



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

VA File Number
[REDACTED]

Represented By:
GORDON A GRAHAM
Rating Decision
07/23/2024

INTRODUCTION

The records reflect that you are a Veteran of the Peacetime and Vietnam Era. You served in the Marine Corps from July 5, 1961 to October 2, 1967. You filed a new claim for benefits that was received on April 22, 2024. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of post traumatic stress disorder (PTSD), which is currently 50 percent disabling, is increased to 70 percent effective April 22, 2024.
2. Evaluation of diabetes mellitus type II, which is currently 10 percent disabling, is continued.
3. Entitlement to special monthly compensation based on aid and attendance is denied.
4. Service connection for motor neuron amyotrophic lateral sclerosis (ALS) is denied.

EVIDENCE

- DD Form 214, Certificate of Release or Discharge from Active Duty
- Service treatment and personnel records, for the period July 5, 1961 to October 2, 1967
- VA Form 21-526EZ Veteran's Fully Developed Claim, dated April 22, 2024
- Treatment reports, Houston VA healthcare system, for the period April 12, 2011 to July 18, 2024
- VA letter, dated April 25, 2024
- VA letter, concerning a request for application, dated April 25, 2024
- VA Form 20-0995 Decision Review Request: Supplemental Claim, received April 29, 2024
- Statement in Support of Claim, VA Form 21-4138, received April 29, 2024
- Report of General Information, VA Form 27-0820, dated May 3, 2024
- Notification of exam cancellation due to a failure to report dated May 7, 2024
- Disability benefits questionnaire and medical opinion, diabetic peripheral neuropathy, conducted May 24, 2024
- Report of General Information, VA Form 27-0820, dated June 5, 2024
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, received July 16, 2024
- Disability benefits questionnaire, PTSD, conducted July 17, 2024
- Disability benefits questionnaire, diabetes mellitus, conducted July 17, 2024

REASONS FOR DECISION

1. Evaluation of post traumatic stress disorder (PTSD) currently evaluated as 50 percent disabling.

The evaluation of post traumatic stress disorder (PTSD) is increased to 70 percent disabling effective April 22, 2024. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is April 22, 2024. Entitlement to an increased evaluation has been established from the date the claim was received. When an increased evaluation is granted based on VA medical evidence showing an increase in disability after the date the claim was received, the effective date of the increase is the date the claim was received. (38 CFR 3.400)

We have assigned a 70 percent evaluation for your post traumatic stress disorder (PTSD) based on:

- Anxiety
- Chronic sleep impairment
- Depressed mood
- Difficulty in establishing and maintaining effective work and social relationships
- Disturbances of motivation and mood
- Impairment of short- and long-term memory
- Mild memory loss
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood

- Suspiciousness

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for a mental disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:

- Gross impairment in thought processes or communication
- Persistent delusions or hallucinations
- Grossly inappropriate behavior
- Persistent danger of hurting self or others
- Intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- Disorientation to time or place
- Memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

2. Evaluation of diabetes mellitus type II currently evaluated as 10 percent disabling.

The evaluation of diabetes mellitus type II is continued as 10 percent disabling. A disability benefits questionnaire was completed July 17, 2024. VA treatment records were reviewed. We reviewed the evidence received and determined your service-connected condition hasn't increased in severity sufficiently to warrant a higher evaluation.

We have assigned a 10 percent evaluation for your diabetes mellitus type II based on:

- Restricted diet

A higher evaluation of 20 percent is not warranted for diabetes mellitus unless the evidence shows:

- Insulin and restricted diet; or, oral hypoglycemic agent and restricted diet. (38 CFR 4.119)

3. Entitlement to special monthly compensation based on aid and attendance.

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 have not been met. (38 CFR 3.350)

VA treatment records and disability benefits questionnaires have been reviewed. The criteria for entitlement to A&A mandate that the you be so helpless due to physical or mental incapacity as a result of SC disability. While there is supporting evidence of the need for aid from another person to perform the personal functions required in everyday living, there is no supporting medical evidence that your need is due to service connected impairments, such as prostate cancer. (38 CFR 3.352)

This benefit is payable for being so helpless (due to service-connected disabilities) as to be permanently bedridden or in need of regular aid and attendance. The following will be considered in determining the need for regular aid and attendance: 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 (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); 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 will be a proper basis for the determination. "Bedridden" means that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that a claimant has voluntarily taken to bed or 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 not required that all of the disabling conditions be found to exist before a favorable rating may be made. The particular personal functions which the claimant is unable to perform should be considered in connection with their condition as a whole. 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. (38 CFR 3.350, 38 CFR 3.352)

Favorable Findings identified in this decision:

You require aid and attendance. A disability benefits questionnaire dated May 24, 2024 indicates you have disabilities which lead to a need for regular assistance from others with activities of daily living.

4. Service connection for motor neuron amyotrophic lateral sclerosis (ALS).

A direct grant of service connection requires: 1) medical evidence of a current disability, 2) evidence of the incurrence or aggravation of a disease or injury in active military service, and 3) medical evidence of a nexus (link) between the current disability and the in-service disease or injury. (38 CFR 3.303, 38 CFR 3.304)

Your service treatment records do not contain complaints, treatment, or diagnosis for this condition.

Service connection may be granted for a condition diagnosed after military discharge provided evidence establishes that the condition was caused by service. Service connection may be granted on this basis for a disability related to toxic exposure risk activity (TERA) during military service if evidence demonstrates that the Veteran was actually exposed in service and that a disease associated with such exposure resulted. (38 CFR 3.303, 38 CFR 3.304)

We considered whether your condition resulted from a toxic exposure risk activity (TERA) in

service. (38 U.S.C. 1168, 38 U.S.C. 1710(e)(4)) The evidence of record shows participation in a TERA, based on your deployment to Vietnam and exposure to herbicides.

VA treatment records and medical evidence found in your peripheral nerves disability benefits questionnaire (dated May 24, 2024) do not reveal a formal diagnosis of ALS.

An examination and/or medical opinion based on toxic exposure risk activity (TERA) was not requested because the evidence shows your disability is not currently diagnosed, would be considered a neurodegenerative disease, and the Secretary has determined there is no indication of association between this condition and participation in a TERA. There is also no competent medical or scientific evidence of an association between your claimed disability and in-service TERA. (38 U.S.C. 1168)

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. Service connection for motor neuron amyotrophic lateral sclerosis (ALS) is denied because the medical evidence of record fails to show that this disability has been clinically diagnosed. (38 CFR 3.303, 38 CFR 3.304)

Service connection for motor neuron amyotrophic lateral sclerosis (ALS) is denied since there is no evidence the claimed condition exists. (38 CFR 3.303, 38 CFR 3.304)

Service connection may be granted on a presumptive basis for motor neuron amyotrophic lateral sclerosis (ALS) if this condition is manifested to any degree after military discharge. As the medical evidence fails to show a diagnosis of motor neuron amyotrophic lateral sclerosis (ALS) within the time period specified under 38 CFR 3.317, service connection on a presumptive basis must be denied. (38 CFR 3.303, 38 CFR 3.307, 38 CFR 3.309, 38 CFR 3.317)

Favorable Findings identified in this decision:

Participation in a toxic exposure risk activity is conceded based on your deployment to Vietnam and contact with herbicides.

You have sufficient service to meet the minimum requirements for presumptive service connection. You served on active duty for at least 90 days.

The claimed disability is a chronic disease which may be presumptively linked to your military service. You claimed service connection for amyotrophic lateral sclerosis.

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.