



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

[REDACTED]

**VA File Number**  
[REDACTED]

**Represented By:  
GORDON A GRAHAM  
Rating Decision  
06/29/2022**

**INTRODUCTION**

The records reflect that you are a Veteran of the Peacetime and Vietnam Era. You served in the Air Force from October 24, 1972 to June 30, 1976. You filed a new claim for benefits that was received on December 6, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Entitlement to individual unemployability is granted effective December 6, 2021.
2. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from December 6, 2021.
3. Entitlement to special monthly compensation based on aid and attendance/housebound is denied.

**EVIDENCE**

[REDACTED]

- Rating decision dated April 11, 2022
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, received December 6, 2021
- Letter, Dr. [REDACTED], dated April 22, 2021
- VA Letters Concerning Your Claim, dated December 9, 2021; December 22, 2021; December 29, 2021; January 11, 2022; and January 13, 2022
- VA Form 21-4138, Statement in Support of Claim, received December 27, 2021 Section (§) 5103 Notice, dated December 29, 2021
- Requests for Employment Information requested, but not received, [REDACTED], sent December 29, 2021 and January 13, 2022
- Section (§) 5103 Notice Response, received December 30, 2021
- Letter, Dr. [REDACTED], dated September 15, 2019
- VA contract examinations, LHI, conducted January 10, 2022 and April 5, 2022 with addendum dated February 24, 2022
- Social Security Administration Records, received January 13, 2022
- Rating Decisions, dated February 2, 2022; February 25, 2022; and March 14, 2022
- VAMC (Veterans Affairs Medical Center) treatment records, [REDACTED] VA Health Care System, for the period August 16, 2014 to April 6, 2022
- Custom 5103 Notice, received on May 17, 2022
- Service Record (SR), received on May 16, 2022
- 5103 Notice Acknowledgement, received on May 16, 2022
- VA 21-526EZ, Fully Developed Claim (Compensation), received on April 29, 2022
- Copies of VA treatment records, [REDACTED] VAMC, received on April 25, 2022
- VA 27-0820 Report of General Information, received on April 25, 2022
- VA Form 21-4138 Statement In Support of Claim, received on April 25, 2022
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, dated June 6, 2022

## REASONS FOR DECISION

### 1. Entitlement to individual unemployability.

Total disability ratings for compensation based on individual unemployability may be assigned where the schedular rating is less than total if it is found that the disabled person is unable to secure or follow a substantially gainful occupation as a result of 1) a single service-connected disability ratable at 60 percent or more, or 2) as a result of two or more disabilities, provided at least one disability is ratable at 40 percent or more, and there is sufficient additional service-connected disability to bring the combined rating to 70 percent or more. For the purposes of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: disabilities of one or both upper extremities; or of one or both lower extremities, including the bilateral factor, if applicable; disabilities resulting from common etiology or a single accident; disabilities affecting a single body system (e.g., orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric); multiple injuries incurred in action; or multiple disabilities incurred as a prisoner of war. Prior employment or unemployment status is immaterial if your disabilities render you unemployable. (38 CFR 4.16)

The available evidence of record shows that you are a Veteran [REDACTED] years of age. You completed four years of high school. Your VA Form 21-8940, Veteran's Application for Increased Compensation Based on Unemployability dated December 15, 2021 notes you last worked at [REDACTED], as a driver. You worked 15-20 hours per week. You were employed there from 2016 until 2020. You noted you last worked full time on June 1, 2019.

The VA examiner noted that due to your service connected cirrhosis of the liver with abdominal varices, portal hypertension and splenomegaly, you are unable to perform sedentary work. The examiner provided the following rationale: " Per recent progress note on 12/08/2021 veteran has confusion noted in progress notes as result of hepatic encephalopathy. It is noted that his cirrhosis is well controlled but decompensated HCV (treated) cirrhosis w/ hx of Grade 2 esophageal varices. Because of his confusion, unable to perform the task ask of him."

Based on the findings at the VA exam, we have determined that you are unable to obtain and maintain substantially gainful employment due to your service connected cirrhosis of the liver with abdominal varices, portal hypertension and splenomegaly with secondary conditions of insomnia disorder and iron deficiency anemia, and entitlement to TDIU is granted.

Entitlement to individual unemployability is granted because you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities of of the liver with abdominal varices, portal hypertension and splenomegaly with secondary conditions of insomnia disorder and iron deficiency anemia. (38 CFR 4.16)

## **2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35 based on permanent and total disability status.**

Eligibility for Dependents' Educational Assistance is derived from a Veteran who was discharged under other than dishonorable conditions; and has permanent and total service-connected disability(ies); or permanent and total disability(ies) existed at the time of death; or the Veteran died as a result of service-connected disability(ies). Also, eligibility exists for a service member 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 Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is granted as the evidence shows you currently have a totally disabling service-connected disability or disabilities, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from December 6, 2021, the date from which VA considers that P&T disability commenced for the purpose of VA benefits. (38 CFR 21.3021(r))

## **3. Entitlement to special monthly compensation based on aid and attendance/housebound.**

Entitlement to an additional payment of compensation is established when service-connected impairment imposes a special level of disability. Entitlement to special monthly compensation is not warranted in this case because the criteria regarding aid and attendance/housebound have not been met. (38 CFR 3.350)

Aid and attendance is payable for being so helpless (due to service-connected disabilities) as to be permanently bedridden or in need of regular aid and attendance. Aid and attendance is defined as: inability to dress or undress, or to keep ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid; inability to feed oneself through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or physical or mental incapacity which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to the daily environment. "Bedridden" means that condition which actually requires that the claimant remain in bed. Voluntarily taking to bed or the fact that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is only necessary that the evidence shows that the claimant is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations as to the need for regular aid and attendance will not be based solely upon an opinion that their condition is such as would require them to be in bed. They must be based on the actual requirement of personal assistance from others.

Housebound benefits are payable when the claimant is substantially confined, due to service-connected disability(ies), to their dwelling and the immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that this is permanent. Housebound benefits are also payable for a single service-connected disability rated as totally disabling with additional service-connected disability(ies) independently ratable at 60 percent, separate and distinct from the totally disabling service-connected disability. (38 CFR 3.350, 38 CFR 3.352)

VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance notes that you are unable to prepare your own meals, you need assistance in bathing and tending to other hygiene needs, and you require medication management. You were noted to have no upper or lower extremity restrictions. The examiner noted that you are able to participate in most activities but you suffer from dizziness and you feel weak at times which limits the amount of physical activity you are able to do.

We have denied entitlement to special monthly compensation because the evidence shows you do not need the regular aid and attendance of another person to perform routine activities of daily living, OR you are not permanently bedridden. (38 CFR 3.350, 38 CFR 3.352)

We have denied entitlement to special monthly compensation because the evidence shows you are not substantially confined to your home or immediate premises due to your service-connected disability, nor do you have a single service-connected disability rated 100 percent and a separate service-connected disability or disabilities independently rated 60 percent or more. (38 CFR 3.350)

Favorable Findings identified in this decision:

You require aid and attendance. VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance notes you need assistance with preparing meals, bathing and other hygiene needs, and medication management.

**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).

