



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

[REDACTED]

**VA File Number**

26 [REDACTED]

**Represented By:  
GORDON A GRAHAM  
Rating Decision  
06/25/2022**

**INTRODUCTION**

The records reflect that you are a Veteran of the Vietnam Era. You served in the Army from January 29, 1968 to January 28, 1971. We received your supplemental claim on January 25, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of posttraumatic stress disorder (previously rated as unspecified anxiety disorder) with traumatic brain injury, which is currently 40 percent disabling, is increased to 50 percent disabling effective October 28, 2021.
2. Evaluation of post-concussion headaches, which is currently 0 percent disabling, is increased to 30 percent effective January 25, 2022.

**EVIDENCE**

[REDACTED]

- Rating Decision, dated November 4, 2019
- Private Medical Records, [REDACTED] received January 25, 2022
- Disability Benefit Questionnaire, provide by Veteran, received January 25, 2022
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received January 25, 2022
- VA Form 21-4138, Statement in Support of Claim, received January 25, 2022
- Private Medical Records, [REDACTED] received January 25, 2022
- Section (§) 5103 Notice Response, received February 23, 2022
- Section (§) 5103 Notice, dated February 24, 2022
- VA Contract Examination, VES, conducted April 9, 2022
- VA Contract Examinations, VES, conducted April 15, 2022
- VA Contract Examination, VES, received June 17, 2022
- VA Medical Records, Walla Walla VAMC, for the period August 14, 2020 to March 25, 2022

### **REASONS FOR DECISION**

#### **1. Evaluation of posttraumatic stress disorder (previously rated as unspecified anxiety disorder) with traumatic brain injury currently evaluated as 40 percent disabling.**

The evaluation of posttraumatic stress disorder (PTSD) with traumatic brain injury (TBI) is increased to 50 percent disabling effective October 28, 2021. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is October 28, 2021, which is the date of the medical evidence showing an increase in disability. When private medical evidence showing an increase in disability is received within one year of the date of the evidence, the effective date of the increase is the date of the evidence. (38 CFR 3.400)

A claimant may continuously pursue a claim by timely and properly filing a supplemental claim. "Timely" means the supplemental claim is submitted within one year of the VA decision. "Properly" means VA form 20-0995, Decision Review Request: Supplemental Claim, is completed and submitted along with new and relevant evidence. (38 CFR 3.2500, 38 CFR 3.2501)

If the claim is not continuously pursued and benefits are granted, the effective date will be the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim currently under review. (except as otherwise provided by other regulations including 38 CFR 3.400)

We acknowledge receipt of your PTSD examination interview via telephone conversation with Elaine Tripi, Ph.D. While the VA requires mental health examinations to be conducted by telemental health using video technology when conducted in lieu of an in person examination, the private examination can be used as evidence providing it has probative value.

Additionally, we received the results of your VA exam that was conducted on February 9, 2022,

by approved video telemental health, which confirmed the new diagnosis of PTSD and also showed a mild to moderate improvement in your condition. The VA examiner also stated your PTSD is a progression of your previous diagnosis of unspecified anxiety disorder.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt is to be resolved in favor of the claimant. (38 CFR 3.102, 38 CFR 4.3, 38 CFR 4.6, 38 CFR 3.326)

In the VA examination, the VA examiner indicated that symptoms of PTSD and your TBI are co-occurring and overlap, and it is not possible to differentiate what portion of each symptom is attributable to each disorder. When a veteran has a comorbid mental disorder (in this case PTSD) and TBI, and the examiner is unable to delineate both symptoms, and/or occupational and social impairment; a single evaluation is assigned under the condition that provides the higher evaluation based on overall impaired functioning due to both conditions. Since we are able to give you a higher evaluation under the mental health criteria, we are using this criteria in order to evaluate your combined PTSD with TBI. (38 CFR 4.14, 38 CFR 4.3, 38 CFR 4.7)

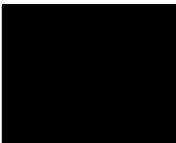
An evaluation of 50 percent is assigned from October 28, 2021.

We have assigned a 50 percent evaluation for your post traumatic stress disorder (PTSD) based on:

- Anxiety
- Chronic sleep impairment
- Depressed mood
- Occupational and social impairment with reduced reliability and productivity
- Suspiciousness

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 50 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 70 percent is not warranted for a mental disorder unless the evidence shows occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as:

- Suicidal ideation
  - Obsessional rituals which interfere with routine activities
  - Speech intermittently illogical, obscure, or irrelevant
  - Near-continuous panic or depression affecting the ability to function independently, appropriately and effectively
  - Impaired impulse control (such as unprovoked irritability with periods of violence)
  - Spatial disorientation
  - Neglect of personal appearance and hygiene
  - Difficulty in adapting to stressful circumstances (including work or a worklike setting)
  - Inability to establish and maintain effective relationships. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)
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The rating schedule contains ten important facets of TBI related to cognitive impairment and subjective symptoms. It provides criteria for levels of impairment for each facet, as appropriate, ranging from 0 to 3, and a 5th level, the highest level of impairment, labeled "total." However, not every facet has every level of severity. The Consciousness facet, for example, does not provide for an impairment level other than "total" since any level of impaired consciousness would be totally disabling. A 100 percent evaluation will be assigned if "total" is the level of evaluation for one or more facets. If no facet is evaluated as "total," the overall percentage evaluation will be assigned based on the level of the highest facet as follows: 0 = noncompensable; 1 = 10 percent; 2 = 40 percent; and 3 = 70 percent. For example, a 70 percent evaluation will be assigned if 3 is the highest level of evaluation for any facet.

A level of severity of "1" has been assigned for your Memory, Attention, Concentration, Executive Functions Facet based on:

- A complaint of mild loss of memory (such as having difficulty following a conversation, recalling recent conversations, remembering names of new acquaintances, or finding words, or often misplacing items), attention, concentration, or executive functions, but without objective evidence on testing. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Judgement Facet based on:

- Normal. (38 CFR 4.124a)

A level of severity of "1" has been assigned for your Social Interaction Facet based on:

- Social interaction is occasionally inappropriate. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Orientation Facet based on:

- Always oriented to person, time, place, and situation. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Motor Activity (with intact motor and sensory system) Facet based on:

- Motor activity normal. (38 CFR 4.124a)

A level of severity of "1" has been assigned for your Visual Spatial Orientation Facet based on:

- Mildly impaired. Occasionally gets lost in unfamiliar surroundings, has difficulty reading maps or following directions. Is able to use assistive devices such as GPS (global positioning system). (38 CFR 4.124a)

A level of severity of "2" has been assigned for your Neurobehavioral Effects Facet based on:

- One or more neurobehavioral effects that frequently interfere with workplace interaction, social interaction, or both but do not preclude them. (38 CFR 4.124a)

A level of severity of "0" has been assigned for your Communication Facet based on:

- Able to communicate by spoken and written language (expressive communication), and to comprehend spoken and written language. (38 CFR 4.124a)

The following facet(s) cannot be used to support your evaluation as it is being used to support an

evaluation for separate disability or has been found to be unrelated:

- Subjective Symptoms Facet

If we were to apply the rating criteria for TBI in evaluating your condition, an overall 40 percent evaluation would be warranted based on the highest level of severity of "2". (38 CFR 4.124a)

A higher evaluation of 70 percent is not warranted for traumatic brain injury (TBI) unless the evidence shows:

- Inability to communicate either by spoken language, written language, or both, at least half of the time but not all of the time, or to comprehend spoken language, written language, or both, at least half of the time but not all of the time. May rely on gestures or other alternative modes of communication. Able to communicate basic needs; or,
- Moderately severely impaired judgment. For even routine and familiar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision; or,
- Objective evidence on testing of moderate impairment of memory, attention, concentration, or executive functions resulting in moderate functional impairment; or,
- Motor activity moderately decreased due to apraxia; or,
- One or more neurobehavioral effects that interfere with or preclude workplace interaction, social interaction, or both on most days or that occasionally require supervision for safety of self or others; or,
- Often disoriented to two or more of the four aspects (person, time, place, situation) of orientation; or,
- Social interaction is inappropriate most or all of the time; or,
- Moderately severely impaired. Gets lost even in familiar surroundings, unable to use assistive devices such as GPS (global positioning system). (38 CFR 4.120, 38 CFR 4.124a)

## **2. Evaluation of post-concussion headaches currently evaluated as 0 percent disabling.**

The evaluation of post-concussion headaches is increased to 30 percent disabling effective January 25, 2022. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is January 25, 2022. Service connection has been established from the day VA received your claim. When a claim for service connection is received more than one year after a Veteran's discharge from active duty, the effective date is the date VA receives the claim. (38 CFR 3.400)

The results of your recent examination show an increase in disability. Although you did not specifically claim this condition, we have considered it to be within the scope of your claim for the co-morbid mental health/TBI condition. We have sympathetically granted service connection based on all facts and evidence found. (38 CFR 3.155)

We have assigned a 30 percent evaluation for your post-concussion 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).

