



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



**VA File Number**



**Represented By:  
GORDON A GRAHAM  
Rating Decision  
06/17/2022**

**INTRODUCTION**

You have requested VA provide a higher-level review of the issue(s) addressed in this decision.

The records reflect that you are a Veteran of the Gulf War Era. You served in the Marine Corps from June 15, 1998 to June 30, 2015. We received your request for a Higher Level Review on May 17, 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 as of the date of notice of our prior decision. VA received additional evidence after the record closed that was not considered as part of this decision. 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.

**DECISION**

Entitlement to special monthly compensation (T) based on aid and attendance due to residuals of traumatic brain injury criteria being met is granted from July 10, 2019.



## EVIDENCE

- Service treatment records for the period of service from June 1998 through June 2015, received January 12, 2015, January 26, 2015, July 22, 2015, September 12, 2015, December 18, 2015, December 30, 2015
- DD Form 214 and service personnel records for the period of service from June 1998 through June 2015, received May 28, 2015, December 8, 2016
- VA Intent to File Letter re: ITF received July 10, 2019
- 5103 Notice Response received July 10, 2019
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received June 19, 2020
- VA Letters dated June 24, 2020, July 10, 2020, December 30, 2020
- Private medical records, [REDACTED] dated April 2017 through October 2019, received July 1, 2020
- Private medical records, [REDACTED] dated August 2019 through September 2019, received July 16, 2020, July 20, 2020
- Treatment reports, VAMC Fayetteville, dated March 7, 2019 through June 24, 2020, uploaded to VBMS July 30, 2020; and dated April 24, 2015 through August 25, 2020, uploaded October 6, 2020; and dated October 21, 2020 through December 21, 2020, uploaded December 29, 2020; and dated February 11, 2021 through March 3, 2021, uploaded March 16, 2021; and dated April 9, 2021 through July 19, 2021, uploaded September 15, 2021
- Statements from [REDACTED] received January 6, 2021, January 7, 2021
- QTC Contract Examinations dated January 5, 2021 (TBI, Headaches, Neck, Hip, Scar, Peripheral Nerves, Back, Esophageal, Knee/Leg)
- Rating Decision dated January 28, 2021, with notification letter dated January 29, 2021
- VA Letter dated February 4, 2021
- VAF 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, dated March 3, 2021, received March 9, 2021
- Statement from [REDACTED] received March 9, 2021
- 5103 Notice Response received May 6, 2021
- QTC Contract Examinations dated March 4, 2021 (TBI, PTSD, Scar) and June 29, 2021 (Ear, Scar, Central Nervous System, Headaches)
- Rating Decision dated August 5, 2021, with notification letter dated August 6, 2021
- LHI Contract Examination dated September 13, 2021 (Aid and Attendance)
- VAF 27-0820, Report of General Information, dated September 13, 2021, December 20, 2021
- Rating Decision dated September 15, 2021, with notification letter dated September 17, 2021
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received December 12, 2021
- 38 U.S.C. §5103 Notice Response, received December 14, 2021
- Section (§) 5103 Notice Letter, dated December 15, 2021
- Private Medical Records, [REDACTED] P.A., dated March 2021 to August 2021, received January 11, 2022
- Private Medical Records, [REDACTED] dated January 2022, and received January 19, 2022
- VA Form 21-4138, Statement in Support of Claim, with attached personal statement,



received January 28, 2022

- Statement from Veteran received January 28, 2022
- VES Contract Examinations dated February 4, 2022 (PTSD) and February 10, 2022 (Headaches, Ear Conditions, Residuals of Traumatic Brain Injury, Aid and Attendance or Housebound Examination)
- Treatment Reports, [REDACTED] (to include: Fayetteville, NC, and [REDACTED])

[REDACTED] dated December 2, 2020 through February 4, 2022,

- Rating Decision dated February 18, 2022, with notification letter dated February 23, 2022
- VAF 20-0996, Decision Review Request: Higher Level Review, received May 17, 2022
- Informal Conference Report dated June 17, 2022

#### REASONS FOR DECISION

##### Entitlement to special monthly compensation (T) based on aid and attendance due to residuals of traumatic brain injury.

Entitlement to special monthly compensation (T) based on aid and attendance due to residuals of traumatic brain injury criteria being met is granted from July 10, 2019.

A de novo review of your claims file and medical evidence indicates that entitlement to special monthly compensation (SMC) based on higher level of care aid and attendance pursuant to 38 U.S.C. § 1114(t) (SMC T) due to the residuals of traumatic brain injury (TBI) is warranted. Resolving all doubt in your favor, a de novo review of the evidence indicates that absent your spouse's regular aid and attendance care, you would not be able to reside on your own and care for your own needs. Your medical records and VA exams indicate that your TBI and PTSD residuals have impaired your judgment, motor skills, and impulse control, in addition to cognitive functioning (i.e. reports showing TBI caused significant memory and judgment impairment, disorientation, motor impairment, and communication impairment, and PTSD resulting in total occupational and social impairment, etc.). Given the risks associated with your residuals, evidence indicates you would require hospitalization or institutional residential care absent the regular aid and attendance provided by your spouse. While you do not need regular aid of a nurse or other healthcare professional, absent your spouse taking care of your daily tasks, the totality of the evidence indicates that it is as likely as not that you would not be able to reside on your own and would need to be placed in a nursing home or a similar living arrangement. Thus, entitlement to additional aid and attendance allowance under 38 U.S.C. 1114, subsection (t) and 38 CFR 3.350(j), subject to the provisions of 38 CFR 3.352 (b)(2) and 38 CFR 3.552(b)(2), on account of need for regular aid and attendance due to residuals of traumatic brain injury, certified need for hospitalization, nursing home care, or other residential institutional care in the absence of regular aid and attendance, and, in addition, ineligibility for a higher level of aid and attendance under 38 U.S.C. 1114, subsection(r)(2), is warranted from July 10, 2019. (38 USC 1114(t), 38 CFR 3.350(j), 38 CFR 3.352)

The effective date, July 10, 2019, is the date you met the criteria to receive this benefit. (38 CFR



3.350, 38 CFR 3.155, 38 CFR 3.400, 38 CFR 3.401, 38 CFR 3.2500)

**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](http://www.va.gov).



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ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
06/15/1998	06/30/2015	Marine Corps	Honorable

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

**JURISDICTION:** Higher Level Review Received 05/17/2022

**ASSOCIATED CLAIM(s):** 030; Higher-Level Review Rating; 05/17/2022

**SUBJECT TO COMPENSATION (1.SC)**

9411	POSTTRAUMATIC STRESS DISORDER WITH TRAUMATIC BRAIN INJURY, INSOMNIA DISORDER, GENERALIZED ANXIETY DISORDER AND PERSISTENT DEPRESSIVE DISORDER [PTSD - Non-Combat/Stressful Event] Service Connected, Gulf War, Incurred Static Disability 70% from 07/01/2015 100% from 07/10/2019
8100	CHRONIC HEADACHES Service Connected, Gulf War, Incurred Static Disability 50% from 07/01/2015
8516	RADICULOPATHY, RIGHT UPPER EXTREMITY ASSOCIATED WITH CERVICAL SPINE DEGENERATIVE ARTHRITIS Service Connected, Gulf War, Secondary Static Disability 20% from 07/01/2015 (8610) 30% from 07/10/2019 Original Date of Denial: 11/19/2015
5242-5237	CERVICAL SPINE DEGENERATIVE ARTHRITIS Service Connected, Gulf War, Incurred



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Static Disability  
20% from 07/01/2015

8516 RADICULOPATHY, LEFT UPPER EXTREMITY ASSOCIATED WITH CERVICAL SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Secondary  
Static Disability  
20% from 07/01/2015

5242 LUMBAR SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Incurred  
Static Disability  
10% from 07/01/2015  
20% from 12/18/2015

8520 RADICULOPATHY, RIGHT LOWER EXTREMITY (SCIATIC) ASSOCIATED WITH LUMBAR SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Secondary  
Static Disability  
20% from 12/18/2015

8520 RADICULOPATHY, LEFT LOWER EXTREMITY (SCIATIC) ASSOCIATED WITH LUMBAR SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Secondary  
Static Disability  
20% from 12/18/2015

8526 RADICULOPATHY, LEFT LOWER EXTREMITY (FEMORAL) ASSOCIATED WITH LUMBAR SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Secondary  
Static Disability  
20% from 12/18/2015

8526 RADICULOPATHY, RIGHT LOWER EXTREMITY (FEMORAL) ASSOCIATED WITH LUMBAR SPINE DEGENERATIVE ARTHRITIS  
Service Connected, Gulf War, Secondary  
Static Disability  
20% from 12/18/2015

5253 RIGHT HIP FEMORAL ACETABULAR IMPINGEMENT SYNDROME, ABDUCTION/ADDITION THIGH IMPAIRMENT  
Service Connected, Gulf War, Incurred  
Static Disability  
10% from 07/01/2015  
Original Date of Denial: 11/19/2015

6260 TINNITUS



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Service Connected, Gulf War, Incurred  
Static Disability  
10% from 07/01/2015

5252 LEFT HIP FEMORAL ACETABULAR IMPINGEMENT SYNDROME  
Service Connected, Gulf War, Incurred  
Static Disability  
0% from 07/01/2015  
10% from 07/10/2019  
Original Date of Denial: 11/19/2015

7399-7346 GASTROESOPHAGEAL REFLUX DISEASE  
Service Connected, Gulf War, Incurred  
Static Disability  
0% from 07/01/2015  
10% from 07/10/2019  
Original Date of Denial: 11/19/2015

7804 PAINFUL SCAR, HEAD AND RIGHT KNEE ASSOCIATED WITH TRAUMATIC BRAIN INJURY  
Service Connected, Gulf War, Secondary  
Static Disability  
10% from 07/01/2015, Earlier Effective Date Granted  
10% from 07/10/2019

6204 PERIPHERAL VESTIBULAR DISORDER DUE TO TRAUMATIC BRAIN INJURY  
Service Connected, Gulf War, Incurred  
Static Disability  
10% from 12/12/2021

5251 RIGHT HIP FEMORAL ACETABULAR IMPINGEMENT SYNDROME WITH LIMITATION OF EXTENSION  
Service Connected, Gulf War, Incurred  
Static Disability  
0% from 07/01/2015  
Original Date of Denial: 11/19/2015

5252 RIGHT HIP FEMORAL ACETABULAR IMPINGEMENT SYNDROME WITH LIMITATION OF FLEXION  
Service Connected, Gulf War, Incurred  
Static Disability  
0% from 07/01/2015

5299-5262 LEFT LEG SHIN SPLINTS  
Service Connected, Gulf War, Incurred  
Static Disability  
0% from 07/01/2015



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5299-5262	RIGHT LEG SHIN SPLINTS Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015
6522	ALLERGIC RHINITIS Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015
7800	RESIDUAL SCAR, HEAD ASSOCIATED WITH TRAUMATIC BRAIN INJURY Service Connected, Gulf War, Secondary Static Disability 0% from 07/01/2015, Earlier Effective Date Granted
7805	RESIDUAL SCAR, RIGHT KNEE Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015
7805	RIGHT FOREARM SCARS Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015
7813-7806	TINEA PEDIS Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015
8045	TRAUMATIC BRAIN INJURY Service Connected, Gulf War, Incurred Static Disability 0% from 07/01/2015 to 07/10/2019 Original Date of Denial: 06/07/2016

***COMBINED EVALUATION FOR COMPENSATION :***

100% from 07/01/2015 (Bilateral factor of 3.6 Percent for diagnostic codes 8610, 8516)  
 100% from 12/18/2015 (Bilateral factor of 7.7 Percent for diagnostic codes 8610, 8516, 8520, 8520, 5253, 8526, 8526)  
 100% from 07/10/2019 (Bilateral factor of 8.1 Percent for diagnostic codes 8516, 8516, 5252, 8520, 8520, 5253, 8526, 8526)  
 Individual Unemployability Granted from July 01, 2015



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***SPECIAL MONTHLY COMPENSATION :***

S-1 Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (s) and 38 CFR 3.350(i) on account of posttraumatic stress disorder with traumatic brain injury, insomnia disorder, generalized anxiety disorder and persistent depressive disorder a single disability upon which a total individual unemployability rating is based and additional service-connected disabilities of tinnitus, lumbar spine degenerative arthritis, radiculopathy, right upper extremity, radiculopathy, left upper extremity, chronic headaches, cervical spine degenerative arthritis, independently ratable at 60 percent or more from 07/01/2015 to 07/09/2019.

L-1 Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (l) and 38 CFR 3.350(b) on account of being so helpless as to be in need of regular aid and attendance from 07/10/2019.

P-1 Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (p) and 38 CFR 3.350(f)(3) at the rate intermediate between subsection (l) and subsection (m) on account of entitlement to the rate equal to subsection (l) with additional disability, chronic headaches independently ratable at 50 percent or more from 07/10/2019.

T-2 Entitled to additional aid and attendance allowance under 38 U.S.C. 1114, subsection (t) and 38 CFR 3.350(j), subject to the provisions of 38 CFR 3.352(b)(2) and 38 CFR 3.552(b)(2), on account of need for regular aid and attendance due to residuals of traumatic brain injury, certified need for hospitalization, nursing home care, or other residential institutional care in the absence of regular aid and attendance, and, in addition, ineligibility for a higher level of aid and attendance under 38 U.S.C. 1114, subsection (r)(2), from 07/10/2019.

EFFECTIVE DATE	BASIC	HOSPITAL	LOSS OF USE	ANAT. LOSS	OTHER LOSS
07/01/2015	48	48	00	00	0
07/10/2019	62	48	00	00	4

**NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSCPeacetime, Gulf War)**

5201                   RIGHT SHOULDER CONDITION  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5201                   LEFT SHOULDER CONDITION  
Not Service Connected, Peacetime, No Diagnosis



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5215      **RIGHT WRIST CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5215      **LEFT WRIST CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5257      **LEFT KNEE CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5257      **RIGHT KNEE CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5271      **LEFT ANKLE CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5271      **RIGHT ANKLE CONDITION**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

5299-5275      **UNEQUAL LEG LENGTH**  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

6847      **SLEEP APNEA ASSOCIATED WITH POSTTRAUMATIC STRESS DISORDER  
WITH TRAUMATIC BRAIN INJURY, INSOMNIA DISORDER, GENERALIZED**



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ANXIETY DISORDER AND PERSISTENT DEPRESSIVE DISORDER  
Not Service Connected, Gulf War, Not Secondary  
Static Disability

Original Date of Denial: 08/05/2021

7099-7010 A CHRONIC CONDITION TO ACCOUNT FOR SYNCOPES  
Not Service Connected, Peacetime, No Diagnosis

Original Date of Denial: 11/19/2015

7101 HIGH BLOOD PRESSURE  
Not Service Connected, Peacetime, No Diagnosis  
Static Disability

Original Date of Denial: 01/28/2021

7805 APPENDECTOMY SCAR  
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 11/19/2015

7805 LOW BACK SCAR  
Not Service Connected, Peacetime, Not Incurred/Caused by Service

Original Date of Denial: 11/19/2015

#### ANCILLARY DECISIONS

Basic Eligibility under 38 USC Ch 35 from 07/01/2015

eSign: certified by DROC, VBASEACAMPBT, DRO DRO

