



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

██████████ D ██████████ K

VA File Number

██████████

**Represented By:
GORDON A GRAHAM
Decision Review Officer Decision
08/29/2019**

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era. You served in the Army from May 3, 1967 to May 1, 1970. We received a Notice of Disagreement from you on February 27, 2019 about one or more of our earlier decisions. The Decision Review Process was elected and this decision represents a de novo review. Under the provisions of 38 CFR 3.2600, this review has been conducted by an individual who did not participate in the decision being appealed. The review has been based on all evidence of record and applicable law, and no deference has been given to the decision being reviewed. 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 March 22, 2017.
2. Basic eligibility to Dependents' Educational Assistance is established from March 22, 2017.

EVIDENCE



- Rating decision of June 21, 2017 and corresponding notification letter of June 27, 2017
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received March 13, 2018 and March 16, 2018
- Treatment records from Legacy Medical Group, November 28, 2017 echocardiogram received April 11, 2018
- Hearing loss and tinnitus exam conducted April 6, 2018 by QTC for VA
- Muscle injury exam conducted April 6, 2018 by QTC for VA
- Heart conditions exam conducted April 6, 2018 by QTC for VA to include review and clarification of December 7, 2018
- Review PTSD exam conducted August 14, 2019 at the Portland VA Medical Center
- Heart conditions exam conducted August 14, 2019 at the Portland VA Medical Center to include clarification August 21, 2019
- Muscle injuries exam conducted April 24, 2017 by VES for VA
- Shoulder and arm conditions exam conducted April 24, 2017 by VES for VA
- Heart conditions exam conducted April 24, 2017 by VES for VA
- Review PTSD exam conducted April 22, 2017 by VES for VA
- Portland VA Medical Center treatment records dated May 31, 2017 through August 14, 2019
- Heart conditions exam conducted April 24, 2017 by VES for VA

REASONS FOR DECISION

1. Entitlement to individual unemployability.

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. (38 CFR 4.16)

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)

In reviewing your record for the purposes of granting the benefit sought it was noted two of your service connected conditions did not reflect current diagnoses in accordance with the VA exams and treatment records. Your record has been updated, this does not reflect a change in evaluation or symptoms on which the evaluations are based.



The April 22, 2017 review PTSD exam conducted by VES for VA continued the diagnosis of PTSD and added another diagnosis of major depressive disorder, recurrent episode, moderate stating this is secondary to PTSD. Your evaluation reflected all symptoms related to the entire disorder and the examiner found you competent to handle your own financial affairs. All subsequent review PTSD exams have continued this diagnosis and as such the record has been updated to reflect the diagnosis of posttraumatic stress disorder with associated major depressive disorder, recurrent.

Your April 24, 2017 Heart conditions exam conducted by VES for VA noted diagnosis of coronary artery disease (which is ischemic heart disease) and mitral valve prolapse. That exam noted that mitral valve prolapse is a structural dysfunction and did not relate it to your coronary artery disease, your service connected heart condition. March 2017 your valve was repaired and at the time of exam you recovering from the surgery to repair the valve. You were seen for a heart conditions exam conducted April 6, 2018 by QTC for VA, you were diagnosed with supraventricular arrhythmia and valvular heart disease, the examiner stated this was a progression of your ischemic heart disease. Clarification was sought as this new diagnosis not considered an ischemic heart disease as defined under provisions of Nehmer, for the purposes of service connection as due to Agent Orange exposure and the exam findings directly contradicted the prior exam findings of April 24, 2017. The clarification confirmed the diagnosis of coronary artery disease (an ischemic heart disease) and stated the etiology of the mitral valve regurgitation is a structural change and not related to the coronary artery disease. The doctor that conducted the August 14, 2019 heart exam reviewed your records and confirmed that your mitral valve prolapse with regurgitation and subsequent repair are not related to your coronary artery disease and noted a private treatment record from your cardiology report of July 25, 2019, Dr. Meyer of Cardiac Surgery in Tacoma, that your flutter is coming from the mitral valve after your repair and stated the supraventricular arrhythmias, including atrial fibrillation, are secondary to your mitral valve repair and not related to the service connected coronary artery disease. Your service connected heart condition is coronary artery disease, which is one of the presumptive Agent Orange ischemic heart conditions, the record has been updated to reflect coronary artery disease.

March 22, 2017 you met the schedular criteria for consideration of entitlement to individual unemployability, you were notified of increases granted in the rating decision of June 21, 2017 in the notification letter of June 27, 2017. On March 13, 2018 we received your claim for individual unemployability, within one year of the June 27, 2017 notification letter and as such entitlement is established from March 22, 2017 (38 CFR 3.400)

In your notice of disagreement, your representative stated in concert the disabilities of coronary artery disease and PTSD combine to be debilitating and a bar to employment and that achieving a total disability rating potentially applies to all disabilities or in some cases combinations of those disabilities. When entitlement to individual employability cannot be found based on the conditions claimed, the adjudicator may grant it based on other disabilities, or as stated by your representative, or a combination of disabilities. On August 14, 2019 a review PTSD exam was conducted, your symptoms continue to support a 70 percent evaluation. The examiner restated your evaluation to be PTSD with associated major depression, recurrent and noted this would limit your ability to return to a work situation involving ongoing stress or confrontations. You would have a moderate impairment in dealing with the general public due to irritability, you experience impaired concentration and focus that would limit your ability to engage in more



complex or demanding tasks. The examiner that conducted the August 14, 2019 heart conditions exam stated there are no limitations on employment due to your heart condition, however, of record is a statement based on a review for clarification of your heart condition dated December 7, 2018 noting your service connected heart condition of coronary artery disease causes fatigue. Your April 6, 2018 hearing loss exam notes your difficulty hearing speech which is low in volume, spoken rapidly or with background noise and the April 24, 2017 shoulder exam noted you are unable to do any strenuous activities, to perform prolonged overhead work and lift and carry more than 30 pounds due to your service connected shoulder condition. The muscles exam of April 24, 2017 noted you are unable to do prolonged overhead work or handle small hand tools for prolonged periods of time due to your service connected muscle condition.

VA treatment records reviewed do not rebut these statements found in exams and as such, resolving reasonable doubt in favor of the veteran, entitlement to individual unemployability is granted based on all of your service connected disability because in concert, together, they prevent you from securing or following any substantially gainful occupation (38 CFR 4.3). The record shows you have not worked at least from the date of entitlement to this benefit, March 22, 2017. This is a full grant of the benefit sought on appeal and as such the appeal is considered satisfied.

2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson 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 Ch. 35, 38 CFR 3.807)

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows you currently have a total service-connected disability, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807)

Basic eligibility to Dependents' Educational Assistance is established from March 22, 2017, corresponding with the effective date of entitlement to individual unemployability (38 CFR 21.3021(r)).

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

