BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Represented by
Gordon A. Graham, Agent

[redacted]
Docket No. 260728-699781
Advanced on the Docket

DATE: October 29, 2026

ORDER

Entitlement to special monthly compensation (SMC) at the rate under 38 U.S.C. § 1114(r)(1), 38 U.S.C. § 3.350(h), but no higher, is granted.

FINDING OF FACT

1. Pursuant to 38 U.S.C. § 1114(p) and 38 C.F.R. § 3.350(f), the Veteran's is in receipt of SMC (l) based on his loss of use of bilateral feet and additional disability or combination of disabilities which resulted in 5 half steps to the intermediate rate between (n) and (o).

2. The evidence supports a factual finding of the Veteran's need for regular aid and attendance based on his service-connected disabilities.

3. The Veteran meets the criteria for entitlement to SMC at the (r)(1) rate based on entitlement to the maximum rate under subsection n and 1/2 rate plus SMC(k), and the need for regular aid and attendance.

CONCLUSION OF LAW

1. The criteria for entitlement to SMC at the R1 rate have been met. 38 U.S.C. § 1114(r), 38 C.F.R. §§ 3.350(h), 3.352.

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty in the United States Navy from February 1967 to June 1968.

In June 2026, the Veteran submitted a VA Form 20-0995, Decision Review Request: Supplemental Claim, and requested readjudication of a January 2026 rating decision. In July 2026, the VA Regional Office issued the supplemental claim decision on appeal. Although the VA Regional Office did not explicitly find that new and relevant evidence was received, the VA Regional Office adjudicated the claim on the merits. As such, the Board concludes that there was an implicit finding of new and relevant evidence by the VA Regional Office.

In the July 2026 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Direct Review docket. Therefore, the Board may only consider the evidence of record at the time of the July 2026 rating decision rating decision on appeal. 38 C.F.R. § 20.301. Any evidence submitted after the VA Regional Office's rating decision on appeal cannot be considered by the Board. 38 C.F.R. §§ 20.300, 20.301, 20.801.

If the Veteran would like VA to consider any evidence that was submitted that the Board could not consider, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claim, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

Entitlement to a higher level of special monthly compensation of the intermediate rate between (n) and (o) plus K is granted.

The Veteran seeks a higher level of special monthly compensation of the intermediate rate between (n) and (o) plus K. *See* June 2026 Supplemental Claim and August 2026 Appellate Brief.

SMC is available when, as the result of service-connected disability, a veteran suffers additional hardships above and beyond those contemplated by VA's schedule for rating disabilities. 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352. The rate of SMC varies according to the nature of a veteran's service-connected disabilities. Basic levels of SMC are listed at 38 U.S.C. § 1114 (k). Higher levels of SMC are provided at 38 U.S.C. § 1114 (l), (m), (n), and (o).

SMC under 38 U.S.C. § 1114 (k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, having complete organic aphonia with constant inability to communicate by speech or, in the case of a female veteran, loss of 25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy), or following receipt of radiation treatment of breast tissue. This special compensation is payable in addition to the basic rate of compensation otherwise payable based on degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. § 1114 (l) when authorized in conjunction with any of the provisions of 38 U.S.C. § 1114 (a) through (j) or (s). When there is entitlement under 38 U.S.C. § 1114 (l) through (n) or an intermediate rate under (p), such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed the monthly rate set forth in 38 U.S.C. § 1114 (o). The limitations on the maximum compensation payable under this paragraph are independent of, and do not preclude payment of, additional compensation for dependents under 38 U.S.C. § 1115, or the special allowance for aid and attendance provided by 38 U.S.C. § 1114 (r).

SMC at the (l) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both feet; (2) anatomical loss or loss of use of one hand and one foot; (3) blindness in both eyes with visual acuity of 5/200 or less; (4) being permanently bedridden; or (5) being so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114 (l); 38 C.F.R. § 3.350 (b).

SMC at the (m) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both hands; (2) anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place; (3) anatomical loss or loss of use of one arm and of one leg at a level, or with complications, preventing natural elbow and knee action with prosthesis in place; (4) blindness in both eyes having only light perception; or (5) blindness in both eyes which results in being so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114 (m); 38 C.F.R. § 3.350 (c).

SMC at the (n) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both arms at a level, or with complications, preventing natural elbow action with prosthesis in place; (2) anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance; (3) anatomical loss of one arm and one leg so near the shoulder and hip as to prevent use of a prosthetic appliance; or (4) anatomical loss of both eyes or blindness without light perception in both eyes. 38 U.S.C. § 1114 (n); 38 C.F.R. § 3.350 (d).

Subsection (o) provides for the highest level of SMC for (i) anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; (ii) conditions entitling to two or more of the rates, no condition being considered twice, provided in 38 U.S.C. § 1114 (l) through (n); (iii) bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less; (iv) service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less; (v) paraplegia; or helplessness. 38 U.S.C. § 1114 (o); 38 C.F.R. § 3.350 (e).

Subsection (p) increases the rate assigned under other SMC provisions in half step or whole step increments. 38 U.S.C. § 1114 (p); 38 C.F.R. § 3.350 (f). Increases in excess of the (l) rate, but in no event higher than the (o) rate, are assigned for various combinations involving loss or loss of use of the feet, legs, arms, and/or

hands, as well as for various combinations involving blindness and deafness. 38 C.F.R. § 3.350 (f)(1-2).

Subsection (p) also increases the rate assigned for the presence of additional service-connected disabilities. Additional single permanent disability or combinations of permanent disabilities (not involved in prior SMC determinations) independently ratable at 50 percent or more warrants the assignment of the next highest "half step" or intermediate rate. 38 C.F.R. § 3.350 (f)(3). Similarly, additional single permanent disability (again, not involved in prior SMC determinations) independently ratable at 100 percent apart from any consideration of individual unemployability warrants a full step to the next higher statutory rate. 38 C.F.R. § 3.350 (f)(4). In no event can the rate be higher than that provided in subsection (o), however. To reiterate, the additional disability or disabilities must be separate and distinct as well as involve different anatomical segments or bodily systems from those used to achieve SMC at the (l) through (n) rate or a half step rate. Finally, the next highest half step or whole step rate is assigned for anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities. 38 C.F.R. § 3.350 (f)(5).

Subsection (r) provides for even higher levels of SMC, but only when certain threshold requirements are met. There are two parts to subsection (r): special aid and attendance under (r)(1), and a higher level of special aid and attendance that is discussed in (r)(2), which includes the need for hospitalization, nursing home care, or other residential institutional care. 38 U.S.C. § 1114 (r); 38 C.F.R. §§ 3.350 (h), 3.352. It is critical to note that to be eligible for SMC under subsection (r), a Veteran must be entitled to SMC at the rate authorized under subsection (o), the maximum rate authorized under subsection (p), or at the intermediate rate between subsections (n) and (o) plus SMC under subsection (k).

Determinations will be based on review of the entire evidence of record, to include all pertinent medical and lay evidence, with due consideration to VA's policy to administer the law under a broad and liberal interpretation consistent with the facts in each individual case. 38 U.S.C. § 1154 (a); 38 C.F.R. § 3.303 (a). Nevertheless, while the Board has an obligation to provide adequate reasons and bases supporting its decision, there is no requirement that it discuss, in exhaustive detail,

each and every piece of evidence submitted or that VA has obtained on the Veteran's behalf. *Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) (the Board must review the entire record but does not have to discuss each and every piece of evidence). Rather, the Board's analysis herein focuses on the most salient and relevant evidence and on what this evidence shows, or fails to show, with respect to the appellant's claim of entitlement to a higher level of SMC at the time of the rating decision on appeal. *Timberlake v. Gober*, 14 Vet. App. 122, 128-30 (2000) (the law requires only that the Board discuss its reasons for rejecting favorable evidence). 38 U.S.C. § 5107; 38 C.F.R. §§ 3.102, 4.3.

The Veteran is currently assigned the following SMC rates: SMC K-1 based on the loss of use of a creative organ; SMC L-1 based on loss of use of both feet; SMC P-1 at the rate intermediate between subsection (l) and subsection (m) on account of entitlement to the rate equal to subsection (l) with posttraumatic stress disorder (PTSD) independently ratable at 50 percent or more; SMC P-1 at the rate intermediate between subsection (l) and subsection (m) on account of the rate equal to subsection (m) with obstructive sleep apnea independently ratable at 50 percent or more; SMC P-1 at the rate intermediate between subsection (m) and subsection (n) on account of entitlement to the rate equal to subsection (m) with additional disabilities of right upper extremity diabetic peripheral polyneuropathy and radiculopathy independently and cervical strain rated at 50 percent or more; SMC P-1 at the rate intermediate between subsection (m) and subsection (n) on account of entitlement to the rate equal to subsection (n) with additional disabilities, left upper extremity diabetic peripheral polyneuropathy, type 2, and headaches independently ratable at 50 percent or more.

Based on the foregoing current SMC assigned, in order to be entitled to a higher level of SMC as requested by the Veteran, the Board will consider whether the Veteran meets the criteria for SMC at the rate authorized under subsection (o).

A review of the evidence does not show that he meets the criteria for SMC (o) because he does not have two ratings under subsections (l) through (n). He does not have bilateral deafness rated at 60 percent or more disabling and total blindness with 20/200 visual acuity or less. The Veteran also does not have service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling

and service-connected blindness having only light perception or less. Finally, the Veteran does not have the anatomical loss of both arms with factors that prevent the use of a prosthetic. Therefore, he does not meet the criteria for SMC at the rate authorized under subsection (o).

Next, the Board will consider whether the Veteran meets the maximum rate under SMC-P. While the Veteran has been granted four half steps under SMC P-1, this is not the maximum rate for SMC-P. To have the maximum rate, the Veteran must have blindness with bilateral deafness, or blindness with deafness in one ear or anatomical loss or loss of use of one hand or one foot. As discussed above, he does not have blindness. The criteria for SMC under 38 U.S.C. § 1114(p) can also be met if there is anatomical loss or loss of use, or a combination of anatomical loss or loss of use, of three extremities. The Veteran does not have loss or loss of use of three extremities as a result of a service-connected disability. Therefore, the Veteran does not meet the criteria for the maximum rate under SMC-P.

Finally, the Board will address whether the Veteran is entitled to the intermediate rate authorized between the rates under subsections (n) and (o) and at the rate authorized under subsection (k).

With regards to whether he meets the criteria for the intermediate rate between (n) and (o), the Veteran and his representative asserts that the VA Regional Office did not utilize his additional disabilities in achieving an additional 50 percent disability in the most advantageous way to allow him to meet the steps to arrive at the intermediate rate between (n) and (o) resulting in a n and 1/2. Aside from the first two half-steps awarded based on his PTSD and obstructive sleep apnea, he asserts that the VA Regional Office should have assigned a third half-step based on his right upper extremity neuropathy and radiculopathy rated at 40 percent with his tinnitus rated at 10 percent. The VA Regional Office should have also assigned a fourth half-step based on his cervical strain rated at 30 percent, left upper extremity neuropathy rated at 20 percent, and hypertension rated at 10 percent. Lastly, he suggested that the fifth half-step, which would entitle him to the intermediate rate of n and 1/2, should be based on his diabetes mellitus rated at 30 percent, migraine headaches rated at 30 percent, and incontinence due to his prostate cancer rated at 20 percent.

Upon review of his service-connected disabilities used to achieve the half-steps pursuant to 38 C.F.R. § 3.350 (f)(3), the Board finds that the Veteran's suggested combination of disabilities meets the criteria for a fifth half-step. As indicated above, he is in receipt of SMC K-1 based on the loss of use of a creative organ; SMC L-1 based on loss of use of both feet. The award of SMC (l) is the bases of the Veteran's entitlement to the first half-step under SMC P-1 at the intermediate rate between subsection (l) and subsection (m) on account of entitlement to the rate equal to subsection (l) with posttraumatic stress disorder (PTSD) independently ratable at 50 percent or more. The second half-step is based on his entitlement to SMC P-1 at the intermediate rate between subsection (l) and subsection (m) on account of the rate equal to subsection (m) with obstructive sleep apnea independently ratable at 50 percent or more.

The Veteran has the remaining service-connected disabilities that can be combined to be rated at 50 percent or more:

1) right upper extremity diabetic peripheral polyneuropathy and radiculopathy rated at 40 percent;

2) degenerative disc disease of the cervical spine rated at 30 percent;

3) headaches rated at 30 percent;

4) type 2 diabetes mellitus rated at 20 percent; left upper extremity peripheral polyneuropathy rated at 20 percent;

5) left lower diabetic peripheral sensory polyneuropathy rated at 20 percent;

6) right lower diabetic peripheral sensory polyneuropathy rated at 20 percent;

7) left lower diabetic peripheral sensory polyneuropathy rated at 20 percent;

8) incontinence rated at 20 percent;

9) tinnitus rated at 10 percent

10) hypertension rated at 10 percent

With consideration of the Veteran's suggested combination of disabilities above, the Veteran's service-connected disabilities results in three additional half-steps. These three half-steps in addition to the first two half-steps results in five half-steps above the subsection (l) compensation rate, which is the intermediate rate between subsection (n) and (o). Thus, the Board finds that he is entitled SMC P-1 at the intermediate rate between (n) and (o) based on additional disabilities rated at 50 percent or more.

The next question is whether the Veteran is entitled to regular aid and attendance in order to qualify for a higher rating under SMC (r)(1).

The need for aid and attendance means helplessness as to require the regular aid and attendance of another person. 38 C.F.R. § 3.350(b). In this regard, the Veteran will be considered in need of regular aid and attendance if he or she (1) is blind or so nearly blind as to have corrected visual acuity of 5/200 or less in both eyes, or concentric contraction of the visual field to 5 degrees or less; or (2) is a patient in a nursing home because of mental or physical incapacity; or (3) establishes a factual need for aid and attendance under the criteria set forth in § 3.352(a). 38 C.F.R. § 3.351(c). The need for aid and attendance need not be independent of the underlying disabilities used to meet the threshold eligibility requirement, as the regulation provides an exception to the pyramiding rule. 38 C.F.R. § 3.350(h)(1).

As directed by 38 C.F.R. § 3.352(a), the following criteria are to be considered for determining whether a claimant is in need of the regular aid and attendance of another person: (1) the inability of the claimant to dress himself or herself or to keep himself or herself ordinarily clean and presentable; (2) frequent need of adjustment of any special prosthetic or orthopedic appliance which, by reason of the particular disability, cannot be done without aid (not to include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (3) the inability of the claimant to feed himself or herself through the loss of coordination of the upper extremities or through extreme weakness; (4) the inability to attend to the wants of nature; or, (5) a physical or mental incapacity that requires care and assistance on a regular

basis to protect the claimant from the hazards or dangers incident to their daily environment.

It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with their condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need.

Determinations that the veteran is so helpless, as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's 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 C.F.R. § 3.352 (a); *Turco v. Brown*, 9 Vet. App. 222, 224 (1996) (finding that it is logical to infer there is a threshold requirement that "at least one of the enumerated factors be present."). Furthermore, the performance of the necessary aid and attendance service by a relative of the beneficiary or other member of their household will not prevent the granting of the additional allowance. 38 C.F.R. § 3.352(c).

While the Veteran's earlier VA treatment records indicated that he was independent in his activities of daily living despite having some functional limitations due to his bilateral upper and bilateral lower extremities disabilities, these disabilities increased in severity during the period on appeal. In a September 6, 2025 VA 21-2860 Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, a doctor indicated that he required assistance with dressing, ambulating within the home or living area, medication management, and preparing meals. The doctor indicated that he had severe balance impairment such that he cannot walk unassisted without falling down. The doctor stated that his functional impairment of his lower extremities was so great that ambulation without assistance with another was too dangerous due to balance impairment. He also required help with shaving and dressing due to his impaired grip due to weakness, rigidity, and tremors. In a September 2025 VA examination for his diabetes mellitus, a VA examiner indicated that his diabetic neuropathy has progressed causing difficulty to stand or walk for long periods of time. He was also unable to

drive due to his bilateral lower extremity radiculopathy with foot drop. Based on the foregoing evidence, the Board finds that the evidence supports a factual finding of the need for regular aid and attendance.

Taken together, the Board finds that the Veteran meets the criteria for a higher level of SMC at the (r)(1) rate. As indicated above, he is currently in receipt of SMC (k) throughout the period on appeal. The Board also found in the current appeal that he meets the higher rate of SMC (p), specifically at the n and 1/2 rate based on separate disabilities ratable at 50 percent or more. Additionally, the Board also found in the current appeal that he meets the criteria for a factual finding of regular aid and attendance due to his service-connected disabilities. As such, entitlement to SMC (r)(1) is warranted.

The Board has further considered whether he is entitled to a higher level of SMC at the (r)(2) rate. However, the Veteran does not meet the criteria for a higher SMC award under 38 U.S.C. § 1114(r)(2) as there is no competent evidence of a need for personal health-care services provided on a daily basis in the Veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. As indicated in the September 2025 VA Form 21-2680, he did not require nursing home care. Moreover, the examination did not indicate that he is hospitalized or permanently bedridden. As such, entitlement to SMC (r)(2) is not warranted.

(Continued on the next page)

In conclusion, the Board resolves all doubts in favor of the evidence and finds that the evidence persuasively supports a finding entitlement to SMC (r)(1) but no higher.

M. Tenner
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board Xiong, Doaw

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.