



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
BARBARA J. LONG
IN THE CASE OF
LESLIE C. LONG
Appellant B. L. Represented by
Gordon J. Graham, Agent

C XX XXX 503
Docket No. 211015-358304
Advanced on the Docket

J for Joker?

DATE: August 29, 2023

ORDER

Entitlement to an effective date prior to March 30, 2014, for service connection for tinnitus is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for shell fragment wound (SFW) from right upper thigh (extension) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for left (nondominant) hand status post shrapnel wound with retained foreign body is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for posttraumatic stress disorder (PTSD) with alcohol use disorder is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for status post right upper and lower back shell fragment wound with retained metallic shrapnel near 2nd rib (previously denied as right upper and lower back fragment wound) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for shell fragment wound of the right shoulder (dominant) (claimed as pain from SFW right shoulder) is denied.

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Entitlement to an effective date prior to April 29, 1970, for service connection for right corneal shell fragment wound with foreign body residual and pseudophakia with sympathetic left eye (previously rated as right cornea shell fragment wound residuals; claimed as loss of use right eye and unhealed injury to eye retained metal fragments and perforation of cornea) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for shell fragment wound from right upper thigh (claimed as pain from SFW right upper thigh) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for scar, pepper spots of the right leg and right pelvic region and left hand (also claimed as pain from SFW right upper thigh) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for scars, pepper spots of the right arm, right leg, right pelvic region, right neck, and left hand (claimed as painful scars from SFW, pain from SFW right shoulder, pain from SFW right hand, residuals of SFW metal fragments) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for shell fragment wound from right upper thigh (flexion) is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for scars, pepper spots on right side of neck is denied.

Entitlement to an effective date prior to April 29, 1970, for service connection for status post right (dominant) forearm shell fragment wound with cutaneous neuropraxia from shrapnel wound right dorsum hand and distal radial forearm (previously right forearm SFW with cutaneous nerve damage, also claimed as SFW right hand & peripheral neuropathy) is denied.

Entitlement to an effective date prior to December 27, 2016, for service connection for migraine including migraine variants (claimed as all other informal claims due

to traumatic brain injury (TBI) or other injuries suffered on January 18, 1969) is denied.

Entitlement to an effective date prior to December 27, 2016, for service connection for TBI is denied.

Entitlement to an effective date prior to March 30, 2015, for service connection for scars, pepper spots of the right arm (dominant) is denied.

Entitlement to an effective date prior to April 29, 1970, for service connection for bilateral deafness (claimed as perforation of tympanic membranes) is denied.

FINDINGS OF FACT

1. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for tinnitus.
2. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for SFW from right upper thigh (extension).
3. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for left (nondominant) hand status post shrapnel wound with retained foreign body.
4. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for PTSD with alcohol use disorder.
5. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for status post right upper and lower back shell fragment wound with retained metallic shrapnel near 2nd rib (previously denied as right upper and lower back fragment wound).

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6. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for shell fragment wound of the right shoulder (dominant) (claimed as pain from SFW right shoulder).
7. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for right corneal shell fragment wound with foreign body residual and pseudophakia with sympathetic left eye (previously rated as right cornea shell fragment wound residuals; claimed as loss of use right eye and unhealed injury to eye retained metal fragments and perforation of cornea).
8. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for shell fragment wound from right upper thigh (claimed as pain from SFW right upper thigh).
9. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for scar, pepper spots of the right leg and right pelvic region and left hand (also claimed as pain from SFW right upper thigh).
10. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for scars, pepper spots of the right arm, right leg, right pelvic region, right neck, and left hand (claimed as painful scars from SFW, pain from SFW right shoulder, pain from SFW right hand, residuals of SFW metal fragments).
11. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for shell fragment wound from right upper thigh (flexion).
12. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for scars, pepper spots on right side of neck.
13. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for status post right (dominant) forearm shell fragment wound with cutaneous neuropraxia from shrapnel wound right dorsum hand and distal

radial forearm (previously right forearm SFW with cutaneous nerve damage, also claimed as SFW right hand & peripheral neuropathy).

14. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for migraine including migraine variants (claimed as all other informal claims due to TBI or other injuries suffered on January 18, 1969).

15. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for TBI.

16. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for scars, pepper spots of the right arm (dominant).

17. The Veteran's claim is a stand-alone appeal for an earlier effective date for service connection for bilateral deafness (claimed as perforation of tympanic membranes).

CONCLUSIONS OF LAW

1. The criteria for entitlement to an earlier effective date for service connection for a tinnitus have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

2. The criteria for entitlement to an earlier effective date for service connection for a SFW from right upper thigh (extension) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

3. The criteria for entitlement to an earlier effective date for service connection for a left (nondominant) hand status post shrapnel wound with retained foreign body have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

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4. The criteria for entitlement to an earlier effective date for service connection for a PTSD with alcohol use disorder have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006)
5. The criteria for entitlement to an earlier effective date for service connection for a status post right upper and lower back shell fragment wound with retained metallic shrapnel near 2nd rib (previously denied as right upper and lower back fragment wound) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).
6. The criteria for entitlement to an earlier effective date for service connection for a shell fragment wound of the right shoulder (dominant) (claimed as pain from SFW right shoulder) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).
7. The criteria for entitlement to an earlier effective date for service connection for a for right corneal shell fragment wound with foreign body residual and pseudophakia with sympathetic left eye (previously rated as right cornea shell fragment wound residuals; claimed as loss of use right eye and unhealed injury to eye retained metal fragments and perforation of cornea) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).
8. The criteria for entitlement to an earlier effective date for service connection for a shell fragment wound from right upper thigh (claimed as pain from SFW right upper thigh) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).
9. The criteria for entitlement to an earlier effective date for service connection for a scar, pepper spots of the right leg and right pelvic region and left hand (also claimed as pain from SFW right upper thigh) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

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10. The criteria for entitlement to an earlier effective date for service connection for a scars, pepper spots of the right arm, right leg, right pelvic region, right neck, and left hand (claimed as painful scars from SFW, pain from SFW right shoulder, pain from SFW right hand, residuals of SFW metal fragments) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

11. The criteria for entitlement to an earlier effective date for service connection for a shell fragment wound from right upper thigh (flexion) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

12. The criteria for entitlement to an earlier effective date for service connection for a scars, pepper spots on right side of neck have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

13. The criteria for entitlement to an earlier effective date for service connection for a status post right (dominant) forearm shell fragment wound with cutaneous neuropraxia from shrapnel wound right dorsum hand and distal radial forearm (previously right forearm SFW with cutaneous nerve damage, also claimed as SFW right hand & peripheral neuropathy) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

14. The criteria for entitlement to an earlier effective date for service connection for a migraine including migraine variants (claimed as all other informal claims due to TBI or other injuries suffered on January 18, 1969) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

15. The criteria for entitlement to an earlier effective date for service connection for a TBI have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

16. The criteria for entitlement to an earlier effective date for service connection for a scars, pepper spots of the right arm (dominant) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

17. The criteria for entitlement to an earlier effective date for service connection for a bilateral deafness (claimed as perforation of tympanic membranes) have not been met. 38 U.S.C. § 5110; 38 C.F.R. §§ 3.400, 20.1100, 20.1103, *Rudd v. Nicholson*, 20 Vet. App. 296, 299 (2006).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran had active military service from April 1968 to April 1970, and passed away in November 2021. The Appellant is the Veteran's surviving spouse and has been substituted in this appeal.

On August 23, 2017, the Veterans Appeals Improvement and Modernization Act, Pub. L. No. 115-55 (to be codified as amended in scattered sections of 38 U.S.C.), 131 Stat. 1105 (2017), also known as the Appeals Modernization Act (AMA), was signed into law. This law creates a new framework for Veterans dissatisfied with VA's decision on their claim to seek review. This decision has been written consistent with the new AMA framework.

In November 2020, the Veteran submitted a Supplemental Claim Application requesting a reconsideration of a June 1970 claim, and in response to a July 2020 decision by the Court of Appeals for Veterans Claims (Court).

A January 2021 rating decision denied the Veteran's claims for earlier effective dates for service connection of the Veteran's claims. In June 2021, the Veteran requested a Higher-Level Review of the January 2021 decision. In August 2021, the AOJ issued a Higher-Level Review decision confirming the January 2021 denials.

The August 2021 decision found that the Department of Veterans Affairs (VA) has no authority to adjudicate a request for earlier effective date for service connection or increased rating of the issues as they are stand-alone claims. In August 2021, VA notified the Veteran that he may request revision of a prior decision based on Clear and Unmistakable Error (CUE). In October 2021, the Veteran appealed the January 2021 rating decision to the Board of Veterans' Appeals (Board), electing the AMA Evidence Submission docket. The Appellant filed an additional appeal following the Veteran's death in January 2022.

At the outset, the Board notes that it has no authority to reconsider a decision made by the Court. As to reconsideration of a 1970 decision, the Veteran did not appeal that decision, and has not specifically alleged that CUE occurred in fact or law in the 1970 decision. To the extent that the Appellant argues that the June 1970 claim was a claim for additional conditions not considered by the September 1970 decision, that argument was addressed and decided by the Board in October 2019. The October 2019 Board decision is incorporated herein by reference, and as discussed below, there is no basis for the Board to reconsider or reverse that decision.

Earlier Effective Date

Generally, the effective date of an award of compensation or a claim reopened after final disallowance, will be the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 U.S.C. § 5110(a); 38 C.F.R. § 3.400. When there is a prior final decision in the claims file and a later reopened claim results in a grant of the benefit, the general rule for effective dates for reopened claims applies. In such cases the effective date cannot be earlier than the subsequent claim to reopen. 38 C.F.R. § 3.400(r), 3.400(q)(2). Moreover, subject to certain exceptions, "absent a showing of clear and unmistakable error, [a veteran] cannot receive disability payments for a time frame earlier than the application date of his claim to reopen, even with new evidence supporting an earlier disability date." *Leonard v. Nicholson*, 405 F.3d 1333, 1337 (Fed. Cir. 2005).

Generally, the fact that the veteran had previously submitted a claim which had been denied is not relevant to the assignment of an effective date based on his most recent claim to reopen. “Nothing in the statute indicates that an effective date can be set based upon an application that resulted in a final disallowance of the claim.” *Wright v. Gober*, 10 Vet. App. 343, 347 (1997). Moreover, the Court held in *Sears v. Principi*, 16 Vet. App. 244, 248 (2002) that “[t]he statutory framework simply does not allow for the Board to reach back to the date of the original claim as a possible effective date for an award of service-connected benefits that is predicated upon a reopened claim.” In order for the veteran to be awarded an effective date based on an earlier claim, he or she has to show clear and unmistakable error in the prior denial of the claim.

One exception to the general rule that the effective date of an award based on a request to reopen is the date VA receives the request to reopen is that service records submitted or received after a prior final denial can serve as a basis for providing an early effective date under 38 U.S.C. § 3.156(c). 38 C.F.R. § 3.156(c)(1) provides that, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim.

Only if VA grants benefits resulting from reconsideration of the merits under § 3.156(c)(1) must it consider an earlier effective date under subsection (c)(3). *Blubaugh v. McDonald*, 773 F.3d 1310, 1314 (Fed. Cir. 2014).

Argument to Reopen 1970 Claim

In the Appellant’s brief, she asserts an argument that a medical treatment record serves as the basis for reconsideration of the June 1970 claim, and that it was incumbent upon VA to reopen the 1970 claim upon the Veteran’s notation of a Combat Infantryman Badge. The brief acknowledges the Veteran submitted a claim to reopen on March 30, 2015 under 38 C.F.R. § 3.156 (c)(1). In brief, the Appellant argues that new and relevant evidence has been submitted to reconsider the September 1970 rating decision.

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Under the new AMA framework, “a claimant or his or her authorized representative, if any, who disagrees with a prior VA decision may file a supplemental claim. If new and relevant evidence is presented or secured with respect to the supplemental claim, the agency of original jurisdiction will readjudicate the claim taking into consideration all of the evidence of record.” *See* 38 C.F.R. §§ 3.156(d); 3.2501.

In general, decisions of a VA regional office, which is the Agency of Original Jurisdiction (AOJ), that are not appealed in the prescribed time period are final. 38 U.S.C. § 7105; 38 C.F.R. §§ 20.302, 20.1103. A finally disallowed claim will be readjudicated if new and relevant evidence is presented or secured with respect to that claim. 38 U.S.C. § 5108. Under the AMA, the evidence necessary for VA to readjudicate a claim is “new and relevant.” “New evidence” is evidence not previously part of the actual record before agency adjudicators. 38 C.F.R. § 3.2501(a)(1). “Relevant evidence” is evidence that tends to prove or disprove a matter in issue. *Id.*

The new evidence submitted in support of the November 2020 claim (since the previous denial in October 2019) consists of June 2021 and July 2021 medical opinions, about 50 years after the September 1970 decision. Because these records did not exist at the time of the September 1970 decision, they cannot be the basis of an earlier effective date under 38 C.F.R. § 3.156 (c). Accordingly, there is no basis under which to reopen the 1970 claim absent a specific contention of CUE.

The October 2019 Board decision also addressed the Veteran’s contentions under 38 C.F.R. § 3.156 (c); no additional relevant records have been received. Additionally, neither the Appellant, nor her representative have asserted that the October 2019 Board decision lacks finality. *See* 38 C.F.R. § 20.1100. Moreover, the Board’s decision was affirmed by the Court in July 2020.

Significantly, once a decision assigning an effective date becomes final, that assignment cannot be challenged through a freestanding claim for entitlement to an earlier effective date. *Rudd v. Nicholson*, 20 Vet. App. 296, 299-300 (2006). Thus, the Board is required to dismiss freestanding claims for entitlement to earlier

effective dates. *Id*; see also *DiCarlo v. Nicholson*, 20 Vet. App. 52 (2006) (stating there is no such procedure as a freestanding challenge to the finality of a VA decision). In other words, if there is disagreement as to the effective date assigned in a given rating action, it must be timely appealed (within one year of notice of the rating decision assigning the effective date).

A Veteran has the right to submit a claim to reopen a previously withdrawn or abandoned claim, however, a claim for an earlier effective date cannot be a freestanding claim, and the prior denials of the Veteran's claims are final. The Board has further explained the denial of these claims, below.

1. Tinnitus

The Appellant seeks an earlier effective date, prior to March 30, 2014, for service connection of tinnitus. The Board finds that this is a stand-alone claim that must be denied as a matter of law.

The Veteran filed a claim for service connection for tinnitus in March 2015, the AOJ granted service connection from March 30, 2014, under liberalizing legislation. The Veteran appealed that decision and alleged CUE. The Veteran withdrew the CUE claim, but continued an appeal for an earlier effective date. The Board denied entitlement to an earlier effective date in an October 2019 decision, which was specifically affirmed by the Court in July 2020.

In November 2020, the Veteran provided additional evidence and argument in support of a claim for an earlier effective date, which was addressed in the January 2021 and August 2021 rating decisions. The August 2021 decision found that 38 C.F.R. § 3.156(c) was inapplicable to the tinnitus claim because there was no prior final denial of benefits for tinnitus at the time of the September 1970 rating decision, and there was no basis award service connection at that time. The Board agrees. There is no claim, formal or informal, for service connection of tinnitus prior to March 30, 2015; accordingly, 38 C.F.R. § 3.156(c) is inapplicable to the tinnitus claim as there is no previously denied claim to reopen.

Additionally, the accompanying argument from the Appellant's representative did not specifically allege CUE, and in October 2021, the Appellant's brief indicated an argument specifically stating that their argument is not based on CUE, but is strictly a request to reconsider tinnitus as a claim that was pending since 1970 – which is essentially an earlier effective date claim that has already been addressed by the Board in its October 2019 decision and which was affirmed by the Court in July 2021. As such, a new claim for an earlier effective date is a stand-alone claim, which must be denied, as discussed above. *Rudd*, supra; *DiCarlo*, supra.

- 2. Shell fragment wound from right upper thigh (extension)**
- 3. Left (nondominant) hand status post shrapnel wound with retained foreign body**
- 4. PTSD with alcohol use disorder**
- 5. Status post right upper and lower back shell fragment wound with retained metallic shrapnel near 2nd rib (previously denied as right upper and lower back fragment wound)**
- 6. Shell fragment wound of the right shoulder (dominant) (claimed as pain from SFW R shoulder)**
- 7. Right corneal shell fragment wound with foreign body residual and pseudophakia with sympathetic left eye (previously rated as right cornea shell fragment wound residuals; claimed as loss of use R eye and unhealed injury to eye retained metal fragments and perforation of cornea) remains denied.**

The Appellant seeks earlier effective dates for the above claims. The Board finds that these are stand-alone claims and must be denied as a matter of law.

By way of background, a rating decision in September 1970 granted service connection for residuals of a right forearm SFW, Residuals of SFW to the right cornea, bilateral deafness, and scars or pepper shots, to right arm, leg, and right pelvic region, effective April 29, 1970, the day after discharge from active service.

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The Veteran did not appeal this decision. The Veteran later filed a formal claim for entitlement to service connection for the above conditions that was received by VA on March 30, 2015.

Service connection for these conditions was granted in a December 2015 rating decision. The Veteran appealed the evaluation and the effective date of service connection. At a September 2018 hearing, the Veteran withdrew his claim for increased ratings. In an October 2019 decision, the Board denied the withdrawn claims and denied entitlement to earlier effective dates of service connection. The Veteran filed an appeal of the October 2019 decision to the Court, but did not include these claims in that appeal. The Court specifically noted that these claims were abandoned.

No other claim, evidence, or request for reconsideration was received within one year of October 2019 Board decision. In November 2020, the Veteran submitted a claim to reconsider both the June 1970 claim for service connection, and the July 2020 Court decision. Board decisions become final upon issuance, and without a specific allegation of CUE, there is no basis to reconsider the decision. VA has no jurisdiction to consider these claims, as they constitute stand-alone earlier effective date claims. Therefore, these claims must be denied. 38 C.F.R. § 20.100.

8. Shell fragment wound from right upper thigh (claimed as pain from SFW R upper thigh)

9. Scar, pepper spots of the right leg and right pelvic region and left hand (also claimed as pain from SFW R upper thigh)

10. Scars, pepper spots of the right arm, right leg, right pelvic region, right neck, and left hand (claimed as painful scars from SFW, pain from SFW R shoulder, pain from SFW R hand, residuals of SFW metal fragments)

11. Shell fragment wound from right upper thigh (flexion)

12. Scars, pepper spots on right side of neck

The Appellant seeks earlier effective dates for the above claims. The Board finds that these are stand-alone claims and must be denied as a matter of law.

By way of background, a rating decision in September 1970 granted service connection for residuals of a right forearm SFW, Residuals of SFW to the right cornea, bilateral deafness, and scars or pepper shots, to right arm, leg, and right pelvic region. The Veteran did not appeal this decision. The Veteran later filed a formal claim for entitlement to service connection for the above conditions that was received by VA on March 30, 2015.

Service connection for these conditions was granted in a December 2015 rating decision. The Veteran appealed the evaluation and the effective date of service connection. At a September 2018 hearing, the Veteran withdrew these claim for increased ratings. In an October 2019 decision, the Board denied the withdrawn claims and denied entitlement to an earlier effective date of service connection. The Veteran filed an appeal of the October 2019 decision to the Court, but did not include these claims in that appeal. The Court specifically noted that these claims were abandoned.

No other claim, evidence, or request for reconsideration was received within one year of October 2019 Board decision. In November 2020, the Veteran submitted a claim to reconsider both the June 1970 claim for service connection, and the July 2020 Court decision.

Board decisions become final upon issuance, and without a specific allegation of CUE, there is no basis to reconsider the decision, and VA has no jurisdiction to consider these claims, as they constitute stand-alone earlier effective date claims. Therefore, these claims must be denied.

13. Status post right (dominant) forearm shell fragment wound with cutaneous neuropraxia from shrapnel wound right dorsum hand and distal

radial forearm (previously r forearm SFW MG VIII w/ cutaneous nerve dmg, also claimed as SFW r hand & peripheral neuropathy)

The Appellant appears to be seeking an earlier effective date for service connection of status post right (dominant) forearm shell fragment wound with cutaneous neuropraxia from shrapnel wound right dorsum hand and distal radial forearm. The Board finds this is a stand-alone claim and must be denied as a matter of law.

In a June 2018 rating decision, VA found clear and unmistakable error in the September 20, 1970 rating decision, and granted service connection for this claim with a 20 percent rating effective April 29, 1970, the date following separation from active duty. The Board notes that this was a full grant of the claim for an earlier effective date for service connection. At the 2018 hearing, the Veteran withdrew his CUE claims and made no further argument for a higher rating.

In an October 2019 decision, the Board denied the withdrawn CUE claims. The Veteran filed an appeal of the October 2019 decision to the Court, but did not include this claim in that appeal. The Court specifically noted that these claims were abandoned.

No other claim, evidence, or request for reconsideration was received within one year of October 2019 Board decision. In November 2020, the Appellant submitted a claim to reconsider both the June 1970 claim for service connection, and the July 2020 Court decision.

Board decisions become final upon issuance, and without a specific allegation of CUE, there is no basis to reconsider the decision, and VA has no jurisdiction to consider this claim, as it has already been granted, and it constitutes a stand-alone earlier effective date claim. Therefore, this claim must be denied.

14. Migraine including migraine variants (claimed as all other informal claims due to TBI or other injuries suffered on 1/18/1969)

15. Traumatic brain injury (TBI)

The Appellant seeks an earlier effective date of service connection for migraines and TBI. The Board finds that these are stand-alone claims and must be denied as a matter of law.

A May 2017 rating decision granted service connection for migraines with a 30 percent rating and a noncompensable rating for traumatic brain injury (TBI), effective December 27, 2016. The Veteran did not appeal this rating decision.

In June 2018 correspondence, the Veteran's representative raised the issue of effective date of these conditions. In the October 2019 Board decision, the matter of earlier effective date of TBI was denied as a stand-alone claim, which was also not pursued by the Veteran in the appeal to the Court.

These claims have not been continuously pursued, the May 2017 rating decision was final, and these claims for an earlier effective date must be denied as a matter of law. *See* 38 C.F.R. § 20.1103.

16. Scars, pepper spots of the right arm (dominant)

The Appellant seeks an effective date prior to March 30, 2015 for service connection of scars and pepper spots of the right arm. The Board finds this is a stand-alone claim and must be denied as a matter of law.

Service connection for a separate rating for scars, pepper spots of the right arm was granted with an effective date of March 30, 2015 in a December 2015 rating decision. The Veteran filed a Notice of Disagreement that included painful scars, which are rated separately, but did not include the condition of scars of the right arm in his appeal. *See* 38 C.F.R. § 20.1103.

Accordingly, a new claim for an earlier effective date constitutes a stand-alone claim, which must be denied, as discussed above.

17. Bilateral deafness (claimed as perforation of tympanic membranes)

The Appellant seeks reconsideration of service connection for bilateral deafness. The Board finds this is a stand-alone claim and must be denied as a matter of law.

A September 1970 decision granted service connection for bilateral deafness, effective April 29, 1970, the date after separation from active duty. The Veteran did not appeal that decision and it became final. *See* 38 C.F.R. § 20.1103.

No other claim, evidence, or request for reconsideration was received within one year of October 2019 Board decision. In November 2020, the Appellant submitted a claim to reconsider both the June 1970 claim for service connection, and the July 2020 Court decision.

The October 2021 brief indicates that the Appellant is not requesting an increased rating, but a reconsideration of the September 1970 decision. The Board notes that service-connection was granted from the date of active service discharge, and there is no controversy of fact or law raised concerning the appropriateness of that effective date.

There is nothing to reconsider concerning this claim and it constitutes a stand-alone earlier effective date claim. Therefore, this claim must be denied.



J. Kirby
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

M. E. Lee