

HLR Arguments

Vet has numerous visits for injuries due to falling down. Vet wears AFOs on lower extremities due to foot drop.

Vet is SC for DM II and that presumably encompasses residuals such as neuropathies of both extremities. Not 4.14 pyramiding as the two diseases are independently ratable from one another.

Dr. J declines to rate the Veteran for PN using DCs 8515/ 8520 but notes under DC 8004. He states:

" Parkinson's disease is not a condition of the peripheral nerves to include the Veteran's left and right upper extremity peripheral nerves. Therefore there is no clinical indication to complete a peripheral nerve worksheet".

However, § 4.124a Schedule of ratings - neurological conditions and convulsive disorders, by the Secretary's very own regulation instructs to do the very same...

"[With the exceptions noted, disability from the following diseases and their residuals may be rated from 10 percent to 100 percent in proportion to the impairment of motor, sensory, or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, etc., referring to the appropriate bodily system of the schedule. **With partial loss of use of one or more extremities from neurological lesions, rate by comparison with the mild, moderate, severe, or complete paralysis of peripheral nerves]. 4.124a**

This would be true of either PN 2ndy to DM II or PN due to DC 8004 PD.

The 5/24/2022 c&p exam revealed the possibility of diabetic retinopathy which has not been investigated. As an ancillary disability directly related to DM II, diabetic retinopathy would have to be considered under 3.310.

The combination of comorbidities combine to create loss of use of the lower extremities such that Veteran would be equally well served by elective amputation at a suitable joint with prostheses bilaterally. As it is now, he cannot walk unattended without suffering falls.

Parkinson's is a progressive disease. Any reduction of ratings for balance impairment is medically unsupported or a transient improvement that cannot be sustained permanently.

Colvin violation. Dr. J did an ACE on client and never set eyes on him. Refused to opine on bilateral extremity nerve lesions due to Parkinson's in violation of the duty to assist.

The medical professional may not determine a legal matter. He may only opine on the conditions of the Veteran. A VA examiner may not make determinations medical in nature.

The reductions all occurred before the recent DM II examinations. They are inadmissible during this HLR rating decision period by operation of law. The rating decision for the DM requires a separate RD and by virtue of the A&A award, the ancillary entitlement to SMC must once again be entertained by law (Akles v. Derwinski, Buie v Shinseki).

3.344—You guys know the drill. Parkinson's falls into 3.344(a). You cannot reduce on one exam and prove sustained improvement has been demonstrated.

What the hey? You just gave him an increase to SMC L from 100%. Does that sound like sustained improvement?

Please cite to any literature you can find to sustain a medical determination that Veteran's PD symptomatology -or any person's PD symptoms- can be cured with medication or resolve spontaneously ?

Please cite to anything in Vet's records showing improvement in PD and that it can be permanently sustained.

Examinations less full and complete than those on which payments were authorized or continued will not be used as a basis of reduction. **Ratings on account of diseases subject to temporary or episodic improvement**, e.g., manic depressive or other psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease, bronchial asthma, gastric or duodenal ulcer, many skin diseases, etc., **will not be reduced on any one examination, except in those instances where all the evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated**

You cannot reduce the 8514/8520 ratings because Dr. J never opined on them. You cannot attribute them to Diabetes because he isn't rated for them under DC 7913 etiology.

It would be CUE to admit the recent c&p info into the record or to reduce without a **baseline** to begin with. I don't see any evidence of that

Vet has two equally serious illnesses involving two different bodily systems. The symptoms overlap. He still has to be rated for both independently under 4.25(b). In combination, they create loss of use.

**6/12/2020—RD grants increase in PN=DM II from 20 >40%
then reduction of 40 to 20% on 4/25/2022 but Code Sheet
note invites new claim for increase in PN in all 4
extremities???????????????? Helloooooooooooooooooooooo?**