

**DEPARTMENT OF VETERANS AFFAIRS
Houston Regional Office 6900 Almeda
Houston, TX 77030**

VA File Number

**Represented by: TEXAS VETERANS
COMMISSION**

**Rating Decision
August 17, 2011**

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era. You served in the Army from June 1, 1971 to May 31, 1974. We received a request to reopen a previous claim on February 11, 2011. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

We deeply appreciate your dedication and service to our country, the United States of America.

DECISION

1. The decision to deny service connection for hepatitis C was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 40 percent effective August 30, 2010.

REASONS FOR DECISION

1. Whether the decision to deny service connection for hepatitis C was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made'. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision.

In a VA Rating Decision dated March 7, 2011, service connection for this condition was denied because we found no evidence that this condition was incurred or aggravated by service, and or this condition was incurred or aggravated as a result of willful misconduct. An opinion was given in a VA medical examination dated February 11, 2011 that "due to the high risk sexual activity documented in service treatment records, it is likely that hepatitis C had its onset and was acquired while in service. In accordance with VA policy, the denial for service connection for this condition based on willful misconduct is a clear and unmistakable error. VA regulations specifically indicate that treatment of venereal disease during military service is not considered willful misconduct. A determination had been made that there was a clear and unmistakable error in a prior decision that would change the outcome, and therefore; this decision has been reviewed and revised to conform to what the decision should have been.

We received your claim for service connection for this condition. We reviewed service treatment records and find that you were treated for sexually transmitted disease during service. We reviewed VA medical records and find that that based on serologic evidence you were diagnosed with hepatitis C on December 7, 2010. Records show complaints of right upper quadrant pain, nausea, documented weight loss, feelings of malaise, arthralgia. You attended a VA Compensation and Pension examination on February 11, 2011. You reported near constant symptom of fatigue and right upper quadrant pain. The examiner notes a 10 percent change in weight compared to baseline weight. The abdominal examination was normal. The examiner notes that liver function testing dated

January 21, 2011 were normal. The examiner provided the opinion that the condition of hepatitis C was at least as likely as not related to high risk sexual activity during service.

As the previous decision was clearly and unmistakably erroneous, service connection is established for hepatitis C with an evaluation of 40 percent effective August 30, 2010, the date we received your claim for this condition.

An evaluation of 40 percent is assigned as we find serologic evidence of hepatitis C infection with the following signs and symptoms: daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period.

A higher evaluation of 60 percent is not warranted at this time as we do not find evidence of the following signs and symptoms: daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly, or;
. incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly.

This decision is a grant of benefits sought on appeal as service connection has been granted for the condition of hepatitis C. The appeal as to this issue is considered to be satisfied in full. No further action will be taken.