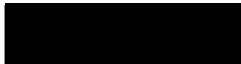
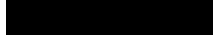




DEPARTMENT OF VETERANS AFFAIRS
Department of Veteran Affairs
DROC-DC



VA File Number



Represented By:
GORDON A GRAHAM
Rating Decision
02/10/2021

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era and Peacetime. You served in the Army from October 10, 1989 to March 18, 1996. The Board of Veterans Appeals remanded the case to our office on February 8, 2021. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Evaluation of lumbar disc disease claimed as low and mid back strain, which is currently 10 percent disabling, is increased to 20 percent effective June 10, 2015.

2. Service connection for left knee meniscal tear, osteoarthritis and recurrent patellar dislocations is granted with an evaluation of 0 percent effective November 20, 2003.

An evaluation of 20 percent is assigned from January 30, 2020.

3. Service connection for knee, limitation of flexion is granted with an evaluation of 10 percent effective November 20, 2003.



EVIDENCE

- VA Form 21-526, Veteran's Application for Compensation and/or Pension, received November 20, 2003
- Disability Benefit Questionnaire, Back Condition, QTC Services, conducted June 10, 2015
- Disability Benefit Questionnaire, Knee Condition, QTC Services, conducted June 10, 2015
- Veterans Affairs Medical Center treatment records, West LA VAMC, for the period July 17, 2002 to October 26, 2015
- Disability Benefit Questionnaire, Back Condition, Dallas VAMC, conducted January 30, 2020
- Disability Benefit Questionnaire, Knee Condition, Dallas VAMC, conducted January 30, 2020
- Private Disability Benefit Questionnaire, Mednick Associates, Veteran Provided, conducted September 18, 2020
- Board of Veterans' Appeals Decision, and all its contents within, received February 8, 2021

REASONS FOR DECISION

1. Entitlement to a 20 percent rating, but no higher, for lumbar disc disease since June 10, 2015 is granted subject to the laws and regulations governing the award of monetary benefits.

The evaluation of lumbar disc disease claimed as low and mid back strain is increased to 20 percent disabling effective June 10, 2015, this is the date as established by the Board as the point of increased disability. (38 CFR 4.1, 38 CFR 3.400, 38 CFR 3.157)

We have assigned a 20 percent evaluation for your lumbar disc disease claimed as low and mid back strain based on:

- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees
- Incapacitating episodes having a total duration of at least two weeks but less than four weeks during the past 12 months

Additional symptom(s) include:

- Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees
- Objective evidence of flare-ups
- Painful motion

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown and Mitchell v. Shinseki*, have been considered and are not warranted.

A higher evaluation of 40 percent is not warranted for intervertebral disc syndrome unless the evidence shows:



- Incapacitating episodes having a total duration of at least four weeks but less than six weeks during the past 12 months. (38 CFR 4.71a)

Additionally, a higher evaluation of 40 percent is not warranted for diseases and injuries of the thoracolumbar spine unless the evidence shows:

- Favorable ankylosis of the entire thoracolumbar spine; or,
- Forward flexion of the thoracolumbar spine 30 degrees or less. (38 CFR 4.71a)

This decision represents a Board of Veterans' Appeals' (BVA) grant that is considered to be a full and final determination of this issue on appeal.

2. Entitlement to service connection for left knee meniscal tear residuals, osteoarthritis and recurrent patellar dislocations as secondary to left ankle fracture residuals.

Service connection for left knee strain has been established as related to the service-connected disability of s/p left ankle fracture with pain. (38 CFR 3.310)

The VA examination dated June 10, 2015 conducted by QTC shows the examiner reviewed your entire claims file. The diagnosis rendered is left knee strain. The examiner opined that your left knee strain was less as likely as not (50%probability or greater) related to your military service. This examiner stated, "Veterans Left knee condition is less likely than not related to his military service as there were records during service that documented a left knee injury." The examiner found no arthritis at this exam. The examiner concluded that there was no evidence of a nexus for your left knee strain to your military service or related to your service-connected ankle.

The effective date of this grant is November 20, 2003. 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 non-compensable evaluation is assigned from November 20, 2003.

We have assigned a 0 percent evaluation for your left knee strain based on:

- A diagnosed disability with no compensable symptoms

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}

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and are not warranted.



A higher evaluation of 10 percent is not warranted for limitation of flexion of the knee unless the evidence shows:

- Limitation of flexion of 31 to 45 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 10 percent is not warranted for impairment of the knee unless the evidence shows:

- A diagnosed condition involving the patellofemoral complex with recurrent instability (with or without history of surgical repair) that does not require a prescription from a medical provider for a brace, cane, or walker; or,
- Sprain, incomplete ligament tear, or complete ligament tear (repaired, unrepaired, or failed repair) causing persistent instability, without a prescription from a medical provider for an assistive device (e.g., cane(s), crutch(es), walker) or bracing for ambulation. (38 CFR 4.71a)

Additionally, a higher evaluation of 10 percent is not warranted for limitation of extension of the knee unless the evidence shows:

- Limitation of extension of 10 to 14 degrees; or,
- Painful motion of the knee. (38 CFR 4.71a)

Additionally, a higher evaluation of 10 percent is not warranted for impairment of the tibia and fibula unless the evidence shows:

- Medial tibial stress syndrome (MTSS), or shin splints with imaging evidence (X-rays, bone scan, or MRI), requiring treatment for no less than 12 consecutive months, and unresponsive to either shoe orthotics or other conservative treatment, one or both lower extremities. (38 CFR 4.71a)

Service connection for left knee meniscal tear residuals, osteoarthritis and recurrent patellar dislocations has been established as related to the service-connected disability of s/p left ankle fracture with pain. (38 CFR 3.310)

The VA examination dated January 30, 2020 conducted at the Dallas VAMC shows the examiner reviewed your entire claims file. The diagnosis rendered is a left knee meniscal tear, osteoarthritis and recurrent patellar dislocations. This indicates a worsening of your left knee strain, therefore resulting in a change in your diagnosis. The examiner opined that your left knee meniscal tear, osteoarthritis and recurrent patellar dislocations was less as likely as not (50% probability or greater) related to your service-connected left ankle condition. This examiner referenced your treatment records which indicate you called your provider on or about July 17, 2002 to report that your "left knee [is] painful & swollen after falling on dance floor last night while dancing, "the knee cap came out of socket, but I snapped it back, now it's too painful to walk." The examiner opined that medical literature does not support the source of your fall would result in your current left knee condition(s) or be related to your service-connected ankle



condition. The examiner performed an X-ray of your left knee and noted osteoarthritis was found. The examiner concluded that there was no evidence of a nexus for your left knee condition(s) to your service-connected left ankle condition.

Private disability examination record dated September 18, 2020, received from Mednick Associates shows that this was not an in-person exam, however the examiner reviewed your entire claims file. The examiner stated that he did not meet with you directly or have any contact with you and had only reviewed your records made available to him at the time. The examiner did not provide a diagnosis but referred to your claimed condition as a left knee condition. The examiner opined that your left knee condition was at least as likely as not (50% probability or greater) related to your service-connected left ankle condition. This examiner "An abnormal gait puts stress on the knees, which will alter the pressure in the kinetic chain (3). The abnormal forces that are put through the musculoskeletal system due to an abnormal gait causes degenerative changes at multiple levels (4,5,6)."

The effective date of this grant is January 30, 2020. Service connection has been established from the day of your VA exam. (38 CFR 3.400)

An evaluation of 20 percent is assigned from January 30, 2020.

We have assigned a 20 percent evaluation for your left knee meniscal tear residuals, osteoarthritis and recurrent patellar dislocations based on:

- Moderate recurrent subluxation

Additional symptom(s) include:

- Objective evidence of arthritis

A higher evaluation of 30 percent is not warranted for impairment of the knee unless the evidence shows:

- Severe lateral instability; or,
- Severe recurrent subluxation. (Historical 38 CFR 4.71a effective April 1, 1946, Historical 38 CFR 4.71a effective July 6, 1950)

This decision represents a grant that is considered a full and final determination of this issue on appeal.

3. Service connection for knee, limitation of flexion as secondary to the service-connected disability of s/p left ankle fracture with pain.

Service connection for knee, limitation of flexion has been established as related to the service-connected disability of s/p left ankle fracture with pain. (38 CFR 3.310)



The effective date of this grant is November 20, 2003. 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 10 percent is assigned from November 20, 2003.

We have assigned a 10 percent evaluation for your left knee strain based on:

- Painful motion of the knee (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the knee, the minimum compensable evaluation of 10 percent is assigned)

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown* and *Mitchell v. Shinseki*, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of flexion of the leg unless the evidence shows:

- Limitation of flexion of 16 to 30 degrees. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of extension of the knee unless the evidence shows:

- Limitation of extension of 15 to 19 degrees. (38 CFR 4.71a)

This decision represents a grant that is considered a full and final determination of this issue on appeal.

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.

