



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

[REDACTED]

VA File Number

[REDACTED]

**Represented By:
GORDON A GRAHAM
Rating Decision
12/28/2022**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from March 11, 2003 to November 4, 2007. We received your supplemental claim on August 2, 2022. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

Service connection for traumatic brain injury is granted with an evaluation of 10 percent effective August 2, 2022.

EVIDENCE

- Rating Decision, dated August 8, 2015
- Copy of VA Puget Sound VAMC/American Lake treatment records, received August 2, 2022
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received August 2, 2022
- VAMC (Veterans Affairs Medical Center) treatment records, Puget Sound VAMC, for the

- period March 22, 2011 to January 22, 2022
- Disability Benefit Questionnaire, Foot Conditions, Including Flatfoot, conducted September 9, 2022
- Disability Benefit Questionnaire, Medical Opinion, conducted September 9, 2022
- Rating Decision, dated November 9, 2022
- VA Traumatic Brain Injury Examination and Medical Opinion, Logistics Health Incorporated (LHI), conducted December 16, 2022

REASONS FOR DECISION

Service connection for traumatic brain injury.

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim. (38 CFR 3.2501) In support of your claim, new and relevant evidence has been received and your claim is now reconsidered.

The VA examiner opined the claimed condition is at least as likely as not (50 percent or greater probability) due to military service. Diagnosis was provided on VA examination. Evidence of a current diagnosis that first began on active duty supports a finding of direct service connection. (38 CFR 3.304)

Service connection for traumatic brain injury has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is August 2, 2022. 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 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)

An evaluation of 10 percent is assigned from August 2, 2022.

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 "0" has been assigned for your Social Interaction Facet based on:

- Social interaction is routinely appropriate. (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 "0" has been assigned for your Visual Spatial Orientation Facet based on:

- Normal. (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)

An overall 10 percent evaluation is assigned for your traumatic brain injury based on the highest level of severity of "1". (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for traumatic brain injury (TBI) unless the evidence shows:

- Inability to communicate either by spoken language, written language, or both, more than occasionally but less than half of the time, or to comprehend spoken language, written language,

or both, more than occasionally but less than half of the time. Can generally communicate complex ideas; or,

- Moderately impaired judgment. For complex or unfamiliar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, although has little difficulty with simple decisions; or,
- Objective evidence on testing of mild impairment of memory, attention, concentration, or executive functions resulting in mild functional impairment; or,
- Motor activity mildly decreased or with moderate slowing due to apraxia; or,
- One or more neurobehavioral effects that frequently interfere with workplace interaction, social interaction, or both but do not preclude them; or,
- Occasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation; or,
- Social interaction is frequently inappropriate; or,
- Three or more subjective symptoms that moderately interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples of findings that might be seen at this level of impairment are: marked fatigability, blurred or double vision, headaches requiring rest periods during most days; or,
- Moderately impaired. Usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions, and judging distance. Has difficulty using assistive devices such as GPS (global positioning system). (38 CFR 4.120, 38 CFR 4.124a)

Additionally, a higher evaluation of 100 percent is not warranted for traumatic brain injury (TBI) unless the evidence shows:

- Persistently altered state of consciousness, such as vegetative state, minimally responsive state, coma under the consciousness facet. (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.