



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

**DON** [REDACTED]

**VA File Number  
27** [REDACTED]

**Represented By:  
GORDON A GRAHAM  
Rating Decision  
08/22/2022**

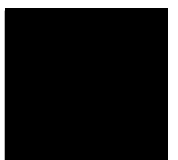
**INTRODUCTION**

The records reflect that you are a Veteran of the Vietnam Era. You served in the Army from June 3, 1970 to December 6, 1971. We received your request for a Higher Level Review on August 15, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

Please note: The evidentiary record closed on the date of notice of our prior decision. VA received additional evidence, which was not part of that decision, after the record closed. If you would like VA to consider this evidence, you may submit a supplemental claim at any time; however, VA must receive your application within one year of the date of notice of this decision to preserve your right to receive the maximum possible benefit.

**DECISION**

A clear and unmistakable error was made in the level of special monthly compensation assigned from October 1, 2018 and is changed to reflect entitlement to SMC M.



### EVIDENCE

- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits received October 31, 2021
- Section 5103 Notice Response received October 31, 2021 and November 3, 2021
- Correspondence to you dated November 3, 2021
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance received November 5, 2021
- Correspondence to you dated December 3, 2021
- VA contract examination (eye) from LHI dated December 13, 2021
- Medical evidence from Summit Eye Consultants for treatment beginning October 8, 2021 through November 29, 2021 received December 26, 2021
- Outpatient treatment records from Puget Sound VA Medical Center for treatment beginning February 2, 2009 through July 6, 2022
- Rating decision dated March 3, 2022
- VA notification letter dated March 7, 2022
- VA Form 20-0996, Decision Review Request: Higher-Level Review received March 11, 2022
- VA Form 27-0820, Report of General Information dated March 15, 2022
- VA Form 20-0999, Higher-Level Review Return, dated March 24, 2022
- Extra-Schedular Memorandum dated April 19, 2022
- Extra-Schedular Memorandum Response, received August 9, 2022
- Rating Decision, dated August 10, 2022 with notification letter dated August 11, 2022
- VA Form 20-0996, Decision Review Request - Higher Level Review, received August 15, 2022
- HLR Informal Conference Worksheet, dated August 17, 2022

### REASONS FOR DECISION

#### Whether the level of Special Monthly Compensation assigned was a clear and unmistakable error.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. (38 CFR 3.105) The previous rating although correctly granted aid and attendance based on extra schedular entitlement, they did not grant smc M based on blindness in both eyes rendering the veteran so helpless as to be in need of regular aid and attendance from October 1, 2018. This decision corrects that error.

The evidence shows that your service connected condition of bilateral retinal detachment associated with malaria is currently evaluated as 90 percent disabling however, the disability is so severe as to demonstrate the need for aid and attendance. To correct our error, we referred

your case to Compensation Service for an advisory opinion requesting consideration for entitlement to aid and attendance on an extra-schedular basis. We received a response from the Director of Compensation service on August 9, 2022 recommending entitlement to special monthly compensation for aid and attendance.

The effective date of this grant is October 1, 2018, the earliest date you met all the parameters necessary to be eligible for this entitlement. (38 CFR 3.350, 38 CFR 3.400)

Laws and Regulations applicable to this issue:

- 38 CFR §4.1 Essentials of evaluative rating.
- 38 CFR §3.350 Special monthly compensation ratings.
- 38 CFR §4.76 Visual acuity.
- 38 CFR §3.103 Procedural due process and appellate rights.
- 38 C.F.R. §3.303 Principles relating to service connection.
- 38 CFR §3.304 Direct service connection; wartime and peacetime.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 CFR §3.326 Examinations.
- 38 CFR 3.2400 Applicability of Modernized Review System.
- 38 C.F.R. §3.2500 Review of decisions.
- 38 C.F.R. §3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals
- 38 C.F.R. §3.2601 Higher-level review
- 38 C.F.R. 3.2600 Review of Benefit Claims Decision
- 38 USC 1155 Authority for schedule for rating disabilities.
- 38 C.F.R. §4.25 Combined ratings table.

**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).