEFT HIP, LIMITATION OF ABDUCTION
Service Connected, Gulf War, Incurred
Static Disability
0% from 04/20/2022, Earlier Effective Date Granted

COMBINED EVALUATION FOR COMPENSATION :

40% from 12/02/2011 (Bilateral factor of 2.7 Percent for diagnostic codes 5024, 5024, 5024)
90% from 04/20/2022 (Bilateral factor of 8.1 Percent for diagnostic codes 5201, 5024, 5024, 5215, 5252, 5260, 5260, 5276, 8520, 8520)
100% from 09/28/2022 (Bilateral factor of 8.5 Percent for diagnostic codes 5201, 5024, 5024, 5229, 5215, 5229, 5252, 5260, 5260, 5276, 8520, 8520)

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

5237 NECK CONDITION ASSOCIATED WITH DEGENERATIVE ARTHRITIS, LUMBAR SPINE
Not Service Connected, Peacetime, Not Secondary

Original Date of Denial: 12/05/2022

5252 RIGHT HIP CONDITION ASSOCIATED WITH STRAIN, LEFT HIP, LIMITATION OF FLEXION
Not Service Connected, Peacetime, Not Secondary

Original Date of Denial: 12/05/2022

6099-6066 BILATERAL HYPEROPIC ASTIGMATISM (CLAIMED VISION LOSS) [Predischage Exam]
Not Service Connected, Peacetime, Constitutional/Developmental Abnormality



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Original Date of Denial: 12/10/2012

6100 BILATERAL SENSORINEURAL HEARING LOSS [Predischarge Exam]
Not Service Connected, Peacetime, Hearing Normal for VA Purposes

Original Date of Denial: 12/10/2012

6502 DEVIATED SEPTUM
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 12/05/2022

6511 SINUSITIS
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 12/05/2022

7319 IBS
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 12/05/2022

7805 SCAR OF HEAD, FACE, OR NECK
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 12/05/2022

8510 RIGHT ARM RADICULOPATHY
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 12/05/2022

8510 LEFT ARM RADICULOPATHY
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 12/05/2022

9999-9902 DENTAL IMPLANTS AND CROWNS, S/P MOUTH INJURY [Predischarge Exam]



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Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 12/10/2012

DEFERRED ISSUES - VETERAN

6204 VERTIGO
Deferred, Peacetime
Static Disability

6522 RHINITIS
Deferred, Peacetime
Static Disability

8045 TBI
Deferred, Peacetime
Static Disability

8100 HEADACHES
Deferred, Peacetime
Static Disability

9434 DEPRESSION
Deferred, Peacetime
Static Disability

Deferred Evaluation - rotator cuff strain, left shoulder

NOTE to reviewer: Although, all issues were not listed on the 0996 the argument submitted by representative indicated all issues on claim for effective date. Therefore, all issues that were granted are addressed on HLR.

esign: certified by vbasptclarkn, DRO





DEPARTMENT OF VETERANS AFFAIRS
Department of Veteran Affairs
Regional Office

Represented By:
ANDREW J MCKEOWN
Rating Decision
03/08/2023

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from July 27, 1998 to December 1, 2011. We received your request for a Higher Level Review on December 7, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

Please note: The evidentiary record closed on the date of notice of our prior decision. VA received additional evidence, which was not part of that decision after the record closed. If you would like VA to consider this evidence, you may submit a supplemental claim at any time; however, VA must receive your application within one year of the date of notice of this decision to preserve your right to receive the maximum possible benefit. (38 CFR 3.2500)

DECISION

1. A 30 percent evaluation has been assigned for bilateral pes planus with plantar fasciitis from April 20, 2022.
2. A 20 percent evaluation has been assigned for degenerative arthritis, lumbar spine from April



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20, 2022.

3. Entitlement to an earlier effective date for service connection for left leg radiculopathy is granted effective April 20, 2022.

4. Entitlement to an earlier effective date for service connection for right leg radiculopathy is granted effective April 20, 2022.

5. A 20 percent evaluation has been assigned for rotator cuff strain, right shoulder from April 20, 2022.

6. A 10 percent evaluation has been assigned for patellofemoral syndrome, left knee from April 20, 2022.

7. A 10 percent evaluation has been assigned for patellofemoral syndrome, right knee from April 20, 2022.

8. Entitlement to an earlier effective date for service connection for left wrist sprain (claimed as left wrist condition) is granted effective April 20, 2022.

9. Entitlement to an earlier effective date for service connection for tinnitus is granted effective April 20, 2022.

10. Entitlement to an earlier effective date for service connection for strain, left hip, limitation of abduction is granted effective April 20, 2022.

11. Entitlement to an earlier effective date for service connection for strain, left hip, limitation of extension is granted effective April 20, 2022.

12. Evaluation of strain, left hip, limitation of flexion, which is currently 10 percent disabling, is continued.

13. A difference of opinion has been asserted during the higher-level review for left hand strain (claimed as left hand condition).

14. A difference of opinion has been asserted during the higher-level review for right hand strain (claimed as right hand condition).

EVIDENCE

- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received September 28, 2022
- VA Form 21-4138, Statement in Support of Claim, received September 28, 2022



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shows bilateral involvement with pronounced symptoms; marked pronation, extreme tenderness of plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances. (38 CFR 4.57, 38 CFR 4.71a)

The plantar fasciitis warrants a 10 percent evaluation based on:

- No relief from non-surgical treatment for the left foot
- No relief from non-surgical treatment for the right foot
- Painful motion, bilateral involvement

A higher evaluation of 20 percent is not warranted for plantar fasciitis unless the evidence shows:

- No relief from both non-surgical and surgical treatment, unilateral. (38 CFR 4.71a)

VA regulations provide when service connection is established for pes planus and plantar fasciitis, evaluate the symptoms of both conditions together under the rating criteria warranting the highest evaluation for the combined impairment. In this case, the higher evaluation is warranted based on pes planus.

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports
- 38 CFR §4.3 Resolution of Reasonable Doubt
- 38 CFR §4.6 Evaluation of Evidence
- 38 CFR §4.7 Higher of Two Evaluations
- 38 CFR §4.10 Functional Impairment
- 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
- Analogous Ratings
- 38 CFR §4.21 Application of rating schedule.
- 38 CFR §4.40 Functional loss.
- 38 CFR §4.41 History of injury.
- 38 CFR §4.42 Complete medical examination of injury cases.
- 38 CFR §4.43 Osteomyelitis.
- 38 CFR §4.44 The bones.
- 38 CFR §4.45 The joints.
- 38 CFR §4.46 Accurate measurement.
- 38 CFR §4.59 Painful motion.
- 38 CFR §4.71 Measurement of ankylosis and joint motion.
- 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
- 38 CFR §3.1 Definitions.



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38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
 38 CFR §3.2601 Higher-level review.

2. Entitlement to an earlier effective date for the evaluation assigned to the service connected degenerative arthritis, lumbar spine.

Entitlement to an earlier effective date for the evaluation assigned for degenerative arthritis, lumbar spine has been granted. (38 CFR 3.400) The effective date is April 20, 2022 the date we received the intent to file for compensation as you filed a complete claim for compensation within one year. (38 CFR 3.155)

An evaluation of 20 percent is assigned from April 20, 2022.

The evaluation of degenerative arthritis, lumbar spine is continued as 20 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

There was no evidence of any incapacitating episodes during the past 12 months. (For VA purposes, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.)

Range of motion was normal and without pain. Forward flexion was at 80 degrees (normal is 90 degrees), extension was 20 degrees (normal is 30 degrees), right lateral flexion was at 30 degrees (normal is 30 degrees), left lateral flexion was 30 degrees (normal is 30 degrees), right lateral rotation was 30 degrees (normal is 30 degrees), left lateral rotation was 30 degrees (normal is 30 degrees). There was no loss of function or decreased range of motion after repetitive motion. Examiner noted after repetitive use over time and during a flare-up flexion was at 40 degrees, extension to 10 degrees, right and left lateral rotation to 30 degrees and right and left lateral extension to 30 degrees.

We have assigned a 20 percent evaluation for your degenerative arthritis, lumbar spine based on:

- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees

Additional symptom(s) include:

- Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees
- Localized tenderness not resulting in abnormal gait or abnormal spinal contour



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

- Favorable ankylosis of the entire thoracolumbar spine; or,
- Forward flexion of the thoracolumbar spine 30 degrees or less. (38 CFR 4.71a)

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports
- 38 CFR §4.3 Resolution of Reasonable Doubt
- 38 CFR §4.6 Evaluation of Evidence
- 38 CFR §4.7 Higher of Two Evaluations
- 38 CFR §4.10 Functional Impairment
- 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
- Analogous Ratings
- 38 CFR §4.21 Application of rating schedule.
- 38 CFR §4.40 Functional loss.
- 38 CFR §4.41 History of injury.
- 38 CFR §4.42 Complete medical examination of injury cases.
- 38 CFR §4.43 Osteomyelitis.
- 38 CFR §4.44 The bones.
- 38 CFR §4.45 The joints.
- 38 CFR §4.46 Accurate measurement.
- 38 CFR §4.59 Painful motion.
- 38 CFR §4.71 Measurement of ankylosis and joint motion.
- 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
- 38 CFR §3.2601 Higher-level review.
- 38 CFR §3.1 Definitions.
- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.155 (Historical) Informal claims.
- 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
- 38 CFR §3.400 General
- 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
- 38 CFR §3.2500 Review of decisions.



3. Entitlement to an earlier effective date for service connection of left leg radiculopathy.

Entitlement to an earlier effective date for service connection for left leg radiculopathy has been granted. (38 CFR 3.400)

The evaluation of left leg radiculopathy is increased to 20 percent disabling effective April 20, 2022. (38 CFR 4.1, 38 CFR 3.400, 38 CFR 3.155) The effective date is the date we received the intent to file for compensation as you filed a complete claim within one year.

The type of impairment noted was paralysis. The left lower extremity was affected. The sciatic nerve was affected. There were subjective symptoms noted on exam. Muscle strength testing showed the following findings: knee extension was 5/5, ankle plantar flexion was 5/5, ankle dorsiflexion was 5/5. Deep tendon reflexes showed the following findings: knee was 0+, ankle was 0+. Sensory examination showed the following findings: upper anterior thigh was normal, thigh/knee area was decreased, lower leg/ankle area was decreased, foot/toes area was decreased. There was no atrophy noted on exam. This impairment more nearly approximates a moderate evaluation.

We have assigned a 20 percent evaluation for your left leg 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)

Laws and regulations applicable to this issue:

38 CFR §3.155 How to file a claim.
 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
 38 CFR §3.321 General Rating Considerations
 38 CFR §3.400 General
 38 CFR §3.2500 Review of decisions.
 38 CFR §4.1 Essentials of Evaluative Ratings
 38 CFR §4.2 Interpretation of Examination Reports
 38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
 Analogous Ratings
 38 CFR §4.21 Application of rating schedule.
 38 CFR §4.120 Evaluations by comparison.
 38 CFR §4.123 Neuritis, cranial or peripheral.
 38 CFR §4.124 Neuralgia, cranial or peripheral.
 38 CFR §4.124a Schedule of ratings—neurological conditions and convulsive disorders.
 38 CFR §3.2601 Higher-level review.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.



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38 CFR §3.155 (Historical) Informal claims.

38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.

38 CFR §3.400 General

38 CFR §3.114 Change of law or Department of Veterans Affairs issue.

4. Entitlement to an earlier effective date for service connection of right leg radiculopathy.

Entitlement to an earlier effective date for service connection for right leg radiculopathy is granted effective April 20, 2022.

The evaluation of right leg radiculopathy is increased to 20 percent disabling effective April 20, 2022. (38 CFR 4.1, 38 CFR 3.400, CFR 3.155)) The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year and have continuously pursued your claim since this time.

The type of impairment noted was paralysis. The right lower extremity was affected. The sciatic nerve was affected. There were subjective symptoms noted on exam. Muscle strength testing showed the following findings: knee extension was 5/5, ankle plantar flexion was 5/5, ankle dorsiflexion was 5/5. Deep tendon reflexes showed the following findings: knee was 0+, ankle was 0+. Sensory examination showed the following findings: upper anterior thigh was normal, thigh/knee area was decreased, lower leg/ankle area was decreased, foot/toes area was decreased. There was no atrophy noted on exam. This impairment more nearly approximates a moderate evaluation.

We have assigned a 20 percent evaluation for your right leg 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)

Laws and regulations applicable to this issue:

38 CFR §3.155 How to file a claim.

38 CFR §3.159 Department of Veterans Affairs assistance in developing claims

38 CFR §3.321 General Rating Considerations

38 CFR §3.400 General

38 CFR §3.2500 Review of decisions.

38 CFR §4.1 Essentials of Evaluative Ratings

38 CFR §4.2 Interpretation of Examination Reports

38 CFR §4.3 Resolution of Reasonable Doubt

38 CFR §4.6 Evaluation of Evidence

38 CFR §4.7 Higher of Two Evaluations

38 CFR §4.10 Functional Impairment

38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities Analogous Ratings

38 CFR §4.21 Application of rating schedule.



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38 CFR §4.120 Evaluations by comparison.
 38 CFR §4.123 Neuritis, cranial or peripheral.
 38 CFR §4.124 Neuralgia, cranial or peripheral.
 38 CFR §4.124a Schedule of ratings—neurological conditions and convulsive disorders.
 38 CFR §3.2601 Higher-level review.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.

5. Entitlement to an earlier effective date for the evaluation assigned to the service connected rotator cuff strain, right shoulder.

Entitlement to an earlier effective date for the evaluation assigned for rotator cuff strain, right shoulder has been granted. (38 CFR 3.400)

A 20 percent evaluation has been assigned for rotator cuff strain, right shoulder from April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year. (38 CFR 3.155)

The evaluation of rotator cuff strain, right shoulder is continued as 20 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted no edema, instability, abnormal movement, effusion, weakness, redness, heat, deformity, guarding of movement, malalignment, or drainage. There was no subluxation or ankylosis.

Range of motion was: flexion to 140 degrees with pain (180 degrees is normal); abduction to 110 degrees with pain (180 degrees is normal); internal rotation to 40 degrees with pain (90 degrees is normal); and external rotation to 40 degrees with pain (90 degrees is normal). Range of motion was not additionally limited due to pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. The examiner noted after repetitive use over time and flare-ups the flexion would be at 130 degrees, abduction to 100 degrees, internal rotation to 40 degrees, and external rotation to 40 degrees.

We have assigned a 20 percent evaluation for your rotator cuff strain, right shoulder based on:

- Painful motion of the shoulder

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



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Mitchell v. Shinseki, have been considered and are not warranted. Although there was additional loss of range of motion with repetitive movements, these changes did not rise to the next higher level of disability.

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 applied under 38 CFR §4.59.

A higher evaluation of 30 percent is not warranted for limitation of motion of the arm unless the evidence shows:

- Limited motion of the arm midway between side and shoulder level (flexion and/or abduction limited to 45 degrees). (38 CFR 4.69, 38 CFR 4.71a)

A higher evaluation of 30 percent is not warranted unless flexion and/or abduction is limited to 25° from the side. (38 CFR 4.69, 38 CFR 4.71a)

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports
- 38 CFR §4.3 Resolution of Reasonable Doubt
- 38 CFR §4.6 Evaluation of Evidence
- 38 CFR §4.7 Higher of Two Evaluations
- 38 CFR §4.10 Functional Impairment
- 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
- Analogous Ratings
- 38 CFR §4.21 Application of rating schedule.
- 38 CFR §4.40 Functional loss.
- 38 CFR §4.41 History of injury.
- 38 CFR §4.42 Complete medical examination of injury cases.
- 38 CFR §4.43 Osteomyelitis.
- 38 CFR §4.44 The bones.
- 38 CFR §4.45 The joints.
- 38 CFR §4.46 Accurate measurement.
- 38 CFR §4.59 Painful motion.
- 38 CFR §4.71 Measurement of ankylosis and joint motion.
- 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
- 38 CFR §3.2601 Higher-level review.
- 38 CFR §3.1 Definitions.
- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.155 (Historical) Informal claims.
- 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to



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reopen.

38 CFR §3.400 General

38 CFR §3.114 Change of law or Department of Veterans Affairs issue.

6. Entitlement to an earlier effective date for the evaluation assigned to the service connected patellofemoral syndrome, left knee.

Entitlement to an earlier effective date for the evaluation assigned for patellofemoral syndrome, left knee has been granted. (38 CFR 3.400, 38 CFR 3.155)

A 10 percent evaluation has been assigned for patellofemoral syndrome, left knee from April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year.

The evaluation of patellofemoral syndrome, left knee is continued as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted the knee showed no signs of edema, instability, abnormal movement, effusion, weakness, redness, heat, deformity, malalignment, drainage, subluxation, or guarding of movement. Examination of the knee revealed no locking pain, genu recurvatum, or crepitus. Upon examination of the knee, there was no ankylosis.

The range of motion of your knee was reported as follows: flexion to 90 degrees (normal is 140 degrees) with pain and extension to 0 degrees with pain (0 degrees is normal). Your range of motion was not additionally limited due to pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. After repetitive use over time and during a flare-up the examiner noted flexion would be at 80 degrees and 0 degrees.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

We have assigned a 10 percent evaluation for your patellofemoral syndrome, left knee based on:

- Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10 percent is assigned)

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 applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of flexion of the knee unless the evidence shows:



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- Limitation of flexion of 16 to 30 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of extension of the knee unless the evidence shows:

- Limitation of extension of 15 to 19 degrees. (38 CFR 4.71a)

Laws and regulations applicable to this issue:

38 CFR §3.155 How to file a claim.
 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
 38 CFR §3.321 General Rating Considerations
 38 CFR §3.400 General
 38 CFR §3.2500 Review of decisions.
 38 CFR §4.1 Essentials of Evaluative Ratings
 38 CFR §4.2 Interpretation of Examination Reports
 38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
 Analogous Ratings
 38 CFR §4.21 Application of rating schedule.
 38 CFR §4.40 Functional loss.
 38 CFR §4.41 History of injury.
 38 CFR §4.42 Complete medical examination of injury cases.
 38 CFR §4.43 Osteomyelitis.
 38 CFR §4.44 The bones.
 38 CFR §4.45 The joints.
 38 CFR §4.46 Accurate measurement.
 38 CFR §4.59 Painful motion.
 38 CFR §4.71 Measurement of ankylosis and joint motion.
 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
 38 CFR §3.2601 Higher-level review.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.

7. Entitlement to an earlier effective date for the evaluation assigned to the service connected patellofemoral syndrome, right knee.

Entitlement to an earlier effective date for the evaluation assigned for patellofemoral syndrome, right knee has been granted. (38 CFR 3.400)



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A 10 percent evaluation has been assigned for patellofemoral syndrome, right knee from April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year and have continuously pursued your claim since this time. (38 CFR 3.155)

The evaluation of patellofemoral syndrome, right knee is continued as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted the knee showed no signs of edema, instability, abnormal movement, effusion, weakness, redness, heat, deformity, malalignment, drainage, subluxation, or guarding of movement. Examination of the knee revealed no locking pain, genu recurvatum, or crepitus. Upon examination of the knee, there was no ankylosis.

The range of motion of your knee was reported as follows: flexion to 90 degrees (normal is 140 degrees) with pain and extension to 0 degrees with pain (0 degrees is normal). Your range of motion was not additionally limited due to pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. After repetitive use over time and during a flare-up the examiner noted flexion would be at 80 degrees and 0 degrees.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

We have assigned a 10 percent evaluation for your patellofemoral syndrome, right knee based on:

- Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10 percent is assigned)

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 applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of extension of the knee unless the evidence shows:

- Limitation of extension of 15 to 19 degrees. (38 CFR 4.71a)

Laws and regulations applicable to this issue:
38 CFR §3.155 How to file a claim.



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38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
 38 CFR §3.321 General Rating Considerations
 38 CFR §3.400 General
 38 CFR §3.2500 Review of decisions.
 38 CFR §4.1 Essentials of Evaluative Ratings
 38 CFR §4.2 Interpretation of Examination Reports
 38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
 Analogous Ratings
 38 CFR §4.21 Application of rating schedule.
 38 CFR §4.40 Functional loss.
 38 CFR §4.41 History of injury.
 38 CFR §4.42 Complete medical examination of injury cases.
 38 CFR §4.43 Osteomyelitis.
 38 CFR §4.44 The bones.
 38 CFR §4.45 The joints.
 38 CFR §4.46 Accurate measurement.
 38 CFR §4.59 Painful motion.
 38 CFR §4.71 Measurement of ankylosis and joint motion.
 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
 38 CFR §3.2601 Higher-level review.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.

8. Entitlement to an earlier effective date for service connection of left wrist sprain (claimed as left wrist condition).

Entitlement to an earlier effective date for service connection for left wrist sprain (claimed as left wrist condition) has been granted. (38 CFR 3.400)

An evaluation of 10 percent is assigned from April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a completed claim for compensation within one year.

The VA examiner noted the wrist showed no signs of edema, instability, abnormal movement, effusion, weakness, redness, heat, deformity, malalignment, drainage, subluxation, or guarding of movement. Your range of motion was noted as: dorsiflexion 70/70 degrees with pain, palmar flexion 80/80 degrees with pain, radial deviation 20/20 degrees with pain, and ulnar deviation



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45/45 degrees with pain. Your range of motion and joint function was not additionally limited by pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. VA examiner noted after repetitive use over time and during a flare-up your dorsiflexion would be at 60 degrees, palmar flexion at 70 degrees, ulnar deviation at 45 degrees, and radial deviation at 20 degrees.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

We have assigned a 10 percent evaluation for your left wrist sprain (claimed as left wrist condition) based on:

- Painful motion of the wrist (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the wrist, the minimum compensable evaluation of 10 percent is assigned.)

Additional symptom(s) include:

- Dorsiflexion limited to 15 degrees or beyond
- Palmar flexion limited, but not in line with forearm

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. Although there was additional loss of range of motion with repetitive movements, these changes did not rise to the next higher level of disability.

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 applied under 38 CFR §4.59.

This is the highest schedular evaluation allowed under the law for limited motion of the wrist. (38 CFR 4.69, 38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for ankylosis of the wrist unless the evidence shows:

- Favorable ankylosis in 20 degrees to 30 degrees of dorsiflexion. (38 CFR 4.69, 38 CFR 4.71a)

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports



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38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
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 38 CFR §4.21 Application of rating schedule.
 38 CFR §4.40 Functional loss.
 38 CFR §4.41 History of injury.
 38 CFR §4.42 Complete medical examination of injury cases.
 38 CFR §4.43 Osteomyelitis.
 38 CFR §4.44 The bones.
 38 CFR §4.45 The joints.
 38 CFR §4.46 Accurate measurement.
 38 CFR §4.59 Painful motion.
 38 CFR §4.71 Measurement of ankylosis and joint motion.
 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
 38 CFR §3.2601 Higher-level review.

9. Entitlement to an earlier effective date for service connection of tinnitus.

Entitlement to an earlier effective date for service connection for tinnitus has been granted. (38 CFR 3.400) The effective date is April 20, 2022 the date we received your intent to file for compensation as you filed a complete claim within one year. (38 CFR 3.155)

The evaluation of tinnitus is continued as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

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

- Recurrent

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head.

This is the highest schedular evaluation allowed under the law for tinnitus. (38 CFR 4.87)



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Laws and regulations applicable to this issue:

38 CFR §3.155 How to file a claim.
 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
 38 CFR §3.321 General Rating Considerations
 38 CFR §3.400 General
 38 CFR §3.2500 Review of decisions.
 38 CFR §4.1 Essentials of Evaluative Ratings
 38 CFR §4.2 Interpretation of Examination Reports
 38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
 Analogous Ratings
 38 CFR §4.21 Application of rating schedule.
 38 CFR §4.87 Schedule of ratings—ear
 38 CFR §3.2601 Higher-level review.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
 38 CFR §3.2500 Review of decisions.

10. Entitlement to an earlier effective date for service connection of strain, left hip, limitation of abduction.

Entitlement to an earlier effective date for service connection for strain, left hip, limitation of abduction has been granted. (38 CFR 3.400)

Entitlement to an earlier effective date for service connection for strain, left hip, limitation of abduction is granted effective April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year for compensation. (38 CFR 3.155)

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted that there was no evidence of edema, instability, giving way, crepitus, deformity, or malunion of the hip joint. Your range of motion was noted as: flexion 100/125 with pain, backward extension 20/30 with pain, adduction 20/25 with pain, abduction 30/45 with pain, internal rotation 30/40 with pain, and external rotation 30/60 with pain. Your range of motion and joint function was not additionally limited by pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. Examiner noted after repetitive use over time and during



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a flare-up your flexion would be at 90 degrees, extension to 20 degrees, adduction to 20 degrees, abduction to 30 degrees, internal and external rotation to 30 degrees.

An evaluation of 0 percent is assigned from April 20, 2022.

We have assigned a 0 percent evaluation for your strain, left hip, limitation of abduction based on:

- Limitation of abduction of the thigh, motion possible beyond 10 degrees
- Limitation of adduction of the thigh, can cross legs
- Limitation of internal rotation of the thigh
- Limitation of rotation of the thigh, can toe-out more than 15 degrees on the affected leg

Additional symptom(s) include:

- Painful Abduction
- Painful Adduction
- Painful Extension
- Painful External Rotation
- Painful Internal Rotation

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 limitation of extension of the thigh unless the evidence shows:

- Extension of the thigh limited to 5 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 10 percent is not warranted for limitation of flexion of the thigh unless the evidence shows:

- Flexion of the thigh limited to 31-45 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 10 percent is not warranted for impairment of the thigh unless the evidence shows:

- Limitation of adduction of the thigh, cannot cross legs; or,
- Limitation of rotation of the thigh, cannot toe-out more than 15 degrees on the affected leg. (38 CFR 4.71a)

Laws and regulations applicable to this issue:

38 CFR §3.155 How to file a claim.

38 CFR §3.159 Department of Veterans Affairs assistance in developing claims

38 CFR §3.321 General Rating Considerations

38 CFR §3.400 General

38 CFR §3.2500 Review of decisions.

38 CFR §4.1 Essentials of Evaluative Ratings

38 CFR §4.2 Interpretation of Examination Reports



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38 CFR §4.3 Resolution of Reasonable Doubt
 38 CFR §4.6 Evaluation of Evidence
 38 CFR §4.7 Higher of Two Evaluations
 38 CFR §4.10 Functional Impairment
 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
 Analogous Ratings
 38 CFR §4.21 Application of rating schedule.
 38 CFR §3.1 Definitions.
 38 CFR §3.155 How to file a claim.
 38 CFR §3.155 (Historical) Informal claims.
 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
 38 CFR §3.400 General
 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
 38 CFR §4.40 Functional loss.
 38 CFR §4.41 History of injury.
 38 CFR §4.42 Complete medical examination of injury cases.
 38 CFR §4.43 Osteomyelitis.
 38 CFR §4.44 The bones.
 38 CFR §4.45 The joints.
 38 CFR §4.46 Accurate measurement.
 38 CFR §4.59 Painful motion.
 38 CFR §4.71 Measurement of ankylosis and joint motion.
 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
 38 CFR §3.2601 Higher-level review.

11. Entitlement to an earlier effective date for service connection of strain, left hip, limitation of extension.

Entitlement to an earlier effective date for service connection for strain, left hip, limitation of extension has been granted. (38 CFR 3.400)

Entitlement to an earlier effective date for service connection for strain, left hip, limitation of extension is granted effective April 20, 2022. The effective date is the date we received your intent to file for compensation as you filed a complete claim within one year for compensation. (38 CFR 3.155)

An evaluation of 0 percent is assigned from April 20, 2022.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted that there was no evidence of edema, instability, giving way, crepitus, deformity, or malunion of the hip joint. Your range of motion was noted as: flexion 100/125 with pain, backward extension 20/30 with pain, adduction 20/25 with pain, abduction 30/45 with pain, internal rotation 30/40 with pain, and external rotation 30/60 with pain. Your range of motion



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and joint function was not additionally limited by pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. Examiner noted after repetitive use over time and during a flare-up your flexion would be at 90 degrees, extension to 20 degrees, adduction to 20 degrees, abduction to 30 degrees, internal and external rotation to 30 degrees.

We have assigned a 0 percent evaluation for your strain, left hip, limitation of abduction based on:

- Extension of the thigh limited beyond 5 degrees

Additional symptom(s) include:

- Painful Abduction
- Painful Adduction
- Painful Extension
- Painful External Rotation
- Painful Internal Rotation

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 limitation of extension of the thigh unless the evidence shows:

- Extension of the thigh limited to 5 degrees. (38 CFR 4.71a)

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports
- 38 CFR §4.3 Resolution of Reasonable Doubt
- 38 CFR §4.6 Evaluation of Evidence
- 38 CFR §4.7 Higher of Two Evaluations
- 38 CFR §4.10 Functional Impairment
- 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
- Analogous Ratings
- 38 CFR §4.21 Application of rating schedule.
- 38 CFR §3.1 Definitions.
- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.155 (Historical) Informal claims.
- 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
- 38 CFR §3.400 General



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38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
 38 CFR §4.40 Functional loss.
 38 CFR §4.41 History of injury.
 38 CFR §4.42 Complete medical examination of injury cases.
 38 CFR §4.43 Osteomyelitis.
 38 CFR §4.44 The bones.
 38 CFR §4.45 The joints.
 38 CFR §4.46 Accurate measurement.
 38 CFR §4.59 Painful motion.
 38 CFR §4.71 Measurement of ankylosis and joint motion.
 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
 38 CFR §3.2601 Higher-level review.

12. Evaluation of strain, left hip, limitation of flexion currently evaluated as 10 percent disabling.

The evaluation of strain, left hip, limitation of flexion is continued as 10 percent disabling.

We reviewed the evidence received and determined your service-connected condition(s) hasn't/haven't increased in severity sufficiently to warrant a higher evaluation.

The VA examiner noted that there was no evidence of edema, instability, giving way, crepitus, deformity, or malunion of the hip joint. Your range of motion was noted as: flexion 100/125 with pain, backward extension 20/30 with pain, adduction 20/25 with pain, abduction 30/45 with pain, internal rotation 30/40 with pain, and external rotation 30/60 with pain. Your range of motion and joint function was not additionally limited by pain, fatigue, weakness, lack of endurance, or incoordination following repetitive use. Examiner noted after repetitive use over time and during a flare-up your flexion would be at 90 degrees, extension to 20 degrees, adduction to 20 degrees, abduction to 30 degrees, internal and external rotation to 30 degrees.

Although, you indicated on your higher level review attached argument you were disagreeing with the effective date assigned review of the file shows you were previously service connected for left hip strain at 10 percent. The rating decision changed the diagnostic code the previous rating was under to account for current level of severity; however, that did not change the previous 10 percent evaluation. Therefore, the effective date is not being addressed.

We have assigned a 10 percent evaluation for your strain, left hip, limitation of abduction based on:

- Painful motion of the hip. (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the thigh at the hip, the minimum compensable evaluation of 10 percent is assigned.)

Additional symptom(s) include:

- Flexion of the thigh beyond 45 degrees
- Painful Abduction



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- Painful Adduction
- Painful Extension
- Painful External Rotation
- Painful Internal Rotation

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 applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of flexion of the thigh unless the evidence shows:

- Flexion of the thigh limited to 21-30 degrees. (38 CFR 4.71a)

Laws and regulations applicable to this issue:

- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.159 Department of Veterans Affairs assistance in developing claims
- 38 CFR §3.321 General Rating Considerations
- 38 CFR §3.400 General
- 38 CFR §3.2500 Review of decisions.
- 38 CFR §4.1 Essentials of Evaluative Ratings
- 38 CFR §4.2 Interpretation of Examination Reports
- 38 CFR §4.3 Resolution of Reasonable Doubt
- 38 CFR §4.6 Evaluation of Evidence
- 38 CFR §4.7 Higher of Two Evaluations
- 38 CFR §4.10 Functional Impairment
- 38 CFR §4.20 Appropriate Diagnostic Code(s) 38 CFR Part 4 Schedule for Rating Disabilities
- Analogous Ratings
- 38 CFR §4.21 Application of rating schedule.
- 38 CFR §3.1 Definitions.
- 38 CFR §3.155 How to file a claim.
- 38 CFR §3.155 (Historical) Informal claims.
- 38 CFR §3.157 (Historical) Report of examination or hospitalization as claim for increase or to reopen.
- 38 CFR §3.400 General
- 38 CFR §3.114 Change of law or Department of Veterans Affairs issue.
- 38 CFR §4.40 Functional loss.
- 38 CFR §4.41 History of injury.
- 38 CFR §4.42 Complete medical examination of injury cases.
- 38 CFR §4.43 Osteomyelitis.
- 38 CFR §4.44 The bones.
- 38 CFR §4.45 The joints.
- 38 CFR §4.46 Accurate measurement.
- 38 CFR §4.59 Painful motion.
- 38 CFR §4.71 Measurement of ankylosis and joint motion.
- 38 CFR §4.71a Schedule of ratings—musculoskeletal system.
- 38 CFR §3.2601 Higher-level review.



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13. Higher Level Review for left hand strain (claimed as left hand condition).

The issue of left hand strain (claimed as left hand condition) was returned due to the need to obtain additional evidence to substantiate your claim. We will develop for VA medical opinion.

14. Higher Level Review for right hand strain (claimed as right hand condition).

The issue of right hand strain (claimed as right hand condition) was returned due to the need to obtain additional evidence to substantiate your claim. We will develop for VA medical opinion.

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.

