



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

**CHARLES [REDACTED]**

**VA File Number**

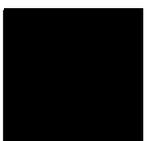
**Represented By:  
GORDON A GRAHAM  
Rating Decision  
04/01/2020**

**INTRODUCTION**

The records reflect that you are a Veteran of the Peacetime and Vietnam Era. You served in the Marine Corps from July 22, 1969 to July 21, 1972 and the Army from June 24, 1974 to July 18, 1979. A special review of your file was mandated. Based on the review and the evidence listed below, we have made the following decisions. Please Note: all claims for Hepatitis C, liver transplant, and diabetes received prior to this year were made on the basis that negligent care was given by a VA provider. On March 6, 2020 we received a disagreement with the denials that presented direct service connection evidence. The claims were re-adjudicated based on this new theory of service connection.

**DECISION**

1. Service connection for Hepatitis C is granted with an evaluation of 40 percent effective March 6, 2020.
2. Service connection for diabetes mellitus, type II is granted with an evaluation of 20 percent effective March 6, 2020.



3. Service connection for liver transplant is granted with an evaluation of 30 percent effective March 6, 2020.
4. Service connection for residual scar is granted with an evaluation of 0 percent effective March 6, 2020.
5. Service connection for autonomic dysreflexia is granted with an evaluation of 10 percent effective March 6, 2020.
6. Service connection for headaches is granted with an evaluation of 30 percent effective March 6, 2020.

#### EVIDENCE

- Service Personnel Records, dated from July 22, 1969 to July 21, 1972 and from June 24, 1974 to July 18, 1979
- Service Treatment Records, dated from July 22, 1969 to July 21, 1972
- Private treatment records, Loma Linda University Hospital, from January 1985 to March 1985
- VA medical records, Central Arkansas VAMC, from January 2011 to January 2020
- Private treatment records, Vanderbilt University Medical Center, from May 2012 to July 2012
- VA medical records, Tennessee Valley (Nashville) VAMC from May 2012 to March 2020
- Lay statement from ██████████ received February 12, 2014
- Rating Decision, dated March 6, 2014
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received April 7, 2015 with attached statement
- Medical treatment records received from you on April 7, 2015, multiple treatment providers
- Memorandum of Unavailability of Army Service Treatment Records, dated July 29, 2015
- VA Respiratory Examination, Central Arkansas VAMC, dated April 8, 2016
- Medical Opinion Disability Benefit Questionnaire, Fayetteville VAMC, dated June 13, 2016
- Medical Opinion Disability Benefit Questionnaire, Anchorage VAMC, dated June 20, 2016
- Rating Decision, dated August 1, 2016
- Correspondence/Hepatitis C risk factors statement received September 5, 2019
- Hepatitis Disability Benefit Questionnaire, QTC Medical Services, dated January 2, 2020 with Medical Opinion
- Statement of the Case, dated January 13, 2020
- Curriculum vitae, Dr. ██████████ received February 24, 2020
- Medical Opinion from Dr. ██████████ dated February 7, 2020
- VA Form 21-0995, Decision Review Request: Supplemental Claim, received March 6, 2020 with attached statement from attorney
- Rating Decision, dated March 26, 2020

#### REASONS FOR DECISION

### **1. Service connection for Hepatitis C.**

A claimant may request a supplemental claim of a finally adjudicated claim by submitting new and relevant evidence. New evidence means evidence not previously submitted to the agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter in issue in a claim. New and relevant evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. (38 CFR 3.2501) In support of your claim, a new theory of service connection was received. Your claim was re-adjudicated on March 26, 2020. Not all applicable regulations were considered in the denial made on March 26, 2020, which represents a clear and unmistakable error. A clear and unmistakable error (CUE) is an error that is undebatable, so that reasonable minds could not differ. A determination of CUE must be based on the record and the law that existed at the time of the prior decision. Such error must have been prejudicial to the claimant. Once a determination is made that there was a CUE in a prior decision that would change the outcome of that decision that decision must be corrected so as if the former error had not been made. (38 CFR 3.105) Guidance from the Adjudication Procedures Manual concerning risk factors for hepatitis was considered and a favorable finding was made with regard to a service event. Based on the medical opinion from Dr. [REDACTED] and the Hepatitis C examination conducted on January 2, 2020, the following decisions were made.

Service connection for Hepatitis C has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304) The effective date of this grant is March 6, 2020. Service connection has been established from the day VA received your claim for direct service connection. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400, 38 CFR 3.2500)

An evaluation of 40 percent is assigned from March 6, 2020.

We have assigned a 40 percent evaluation for your Hepatitis C based on:

- Anorexia
- Daily fatigue
- Malaise
- Minor weight loss

Additional symptom(s) include:

- Continuous medication

A higher evaluation of 60 percent is not warranted for hepatitis c unless the evidence shows daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly or incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12- month period, but not occurring constantly. (38 CFR 4.114)

### **2. Service connection for diabetes mellitus, type II as secondary to the service-connected disability of Hepatitis C.**

A claimant may request a supplemental claim of a finally adjudicated claim by submitting new and relevant evidence. New evidence means evidence not previously submitted to the agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter in issue in a claim. New and relevant evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. (38 CFR 3.2501) In support of your claim, a new theory of service connection was received. Your claim was re-adjudicated on March 26, 2020. Not all applicable regulations were considered in the denial made on March 26, 2020, which represents a clear and unmistakable error. A clear and unmistakable error (CUE) is an error that is undebatable, so that reasonable minds could not differ. A determination of CUE must be based on the record and the law that existed at the time of the prior decision. Such error must have been prejudicial to the claimant. Once a determination is made that there was a CUE in a prior decision that would change the outcome of that decision that decision must be corrected so as if the former error had not been made. (38 CFR 3.105) Guidance from the Adjudication Procedures Manual was considered and a favorable finding was made with regard to a nexus. Based on the medical opinion from Dr. [REDACTED] and the VA Medical records available in the claim file, the following decisions were made.

Service connection for diabetes mellitus, type II has been established as related to the service-connected disability of Hepatitis C. (38 CFR 3.310) The effective date of this grant is March 6, 2020. Service connection has been established from the day VA received your claim for direct service connection. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400, 38 CFR 3.2500)

An evaluation of 20 percent is assigned from March 6, 2020.

We have assigned a 20 percent evaluation for your diabetes, steroid induced based on:

- Insulin required

Additional symptom(s) include:

- Restricted diet

A higher evaluation of 40 percent is not warranted for diabetes mellitus unless the evidence shows:

- Diabetes requiring insulin, restricted diet, and regulation of activities. (38 CFR 4.119)

An examination has been requested for consideration of an evaluation above 20 percent. Your VAMC treatment records indicate you have retinopathy due to your diabetes. Dr. [REDACTED] has also indicated you might have peripheral neuropathy of your lower extremities due to your diabetes. An examination assessment is required to identify the full range of your diabetic complications.

**3. Service connection for liver transplant as secondary to the service-connected disability of Hepatitis C.**

A claimant may request a supplemental claim of a finally adjudicated claim by submitting new and relevant evidence. New evidence means evidence not previously submitted to the agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter in issue in a claim. New and relevant evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. (38 CFR 3.2501) In support of your claim, a new theory of service connection was received. Your claim was re-adjudicated on March 26, 2020. Not all applicable regulations were considered in the denial made on March 26, 2020, which represents a clear and unmistakable error. A clear and unmistakable error (CUE) is an error that is undebatable, so that reasonable minds could not differ. A determination of CUE must be based on the record and the law that existed at the time of the prior decision. Such error must have been prejudicial to the claimant. Once a determination is made that there was a CUE in a prior decision that would change the outcome of that decision that decision must be corrected so as if the former error had not been made. (38 CFR 3.105) Guidance from the Adjudication Procedures Manual was considered and a favorable finding was made with regard to a nexus. Based on the medical opinion from Dr. [REDACTED] and the VA Medical records available in the claim file, the following decisions were made.

Service connection for liver transplant has been established as related to the service-connected disability of Hepatitis C. (38 CFR 3.310) The effective date of this grant is March 6, 2020. Service connection has been established from the day VA received your claim for direct service connection. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400, 38 CFR 3.2500)

An evaluation of 30 percent is assigned from March 6, 2020.

We have assigned a 30 percent evaluation for your liver transplant based on:

- Minimum post-operative evaluation

Higher evaluations are based on more severe levels of impairment. (38 CFR 4.114)

Favorable Findings identified in this decision:

You have been diagnosed with a disability. Your treatment records from Vanderbilt University Medical Center show a diagnosis of end stage liver disease, and that you underwent a liver transplant in May 2012.

#### **4. Service connection for residual scar as secondary to the service-connected disability of liver transplant.**

Service connection for residual scar has been established as related to the service-connected disability of liver transplant. (38 CFR 3.310)

The effective date of this grant is March 6, 2020. Service connection has been established from

the day VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)

A noncompensable evaluation is assigned from March 6, 2020.

We have assigned a 0 percent evaluation for your residual scar based on:

- Anterior trunk: area or areas less than 144 square inches (929 sq. cm.) (Not associated with underlying soft tissue damage)

Additional symptom(s) include:

- Scar 1 Location: Anterior trunk
- Scar 1 type: scar

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

Your first scar/area has a length of 34 cm and a width of 1 cm for a total area of 34 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (anterior trunk) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck that are associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.). (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

##### **5. Service connection for autonomic dysreflexia as secondary to the service-connected disability of Hepatitis C.**

A claimant may request a supplemental claim of a finally adjudicated claim by submitting new and relevant evidence. New evidence means evidence not previously submitted to the agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter in issue

in a claim. New and relevant evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. (38 CFR 3.2501) In support of your claim, a new theory of service connection was received. Your claim was re-adjudicated on March 26, 2020. Not all applicable regulations were considered in the denial made on March 26, 2020, which represents a clear and unmistakable error. A clear and unmistakable error (CUE) is an error that is undebatable, so that reasonable minds could not differ. A determination of CUE must be based on the record and the law that existed at the time of the prior decision. Such error must have been prejudicial to the claimant. Once a determination is made that there was a CUE in a prior decision that would change the outcome of that decision that decision must be corrected so as if the former error had not been made. (38 CFR 3.105) Guidance from the Adjudication Procedures Manual was considered and a favorable finding was made with regard to a nexus. Based on the medical opinion from Dr. [REDACTED] and the VA Medical records available in the claim file, the following decisions were made.

Service connection for autonomic dysreflexia has been established as related to the service-connected disability of Hepatitis C. (38 CFR 3.310) The effective date of this grant is March 6, 2020. Service connection has been established from the day VA received your supplemental claim for service connection. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400, 38 CFR 3.2500)

An evaluation of 10 percent is assigned from March 6, 2020.

We have assigned a 10 percent evaluation for your autonomic dysreflexia based on:

- Occasional dizziness

A higher evaluation of 30 percent is not warranted for peripheral vestibular disorder unless the evidence shows occasional staggering. (38 CFR 4.87)

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related. (38 CFR 4.20)

**6. Service connection for headaches as secondary to the service-connected disability of autonomic dysreflexia.**

Service connection for headaches has been established as related to the service-connected disability of autonomic dysreflexia. (38 CFR 3.310) Dr. Riviero's opinion established your sever headaches as a part of the autonomic dysreflexia disability process.

The effective date of this grant is March 6, 2020. Service connection has been established from the day VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)



An evaluation of 30 percent is assigned from March 6, 2020.

We have assigned a 30 percent evaluation for your headaches based on:

- Characteristic prostrating attacks occurring on an average once a month over last several months

A higher evaluation of 50 percent is not warranted for migraine unless the evidence shows very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability. (38 CFR 4.120, 38 CFR 4.124a)

**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](http://www.va.gov).

