

**Supplemental
Statement of the Case**

*Department of Veterans Affairs
Saint Louis Regional Office*

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POA
MVC

ISSUE:

1. Evaluation of lumbar spine degenerative joint disease with sclerosis and osteophyte formation currently evaluated as 10 percent disabling.
2. Service connection for left shoulder condition.

EVIDENCE:

- Statement of the Case dated February 6, 2012 and the evidence on which it was based.
- VA Form 9, Appeal to Board of Veteran's Appeals received April 5, 2012.
- VA Medical Center Columbia examination conducted on September 30, 2013.
- Treatment reports from VA Medical Center Columbia for the period June 1, 2010 to April 22, 2013.

ADJUDICATIVE ACTIONS:

02-06-2012 The veteran was furnished a Statement of the Case outlining actions taken on the claim.

04-03-2012 Substantive Appeal Received.

04-05-2012 Substantive Appeal Received.

11-07-2013 The veteran was furnished a Supplemental Statement of the Case outlining actions taken on the claim.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

38 USC Section 5107 (03/02) Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative

evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

DECISION:

1. Evaluation of lumbar spine degenerative joint disease with sclerosis and osteophyte formation, which is currently 10 percent disabling, is increased to 20 percent effective September 30, 2013.
2. Service connection for left shoulder condition remains denied.

REASONS AND BASES:

1. Evaluation of lumbar spine degenerative joint disease with sclerosis and osteophyte formation currently evaluated as 10 percent disabling.

The evaluation of lumbar spine degenerative joint disease with sclerosis and osteophyte formation is increased to 20 percent disabling effective September 30, 2013, date of the VA examination showing an increase in symptoms.

In the VA examination of September 30, 2013, you are noted to report that your back condition has worsened. You state that you currently have persistent pain in the lower back that is worse in the mornings. You report that you have shooting pain in the left thigh that is very brief. Range of the motion of your spine shows forward flexion of 45 degrees, extension of 15 degrees, right lateral flexion of 20 degrees, left lateral flexion of 25 degrees, right lateral rotation of 25 degrees and left lateral rotation of 25 degrees.

We have assigned a 20 percent evaluation for your thoracolumbar spine based on:

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

Additional symptom(s) include:

- o Painful motion upon examination
- o Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees

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 40 percent is not warranted for thoracolumbar spine unless there is:

- o Forward flexion of the thoracolumbar spine 30 degrees or less; or,
- o Favorable ankylosis of the entire thoracolumbar spine.



2. Service connection for left shoulder condition.

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 left shoulder condition is denied since this condition neither occurred in nor was caused by service.

In the VA examination, the examiner opined that your left shoulder condition is less likely than not (less than 50 percent probability) incurred in or caused by the claimed in-service injury, event, or illness. The examiner noted that your service treatment records are negative for a left shoulder condition during service. The medical records indicate that you injured the left shoulder in January 2004 while not on active duty and that you required surgery shortly after that injury.

Absent evidence showing that this condition is related to military service or it is related to a service connected disability, service connection is denied.

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 web site, www.va.gov.


