

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
09/07/1979	01/31/2006	Navy	Honorable

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

JURISDICTION: Supplemental Claim Received 08/04/2022

ASSOCIATED CLAIM(s): 040; Supplemental Claim Rating; 08/04/2022

SUBJECT TO COMPENSATION (1.SC)

6847 OBSTRUCTIVE SLEEP APNEA [Predischage Exam]
Service Connected, Gulf War, Incurred

30% from 02/01/2006
50% from 09/12/2006
Original Date of Denial: 02/28/2006

8511 LEFT ARM RADICULOPATHY ASSOCIATED WITH STATUS POST CERVICAL FUSION WITH INTERVERTEBRAL DISC SYNDROME
Service Connected, Gulf War, Secondary
Static Disability
40% from 12/13/2021

5241 STATUS POST CERVICAL FUSION WITH INTERVERTEBRAL DISC SYNDROME [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
20% from 02/01/2006 (5237)
20% from 12/13/2021

5242 DEGENERATIVE DISC DISEASE, LUMBAR SPINE, AND S/P L5-S1 PARTIAL HEMILAMINECTOMY, DISCECTOMY AND FUSION [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability



10% from 02/01/2006 (5237)
20% from 12/13/2021

8520 LEFT LEG RADICULOPATHY WITH SENSORY DEFICIT [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
10% from 02/01/2006 (8599-8520)
20% from 12/13/2021

6260 TINNITUS [Predischage Exam]
Service Connected, Gulf War, Incurred

10% from 02/01/2006

5260 RIGHT KNEE STRAIN ASSOCIATED WITH LEFT KNEE STRAIN
Service Connected, Peacetime, Secondary
Static Disability
10% from 12/13/2021 -Intent To File

5260 LEFT KNEE STRAIN
Service Connected, Peacetime, Incurred
Static Disability
10% from 12/13/2021, Confirmed and Continued Evaluation
Original Date of Denial: 08/01/2022

5299-5227 STATUS POST RIGHT 5TH FINGER FRACTURE [Predischage Exam]
Service Connected, Gulf War, Incurred

0% from 02/01/2006

7399-7346 MILD GASTROESOPHAGEAL REFLUX DISEASE [GERD] [Predischage Exam]
Service Connected, Gulf War, Incurred

0% from 02/01/2006

7802 SURGICAL SCARS (POSTERIOR TRUNK) [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
0% from 02/01/2006

7806 ECZEMA, BILATERAL HANDS [Predischage Exam]
Service Connected, Gulf War, Incurred
Static Disability
0% from 02/01/2006

7800 SURGICAL SCARS (NECK) ASSOCIATED WITH STATUS POST CERVICAL
FUSION WITH INTERVERTEBRAL DISC SYNDROME
Service Connected, Gulf War, Secondary



Static Disability
0% from 12/13/2021

7802 SURGICAL SCARS (RIGHT HIP) ASSOCIATED WITH DEGENERATIVE DISC DISEASE, LUMBAR SPINE, AND S/P L5-S1 PARTIAL HEMILAMINECTOMY, DISCECTOMY AND FUSION
Service Connected, Gulf War, Secondary
Static Disability
0% from 12/13/2021

8865-6522 NON ALLERGIC RHINITIS [Gulf War Presumptive 3.320/Particulate Matter]
[Environmental Hazard in Gulf War/Undiagnosed Illness]
Service Connected, Peacetime, Incurred
Static Disability
0% from 12/13/2021, Confirmed and Continued Evaluation
Original Date of Denial: 08/01/2022

COMBINED EVALUATION FOR COMPENSATION :

60% from 02/01/2006
70% from 09/12/2006
90% from 12/13/2021 (Bilateral factor of 3.5 Percent for diagnostic codes 8520, 5260, 5260)

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

5201 LEFT SHOULDER CONDITION
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 08/01/2022

6100 BILATERAL HEARING LOSS [Predischage Exam]
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/28/2006

6204 VERTIGO
Not Service Connected, No Diagnosis

, Confirmed and Continued Decision
Original Date of Denial: 08/01/2022

7319 IRRITABLE BOWEL SYNDROME [Predischage Exam]



Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 02/28/2006

8045 TRAUMATIC BRAIN INJURY (TBI)
Not Service Connected, No Diagnosis

, Confirmed and Continued Decision

Original Date of Denial: 08/01/2022

8511 RIGHT ARM RADICULOPATHY ASSOCIATED WITH STATUS POST CERVICAL
FUSION WITH INTERVERTEBRAL DISC SYNDROME
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 08/01/2022

8520 RIGHT LEG RADICULOPATHY ASSOCIATED WITH DEGENERATIVE DISC
DISEASE, LUMBAR SPINE, AND S/P L5-S1 PARTIAL HEMI LAMINECTOMY,
DISCECTOMY AND FUSION
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 08/01/2022

8865-6513 SINUSITIS [Gulf War Presumptive 3.320/Particulate Matter] [Environmental Hazard in
Gulf War/Other Unidentified]
Not Service Connected, No Diagnosis

, Confirmed and Continued Decision

Original Date of Denial: 08/01/2022

9434 ACQUIRED PSYCHIATRIC CONDITION (TO INCLUDE DEPRESSION)
ASSOCIATED WITH OBSTRUCTIVE SLEEP APNEA
Not Service Connected, No Diagnosis

, Confirmed and Continued Decision

Original Date of Denial: 08/01/2022

COMPENSATION/VOCATIONAL REHABILITATION PURPOSES

5242 DEGENERATIVE DISC DISEASE, LUMBAR SPINE AND CERVICAL SPINE
FUSION C5-7
Voc Rehab Purposes, Peacetime, SC 20 Percent or More



File Note: Veteran is currently employed.

eSign certified by VSCMCLAR, RVSR





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

**Represented By:
ANDREW J MCKEOWN
Rating Decision
02/07/2023**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the Navy from September 7, 1979 to January 31, 2006. We received your supplemental claim on August 4, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of left knee strain, which is currently 10 percent disabling, is continued.
2. Service connection for right knee strain is granted with an evaluation of 10 percent effective December 13, 2021.
3. Evaluation of non allergic rhinitis, which is currently 0 percent disabling, is continued.
4. The previous denial of service connection for sinusitis is confirmed and continued.
5. The previous denial of service connection for traumatic brain injury (TBI) is confirmed and



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continued.

6. The previous denial of service connection for vertigo is confirmed and continued.

7. The previous denial of service connection for acquired psychiatric condition (to include depression) as secondary to obstructive sleep apnea, left arm radiculopathy, status post cervical fusion with intervertebral disc syndrome, degenerative disc disease, lumbar spine, left leg radiculopathy, tinnitus, status post right 5th finger fracture, mild gastroesophageal reflux disease, surgical scars (posterior trunk), eczema, bilateral hands, surgical scars (neck), and/or surgical scars (right hip) is confirmed and continued.

EVIDENCE

- VA Form 21-0966, Intent to file a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC, received on December 13, 2021
- VA Form 21-526 EZ, Application for Disability Compensation and Related Compensation benefits, received on June 2, 2022
- VA Form 20-0995, Decision Review Request – Supplemental Claim, received on August 4, 2022
- DD Form 214, Certificate of Release or Discharge from Active Duty, for the period of September 7, 1979 to January 31, 2006, received on August 13, 2014, June 9, 2022
- VA Form 21-22a, Appointment of Individual as Claimant's Representative, received on December 13, 2021
- Service treatment records for the period of September 7, 1979 to January 31, 2006 received on August 13, 2014
- Disability Benefit Questionnaires completed November 29, 2022, Psychiatrist, of QTC Medical Services, received on November 29, 2022
- Disability Benefit Questionnaires completed November 29, 2022 Medical Services, received on December 13, 2022
- Veterans Benefit Administration Letter(s) dated December 29, 2022
- Disability Benefit Questionnaires completed December 27, 2022 Medical Services, received on December 27, 2022
- VA treatment records from VAMC for the period of April 27, 2006 through November 16, 2022
- Rating Decision dated December 21, 2022

REASONS FOR DECISION

1. Evaluation of left knee strain currently evaluated as 10 percent disabling.

The evaluation of left knee strain is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your left knee condition based on:

- Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful



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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)

2. Service connection for right knee strain as secondary to the service-connected disability of left knee strain.

Service connection for right knee strain has been established as related to the service-connected disability of left knee strain. (38 CFR 3.303, 38 CFR 3.310)

The effective date of this grant is December 13, 2021. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. This issue has been continuously pursued since the receipt of said intent to file. (38 CFR 3.155, 38 CFR 3.400, 38 CFR 3.2500)

Your VA Examiner opined that this condition is at least as likely as not proximately due to your service connected left knee condition.

An evaluation of 10 percent is assigned from December 13, 2021.

We have assigned a 10 percent evaluation for your right knee strain 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



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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)

3. Evaluation of non allergic rhinitis currently evaluated as 0 percent disabling.

The evaluation of non allergic rhinitis is continued as 0 percent disabling.

We have assigned a 0 percent evaluation for your rhinitis based on:

- Rhinitis without polyps

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 allergic rhinitis unless the evidence shows:

- Rhinitis without polyps, but with greater than 50 percent obstruction of the nasal passages on both sides; or complete obstruction of the nasal passages on one side. (38 CFR 4.97)

4. Service connection for sinusitis.

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim (38 CFR 3.2501, 38 CFR 3.2500).

In support of your claim, new and relevant evidence has been received and your claim is now reconsidered; however, service connection for sinusitis remains denied since this condition neither occurred in nor was caused by service (38 CFR 3.303, 38 CFR 3.304).

We did not find a link between your medical condition and military service. Your VA Examiner did not provide a current diagnosis for this condition.

Favorable Findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records reflect a complaint sinusitis.

Evidence shows that you performed service in the country of Bahrain.



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The claimed disability is a chronic disease which may be presumptively linked to your military service. Sinusitis is a condition that can potentially be linked to Gulf War Particulate Matter exposure if diagnosed within ten years of discharge.

You have sufficient service to meet the minimum requirements for presumptive service connection. You have greater than 90 days active duty service.

You were exposed to Gulf War Particulate Matter during military service.

5. Service connection for traumatic brain injury (TBI).

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim (38 CFR 3.2501, 38 CFR 3.2500).

In support of your claim, new and relevant evidence has been received and your claim is now reconsidered; however, service connection for traumatic brain injury (TBI) remains denied since this condition neither occurred in nor was caused by service (38 CFR 3.303, 38 CFR 3.304).

We did not find a link between your medical condition and military service. Your VA Examiner did not provide a current diagnosis for this condition.

Favorable Findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records reflect screw driver slipped from your hand and struck you in your left eye.

6. Service connection for vertigo.

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim (38 CFR 3.2501, 38 CFR 3.2500).

In support of your claim, new and relevant evidence has been received and your claim is now reconsidered; however, service connection for vertigo remains denied since this condition neither occurred in nor was caused by service (38 CFR 3.303, 38 CFR 3.304).

We did not find a link between your medical condition and military service. Your VA Examiner did not provide a current diagnosis for this condition.

Favorable Findings identified in this decision:



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The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records reflect complaints of vertigo.

7. Service connection for acquired psychiatric condition (to include depression) as secondary to the service-connected disability of obstructive sleep apnea, left arm radiculopathy, status post cervical fusion with intervertebral disc syndrome, degenerative disc disease, lumbar spine, left leg radiculopathy, tinnitus, status post right 5th finger fracture, mild gastroesophageal reflux disease, surgical scars (posterior trunk), eczema, bilateral hands, surgical scars (neck), and/or surgical scars (right hip).

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim (38 CFR 3.2501, 38 CFR 3.2500).

In support of your claim, new and relevant evidence has been received and your claim is now reconsidered; however, service connection for acquired psychiatric condition (to include depression) remains denied since this condition neither occurred in nor was caused by service (38 CFR 3.303, 38 CFR 3.304). Your VA Examiner did not provide a current diagnosis for any mental condition and accordingly opined it less likely than not proximately to your service connected conditions.

We did not find a link between your medical condition and military service.

Favorable Findings identified in this decision:

The claimed issue is secondary to the primary nonservice-connected disability. You are service connected for multiple disabilities which result in pain.

The claimed primary disabilities of obstructive sleep apnea, left arm radiculopathy, status post cervical fusion with intervertebral disc syndrome, degenerative disc disease, lumbar spine, left leg radiculopathy, tinnitus, status post right 5th finger fracture, mild gastroesophageal reflux disease, surgical scars (posterior trunk), eczema, bilateral hands, surgical scars (neck), and/or surgical scars (right hip) are service-connected.

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.

