BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Represented by
Gordon A. Graham, Agent

[redacted]
Docket No. 261007-717626
Advanced on the Docket

DATE: November 9, 2026

ORDER

Entitlement to Special Monthly Compensation (SMC) at the (m) rate prior to June 5, 2019, is denied.

Entitlement to SMC at the intermediate rate between (m) and (n) prior to August 10, 2022, is denied.

Entitlement to SMC at the (n) rate prior to July 21, 2025, is denied.

Entitlement to SMC at the intermediate rate between (n) and (o) is denied.

FINDINGS OF FACT

1. Throughout the period on appeal, the Veteran's service-connected headaches are not separate and distinct from the Veteran's PTSD/TBI.

2. Prior to June 5, 2019, the Veteran did not have two or more permanent disabilities or combinations of permanent disabilities independently ratable at 50 percent or more that were separate and distinct from his service-connected PTSD/TBI, which establish his entitlement to SMC (l) based upon the need for regular aid and attendance.

3. From June 5, 2019, to August 10, 2022, the Veteran did not have three or more permanent disabilities or combinations of permanent disabilities independently

ratable at 50 percent or more that were separate and distinct from his service-connected PTSD/TBI, which establish his entitlement to SMC (l) based upon the regular need for aid and attendance.

4. From August 10, 2022, to July 21, 2025, the Veteran did not have four or more permanent disabilities or combinations of permanent disabilities independently ratable at 50 percent or more that were separate and distinct from his service-connected PTSD/TBI, which establish his entitlement to SMC (l) based upon the regular need for aid and attendance.

5. From July 21, 2025, the Veteran's need for aid and attendance based upon his PTSD/TBI was separately rated from a 50 percent combined rating for degenerative arthritis of the spine, lumbosacral strain, spinal stenosis and peripheral neuropathy right lower extremity, and a 50 percent combined rating for peripheral neuropathy left lower extremity, tinnitus, fracture, left ankle asymptomatic, gastroesophageal reflux disease, and scar of the left upper quadrant of the mouth, and a 100 percent rating for myocardial infarction with mild aortic regurgitation and mild mitral regurgitation.

CONCLUSIONS OF LAW

1. The criteria for entitlement to SMC at the (m) rate prior to June 5, 2019, have not been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.352.

2. The criteria for entitlement to SMC at the intermediate rate between (m) and (n) prior to August 10, 2022, have not been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.352.

3. The criteria for entitlement to SMC at the (n) rate prior to July 21, 2025, have not been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.352.

4. The criteria for entitlement to SMC at the intermediate rate between (n) and (o) have not been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.352.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from October 1966 to May 1970.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a September 2026 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

In October 2026, the Veteran filed a VA Form 10182 Notice of Disagreement and selected the Direct Review docket. Under the Direct Review Lane, the Board reviews the claims based on the evidence of record at the time of the prior rating decision; therefore, the Board will only consider the evidence received as of the September 2026 rating decision on appeal. 38 C.F.R. § 20.301.

The October 2026 10182 requested multiple higher forms of SMC including: (1) SMC at the intermediate rate between (l) and (m), effective November 12, 2018; (2) SMC at the (m) rate, effective November 12, 2018; (3) SMC at the intermediate rate between (m) and (n), effective June 5, 2019; (4) SMC at the (n) rate, effective August 10, 2022; and (5) SMC at the intermediate rate between (n) and (0), effective July 21, 2025. Subsequently, the Veteran was granted the following in an October 2026 rating decision. SMC at the intermediate rate between (l) and (m), effective November 12, 2018; SMC at the (m) rate, effective June 5, 2019; SMC at the intermediate rate between (m) and (n), effective August 10, 2022; and SMC at the (n) rate, effective July 21, 2025. As these grants, however, did not represent a total grant of benefits sought for the entire period on appeal, the Veteran's claims have been recharacterized as listed above. See *AB v. Brown*, 6 Vet. App. 35 (1993).

1. Entitlement to SMC at the (m) rate prior to June 5, 2019

SMC is a higher level of compensation (above the basic level payable for ratings from 10 to 100 percent) for various service-connected disabilities or combinations of service-connected disabilities. Applicable here, SMC at the (l) rate is payable if a veteran is so helpless as to be in need of regular aid and attendance due to service-connected disabilities. 38 U.S.C. § 1114(l); 38 C.F.R. § 3.350(b). Higher levels of SMC are payable when service-connected disabilities exceed the

requirements for SMC at the (l), (m), or (n) rate. Specifically, the SMC rate may be increased either a half or a full step not to exceed the (o) rate. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3-4).

For a half step increase, which encompasses the next higher intermediate rate or if already entitled to an intermediate rate the next higher rate, there must be additional single permanent service-connected disability or combinations of permanent service-connected disabilities are independently ratable at 50 percent or more. The disability or disabilities must be separate and distinct and involve different anatomical segments or bodily systems from those establishing entitlement to SMC at the (l), (m), or (n) rate or the intermediate rate provisions. 38 C.F.R. § 3.350(f)(3). Multiple half step increases are allowable. *See Barry v. McDonough*, 101 F.4th 1348 (Fed. Cir. 2024).

For a whole step increase, which encompasses the next higher rate or if already entitled to an intermediate rate the next higher intermediate rate, there must be an additional single permanent service-connected disability independently ratable at 100 percent apart from any consideration of individual unemployability. This disability must be separate and distinct and involve different anatomical segments or bodily systems from those establishing entitlement to SMC at the (l), (m), or (n) rate or the intermediate rate provisions. 38 C.F.R. § 3.350(f)(4).

On any given point, the claimant is afforded the benefit of the doubt when there is an approximate balance of positive and negative evidence. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102; *Lynch v. McDonough*, 21 F.4th 776, 781-82 (2021).

As noted above, the Veteran was granted SMC at the (m) rate, effective June 5, 2019, in the October 2026 rating decision. However, the Veteran in his October 2026 VA Form 10182 asserted that SMC at the (m) rate was warranted, effective as of November 12, 2018. As such, the Board will address whether SMC at the (m) rate is warranted prior to June 5, 2019.

The Veteran initially stated that SMC at the intermediate rate between (1) and (m) is warranted as of November 12, 2018, based upon 3.350(f) and his rating due to his headaches rated under Diagnostic Code (DC) 8100. See October 2026 VA Form

10182. The Veteran then stated that SMC at the (m) rate was warranted from November 12, 2018, due to his rating for his back condition (DC 5242-5243) and tinnitus (DC 6260).

Regrettably, the Veteran's 50 percent rating for his headaches under DC 8100 cannot support a higher level of SMC as this condition is not separate and distinct from the conditions (PTSD/TBI) that result in the Veteran's need for regular aid and attendance (or SMC at the l rate). The Veteran's headaches have been granted as "headaches associated with PTSD with TBI residuals" and headaches are listed as a subjective symptom under DC 8045, which rates the residuals of TBI. The Board finds probative that the April 2024 TBI examiner reported headaches as a symptom of the Veteran's TBI residuals. As the Veteran only has one combination of permanent service-connected disabilities independently ratable at 50 percent or more that is separate and distinct from his PTSD/TBI prior to June 5, 2019, entitlement to SMC at the (m) rate during this period is not warranted. 38 C.F.R. §§ 3.102, 3.350.

2. Entitlement to SMC at the intermediate rate between (m) and (n) prior to August 10, 2022

The Veteran was granted SMC at the intermediate rate between (m) and (n) prior to August 10, 2022, in the October 2026 rating decision. The Veteran, however, in his September 2026 VA Form 10182 asserted that SMC at the intermediate rate between (m) and (n), was warranted effective June 5, 2019. As such, the Board will address whether SMC at the intermediate rate between (m) and (n) is warranted prior to August 10, 2022.

The Board notes that there is a cascading impact of the Veteran's 50 percent rating for headaches under DC 8100 not applying towards his calculation for SMC. Again, the Veteran's 50 percent rating for his headaches under DC 8100 cannot support a higher level of SMC as this condition is not separate and distinct from the conditions (PTSD/TBI) that result in the Veteran's need for regular aid and attendance (or SMC at the l rate). As such, the Board finds that from June 5, 2019, to August 10, 2022, the Veteran had a pair of combined disabilities of at least 50 percent or more. A 50 percent combined rating for degenerative arthritis of the

spine, lumbosacral strain, spinal stenosis and peripheral neuropathy right lower extremity, and a 50 percent combined rating for peripheral neuropathy left lower extremity, tinnitus, fracture, left ankle asymptomatic, gastroesophageal reflux disease, and scar of the left upper quadrant of the mouth. As the Veteran only has two combinations of permanent service-connected disabilities independently ratable at 50 percent or more that are separate and distinct from his PTSD/TBI from June 5, 2019, to August 10, 2022, entitlement to SMC at the intermediate rate between (m) and (n) is not warranted during this period. 38 C.F.R. §§ 3.102, 3.350.

3. Entitlement to SMC at the (n) rate prior to July 21, 2025

The Veteran was granted SMC at the (n) rate effective July 21, 2025, in the October 2026 rating decision. The Veteran, however, in his September 2026 VA Form 10182 asserted that SMC at the (n) rate, was warranted effective August 10, 2022. As such, the Board will address whether SMC at the (n) rate is warranted prior to July 21, 2025.

Again, the Veteran's 50 percent rating for his headaches under DC 8100 cannot support a higher level of SMC during this period as this condition is not separate and distinct from the conditions (PTSD/TBI) that result in the Veteran's need for aid and attendance (or SMC at the l rate).

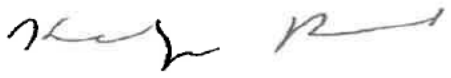
The Board finds that from August 10, 2022, to July 21, 2025, the Veteran had three disabilities (or combinations of disabilities) of at least 50 percent of more. A 50 percent combined rating for degenerative arthritis of the spine, lumbosacral strain, spinal stenosis and peripheral neuropathy right lower extremity; a 50 percent combined rating for peripheral neuropathy left lower extremity, tinnitus, fracture, left ankle asymptomatic, gastroesophageal reflux disease, and scar of the left upper quadrant of the mouth; and a 60 percent rating for myocardial infarction with mild aortic regurgitation and mild mitral regurgitation. The Veteran did not have four or more permanent disabilities or combinations of permanent disabilities independently ratable at 50 percent or more from August 10, 2022, to July 21, 2025; or any independently ratable disabilities at 100 percent during this period. Therefore, the Board finds that entitlement to SMC at the (n) rate is not warranted from August 10, 2022, to July 21, 2025. 38 C.F.R. §§ 3.102, 3.350

4. Entitlement to SMC at the intermediate rate between (n) and (o)

Finally, the Veteran contends that SMC at the intermediate rate between (n) and (o) is warranted from July 21, 2025. See September 2026 VA Form 10182.

The Board finds that from July 21, 2025, the Veteran had three disabilities (or combinations of disabilities) of at least 50 percent of more, with one of those being a separate 100 for myocardial infarction with mild aortic regurgitation and mild mitral regurgitation. As noted above, the Veteran's 50 percent rating for his headaches under DC 8100 cannot support a higher level of SMC during this period as this condition is not separate and distinct from the conditions (PTSD/TBI) that result in the Veteran's need for aid and attendance (or SMC at the l rate).

The Board finds that the Veteran did not have did not have five or more permanent disabilities or combinations of permanent disabilities independently ratable at 50 percent or more from July 21, 2025; or four disabilities (or combinations of disabilities) of at least 50 percent of more, with one of those being a separate 100 during this period. Therefore, entitlement to SMC at the intermediate rate between (n) and (o) is not warranted from July 21, 2025. 38 C.F.R. §§ 3.102, 3.350.



K. Parakkal
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board P.M. Johnson

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.