



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

**VA File Number
SSN Deleted**

**Represented By:
STEVEN E JOHNSON
Rating Decision
07/30/2020**

INTRODUCTION

The records reflect that you are a Veteran of the Peacetime and Vietnam Era. You served in the Navy from June 12, 1972 to June 11, 1975. We received a request to reopen a previous claim on August 14, 2019. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for ischemic heart disease is granted with an evaluation of 10 percent effective June 20, 2018.
2. Entitlement to special monthly compensation based on loss of use of a creative organ is granted from June 20, 2018.
3. Service connection for erectile dysfunction is granted with an evaluation of 0 percent effective June 20, 2018.
4. Service connection for prostate cancer is granted with an evaluation of 0 percent effective June

20, 2018.

EVIDENCE

- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received June 20, 2018
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, July 2, 2018
- Statement of herbicide exposure, July 2, 2018
- VA letters concerning your claim, from July 2, 2018, July 16, 2018, September 13, 2018, February 14, 2019, September 2, 2019, and October 23, 2019
- US Commodities Export Logs from 1972 and 1973, received July 2, 2018
- Disability Benefit Questionnaire for the Heart, Dr. Vasili Lendel, performed December 9, 2017, received July 2, 2018
- Disability Benefit Questionnaire for Prostate Cancer, Dr. Robert Murfee, performed February 21, 2018, received July 2, 2018
- Private Treatment Records, multiple entries, from August , 2011 through November, 2017
- Service Personnel Records for the period of service from June 12, 1972 through June 11, 1975
- Service Treatment Records for the period of service from June 12, 1972 through June 11, 1975
- Private Treatment Records, multiple entries, Arkansas Heart Hospital, from March, 2006 through December, 2017
- Rating Decision, dated June 12, 2019
- Notification Letter regarding Rating Decision, June 14, 2019
- Statement from Stan Ellison concerning herbicide exposure, dated July 9, 2019, received August 14, 2019
- VA Form 21-22a, Appointment of Steven Johnson as Claimant's Representative, received August 22, 2019
- VA Form 20-0995, Decision Review Request - Supplemental Claims, received November 20, 2019
- Evidence Packet, multiple entries, received November 20, 2019
- VA Form 27-0820 Report of General Information, dated February 7, 2020

REASONS FOR DECISION

1. Service connection for ischemic heart disease.

Service connection may be granted for specific diseases or conditions which are presumed to have been caused by service if manifested to a compensable degree following military discharge. Although not shown in service, service connection for ischemic heart disease has been granted on the basis of presumption. (38 CFR 3.307, 38 CFR 3.309)

Exposure to herbicides/dioxin is conceded in your case due to several pieces of compelling

evidence: Submission of US export logs, lay statements, and photographs. The US export logs submitted (and verified via official internet logs) demonstrate the export of herbicidal dioxins (many thousands of pounds of herbicide 2, 4, 5-T, which bears a heavy dioxin load as well as 4-D with a lesser dioxin load) to Panama in 1972 and 1973 when the you served on the canal.

Numerous pictures were reviewed which showed untouched jungle foliage contrasted with the obviously defoliated work areas with you pictured on-site working. In addition, a lay statement from Stanley Ellison, a Veteran with whom you served, bears witness to your accounts of defoliant spraying in your work areas in Panama. It is worth noting that you also provided a Board of Veterans Appeals decision for another Veteran which was also reviewed. While decisions by the Board of Veterans Appeals do not set precedent, it is noted that a similar fact pattern yielded a similar concession of exposure to herbicides in that case. (38 CFR 3.102)

The effective date of this grant is June 20, 2018, the date that your continuously pursued claim was preceded by an Intent to File a claim. (38 CFR 3.155, 38 CFR 3.2500)

We have assigned a 10 percent evaluation for your ischemic heart disease based on:

- Continuous medication is required (your isosorbide mononitrite was prescribed specifically for your coronary artery disease as opposed to your valvular heart disease)

A higher evaluation of 30 percent is not warranted for arteriosclerotic heart disease unless the evidence shows:

- Evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray;

or,

- Workload of greater than five METs but not greater than seven METs results in dyspnea, fatigue, angina, dizziness, or syncope. (38 CFR 4.100, 38 CFR 4.104)

One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. (38 CFR 4.104)

Your evaluation is deferred pending a VA examination to determine the impact of your service connected coronary artery disease aside from your nonservice connected valvular heart disease. You will be notified of where and when to report.

2. Entitlement to special monthly compensation based on loss of use.

Entitlement to special monthly compensation is warranted in this case because criteria regarding loss of use of a creative organ were met from June 20, 2018, the date that your continuously pursued claim was preceded by an Intent to File. (38 CFR 3.350, 38 CFR 3.400, 38 CFR 3.155, 38 CFR 3.2500)

3. Service connection for erectile dysfunction as secondary to the service-connected disability of prostate cancer.

Service connection for erectile dysfunction has been established as related to the service-connected disability of prostate cancer. (38 CFR 3.310)

A noncompensable evaluation is assigned from June 20, 2018, the date that your continuously

pursued claim was preceded by an Intent to File. (38 CFR 3.155, 38 CFR 3.2500)

We have assigned a noncompensable evaluation for your erectile dysfunction based on:

- Erectile dysfunction (38 CFR 4.31)

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31 }

A higher evaluation of 20 percent is not warranted for penile deformity with loss of erectile power unless the evidence shows:

- Deformity with loss of erectile power. (38 CFR 4.115b)

This disability is not specifically listed in the rating schedule; therefore, it is rated analogous to a disability in which not only the functions affected, but anatomical localization and symptoms, are closely related. (38 CFR 4.20)

4. Service connection for prostate cancer.

Service connection may be granted for specific diseases or conditions which are presumed to have been caused by service if manifested to a compensable degree following military discharge. Although not shown in service, service connection for prostate cancer has been granted on the basis of presumption. (38 CFR 3.307, 38 CFR 3.309)

Exposure to herbicides/Dioxin is conceded in your case due to several pieces of compelling evidence: Submission of US export logs, lay statements, and photographs. The US export logs submitted (and verified via official internet logs) demonstrate the export of herbicidal dioxins (many thousands of pounds of herbicide 2, 4, 5-T, which bears a heavy dioxin load as well as 4-D with a lesser dioxin load) to Panama in 1972 and 1973 when the you served on the canal. Numerous pictures were reviewed which showed untouched jungle foliage contrasted with the obviously defoliated work areas with you pictured on-site working. In addition, a lay statement from Stanley Ellison, a Veteran with whom you served, bears witness to your accounts of defoliant spraying in your work areas in Panama. It is worth noting that you also provided a Board of Veterans Appeals decision for another Veteran which was also reviewed. While decisions by the Board of Veterans Appeals do not set precedent, it is noted that a similar fact pattern yielded a similar concession of exposure to herbicides in that case.

A noncompensable evaluation is assigned from June 20, 2018, the date that your continuously pursued claim was preceded by an Intent to File. (38 CFR 3.155, 38 CFR 3.2500)

We have assigned a noncompensable evaluation for your prostate cancer based on:

- Inactive disease (38 CFR 4.31)

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a

compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 10 percent is not warranted for malignant neoplasms of the genitourinary system unless the evidence shows:

- Marked obstructive symptomatology (hesitancy, slow or weak stream, decreased force of stream) with any one or combination of symptoms including:
 - Post void residuals greater than 150 cc; or,
 - Recurrent urinary tract infections secondary to obstruction; or,
 - Stricture disease requiring periodic dilatation every 2 to 3 months; or,
 - Uroflowmetry; markedly diminished peak flow rate (less than 10 cc/sec); or,
- Urinary frequency symptoms including:
 - Awakening to void two times per night; or,
 - Daytime voiding interval between two and three hours. (38 CFR 4.115a, 38 CFR 4.115b)

Additionally, a higher evaluation of 20 percent is not warranted for malignant neoplasms of the genitourinary system unless the evidence shows:

- Voiding dysfunction symptoms including:
 - The wearing of absorbent materials which must be changed less than two times per day is required. (38 CFR 4.115a, 38 CFR 4.115b)

Additionally, a higher evaluation of 30 percent is not warranted for malignant neoplasms of the genitourinary system unless the evidence shows:

- Renal dysfunction symptoms including:
 - Albumin constant or recurring with hyaline and granular casts or red blood cells; or,
 - Hypertension at least 10 percent disabling under diagnostic code 7101; or,
 - Slight edema; or,
 - Transient edema. (38 CFR 4.115a, 38 CFR 4.115b)

Additionally, a higher evaluation of 100 percent is not warranted for malignant neoplasms of the genitourinary system unless the evidence shows:

- Active malignancy; or,
- Surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. (38 CFR 4.115a, 38 CFR 4.115b)

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.