



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

[REDACTED]

VA File Number

[REDACTED]

**Represented By:
GORDON A GRAHAM
Rating Decision
03/10/2023**

INTRODUCTION

The records reflect that you are a Veteran of the Vietnam Era. You served in the Marine Corps from February 17, 1969 to April 2, 1969. You filed a claim for increased evaluation that was received on November 18, 2022. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. A clear and unmistakable error is found in the evaluation of bilateral macular degeneration with glaucoma pseudophakia status post left retinal detachment and a decreased evaluation of 100 percent is established from June 22, 2021.
2. Evaluation of post traumatic stress disorder (PTSD) with major depression, single episode, which is currently 50 percent disabling, is increased to 100 percent effective May 23, 2022.
3. Entitlement to special monthly compensation based on blindness of both eyes with the need for aid and attendance is granted from June 22, 2021.



4. Entitlement to specially adapted housing is established is continued.
5. Entitlement to an allowance for an automobile or other conveyance and adaptive equipment is continued.
6. The claimant is considered competent.

EVIDENCE

- Intent to file for VA benefits received May 23, 2022
- Claim for increased benefits received November 18, 2022
- VA Form 21-526EZ Veteran's Fully Developed Claim, received November 18, 2022
- VA Review PTSD examination, VA Contractor, dated December 5, 2022
- VA Eye examination, VA Contractor, dated December 5, 2022
- VA Aid and Attendance examination, VA Contractor, dated December 20, 2022
- Review of VAMC Phoenix treatment reports dated March 15, 2022 through November 21, 2022
- Review of all Service Treatment and Personnel records for the period of February 17, 1969 to April 2, 1969

REASONS FOR DECISION

1. Whether the evaluation assigned for bilateral macular degeneration with glaucoma pseudophakia status post left retinal detachment was clearly and unmistakably erroneous.

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 a 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. In this case, the disability evaluation is reduced because the previous decision was a clear and unmistakable error. (38 CFR 3.105)

The August 27, 2022 Rating Decision contained a clear and unmistakable error when it continued the 80 percent evaluation for your eyes. The June 22, 2021 examination showed that you meet the criteria for light perception only in the right eye under 38 CFR 3.350 and showed acuity of 5/200 in the left eye. This warrants a 100 percent evaluation. We are granting a 100 percent evaluation from June 22, 2021, the date the evidence first shows a factually ascertainable increase within a year from your August 27, 2022 VA form 21-526EZ. (38 CFR 3.400, 38 CFR 3.105)

We have assigned a 100 percent evaluation for your open-angle glaucoma based on:

- Visual impairment described below

Additional symptom(s) include:

- No incapacitating episodes reported.

Your visual acuity warrants a 100 percent evaluation based on:

Your left eye shows corrected near vision of 5/200. Your left eye corrected far vision was shown as 5/200.

You have light perception only in your right eye.

This is the highest schedular evaluation allowed under the law for this condition.

This is the highest evaluation allowed by law under the General Rating Formula for Diseases of the Eye. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.76a, 38 CFR 4.77, 38 CFR 4.78, 38 CFR 4.79)

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.102 Reasonable doubt.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.321 General rating considerations.
- 38 C.F.R. §3.303 Principles relating to service connection.
- 38 C.F.R. §3.304 Direct service connection; wartime and peacetime.
- 38 U.S.C. §1110 Basic entitlement.
- 38 U.S.C. §1131 Basic entitlement.
- 38 U.S.C. §1154 (b) Consideration to be accorded time, place and circumstances of service (combat).
- 38 C.F.R. §4.75 General considerations for evaluating visual impairment.
- 38 C.F.R. §4.76 Visual acuity.
- 38 C.F.R. §4.76a Computation of average concentric contraction of visual fields.
- 38 C.F.R. §4.77 Visual fields.
- 38 C.F.R. §4.78 Muscle function.
- 38 C.F.R. §4.71a Schedule of ratings—musculoskeletal system. (6064)
- 38 C.F.R. §3.400 General.
- 38 C.F.R. §3.401 Veterans.
- 38 C.F.R. §3.105 Revision of decisions.
- 38 C.F.R. §4.20 Analogous ratings.

2. Evaluation of post traumatic stress disorder (PTSD) with major depression, single episode currently evaluated as 50 percent disabling.

The evaluation of post traumatic stress disorder (PTSD) with major depression, single episode is increased to 100 percent disabling effective May 23, 2022. (38 CFR 4.1, 38 CFR 3.400)

The effective date of this grant is May 23, 2022. The increased evaluation has been established from the day VA received your intent to file (ITF) a claim for compensation. (38 CFR 3.155, 38

CFR 3.400)

We have assigned a 100 percent evaluation for your post traumatic stress disorder (PTSD) with major depression, single episode based on:

- Anxiety
- Chronic sleep impairment
- Depressed mood
- Disturbances of motivation and mood
- Flattened affect
- Forgetting directions
- Forgetting names
- Forgetting recent events
- Inability to establish and maintain effective relationships
- Mild memory loss
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Panic attacks (weekly)
- Suicidal ideation
- Suspiciousness

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 100 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

This is the highest schedular evaluation allowed under the law for posttraumatic stress disorder. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.102 Reasonable doubt.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.321 General rating considerations.
- 38 C.F.R. §3.303 Principles relating to service connection.
- 38 C.F.R. §3.304 Direct service connection; wartime and peacetime.
- 38 U.S.C. §1110 Basic entitlement.
- 38 U.S.C. §1131 Basic entitlement.
- 38 U.S.C. §1154 (b) Consideration to be accorded time, place and circumstances of service(combat).
- 38 C.F.R. §3.400 General.
- 38 C.F.R. §3.401 Veterans.
- 38 C.F.R. §3.304(f) Post-traumatic stress disorder
- 38 C.F.R. §4.125 Diagnosis of mental disorders.
- 38 C.F.R. §4.126 Evaluation of disability from mental disorders.
- 38 C.F.R. §4.127 Intellectual disability (intellectual developmental disorder) and personality disorders.
- 38 C.F.R. §4.128 Convalescence ratings following extended hospitalization.
- 38 C.F.R. §4.129 Mental disorders due to traumatic stress.

38 C.F.R. §4.130 Schedule of ratings—Mental disorders. (9411)
38 C.F.R. §3.353 Determinations of incompetency and competency.
38 C.F.R. §3.155(b) Informal claims.

3. Entitlement to special monthly compensation based on blindness of both eyes with the need for aid and attendance.

Entitlement to special monthly compensation is warranted in this case because criteria regarding loss of use of blindness of both eyes with the need for aid and attendance were met from June 22, 2021, the date entitlement to this benefit is warranted. (38 CFR 3.350, 38 CFR 3.400, 38 CFR 3.401)

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.
38 C.F.R. §3.102 Reasonable doubt.
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.350 Special monthly compensation ratings.
38 C.F.R. §4.63 Loss of use of hand or foot.
38 C.F.R. §4.64 Loss of use of both buttocks.
38 C.F.R. §3.350 Special monthly compensation ratings.
38 C.F.R. §3.400 General.
38 C.F.R. §3.401 Veterans.

4. Entitlement to specially adapted housing.

A certificate of eligibility for assistance in acquiring specially adapted housing may be extended when the Veteran is permanently (but not necessarily totally) disabled due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens; or a permanent and total disability due to loss or, loss of use of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or one lower extremity together with the loss, or loss of use, of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or both upper extremities precluding use of the arms at or above the elbow; or amyotrophic lateral sclerosis (ALS) rated 100-percent disabling; or a permanent and total disability due to full-thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities, or at least one extremity and the trunk. (38 USC 2101 per PL 116-154, 38 CFR 3.809)

Entitlement to special housing assistance is established based on this level of impairment which is caused by the service-connected condition of blindness in both eyes. (38 CFR 3.809)

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.
38 C.F.R. §3.102 Reasonable doubt.

- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.809 Specially adapted housing under 38 U.S.C. 2101(a)(2)(A)(i).
- 38 C.F.R. §3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

5. Entitlement to automobile or other conveyance and adaptive equipment or for adaptive equipment only.

A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance and of basic entitlement to necessary adaptive equipment will be made when the veteran is entitled to compensation under chapter 11 of title 38, United States Code and has permanent impairment of vision of both eyes with central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye. Entitlement to automobile and adaptive equipment is established based on this level of impairment. (38 CFR 3.808).

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.102 Reasonable doubt.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.808 Automobiles or other conveyances and adaptive equipment; certification.

6. Competency to handle disbursement of funds.

Since you are not shown as unable to manage personal affairs, we have determined that you are competent for VA purposes. (38 CFR 3.353)

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.102 Reasonable doubt.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.353 Determinations of incompetency and competency.

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.