



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

[REDACTED]

**VA File Number**

[REDACTED]

**Represented By:  
GORDON A GRAHAM  
Rating Decision  
01/13/2023**

**INTRODUCTION**

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from April 6, 2004 to April 20, 2012. We received your supplemental claim on September 28, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of adjustment disorder with mixed anxiety & depressed mood, which is currently 30 percent disabling, is increased to 70 percent effective September 9, 2022.
2. A clear and unmistakable error is found in the failure to assign special monthly compensation at the housebound level. Therefore, special monthly compensation at this level is granted effective September 28, 2021 to January 31, 2022.

**EVIDENCE**

[REDACTED]

- VAMC (Veterans Affairs Medical Center) treatment records, Seattle, for the period August 21, 2012 to November 14, 2019
- VAMC (Veterans Affairs Medical Center) treatment records, [REDACTED] for the period November 14, 2013 to July 27, 2022 and August 4, 2022 to January 10, 2023
- No Pertinent VA Healthcare Records from the VAMC Available, [REDACTED] for the period January 1, 2018 to May 6, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, [REDACTED] for the period May 7, 2020 to July 8, 2022 and August 22, 2022 to January 05, 2023
- Prior Rating Decision, dated July 28, 2022
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received January 28, 2022
- Disability Benefit Questionnaire (thoracolumbar spine), Logistics Health Incorporated, Fidelis Ejianreh, DO, conducted May 25, 2022
- Disability Benefit Questionnaire (headache), Logistics Health Incorporated, Fidelis Ejianreh, DO, conducted May 25, 2022
- Disability Benefit Questionnaire (scars), Logistics Health Incorporated, Fidelis Ejianreh, DO, conducted May 25, 2022
- Disability Benefit Questionnaire (hip and thigh), Logistics Health Incorporated, Fidelis Ejianreh, DO, conducted May 25, 2022
- Disability Benefit Questionnaire (mental health), Logistics Health Incorporated, [REDACTED] PhD, conducted July 7, 2022
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received September 20, 2022
- Private Disability Benefit Questionnaire (mental health), [REDACTED] PhD Psychology, received September 20, 2022, conducted September 9, 2022
- Medical Review and Opinion, [REDACTED] PhD Psychology, received September 28, 2022, conducted September 7, 2022
- VA Form 21-4138, Statement in Support of Claim, received September 26, 2022

### **REASONS FOR DECISION**

#### **1. Evaluation of adjustment disorder with mixed anxiety & depressed mood currently evaluated as 30 percent disabling.**

The evaluation of adjustment disorder with mixed anxiety & depressed mood is increased to 70 percent disabling effective September 9, 2022. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this increase is September 9, 2022. Entitlement to an increased evaluation has been established from the date entitlement arose which is the date of your last exam. (38 CFR 3.400)

We have assigned a 70 percent evaluation for your adjustment disorder with mixed anxiety & depressed mood based on:

- Anxiety
- Chronic sleep impairment
- Depressed mood

- Difficulty in adapting to a work like setting
- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Difficulty in establishing and maintaining effective work and social relationships
- Disturbances of motivation and mood
- Flattened affect
- Forgetting to complete tasks
- Impaired impulse control
- Impairment of short- and long-term memory
- Inability to establish and maintain effective relationships
- Mental condition has been formally diagnosed
- Near-continuous depression affecting the ability to function independently, appropriately and effectively
- Near-continuous panic affecting the ability to function independently, appropriately and effectively
- Neglect of personal appearance and hygiene
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Panic attacks (less than weekly)
- Panic attacks (weekly)
- Retention of only highly learned material
- Unprovoked irritability with periods of violence

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for a mental disorder unless the evidence shows total occupational and social impairment, due to such symptoms as:

- Gross impairment in thought processes or communication
- Persistent delusions or hallucinations
- Grossly inappropriate behavior
- Persistent danger of hurting self or others
- Intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- Disorientation to time or place
- Memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

## **2. Whether there was a clear and unmistakable error in the failure to assign special monthly compensation at the housebound level.**

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 rating decision dated July 28, 2022, shows you have been evaluated at 100 percent disabling for your lumbar vertebral fusion surgery since September 28, 2021. This previous rating decision also awarded separate evaluations for chronic sinusitis, adjustment disorder with mixed anxiety & depressed mood, left snapping hip syndrome, right snapping hip syndrome combine to a separate evaluation of 60 percent or more.

Entitlement to special monthly compensation at the housebound level is warranted when you have one service connected disability being rated as 100 percent disabling and additional service-connected disabilities independently ratable at 60 percent or more.

The evidence shows that a clear and unmistakable error was made by not awarding this benefit at the time of the last rating. Accordingly, this rating corrects the error and special monthly compensation based on one service connected disability being rated 100 percent and additional service-connected disabilities independently ratable at 60 percent or more is granted effective September 28, 2021 to January 31, 2022.

The effective date is the date that the evidence first shows entitlement to this benefit.

**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).

