



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

[REDACTED] D [REDACTED]

VA File Number

[REDACTED]

**Represented By:
GORDON A GRAHAM
Rating Decision
07/19/2019**

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era. You served in the Army from November 5, 1973 to January 22, 1974. We received a request to reopen a previous claim on July 5, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Service connection for Hepatitis C with liver cirrhosis is granted with an evaluation of 100 percent effective October 31, 2014.
2. Basic eligibility to Dependents' Educational Assistance is established from October 31, 2014.

EVIDENCE

- Supplemental claim, VA Form 20-0995, received on July 5, 2019
- VA 21-526 Veterans Application for Compensation or Pension, received on [REDACTED]

- Service treatment records and personnel records covering the period of service from [REDACTED] [REDACTED] [REDACTED]
- Hepatitis Questionnaire, received on [REDACTED]
- Shot records, received on December 24, 2014
- Duke Medicine Private Treatment Records, received on January 26, 2015
- DBQ Dr [REDACTED] private physician, received on March 23, 2015
- Duke Endoscopy of Raleigh, received on March 23, 2015
- VAMC Examination and Medical Opinion, dated April 6, 2015
- Notice of Disagreement received April 24, 2015
- VA Statement of the case (SOC) dated July 7, 2015
- VA Form 9, Appeal to Board of Appeals, received July 7, 2015
- Hepatitis internet documents submitted by the veteran on November 30, 2018
- Hearing transcript dated December 13, 2018
- VA Form 21-4138, Statement in Support of Claim, received December 13, 2018
- Medical Statement, [REDACTED] PA, dated December 14, 2018
- VA Form 21-4138, Statement in Support of Claim, received January 24, 2018
- VA Form 21-4138, Statement in Support of Claim, received February 10, 2019
- Banking documents showing financial hardship dated January 22, 2019
- Agent Fee Agreement
- VA Form 21-0995, Supplemental Claim, received July 5, 2019
- VA Form 21-0820 Report of General Information, dated July 19, 2019
- Medical Opinion, Dr. [REDACTED], dated June 16, 2019
- BVA Decision dated April 16, 2019

REASONS FOR DECISION

1. Service connection for Hepatitis C with liver cirrhosis.

Service connection for Hepatitis C with liver cirrhosis has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A review of your claims folder shows that service connection was previously denied in your case as the evidence did not show it was related to service. Specifically, VA had obtained a medical opinion indicating potential in-service risk factors were not sufficient to state hepatitis C was due to your military service. You initially appealed this decision which ultimately resulted in a denial of service connection by the Board of Veterans Appeals on April 16, 2019. In response to this you have filed a new supplemental claim that was received on July 5, 2019. You have provided a new medical opinion provided by Dr. [REDACTED] which is considered to be new and relevant evidence as this was obtained after the BVA decision and was not previously considered.

Dr. [REDACTED] has provided a medical opinion that indicates based on the physician's professional opinion that your hepatitis C is more likely than not was contracted during military service either due to immunizations from jet injectors, high risk sexual contact (service treatment records confirm treatment for sexually transmitted disease), sharing razors, and tattoo. While the sharing of razors cannot be verified and your entrance examination shows tattoo other risk

factors attributed to service can be conceded. As such, we have given equal probative value to this medical opinion as opposed to the VA opinion previously of record.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt is to be resolved in favor of the claimant. Based on the evidence and resolving any doubt in your favor, service connection is granted for Hepatitis C. (38 CFR 4.3)

An evaluation of 100 percent is assigned from October 31, 2014, the date your first filed your claim for this issue. (38 CFR 3.2500, 38 CFR 3.400). In this case you have continuously prosecuted your claim since your initial claim as defined by 38 CFR 3.2500. As such, we are awarding your effective date based on your original claims submission for this disability which occurred on October 31, 2014.

Please note the evidence does establish you have liver cirrhosis due to Hepatitis C; however, the symptoms of cirrhosis could not be separated from the symptoms allowing for a 100 percent evaluation for Hepatitis C and therefore the conditions are considered together in order to avoid pyramiding of your rating evaluation. (38 CFR 4.14)

We have assigned a 100 percent evaluation for your Hepatitis C based on:

- Near-constant debilitating symptoms

Additional symptom(s) include:

- Anorexia
- Daily fatigue
- Dietary restriction
- Malaise
- Right upper quadrant pain

This is the highest schedular evaluation allowed under the law for hepatitis c. (38 CFR 4.114)

2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Basic eligibility to Dependents' Educational Assistance is established from October 31, 2014. (38 CFR 21.3021)

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a

foreign government or power. (38 USC Ch. 35, 38 CFR 3.807)

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows you currently have a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807)

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.

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ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
██████████3	██████████4	██████████	Honorable

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

JURISDICTION: Reopened Claim Received 07/05/2019

ASSOCIATED CLAIM(s): 040; Supplemental Claim Rating; 07/05/2019

SUBJECT TO COMPENSATION (1.SC)

7354 HEPATITIS C WITH LIVER CIRRHOSIS [Hepatitis C]
Service Connected, Vietnam Era, Incurred
Static Disability
100% from 10/31/2014

COMBINED EVALUATION FOR COMPENSATION:

100% from 10/31/2014

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CIRRHOSIS

10%

COMBINED EVALUATION FOR PENSION : 100%

ANCILLARY DECISIONS

Basic Eligibility under 38 USC Ch 35 from 10/31/2014

Note to VSR: The veteran has an attorney fee agreement in place. Please check for proper payment (Attorney Fee Coordinator) to the veterans lawyer prior to release of the back pay associated with this claim.

Note to RB: This case presents a complex pattern for effective date. In essence the veteran was just denied by BVA in April 2019. The veterans attorney filed a 20-0995 instead of a motion to reconsider or an appeal to COVA. As such, this places the case within the VSC jurisdiction as a valid EP 040. I have determined that the veteran meets the definition of continuously prosecuted claim as detailed within 38 CFR 3.2500(h)(1). The veteran has also submitted a claim within a year of the BVA decision which is further covered under III.iv.2.B.6.b. Finally III.iv.5.C.6.b. makes it clear that the decision maker must apply the continuously prosecuted provisions of the CFR as outlined within this note.