



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

[REDACTED]  
**VA File Number**  
[REDACTED]

**Represented By:  
VETERANS OF FOREIGN WARS OF THE US  
Decision Review Officer Decision  
03/25/2019**

**INTRODUCTION**

The records reflect that you are a veteran of the Gulf War Era and Peacetime. You served in the Army from June 16, 1982, to June 30, 2002. We received a Notice of Disagreement from you on September 24, 2015 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of bilateral pes planus with calcaneal spurs and calluses (previously separately addressed as pes planus left foot with callus, pes planus right foot and bilateral heel spurs and claimed as flatfeet, corns and calluses), which is currently 20 percent disabling, is increased to 30 percent effective August 1, 2014.
2. Evaluation of right thumb arthritis (also claimed as chronic pain and deformity), which is currently 0 percent disabling, is increased to 10 percent effective February 9, 2015.
3. Service connection for steatocystoma multiplex (also claimed as acne, back cyst scars, cyst chest scars and lump on chest) is granted with an evaluation of 10 percent effective August 1,



2014.

4. Service connection for pseudofolliculitis barbae is granted with an evaluation of 0 percent effective August 1, 2014.
5. Service connection for tinea corporis is granted with an evaluation of 0 percent effective August 1, 2014.
6. Service connection for right hip scar is granted with an evaluation of 0 percent effective February 9, 2015.
7. Service connection for chin scar is granted with an evaluation of 0 percent effective March 2, 2015.
8. Service connection for keratosis (claimed as 2nd toe blister scar) is granted with an evaluation of 0 percent effective March 2, 2015.
9. Service connection for obstructive sleep apnea is granted with an evaluation of 50 percent effective April 12, 2015.
10. Service connection for C6-7 radiculopathy right index finger with right carpal tunnel syndrome (previously right carpal tunnel syndrome) is granted with an evaluation of 20 percent effective February 9, 2015.
11. Service connection for scar status post cervical spine surgery is granted with an evaluation of 0 percent effective February 9, 2015.
12. Entitlement to an earlier effective date for the grant of eligibility to Dependents' Educational Assistance under 38 U.S.C. chapter 35 is granted, with a new effective date of April 12, 2015.

#### EVIDENCE

- Service treatment and personnel records for the active duty period dated June 16, 1982 through June 30, 2002, received June 3, 2014, August 1, 2014, February 9, 2015, October 28, 2016, March 2, 2017 and March 21, 2017
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Veteran's Claims Assistance Act (VCAA) notification letter, dated August 3, 2009
- Correspondence from you, received June 10, 2009
- Private treatment records from Dr. Dawson, received June 30, 2008 and July 2, 2008
- Notification that you did not report for the scheduled VA examination, dated September 2, 2009
- The Rating Decision dated December 8, 2009, and all evidence considered within
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received August 1, 2014





- VA Form 21-4138, Statement in Support of Claim, received August 1, 2014
- Private treatment records from Dr. Dawson, dated January 3, 2008 through October 14, 2016, received August 1, 2014, February 9, 2015, March 26, 2015, October 2, 2015, September 2, 2016, October 7, 2016, November 22, 2016, March 21, 2017 and March 11, 2018
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received February 9, 2015
- VA examination, Washington VA Medical Center, dated February 18, 2015 and February 22, 2015
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received March 2, 2015
- Notification that you did not report for your VA examination, dated February 18, 2015
- Notification letter to you, dated April 10, 2015
- The Rating Decision dated April 13, 2015, and all evidence considered within
- Correspondence from you, received April 17, 2015
- Notification letter to you, dated May 5, 2015
- Notice of Disagreements, received September 24, 2015
- Correspondence from Brian Simpkins, received October 31, 2015 and June 16, 2018
- Outpatient treatment records from the Andrews Air Force Base VA Medical Center, dated October 22, 2015 through January 27, 2017, received October 31, 2015, February 27, 2016, March 14, 2016, November 2, 2016, March 2, 2017, March 21, 2017 and March 11, 2018
- Outpatient treatment records from the Fort Belvoir VA Medical Center, dated November 16, 2015 through March 17, 2016, received December 4, 2015, February 27, 2016, March 14, 2016, March 26, 2016, February 13, 2017, March 21, 2017, March 11, 2018 and June 16, 2018
- VA Form 21-4138, Statement in Support of Claim, received March 14, 2016
- Notification letter to you, dated March 23, 2016
- Notification letter to you, dated March 30, 2016
- Private treatment records from Dr. Ahuja, dated March 24, 2016, received April 14, 2016 and June 16, 2018
- VA examination, Washington VA Medical Center, dated July 8, 2016
- Notification letter to you, dated July 18, 2016
- VA Form 21-0960M-6, Foot Conditions, Including Flatfoot (Pes Planus) Disability Benefits Questionnaire, received September 9, 2016, October 7, 2016 and November 2, 2016
- Correspondence from you, received November 2, 2016 and February 13, 2017
- VA Form 21-0960M-7, Hand and Finger Conditions Disability Benefits Questionnaire, received October 18, 2016, November 2, 2016, March 21, 2017, March 11, 2018 and June 16, 2018
- VA Form 21-0960M-13, Neck (Cervical Spine) Conditions Disability Benefits Questionnaire, received October 18, 2016, November 2, 2016, March 21, 2017 and March 11, 2018
- Correspondence from Dr. Balish, received December 22, 2016, February 13, 2017, March 21, 2017, March 11, 2018 and June 16, 2018
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received February 8, 2017
- Private treatment records from Dr. Khandelwal, dated March 24, 2016 through February 9, 2017, received March 2, 2017, March 21, 2017 and March 11, 2018
- Private treatment records from Julie Catlin PA-C, dated March 22, 2017, received March 2, 2017 and March 21, 2017



- Private treatment records from Danielle Goldberg, CRNP, dated February 23, 2017, received March 2, 2017 and March 21, 2017
- Correspondence from you, received March 8, 2017 and March 21, 2017
- VA examination, LHI Medical Services, dated February 16, 2017
- Private treatment records from Dr. Ignacio, dated September 20, 2016, received March 21, 2017, March 11, 2018 and June 16, 2018
- VA examination, VES Medical Services, dated May 9, 2017
- Correspondence from you, received June 2, 2017
- VA Form 21-0820, Report of General Information, dated June 5, 2017
- Correspondence from you, received June 6, 2017
- Correspondence from Caroline Noel, received June 13, 2017, March 11, 2018 and June 16, 2018
- VA examination, QTC Medical Services, dated June 14, 2017
- Veteran's Claims Assistance Act (VCAA) notification letter, dated June 20, 2017
- Correspondence from you, received June 23, 2017
- Veteran's Claims Assistance Act (VCAA) Notice Response, received July 5, 2017
- Notification letter to you, dated July 13, 2017
- The Rating Decision dated July 17, 2017, and all evidence considered within
- Notification letter to you, dated July 19, 2017
- VA Form 21-0820, Report of General Information, dated August 1, 2017
- Correspondence from you, received August 2, 2017
- VA Form 21-0820, Report of General Information, dated August 18, 2017
- Correspondence from you, received August 22, 2017
- VA Form 21-0820, Report of General Information, dated August 25, 2017
- Correspondence from you, received August 29, 2017
- Notification letter to you, dated September 5, 2017
- Notification letter to you, dated October 3, 2017
- The Rating Decision dated October 5, 2017, and all evidence considered within
- Notification letter to you, dated October 11, 2017
- Correspondence from you, received October 11, 2017
- The Rating Decision dated December 15, 2017, and all evidence considered within
- Notification letter to you, dated December 20, 2017
- VA Form 21-0820, Report of General Information, dated December 26, 2017
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received March 11, 2018
- Outpatient treatment records from the Washington VA Medical Center, dated July 22, 2008 through March 15, 2018, received April 13, 2018
- The Rating Decision dated April 13, 2018, and all evidence considered within
- Notification letter to you, dated April 15, 2018
- Notification letter to you, dated April 24, 2018
- Private treatment records from Wilkins Chiropractic Center, dated March 12, 2018 through March 14, 2018, received June 16, 2018
- Notification letter to you, dated July 6, 2018
- Notification letter to you, dated July 13, 2018
- VA examination, VES Medical Services, dated July 9, 2018
- Correspondence from you, received July 17, 2018
- VA Form 27-0820, Report of General Information, dated July 26, 2018
- VA Form 27-0820, Report of General Information, dated August 1, 2018



- Notification letter to you, dated August 21, 2018
- Medical opinion, VES Medical Services, dated September 10, 2018
- The Rating Decision dated October 2, 2018, and all evidence considered within
- Notification letter to you, dated October 4, 2018
- Notification letter to you, dated October 5, 2018
- Correspondence from you, received October 22, 2018
- VA Form 27-0820, Report of General Information, dated October 25, 2018
- VA Form 27-0820, Report of General Information, dated October 31, 2018
- Notification letter to you, dated November 9, 2018
- Correspondence from you, received December 7, 2018
- Notification from VES Medical Services, dated December 27, 2018
- VA Form 27-0820, Report of General Information, dated January 15, 2019
- VA Form 27-0820, Report of General Information, dated January 16, 2019
- VA Form 27-0820, Report of General Information, dated January 18, 2019
- Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019
- Private treatment records from Dr. Bash, dated February 18, 2019, received February 25, 2019

### **REASONS FOR DECISION**

#### **1. Evaluation of bilateral pes planus with calcaneal spurs and calluses (previously separately addressed as pes planus left foot with callus, pes planus right foot and bilateral heel spurs and claimed as flatfeet, corns and calluses) currently evaluated as 20 percent disabling.**

The evaluation of bilateral pes planus with calcaneal spurs and calluses is increased to 30 percent disabling effective August 1, 2014, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement based on you requested a 30 percent evaluation and entitlement to service connection. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for bilateral pes planus on your separation examination and heel pain.

Private treatment records from Dr. Bash, dated February 18, 2019, received February 25, 2019, reviewed your claims folder and opined your right foot pes planus and calcaneal spurs are at least



as likely as not proximately due to or caused by service based on the same etiology as the conditions in service.

A VA examination was completed at the Washington VA Medical Center on July 24, 2008. The examiner diagnosed bilateral pes planus and heel spurs associated with active duty. An additional VA examination as completed at the Washington VA Medical Center on February 22, 2015; however, only the left foot was addressed as pain resolved by insoles. A VA Form 21-0960M-6, Foot Conditions, Including Flatfoot Disability Benefits Questionnaire, dated August 19, 2016, further confirmed the diagnosis of bilateral pes planus and heel spurs and stated the conditions were due to service based on a review of the claims folder. Entitlement to service connection is warranted as the preponderance of evidence shows a current diagnosis with a nexus to an in-service event.

Please note, your bilateral calcaneal spurs are considered service connected with your bilateral pes planus and calluses effective March 2, 2015, the date we received your claim for heel spurs.

Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings.

We have assigned a 30 percent evaluation based on:

- Pain on manipulation of the feet, accentuated
- Pain on use of the feet, accentuated

Additional symptom(s) include:

- Pain on manipulation of the feet
- Pain on use of the feet
- Symptoms NOT improved by orthopedic shoe or appliance

A higher evaluation of 50 percent is not warranted for acquired flat foot unless the evidence shows bilateral involvement with pronounced symptoms; marked pronation, extreme tenderness of plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances. (38 CFR 4.71a)

An evaluation of 50 percent is assigned effective August 19, 2016, the date of your private Disability Benefits Questionnaire showing an increase in severity of your condition.

We have assigned a 50 percent based on:

- Extreme tenderness of plantar surfaces of the feet
- Marked Pronation
- Symptoms NOT improved by orthopedic shoe or appliance

Additional symptom(s) include:



- Objective evidence of marked deformity (pronation, abduction, etc.)
- Pain on manipulation of the feet
- Pain on manipulation of the feet, accentuated
- Pain on use of the feet
- Pain on use of the feet, accentuated
- Weight-bearing line over or medial to great toe

This is the highest schedular evaluation allowed under the law for acquired flat foot. (38 CFR 4.71a)

**2. Evaluation of right thumb arthritis (also claimed as chronic pain and deformity) currently evaluated as 0 percent disabling.**

The evaluation of right thumb arthritis (also claimed as chronic pain and deformity) is increased to 10 percent disabling effective February 9, 2015, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a partial grant of the benefits sought on Notice of Disagreement. You will receive additional correspondence concerning the conditions pending appellate review.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

A VA examination was completed with VES Medical Services on May 9, 2017; however, only the left thumb was examined. Your lay testimony of chronic pain is considered competent and credible. Your private treatment records and outpatient treatment records from the Washington VA Medical Center support your lay testimony; therefore, painful motion is accepted. There is no evidence a higher evaluation is warranted.

We have assigned a 10 percent evaluation based on:

- Painful motion of the thumb. (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the thigh at the hip, the minimum compensable evaluation of 10 percent is assigned.)

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 and Mitchell v. Shinseki*, have been considered and applied under 38 CFR §4.59.

The following symptom(s) were noted:

- Arthritis, traumatic of the index finger



- Painful motion of the index finger

A higher evaluation of 20 percent is not warranted for traumatic arthritis unless the evidence shows:

- X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for limitation of motion of index or long finger unless the evidence shows:

- Amputation of the index finger without metacarpal resection, at proximal interphalangeal joint or proximal thereto; or,
- Amputation of the long, ring or middle finger with metacarpal resection (more than one-half the bone lost); or,
- Amputation of the thumb at distal joint or through distal phalanx; or,
- Favorable ankylosis involving the index finger and any other finger; or,
- Favorable ankylosis involving the long, ring and little fingers; or,
- Limited motion of the thumb: with a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers; or,
- Unfavorable ankylosis involving the long and little fingers; or,
- Unfavorable ankylosis involving the long and ring fingers; or,
- Unfavorable ankylosis involving the ring and little fingers; or,
- Unfavorable ankylosis involving the thumb. (38 CFR 4.71a)

Because the hand allows multiple digits to be combined into a single diagnostic code, it is necessary to include all possible higher digit-combination criteria.

**3. Service connection for steatocystoma multiplex (also claimed as acne, back cyst scars, cyst chest scars and lump on chest).**

Service connection for steatocystoma multiplex (also claimed as acne, back cyst scars, cyst chest scars and lump on chest) has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

An evaluation of 10 percent is assigned from August 1, 2014, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.



Your service treatment records are positive for rash scars on your separation examination.

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits, multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda stated your condition is treated with periodic removal. Numerous scars ranging from 3mm to 3cm were noted. Individual measurements were not provided. Dr. Krivda reported your cysts are filled with fluid and require discharge, consistent with a compensable evaluation. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for a history of steatocystoma multiplex; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 10 percent evaluation based on:

- Deep acne other than on the face and neck

Higher evaluations may also be warranted based on:

- disfigurement of the head, face, or neck
- scars considered disabling due to limitation of function of the affected part; or,
- painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 30 percent is not warranted for acne unless the evidence shows:

- Deep acne (deep inflamed nodules and pus-filled cysts) affecting more than 40 percent of the face and neck. (38 CFR 4.118)

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 pseudofolliculitis barbae.**

Service connection for pseudofolliculitis barbae has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from August 1, 2014, the dated we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for pseudofolliculitis barbae

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits, multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda stated your condition is treated with topical medication. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for pseudofolliculitis barbae; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been





material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 0 percent evaluation based on:

- No more than topical therapy required over the past 12-month period

Higher evaluations may also be warranted based on:

- disfigurement of the head, face, or neck
- scars considered disabling due to limitation of function of the affected part; or,
- painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for general rating formula for the skin unless the evidence shows:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or,
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or,
- Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

#### **5. Service connection for tinea corporis.**

Service connection for tinea corporis has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from August 1, 2014, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for tinea corporis.

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations



for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits, multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda stated your condition is treated with topical medication. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for tinea corporis; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 0 percent evaluation based on:

- No more than topical therapy required over the past 12-month period

Higher evaluations may also be warranted based on:

- disfigurement of the head, face, or neck
- scars considered disabling due to limitation of function of the affected part; or,
- painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for general rating formula for the skin unless the evidence shows:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or,
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or,
- Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

#### **6. Service connection for right hip scar.**





Service connection for right hip scar has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from February 9, 2015, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for a bone graft from your right hip.

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits, multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda noted a 7cm x 1cm right hip scar. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for a right hip scar; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)



We have assigned a 0 percent evaluation based on:

- Right lower extremity: area or areas less than 144 square inches (929 sq. cm.) (Not associated with underlying soft tissue damage)

Additional symptom(s) include:

- Scar 1 Location: Right lower extremity
- Scar 1 type: scar

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}

Your first scar/area has a length of 7 cm and a width of 1 cm for a total area of 7 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (right lower extremity) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck that are associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.). (38 CFR 4.118)

Additionally, a higher evaluation of 10 percent is not warranted for burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are not associated with underlying soft tissue damage (entire body) unless the evidence shows:

- Area or areas of 144 square inches (929 sq. cm.) or greater. (38 CFR 4.118)

#### **7. Service connection for chin scar.**

Service connection for chin scar has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from March 2, 2015, the dated we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.



This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for a chin scar on your separation examination.

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits, multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda noted a 2cm x 0.5cm chin scar. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for a chin scar; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 0 percent evaluation based on:

- Scar / Area of the head, face or neck with no compensable symptoms

Additional symptom(s) include:

- Scar 1 Location: Head, face, or neck
- Scar 1 type: scar

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}



Your first scar/area has a length of 2 cm and a width of 0.5 cm for a total area of 1 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s), scar(s) due to other causes, or other disfigurement of the head, face, or neck unless the evidence shows:

- One characteristic of disfigurement. (38 CFR 4.118)

The eight characteristics of disfigurement, for purposes of evaluation under 38 CFR §4.118 are: scar 5 or more inches (13 or more cm) in length; scar at least one-quarter inch (0.6 cm) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches (39 cm<sup>2</sup> skin texture abnormal irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 cm<sup>2</sup> underlying soft tissue missing in an area exceeding six square inches (39 cm<sup>2</sup> and, skin indurated and inflexible in an area exceeding six square inches (39 cm<sup>2</sup>) The characteristics of disfigurement may be caused by one scar or by multiple scars; the characteristics required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation. A characteristic of disfigurement, even if present in more than one scar, is only counted once for evaluation purposes. (38 CFR 4.31, 38 CFR 4.118)

#### **8. Service connection for keratosis (claimed as 2nd toe blister scar).**

Service connection for keratosis (claimed as 2nd toe blister scar) has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

A noncompensable evaluation is assigned from March 2, 2015, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are positive for a 2nd toe blisters on your separation examination.

VA regulations state when evaluating separately diagnosed skin conditions and the predominant disability requires evaluation under the general rating formula for the skin, separate evaluations for each diagnosis are permissible when the evaluation is based on disability due solely to the individual diagnosis. However, when it is most advantageous and allows for maximized benefits,





multiple skin disorders evaluated under the same criteria may be assigned a single disability evaluation. A Veteran diagnosed with multiple skin conditions may receive separate evaluations using the general rating formula for the skin based on the percentage of exposed areas affected by each skin condition when separate areas of skin are involved, and the medical evidence clearly indicates that the percentages affected are due solely to each individual diagnosis. The evidence is clear that separate areas of skin are involved regarding your multiple skin disorders.

Private treatment records from Dr. Krivda, dated February 1, 2019, received February 25, 2019. Dr. Krivda reviewed your claims folder and opined your current diagnosis is at least as likely as not incurred in or caused by your in-service treatment as your current diagnosis correlates with the injuries/diagnoses noted during active duty. Dr. Krivda noted blisters on the feet, diagnosed as keratosis, and treated with topical medication. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for blisters; however, there is no evidence a higher evaluation is warranted. Entitlement to service connection is warranted. (38 CFR 3.303, 38 CFR 3.304)

A VA examination was completed at the Washington VA Medical Center on July 24, 2008. That examination noted hyperkeratosis of the 2nd and 5th toes.

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 0 percent evaluation based on:

- No more than topical therapy required over the past 12-month period

Higher evaluations may also be warranted based on:

- disfigurement of the head, face, or neck
- scars considered disabling due to limitation of function of the affected part; or,
- painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for general rating formula for the skin unless the evidence shows:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or,
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or,
- Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

## **9. Service connection for obstructive sleep apnea as secondary to the service-connected**



**disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237).**

Service connection for obstructive sleep apnea has been established as related to the service-connected disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237). (38 CFR 3.310)

An evaluation of 50 percent is assigned from April 12, 2015, the date you were first diagnosed with obstructive sleep apnea by a polysomnogram and recommended for CPAP/AutoPap treatment. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a complete grant of the benefits sought on Notice of Disagreement based on you requested a 30 percent evaluation and entitlement to service connection. Your Notice of Disagreement is now closed for these conditions.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

Your service treatment records are negative for obstructive sleep apnea.

Correspondence from Brian Simpkins, received October 31, 2015, stated that you had difficulty sleeping with irregular breathing. Correspondence from Dr. Balish, received December 22, 2016, February 13, 2017, March 21, 2017 and March 11, 2018, that that your degenerative disc disease have contributed to the development of sleep apnea. Outpatient treatment records from the Washington VA Medical Center noted a sleep study on April 12, 2015 diagnosing obstructive sleep apnea. Private treatment records from Dr. Bash, dated February 18, 2019, received February 25, 2019, reviewed your claims folder opined that your condition was proximately due to or caused by your service connected conditions as your service connected conditions significantly limited your exercise ability, which led to weight gain resulting in obesity, and obesity is a know risk factor for the development of obstructive sleep apnea. As service connected disabilities caused obesity, obesity is a substantial factor in developing obstructive sleep apnea and sleep apnea potentially would not have occurred without obesity, entitlement to service connection is warranted. (38 CFR 3.310)

A VA examination was completed with LHI Medical Services on June 14, 2018. A diagnosis of obstructive sleep apnea treated with CPAP was confirmed.

We have assigned a 50 percent evaluation based on:

- Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine





Additional symptom(s) include:

- Persistent day-time hypersomnolence

A higher evaluation of 100 percent is not warranted for sleep apnea syndromes unless the evidence shows:

- Carbon dioxide retention; or,
- Chronic respiratory failure; or,
- Cor pulmonale; or,
- Tracheostomy required. (38 CFR 4.96, 38 CFR 4.97)

**10. Service connection for C6-7 radiculopathy right index finger with right carpal tunnel syndrome (previously right carpal tunnel syndrome) as secondary to the service-connected disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237).**

Service connection for C6-7 radiculopathy right index finger with right carpal tunnel syndrome (previously right carpal tunnel syndrome) has been established as related to the service-connected disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237). (38 CFR 3.310)

An evaluation of 20 percent is assigned from February 9, 2015, the date we received your claim. (38 CFR 3.400) Please note your conditions are now considered together to prevent pyramiding, which is prohibited by VA regulations. (38 CFR 4.14)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a partial grant of the benefits sought on Notice of Disagreement. You will receive additional correspondence concerning the conditions pending appellate review. We are now considering a separate evaluation as within the scope of the Notice of Disagreement.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

We received evidence that you failed to report for your VA examination on September 2, 2009.

Private treatment records from Dr. Dawson dated March 4, 2015 noted C6-7 nerve impingement associated with your cervical spine condition. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for chronic cervical spine treatment. You provided competent lay testimony regarding a worsening of your condition. Private treatment records from Dr. Bash, dated February 18, 2019, received February 25, 2019 noted a progression of your condition to include degenerative disc disease and degenerative joint disease. Dr. Bash further clarified your radiculopathy affects the upper radicular group and is of a mild severity. There is no evidence of reduced muscle strength or diminished reflexes.



We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 20 percent evaluation based on:

- Mild incomplete paralysis of the major extremity (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the upper radicular nerve group unless the evidence shows nerve damage is moderate. (38 CFR 4.120, 38 CFR 4.124a)

**11. Service connection for scar status post cervical spine surgery as secondary to the service-connected disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237).**

Service connection for scar status post cervical spine surgery has been established as related to the service-connected disability of status post C6-C7 fusion (previously status post C6 fracture with fusion, with C6 radiculopathy with decreased sensation of right index finger DC5237). (38 CFR 3.310)

A noncompensable evaluation is assigned from February 9, 2015, the date we received your claim. (38 CFR 3.400)

You timely elected to have your claim reviewed by a Decision Review Officer. This decision constitutes that de novo review, and is based on all evidence of record and applicable law, without deference to the decision being reviewed.

This decision is considered a partial grant of the benefits sought on Notice of Disagreement. You will receive additional correspondence concerning the conditions pending appellate review. We are now considering a separate evaluation as within the scope of the Notice of Disagreement.

A Rating Decision was furnished on April 13, 2015. You submitted a Notice of Disagreement with our decision which was received on September 24, 2015.

We received evidence that you failed to report for your VA examination on September 2, 2009.

Private treatment records from Dr. Dawson dated March 4, 2015 noted C6-7 prior cervical spine surgery. Your private treatment records and outpatient treatment records from the Washington VA Medical Center are positive for a history of a cervical spine surgery. You provided competent lay testimony regarding a worsening of your condition. Private treatment records from Dr. Bash, dated February 18, 2019, received February 25, 2019 noted a progression of your condition to include degenerative disc disease and degenerative joint disease. Private treatment



records from Dr. Krivda, dated February 1, 2019, received February 25, 2019, noted a surgical neck scar 6cm x 0.3cm. There was no evidence of pain, instability or tenderness.

We requested an additional VA examination but received notice that examination was unable to be completed. Review of the available evidence does not show that you had good cause for failing to report for this examination. The evidence from an examination might have been material to the outcome of your claim. In the absence of a VA examination, we have made our decision based upon the evidence of record. If you can show good cause for not reporting for the VA examination, we will reschedule it and your claim can be reconsidered based on those findings. (38 CFR 3.655)

We have assigned a 0 percent evaluation based on:

- Scar / Area of the head, face or neck with no compensable symptoms

Additional symptom(s) include:

- Scar 1 Location: Head, face, or neck
- Scar 1 type: scar

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}

Your first scar/area has a length of 6 cm and a width of 0.3 cm for a total area of 1.799999999999 sq. cm.

An additional, separate compensable evaluation under Diagnostic Code 7804 is not warranted unless there is at least one scar that is painful or unstable. (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for burn scar(s), scar(s) due to other causes, or other disfigurement of the head, face, or neck unless the evidence shows:

- One characteristic of disfigurement. (38 CFR 4.118)

The eight characteristics of disfigurement, for purposes of evaluation under 38 CFR §4.118 are: scar 5 or more inches 13 or more cm) in length; scar at least one-quarter inch 0.6 cm) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches 39 cm<sup>2</sup> skin texture abnormal irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches 39 cm<sup>2</sup> underlying soft tissue missing in an area exceeding six square inches 39 cm<sup>2</sup> and, skin indurated and inflexible in an area exceeding six square inches 39 cm<sup>2</sup>) The characteristics) of disfigurement may be caused by one scar or by multiple scars; the characteristics) required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation. A characteristic of disfigurement, even if present in more than one scar, is only counted once for evaluation purposes. (38 CFR 4.31, 38 CFR 4.118)

## **12. Entitlement to an earlier effective date for the grant of eligibility to Dependents'**



**Educational Assistance under 38 U.S.C. chapter 35.**

Entitlement to an earlier effective date for the grant of eligibility to Dependents' Educational Assistance under 38 U.S.C. chapter 35 is granted because a permanent and total combined evaluation has been established from April 12, 2015. (38 CFR 3.400)

**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](http://www.va.gov).

