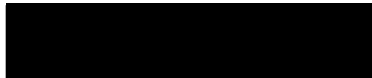
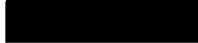




**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**



VA File Number



**Represented By:
GORDON A GRAHAM
Rating Decision
04/26/2023**

INTRODUCTION

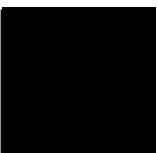
You have requested VA provide a higher-level review of the issue addressed in this decision.

The records reflect that you are a Veteran of the Vietnam Era. You served in the Army from January 29, 1968 to January 28, 1971. We received your request for a Higher Level Review on January 29, 2023. Based on a review of the evidence listed below, we have made the following decision 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

1. Entitlement to individual unemployability is granted effective October 28, 2021.



2. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from October 28, 2021.

EVIDENCE

- VA Form 20-0995, Decision Review Request - Supplemental Claims, received January 25, 2022
- VA Examination, VA Form 21-0960M-9, PTSD Review Disability Benefits Questionnaire, dated, October 28, 2021, received January 25, 2022
- Medical records, [REDACTED], received January 25, 2022, for the period October 2021
- VA Medical Center Portland outpatient treatment records from 05-28-2015 to 06-18-2021
- VA Medical Center Walla Walla outpatient treatment records from 08-14-2020 to 03-25-2022
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received July 7, 2022
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received July 26, 2022
- Correspondence, dated August 2, 2022
- Correspondence, dated August 18, 2022
- Correspondence, dated September 2, 2022
- VA Examinations, VES, Disability Benefits Questionnaires, dated August 31, 2022, and October 3, 2022
- Rating Decision, dated October 19, 2022
- Correspondence, dated October 24, 2022
- VA Form 20-0996, Decision Review Request - Higher Level Review, received January 29, 2023
- HLR Informal Conference Worksheet, dated April 26, 2023

REASONS FOR DECISION

1. Entitlement to individual unemployability.

Entitlement to individual unemployability is granted from October 28, 2021 because you are unable to secure or follow a substantially gainful occupation as a result of your service-connected . (38 CFR 4.16)

Entitlement to Individual Unemployability includes consideration of all service-connected disabilities and those granted under 38 USC 1151. (38 CFR 4.16)

The effective date of this grant is October 28, 2021, the date in which you met the requirements of 38 CFR §4.16, because your claim for individual unemployability was received with in one year of the notification of a change in your schedular eligibility. (38 CFR 3.400, 38 CFR 4.16)

A 70 percent evaluation is assigned for posttraumatic stress disorder (PTSD) with traumatic brain injury (TBI). An evaluation of 70 percent is assigned for occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships. A higher evaluation of 100 percent is not warranted unless there is 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 4.126, 38 CFR 4.130)

Substantially gainful employment is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the Veteran resides. (38 CFR 4.16)

Total disability ratings for compensation based on individual unemployability may be assigned where the schedular rating is less than total if it is found that the disabled person is unable to secure or follow a substantially gainful occupation as a result of 1) a single service-connected disability ratable at 60 percent or more, or 2) as a result of two or more disabilities, provided at least one disability is ratable at 40 percent or more, and there is sufficient additional service-connected disability to bring the combined rating to 70 percent or more. For the purposes of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: disabilities of one or both upper extremities; or of one or both lower extremities, including the bilateral factor, if applicable; disabilities resulting from common etiology or a single accident; disabilities affecting a single body system (e.g., orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric); multiple injuries incurred in action; or multiple disabilities incurred as a prisoner of war. Prior employment or unemployment status is immaterial if your disabilities render you unemployable. (38 CFR 4.16)

The evidence notes that you have an associate degree in Welding and are certified as a caregiver. You are noted to have last worked full time and that became too disabled to work, July 2020.

The medical evidence from [REDACTED] dated October 20, 2021, notes that you become extremely upset around places, people and events that remind him of the military. You have frequent bouts of irritability and outbursts of anger, with periods of violence. Your concentration is impaired, your mind wanders easily, you have many unfinished projects, and you tend to procrastinate about starting projects. You are hypervigilant and has an exaggerated startle response. Finally, it is noted that you do not possess any transferrable skills to sedentary work.

VA examination dated October 3, 2022, notes that your short term memory problems and decreased concentration can interfere with ability to efficiently complete work tasks. VA examination dated August 31, 2022, also notes difficulty in adapting to stressful circumstances, including work or a work like setting.

Based on the above evidence, any and all reasonable doubt is resolved in your favor and entitlement to individual unemployability is established. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. Reasonable doubt exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. (38 CFR 3.102, 38 CFR 4.3, 38 CFR 4.6)

Entitlement to individual unemployability is granted effective October 28, 2021, the day your posttraumatic stress disorder (PTSD) with traumatic brain injury (TBI) combined to clearly provide a major impairment of occupational functioning. (38 CFR 4.16)

2. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35 based on permanent and total disability status.

Eligibility for Dependents' Educational Assistance is derived from a Veteran who was discharged under other than dishonorable conditions; and has permanent and total service-connected disability(ies); or permanent and total disability(ies) existed at the time of death; or the Veteran died as a result of service-connected disability(ies). Also, eligibility exists for a service member who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is granted as the evidence shows you currently have a totally disabling service-connected disability or disabilities, permanent in nature. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Evidence we have used to grant permanent and total disability status: Medical records from Ability Management Associates dated October 20, 2021, VA examination dated August 31, 2022, and VA examination dated October 3, 2022.

The effective date of this grant is October 28, 2021. Eligibility to Dependents' Education Assistance is granted from the day the evidence shows that your service connected disabilities became total service-connected disabilities, permanent in nature.

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.

