

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

KENNETH A. HERNANDEZ,)	
Appellant,)	
)	
v.)	Vet. App. No. 20-0504
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
Appellee.)	

**APPELLEE'S NOTICE REGARDING BVA DECISION,
AND MOTION TO DISMISS**

Pursuant to U.S. Vet. App. R. 4(c) and 27(a), Appellee notifies the Court that there is no Board of Veterans' Appeals (Board or BVA) decision dated November 8, 2019 (the date that he cites as the date of a Board decision that he wishes to appeal to the Court), and moves to dismiss this appeal for lack of subject matter jurisdiction.

BACKGROUND

On January 14, 2020, Appellant filed a Notice of Appeal (NOA) with the Court. In his NOA, Appellant reported that he was appealing an "11/8/2019" Board decision. A review of the Veterans Appeals Control and Locator System (VACOLS) and the Veterans Benefits Management System (VBMS) pertaining to Appellant confirmed that there is no final BVA decision for this appellant dated November 8, 2019. (See attached Declaration). In the absence of a final Board decision dated November 8, 2019, this Court has no jurisdiction over this appeal. 38 U.S.C. §§ 7252(a), 7266.

BASIS FOR DISMISSAL

This Court's jurisdiction derives exclusively from statutory grants of authority provided by Congress, and the Court may not extend its jurisdiction beyond that authorized by law. *Bonhomme v. Nicholson*, 21 Vet.App. 40, 42 (2007). The burden of establishing jurisdiction rests with Appellant. *Hampton v. Nicholson*, 20 Vet.App. 459, 460 (2006). Pursuant to 38 U.S.C. § 7266(a), for a claimant to obtain

review of a Board decision, the decision must be final and the person adversely affected by that decision must file an NOA within 120 days after the date the BVA decision was mailed. “A claimant seeking to appeal an issue to the Court must first obtain a *final* BVA decision on that issue.” *Horowitz v. Brown*, 5 Vet.App. 217, 225 (1993). In this appeal, the Board has not issued a final decision dated November 8, 2019. Instead, the Regional Office issued a rating decision on November 8, 2019, denying multiple service-connection claims. (Attachment). Since there is no final BVA decision dated November 8, 2019, for the Court to review, this case must be dismissed. *Breeden v. Principi*, 17 Vet.App. 475 (2004).

Appellant is proceeding pro se in this matter.

WHEREFORE, Appellee moves the Court to dismiss this appeal for lack of subject matter jurisdiction.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Richard A. Daley
RICHARD A. DALEY
Deputy Chief Counsel

/s/ Amy M. Roth-Pixton
AMY M. ROTH-PIXTON
Appellate Attorney
Office of General Counsel (027E)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 623-6985

CERTIFICATE OF SERVICE

On February 20, 2020, a copy of this notice and motion was mailed, postage prepaid, to:

Kenneth A. Hernandez
Alfred Hughes Unit
3201 FM 929
#01684655
Gatesville, TX 76597

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Amy M. Roth-Pixton
AMY M. ROTH-PIXTON
Appellate Attorney

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

KENNETH A. HERNANDEZ,)	
Appellant,)	
)	
v.)	Vet. App. No. 20-0504
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
Appellee.)	

DECLARATION OF AMY M. ROTH-PIXTON

I, Amy M. Roth-Pixton, depose and state:

1. I am an Appellate Attorney of the Veterans Court Litigation Group, Office of General Counsel, U.S. Department of Veterans Affairs (VA), and, as such, I am responsible for cases brought before the U.S. Court of Appeals for Veterans Claims in which the Court's jurisdiction is in question.

2. In the performance of my duties, I personally reviewed information in VACOLS and VBMS, which is maintained by VA in the normal course of business and contains records of VA's actions involving claims for VA benefits. According to information contained in VACOLS and VBMS, there is no final BVA decision dated November 8, 2019, pertaining to Kenneth A. Hernandez. There is, instead, a rating decision dated on November 8, 2019.

3. Appellant identified November 8, 2019, as the date of the decision he wanted to appeal.

4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements in this declaration are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand in the City of Washington, District of Columbia, this 20th day of February 2020.

/s/ Amy M. Roth-Pixton
AMY M. ROTH-PIXTON
Appellate Attorney

ATTACHMENT



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

Kenneth Hernandez

VA File Number
[REDACTED]

**Represented By:
DISABLED AMERICAN VETERANS
Rating Decision
11/08/2019**

INTRODUCTION

As a result of the enactment of the Veterans Appeals Improvement and Modernization Act of 2017 (Public Law 115-55), the Department of Veterans Affairs (VA) is required to change its current appeals process. Under the authority of Public Law 115-55, VA created the Rapid Appeals Modernization Program (RAMP) to provide Veterans with the earliest possible resolution of their claims. You have chosen to participate in RAMP, and you selected to have your claim reviewed under the [Supplemental Claim or Higher-Level Review] lane option.

The records reflect that you are a veteran of the Gulf War Era. You served in the Army National Guard from October 16, 2001 to March 1, 2002. We have received your request for higher level review on March 12, 2018, however, additional development actions were necessary to fulfill our duty to assist in gathering evidence to support your claim. Additional development has been completed and a Supplemental Claim Review will now be conducted. Based on the review and the evidence listed below, we have made the following decision.

DECISION

1. Service connection for posttraumatic stress disorder is denied.



2. Service connection for abnormal heartbeat is denied.
3. Service connection for depression is denied.
4. Service connection for exposure to biohazards is denied.
5. Service connection for hypertension is denied.
6. Service connection for left ankle/ foot fracture is denied.
7. Service connection for right wrist/ arm tendon tear/ strain is denied.

EVIDENCE

- RAMP Opt-In notice, March 12, 2018
- RAMP Notice Letter, April 20, 2018
- Rating Decision, dated June 17, 2015
- Private Treatment Records, Austin Regional Clinic, received December 4, 2014 and September 25, 2017
- VA Form 21-4138, Statement in Support of Claim, received January 17, 2018
- VA Form 21-4138, Statement in Support of Claim, received February 3, 2017
- VA Form 27-0820 Report of General Information, October 24, 2019
- VA letter, dated May 23, 2019
- VA Examination Report of Cancellation, LHI, March 21, 2019
- VA Examination Report of No Show, VAMC Central Texas, dated January 24, 2019
- RAMP Notice Letter, January 15, 2019
- Your written statement, received January 31, 2019
- DD Form 214, Certificate of Release or Discharge from Active Duty, October 16, 2001 to March 1, 2002, dated January 1, 2001
- Government Treatment Records, June 19, 2001 to June 27, 2007, received February 22, 2012
- Service Treatment Records, October 16, 2001 to March 1, 2002, received February 22, 2012
- VA letter, dated July 12, 2018
- Service Personnel Records-Army National Guard, dated August 5, 2006, received January 31, 2017
- Your written statement, received November 13, 2015
- Private Treatment Records, Airport Chiropractic & Rehabilitation, received March 17, 2015
- Service Personnel Records-Army National Guard, from June 19, 2001 through June 19, 2008, received March 20, 2015
- VAMC (Veterans Affairs Medical Center) treatment records, Austin, from February 12, 2010 through May 11, 2010
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, February 17, 2015
- Treatment Records, Correctional Managed Care, received June 12, 2015



REASONS FOR DECISION

1. Service connection for posttraumatic stress disorder.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with 38 CFR 4.125(a); a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. (38 CFR 3.304)

If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed in-service stressor may be established by the veteran's lay testimony alone. If the evidence establishes that the veteran was a prisoner-of-war under the provisions of 38 CFR 3.1(y) and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed in-service stressor may be established by the veteran's lay testimony alone. {38 CFR Sections 3.1(y), 3.304(f), 4.125(a)} The available medical evidence is insufficient to confirm a link between current symptoms and an in-service stressor.

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.



Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for posttraumatic stress disorder is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Although VAMC Austin treatment records from 2010 indicate treatment for a mental condition, we found no link between your medical condition and military service. There is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

The evidence shows that a qualifying event, injury, or disease had its onset during your service. Service personnel record from Army National Guard shows receipt of the Humanitarian Service Medal for the period August 30, 2005 to September 5, 2005.

Laws and regulations applicable to this issue:

- 38 C.F.R. §3.1 Definitions.
- 38 C.F.R. §3.303 Principles relating to service connection.
- 38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
- 38 C.F.R. §3.6 Duty periods.
- 38 C.F.R. §3.304 Direct SC Post-Traumatic Stress Disorder
- 38 C.F.R. §4.125 Diagnosis of mental disorders.

2. Service connection for abnormal heartbeat.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)



In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for abnormal heartbeat is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show a current diagnosed disability. The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. There is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.



38 C.F.R. §3.303 Principles relating to service connection.
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.6 Duty periods.

3. Service connection for depression.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for depression is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Although VAMC Austin treatment records from 2010 indicate treatment for a mental condition, we found no link between your medical condition and military service. There is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service



connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.

38 C.F.R. §3.303 Principles relating to service connection.

38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.

38 C.F.R. §3.6 Duty periods.

38 C.F.R. §4.125 Diagnosis of mental disorders.

4. Service connection for exposure to biohazards.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for exposure to biohazards is denied since this condition neither occurred in nor was caused by service. (38 CFR



3.303, 38 CFR 3.304). The evidence does not show a current diagnosed disability. The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. There is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.
38 C.F.R. §3.303 Principles relating to service connection.
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.6 Duty periods.

5. Service connection for hypertension.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. §



3.303).

To satisfy the requirements for service connection for a disability based on presumption, you must submit the following: (1) medical evidence demonstrating the existence of a current disability, and (2) medical evidence establishing that the disability manifested to a compensable degree within one year of your discharge from active service. (specified under 38 C.F.R. § 3.309) Longer time limits may apply for certain medical conditions.

Service connection may be granted on a presumptive basis for hypertension if this condition is manifested to a compensable degree (severe enough to be evaluated at least 10 percent disabling) within a certain period after military discharge (specified under 38 CFR 3.307). The medical evidence establishes the existence of hypertension within the specified period after military service; however, the severity of the disability is not shown to be at a compensable level within that specified period. Therefore, service connection on a presumptive basis is denied.

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for hypertension is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Although the medical treatment records from Correctional Managed Care note that hypertension was first observed June 16, 2011, there is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:



None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.
38 C.F.R. §3.303 Principles relating to service connection.
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.6 Duty periods.
38 C.F.R. §3.309 Disease subject to presumptive service connection

6. Service connection for left ankle/ foot fracture.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for left ankle/ foot fracture is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Although treatment records from Austin Regional Clinic show treatment for left ankle pain on June 15, 2004, we found no link between your medical condition and military service. There is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of



active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.

38 C.F.R. §3.303 Principles relating to service connection.

38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.

38 C.F.R. §3.6 Duty periods.

7. Service connection for right wrist/ arm tendon tear/ strain.

A claimant may request readjudication of a previously denied claim, if new and relevant evidence is presented or secured. VA will readjudicate the claim taking into consideration all of the evidence of record. New evidence means existing evidence not previously submitted to agency decisionmakers. The term "relevant evidence" means evidence that tends to prove or disprove a matter in issue. (See generally 38 U.S.C. § 5108, as amended by Public Law 115-55)

In support of your claim, VA has presumed the receipt of new and relevant evidence and your claim is now reconsidered.

Service connection may be granted for any disease or injury that is considered to have resulted in a period of war or service. To establish direct service connection for a claimed disorder, objective evidence must show a diagnosis of a current disability that is related to a disease or injury incurred in or aggravated during "active " service; or that manifested itself to a compensable degree within one year from the date of discharge (specified under 38 C.F.R. § 3.303).

You did not attend the VA examination we scheduled in connection with your claim and did not show good cause for your failure to do so. Therefore, medical evidence that could have been useful to support your claim was not available to us. If you had good cause for missing your VA



examination and are willing to report for an examination, your claim may be reconsidered based on those findings. (38 CFR 3.655) Due to your incarceration, per POC Eric P. for Hughes Unit, an exam will not be possible due to high level security.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. (38 CFR 3.303) Service connection for right wrist/ arm tendon tear/ strain is denied since this condition neither occurred in nor was caused by service. (38 CFR 3.303, 38 CFR 3.304). The evidence does not show an event, disease or injury in service. Your service treatment records do not contain complaints, treatment, or diagnosis for this condition. Although private treatment records from Airport Chiropractic & Rehabilitation note treatment on May 28, 2007 for right wrist sprain/strain, there is no medical evidence showing this condition occurred during your qualifying period of service from October 16, 2001 to March 1, 2002. The evidence does not show that the claimed condition is a result of injury or disease incurred or aggravated in the line of duty during the periods of active duty training.

Active military service includes active duty or any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty. "Active duty" means full-time duty in the Armed Forces, other than active duty for training. "Active duty for training" means full-time duty in the Armed Forces performed by Reserves for training purposes. Disabilities caused by a disease process cannot be service connected if they are discovered during a period of inactive duty for training. Service connection may be warranted for an injury incurred or aggravated while performing inactive duty for training. Service connection may also be warranted for an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during inactive duty for training. (38 CFR 3.6)

Favorable findings identified in this decision:

None.

Laws and regulations applicable to this issue:

38 C.F.R. §3.1 Definitions.
38 C.F.R. §3.303 Principles relating to service connection.
38 C.F.R. §3.159 Department of Veterans Affairs assistance in developing claims.
38 C.F.R. §3.6 Duty periods.

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.



Rating Decision		<i>Department of Veterans Affairs Veterans Benefits Administration</i>		Page 1 of 2 11/08/2019
NAME OF VETERAN Kenneth Hernandez	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA DISABLED AMERICAN VETERANS	
COPY TO				

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: Special Determination Requested 04/20/2018

ASSOCIATED CLAIM(s): 683; RAMP - HLR DTA Error Rating: 04/20/2018

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC)

5215 RIGHT WRIST/ ARM TENDON TEAR/ STRAIN
Not Service Connected, Not Incurred/Caused by Service
Static Disability

Original Date of Denial: 06/17/2015

5271 LEFT ANKLE/ FOOT FRACTURE
Not Service Connected, Not Incurred/Caused by Service
Static Disability

Original Date of Denial: 06/17/2015

6100 RIGHT EAR HEARING LOSS
Not Service Connected, Hearing Normal for VA Purposes

Original Date of Denial: 11/16/2016

6399-6354 EXPOSURE TO BIOHAZARDS
Not Service Connected, No Diagnosis
Static Disability

Original Date of Denial: 06/17/2015

7011 ABNORMAL HEARTBEAT
Not Service Connected, Not Incurred/Caused by Service



Rating Decision		<i>Department of Veterans Affairs Veterans Benefits Administration</i>		Page 2 of 2 11/08/2019
NAME OF VETERAN Kenneth Hernandez	VA FILE NUMBER [REDACTED]	SOCIAL SECURITY NR [REDACTED]	POA DISABLED AMERICAN VETERANS	
COPY TO				

Static Disability

Original Date of Denial: 06/17/2015

7101

HYPERTENSION

Not Service Connected, Not Established by Presumption
Static Disability

Original Date of Denial: 06/17/2015

9411

POSTTRAUMATIC STRESS DISORDER [PTSD - Non-Combat/Fear - Easing Standard]

Not Service Connected, Not Incurred/Caused by Service
Static Disability

Original Date of Denial: 06/17/2015

9434

DEPRESSION

Not Service Connected, Not Incurred/Caused by Service
Static Disability

Original Date of Denial: 06/17/2015

FAMILY MEMBER DECISIONS

JOHN HERNANDEZ -- Helpless Child from 06/14/2013

ADT service only.

eSign: certified by VSCIDICH, RVSR

