



BOARD OF VETERANS' APPEALS
FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
JAMES JACKSON
Represented by
Carol J. Ponton, Attorney

██████████
Docket No. 200608-93132
Advanced on the Docket

DATE: March 23, 2021

ORDER

Entitlement to a 50 percent rating but not higher, for posttraumatic stress disorder (PTSD), as of March 9, 2017, but not earlier, is granted.

Entitlement to a rating in excess of 50 percent for posttraumatic stress disorder (PTSD) is denied.

FINDING OF FACT

Resolving reasonable doubt in favor of the Veteran, as of March 9, 2017, PTSD resulted in occupational and social impairment with reduced reliability and productivity, but not occupational and social impairment with deficiencies in most areas, or total occupational and social impairment.

CONCLUSION OF LAW

The criteria for entitlement to a 50 percent rating, but not higher, for posttraumatic stress disorder (PTSD), effective March 9, 2017, but not earlier, have been met. 38 U.S.C. §§ 1155, 5107; 38 C.F.R. §§ 4.1, 4.3, 4.7, 4.130, Diagnostic Code 9411.

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from December 1967 to August 1971.

An April 2020 rating decision continued a 30 percent rating for PTSD. In June 2020, the Veteran requested evidence submission review of the appeal by the Board of Veterans Appeals. Consequently, this case comes before the Board of Veterans' Appeals (Board) on appeal from the April 2020 rating decision by the Department of Veterans Affairs (VA) Veterans Benefits Administration Regional Office (RO).

Under the evidence submission review election, the Board may consider evidence of record at the time of the April 2020 rating decision for the issue on appeal, evidence submitted by the Veteran when he submitted the Notice of Disagreement on VA Form 10182 in June 2020, and any evidence submitted by the Veteran and representative within 90 days following receipt of the Notice of Disagreement. 38 C.F.R. § 20.303. VA will not seek any additional evidence on behalf of the Veteran as part of the higher-level review.

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c); 38 U.S.C. § 7107(a)(2).

1. Entitlement to an increased rating for posttraumatic stress disorder (PTSD).

Disability ratings are determined by the application of the Schedule for Rating Disabilities, which assigns ratings based on the average impairment of earning capacity resulting from a service-connected disability. 38 U.S.C. § 1155; 38 C.F.R. Part 4. Where there is a question as to which of two ratings shall be applied, the higher rating will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned. 38 C.F.R. § 4.7.

In order to rate the level of disability and any changes in condition, it is necessary to consider the complete medical history of the disability. *Schafrath v.*

Derwinski, 1 Vet. App. 589 (1991). A claimant may experience multiple distinct degrees of disability that might result in different levels of compensation from the time the increased rating claim was filed until a final decision is made. *Hart v. Mansfield*, 21 Vet. App. 505 (2007). The review is undertaken with consideration of the possibility that different ratings may be warranted for different time periods.

Posttraumatic stress disorder (PTSD) has been rated under the provisions of Diagnostic Code 9411, using the General Rating Formula for Mental Disorders.

Under the provisions of Diagnostic Code 9411 and the General Rating Formula for Mental Disorders, a 30 percent rating is warranted for occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events).

A 50 percent rating is warranted for occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect, circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

A 70 percent rating is warranted for occupational and social impairment, with deficiencies in most area, 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 work like setting); inability to establish and maintain effective relationships.

A 100 percent rating is warranted for 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 closest relatives, own occupation, or own name. 38 C.F.R. § 4.130, General Rating Formula for Mental Disorders.

The symptoms listed in the General Rating Formula for Mental Disorders are not intended to constitute an exhaustive list, but rather are to serve as examples of the type and degree of the symptoms, or their effects, that would justify a particular rating. *Mauerhan v. Principi*, 16 Vet. App. 436 (2002).

Considerations in rating a mental disorder include the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the Veteran's capacity for adjustment during periods of remission. The rating must be based on all evidence of record that bears on occupational and social impairment rather than solely on an examiner's assessment of the level of disability at the moment of the examination. 38 C.F.R. § 4.126(a). Although the extent of social impairment is a consideration in determining the level of disability, the rating may not be assigned solely on the basis of social impairment. 38 C.F.R. § 4.126(b).

The Veteran's posttraumatic stress disorder (PTSD) is currently assigned a 30 percent rating, effective March 9, 2017, the effective date of service connection. The Veteran contends that ratings assigned for PTSD do not accurately compensate the severity of the disability, and that a higher rating is warranted.

As an initial matter, the Board notes that the record indicates the Veteran was gainfully employed as an operations manager until he retired in August 2019.

A December 2017 primary care note describes the Veteran as having a normal affect and prosody with no apparent cognitive deficits. The Veteran had an appropriate appearance, normal demeanor, and goal-directed thought processes.

In a January 2019 written statement, the Veteran complained of suicidal and homicidal ideation in the past, depression, avoidance behaviors, nightmares, irritability, hyper startle response, and difficulty in maintaining relationships.

At a January 2019 private psychological evaluation, the examiner diagnosed PTSD pursuant to DSM-V. During the evaluation, the Veteran was noted as being married twice and having two children and one grandchild. The Veteran also reported retaining relationships with his mother, at least one family member, and some close friends. The examiner opined that the PTSD symptoms imposed severe limitations of social and occupation functioning that had been on the decline since, at least, February 2016. The examiner based the finding on clinical videoconference interview with the Veteran and careful review of the Veteran's record, which indicated chronic sleep impairment; constantly being on guard, watchful, or easily startled; feeling numb or detached from others, activities, or surroundings; hypervigilance; insomnia; disturbances of mood; distrust of others; unpredictable irritability; fear of crowds; inability to establish and maintain effective relationships; difficulty sleeping; occasional panic attacks; occasional suicidal and homicidal ideation; isolation; suspiciousness; difficulty establishing and maintaining effective social relationships; and memory difficulties.

During VA examination in November 2019, the psychiatric disability was found to result in occupational and social impairment due to mild or transient symptoms which decreased work efficiency and the ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by medication. During the examination, the Veteran reported being married for 44 years and having two children. He stated that his wife was supportive. The Veteran also reported that he recently retired from being an operations manager in August 2019. Since retirement, the Veteran stated that he had been able to catch up on duties around his farm, which had been fulfilling. He reported that the best way to cope with anxiety was to stay busy, which also helped him at work. The psychiatric disability was found to be manifested by irritability, hypervigilance, exaggerated

startle response, problems with concentration, chronic sleep impairment, depressed mood, anxiety, suspiciousness, sleep disturbances, and difficulty in establishing and maintaining effective work and social relationships. During the examination, the Veteran was intermittently cooperative with a brief period of combativeness. His grooming, hygiene, insight, and judgment were all noted as adequate. The Veteran's speech, psychomotor behavior, and intelligence were noted as being within normal limits. His affect was reactive, consistent, and congruent with an angry and irritable mood. The Veteran was oriented and had logical and goal directed thought processes. The Veteran denied hallucination, delusions, and current suicidal and homicidal ideation. His memory and attention and concentration were grossly intact. The Veteran was found capable of managing his own financial affairs. The November 2019 examiner concluded the examination report by disagreeing with the January 2019 private provider's severity indication because the current examination and record indicated an ability to hold down employment over 30 years at the same site, marriage over 44 years, and the ability to run a small farm to the Veteran's satisfaction in retirement to that point.

During VA examination in January 2020, the Veteran's psychiatric disability was found to result in occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation. During the examination, the Veteran reported being married, having two children, and a granddaughter. The Veteran also reported having a relationship with his mother and siblings. The Veteran also noted that he retired from his job in billing, which he held for 30 years. The psychiatric disability was found to be manifested by irritability, hypervigilance, exaggerated startle response, problems with concentration, chronic sleep impairment, depressed mood, anxiety, suspiciousness, and sleep disturbances; impairment of short and long term memory, for example, retention of only highly learned material, while forgetting to complete task; difficulty in understanding complex commands, difficulty in adapting to stressful circumstances, inability to establish and maintain effective relationships, suicidal ideation, spatial disorientation, and disorientation to time or place. On behavioral testing, the Veteran appeared his stated age. He was dressed in insulated coveralls and an insulated farm coat. He was oriented to

person, place, time, and situation. He was alert, mood was neutral, and affect was mood congruent. Eye contact was appropriately focused. Speech was clear and of appropriate volume, rate, and prosody. Memory was impaired, he remembered one of three words following an intervening period of distracting stimuli. Psychomotor activity was positive for limited range of motion in the right arm. No conceptual disorganization was noted. He felt guilt and irritability much of the time. There was no evidence of perceptual problems. He was open and cooperative. He was aware of his problems, the consequences, and causes. Judgement was fair to poor. He had difficulty maintaining attention. He showed poor frustration tolerance. Posture was normal. Estimated range of intellectual ability was average. He displayed no overt distress during the interview. He was able to successfully subtract sevens, identify objects seen, copy a simple two-dimensional design, and write a complete sentence. He made errors when repeating an oral phrase, following an oral instruction, and recalling words. The Veteran was found capable of managing his own financial affairs. The Veteran reported suicidal ideation with a plan.

In support of the claim, the Veteran has also provided several self-written statements and written statements from family members detailing the behavior and mental changes they had noticed in the Veteran over the years.

Resolving all benefit of doubt in favor of the Veteran, the Board finds that the criteria for a 50 percent rating for PTSD. The evidence shows occupational and social impairment with reduced reliability and productivity due to such symptoms as impaired judgment; impaired abstract thinking; disturbances of motivation and mood; and difficulty in establishing and maintaining effective work relationships.

The Board finds that the evidence does not show that PTSD resulted in deficiencies in most areas. The Veteran has maintained a lengthy marriage and social relationships with his family. He maintained a long term career from which he retired, and following retirement found fulfillment operating a personal farm. The Veteran cannot be found to have deficiencies in family and home working areas. While he had some impairment of thought processes, the Board finds that the overall level of impairment does not constitute deficiencies in most areas. The Board finds that the criteria for a 70 percent rating for a psychiatric disability have

not been met or more nearly approximated, as the Veteran is not shown to have had deficiencies in most areas due to psychiatric symptoms during that period.

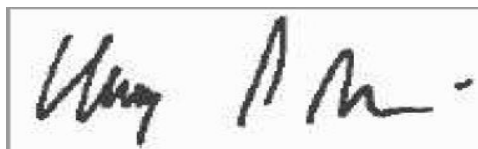
The Board notes that suicidal ideation alone, a Veteran's thoughts of his own death or thoughts of engaging in suicide-related behavior, may cause occupational and social impairment with deficiencies in most areas, and that may be sufficient to warrant a 70 percent rating. *Bankhead v. Shulkin*, 29 Vet. App. 10 (2017). The Board finds that the Veteran's suicidal ideation did not rise to that level. Suicidal and homicidal ideation was noted to be occasional at the January 2019 private examination. In January 2019, the Veteran submitted a statement that he had suicidal and homicidal ideation in the past. In January 2020, he reported suicidal ideation with a plan. However, the Board finds that the evidence does not show that the Veteran posed a persistent danger of harm to himself or others, as the evidence shows the danger was occasional, to support a 100 percent rating. Also, the evidence does not show that suicidal ideation resulted in deficiencies in most areas to support a 70 percent rating.

In considering whether the Veteran warranted a 100 percent rating, the Board has carefully considered the contentions and assertions that psychiatric disability was of such severity so as to warrant a 100 percent schedular rating for the entire appeal period. In making a decision on appeal, the Board must analyze the credibility and probative value of the evidence, account for the evidence which are found to be persuasive or unpersuasive and provide the reasons for the rejection of any material evidence favorable to the claimant. *Gabrielson v. Brown*, 7 Vet. App. 36 (1994); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). The Veteran is competent to report symptoms, such as anxiety, and depressed mood, because that requires only personal knowledge as it comes to him through his senses. *Layno v. Brown*, 6 Vet. App. 465 (1994). However, when considering the overall disability picture, the Board finds that the evidence of record shows that the Veteran's psychiatric disability is more nearly approximated by the criteria for a 70 percent rating under the Diagnostic Code 9411. The Board finds that the Veteran's psychiatric condition did not meet, or more nearly approximate, the criteria for a 100 percent as total occupation and social impairment, as is required for the next higher rating of 100 percent, have not been demonstrated.

The Board finds that total occupational and social impairment has not been shown during the course of the appeal. There is significant evidence of maintained familial relationships, which precludes a finding of total social impairment. The record indicates that the Veteran has been married for over 44 years and has a continued relationship with his children, grandchild, mother, siblings, and friends. Therefore, as both total occupational impairment and social impairment are required for a 100 percent schedular rating, the Board finds that a 100 percent schedular rating is not warranted at any point during the course of this appeal as total social impairment has not been shown.

The Board finds that the Veteran has never displayed gross impairment in thought processes or communication; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); memory loss for names of closest relatives, own occupation, or own name commensurate with a 100 percent rating.

Accordingly, resolving reasonable doubt in favor of the Veteran, the Board finds that the criteria for a 50 percent rating, but not higher, effective March 9, 2017, but not earlier, for a psychiatric disability are met. Therefore, the claim for an increased rating is granted to that extent only. The Board finds that the preponderance of the evidence is against the assignment of any higher rating. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990); 38 U.S.C. § 5107; 38 C.F.R. § 3.102.




Harvey P. Roberts
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

Mondesir, Eric



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The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

If you disagree with VA's decision

Choose one of the following review options to continue your case. If you aren't satisfied with that review, you can try another option. Submit your request before the indicated deadline in order to receive the maximum benefit if your case is granted.

Review option	Supplemental Claim Add new and relevant evidence	Higher-Level Review Not Available Ask for a new look from a senior reviewer	Board Appeal Not Available Appeal to a Veterans Law Judge	Court Appeal Appeal to Court of Appeals for Veterans Claims
Who and what	A reviewer will determine whether the new evidence changes the decision.	Because your appeal was decided by a Veterans Law Judge, you cannot request a Higher-Level Review.	You cannot request two Board Appeals in a row.	The U.S. Court of Appeals for Veterans Claims will review the Board's decision. You can hire an attorney to represent you, or you can represent yourself.
Estimated time for decision	 About 4-5 months	Please choose a different option for your next review.	Please choose a different option for your next review.	Find more information at the Court's website: uscourts.cavc.gov
Evidence	 You must submit evidence that VA didn't have before that supports your case.			
Discuss your case with VA				
Request this option	Submit VA Form 20-0995 Decision Review Request: Supplemental Claim VA.gov/decision-reviews			File a Notice of Appeal uscourts.cavc.gov Note: A Court Appeal must be filed with the Court, not with VA.
Deadline	You have 1 year from the date on your VA decision to submit VA Form 20-0995.			You have 120 days from date on your VA decision to file a Court Appeal.
How can I get help?	A Veterans Service Organization or VA-accredited attorney or agent can represent you or provide guidance. Contact your local VA office for assistance or visit VA.gov/decision-reviews/get-help . For more information, you can call the White House Hotline 1-855-948-2311 .			

What is new and relevant evidence?

In order to request a Supplemental Claim, you must add evidence that is both new and relevant. New evidence is information that VA did not have before the last decision. Relevant evidence is information that could prove or disprove something about your case.

VA cannot accept your Supplemental Claim without new and relevant evidence. In addition to submitting the evidence yourself, you can identify evidence, like medical records, that VA should obtain.

What is the Duty to Assist?

The Duty to Assist means VA must assist you in obtaining evidence, such as medical records, that is needed to support your case. VA's Duty to Assist applied during your initial claim, and it also applies if you request a Supplemental Claim.

If you request a Higher-Level Review or Board Appeal, the Duty to Assist does not apply. However, the reviewer or judge will look at whether VA met its Duty to Assist when it applied, and if not, have VA correct that error by obtaining records or scheduling a new exam. Your review may take longer if this is needed.

What if I want to file a Court Appeal, but I'm on active duty?

If you are unable to file a Notice of Appeal due to active military service, like a combat deployment, the Court of Appeals for Veterans Claims may grant additional time to file. The 120-day deadline would start or resume 90 days after you leave active duty. Please seek guidance from a qualified representative if this may apply to you.

What if I miss the deadline?

Submitting your request on time will ensure that you receive the maximum benefit if your case is granted. Please check the deadline for each review option and submit your request before that date.

If the deadline has passed, you can either:

- Add new and relevant evidence and request a Supplemental Claim. Because the deadline has passed, the effective date for benefits will generally be tied to the date VA receives the new request, not the date VA received your initial claim. Or,
- File a motion to the Board of Veterans' Appeals.

What if I want to get a copy of the evidence used in making this decision?

Call 1-800-827-1000 or write a letter stating what you would like to obtain to the address listed on this page.

Motions to the Board

Please consider the review options available to you if you disagree with the decision. In addition to those options, there are three types of motions that you can file with the Board to address errors in the decision. Please seek guidance from a qualified representative to assist you in understanding these motions.

Motion to Vacate

You can file a motion asking the Board to vacate, or set aside, all or part of the decision because of a procedural error. Examples include if you requested a hearing but did not receive one or if your decision incorrectly identified your representative. You will need to write a letter stating how you were denied due process of law. If you file this motion within 120 days of the date on your decision letter, you will have another 120 days from the date the Board decides the motion to appeal to the Court of Appeals for Veterans Claims.

Motion to Reconsider

You can file a motion asking the Board to reconsider all or part of the decision because of an obvious error of effect or law. An example is if the Board failed to recognize a recently established presumptive condition. You will need to write a letter stating specific errors the Board made. If the decision contained more than one issue, please identify the issue or issues you want reconsidered. If you file this motion within 120 days of the date on your decision letter, you will have another 120 days from the date the Board decides the motion to appeal to the Court of Appeals for Veterans Claims.

Motion for Revision of Decision based on Clear and Unmistakable Error

Your decision becomes final after 120 days. Under certain limited conditions, VA can revise a decision that has become final. You will need to send a letter to VA requesting that they revise the decision based on a Clear and Unmistakable Error (CUE). CUE is a specific and rare kind of error. To prove CUE, you must show that facts, known at the time, were not before the judge or that the judge incorrectly applied the law as it existed at the time. It must be undebatable that an error occurred and that this error changed the outcome of your case. Misinterpretation of the facts or a failure by VA to meet its Duty to Assist are not sufficient reasons to revise a decision. Please seek guidance from a qualified representative, as you can only request CUE once per decision.

Mail to:

Board of Veterans' Appeals
PO Box 27063
Washington, DC 20038

Or, fax:

1-844-678-8979