



DEPARTMENT OF VETERANS AFFAIRS
Regional Office
6900 Almeda Rd
Houston TX 77030

[REDACTED]

VA File Number

[REDACTED]

Represented by:
TEXAS VETERANS COMMISSION

Decision Review Officer Decision
November 16, 2012

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era, Peacetime and Gulf War Era. You served in the Marine Corps from May 30, 1974 to November 1, 1996. We received a Notice of Disagreement from you on July 29, 2010 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

- 1 . Service connection for T6 compression fracture with degenerative disc disease is granted with an evaluation of 0 percent effective January 28, 2010.
 - 2 . Compensation for right testicle removal is granted under 38 U.S.C. 1151 with an evaluation of 0 percent effective May 1, 2009.
 - 3 . Entitlement to special monthly compensation based on anatomical loss of a creative organ is granted from May 1, 2009.
- [REDACTED]

EVIDENCE

- VA Form 21-4138, Statement in Support of Claim, received October 28, 2010
- Medical treatment reports from the VA Medical Center in San Antonio from March 14, 2008 through October 29, 2012
- Progress notes from South Texas Health Care System received February 4, 2010
- Copies of service treatment records submitted by the veteran received February 4, 2010
- Duty to Assist notification letter dated March 1, 2010
- Service treatment records from May 30, 1974 through November 1, 1996
- Consent for treatment/procedure from the South Texas Veterans Healthcare System dated March 11, 2010
- VA spine examination dated May 24, 2010
- Medical statements from Dr. Glen Whitten dated August 31, 2009 and March 15, 2010
- Informal hearing conducted on February 3, 2011
- MRI reports from South Texas Health Care System received April 28, 2011
- Medical statements from Dr. Gregory Ales dated January 4, 2011
- Medical opinion from Dr. Craig Bash dated April 3, 2011, received April 3, 2011

REASONS FOR DECISION

1. Service connection for T6 compression fracture with degenerative disc disease.

We granted service connection for your T6 compression fracture with degenerative disc disease because we received a medical opinion from [REDACTED] who found that your current T6 compression fracture was caused by your military service. Your exam showed you have normal range of motion and noted that the thoracic spine is relatively fixed by the rib cage, so it does not participate in range of motion movements [REDACTED] evidence of functional loss and no objective signs of pain, tenderness, muscle spasms, radiculopathy or ankylosis. You were diagnosed with a T6 compression fracture and degenerative disc disease.

We have assigned a noncompensable evaluation for your thoracolumbar spine because range of motion testing was within normal limits.

The provisions of 38 CFR §§4.40 and 4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown*, 8 Vet. App. 202 (1995), have been considered and are not warranted.

A higher evaluation of 10 percent is not warranted unless there is forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; or, combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees; or, muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour; or, vertebral body fracture with loss of 50 percent or more of the height; or, objective evidence of painful motion is shown upon examination.

There is no evidence to show more severe limitation of motion or disabling symptoms which would warrant a higher evaluation.

We assigned an effective date of January 28, 2010, the date we received your claim.

The grant of service connection for your T6 compression fracture with degenerative disc disease is considered a full grant of benefits for the issue on appeal.

2. Entitlement to compensation under 38 U.S.C. 1151 for right testicle removal.

We granted service connection for your right testicle loss because we received a medical opinion from Dr. Bash, who found that your right testicle loss was the fault of the VA. It was found that during your hernia surgery on May 1, 2009, "cord manipulation ultimately led to vascular compromise..." in your right testicle and a follow-up ultrasound showed decreased vascular flow in the right testicle, however no action was taken on these findings until surgery was performed to remove the testicle on May 7, 2009. Negligence was shown when the VA waited over 24 hours to begin testing. It was Dr. Bash's opinion that had such testing been performed, a subsequent surgery could have saved the testicle.

We have assigned a noncompensable evaluation for your right testicle loss based on:

- o Removal of one testicle

A higher evaluation of 30 percent is not warranted unless there is removal of both testicles.

We assigned an effective date of May 1, 2009, the date of your hernia surgery leading to the loss of your right testicle.

The grant of service connection for your right testicle loss is considered a full grant of benefits for the issue on appeal.

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

Entitlement to special monthly compensation is warranted in this case because criteria regarding anatomical loss of a creative organ were met from May 1, 2009, the date of your surgical treatment causing the loss. The evidence reviewed in making this decision is discussed in the previous issue and will not be repeated here.

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 web site, www.va.gov.