



**DEPARTMENT OF VETERANS AFFAIRS
HARTFORD REGIONAL OFFICE
450 MAIN ST
HARTFORD CT 06103**

[REDACTED]

VA File Number

[REDACTED]

**Represented by:
CONNECTICUT DEPARTMENT OF VETERANS AFFAIRS**

**Decision Review Officer Decision
January 9, 2004**

INTRODUCTION

The records reflect that you are a peacetime veteran . You served in the Navy from April 1, 1983 to February 22, 1985. We received a Notice of Disagreement from you on July 15, 2003 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 Focal Protrusion Posteriorly at L5-S1 of the Disc Material with Severe Limitation of Motion formerly coded as 5293-5292, which is currently 40 percent disabling, is increased to 60 percent effective January 31, 2003.
- 2 . Entitlement to individual unemployability is granted effective January 31, 2003.
- 3 . Basic eligibility to Dependents' Educational Assistance is established from January 31, 2003

4 . Evaluation of Sciatica, Left Lower Extremities, which is currently 20 percent disabling, is continued.

EVIDENCE

- Your 12-12-2003 letter
- Report from Dr. Kenneth Lipow, 10-09-2003
- Report from Dr. Craig Bash, 10-24-2003
- Report from Dr. Charles Kime, 11-07-2003
- Hartford Hospital Radiology report, 10-09-2003
- Your 10-15-2003 letter
- VA examination, 11-24-2003
- Your 10-24-2003 letter
- VA Connecticut Healthcare radiology report, 07-27-1998
- Reports from Housatonic Orthopedic and Sports Medicine Center, March/April 2003
- Your claim for Individual Unemployability, dated 07-24-2003
- VA Connecticut treatment reports, 08-13-2001 to 04-17-2003
- Report from Phoenix Internal Medicine, January/February 2003
- VA examination dated 04-29-2003

REASONS FOR DECISION

1. Evaluation of Focal Protrusion Posteriorly at L5-S1 of the Disc Material with Severe Limitation of Motion formerly coded as 5293-5292 currently evaluated as 40 percent disabling.

The evaluation of Focal Protrusion Posteriorly at L5-S1 of the Disc Material with Severe Limitation of Motion formerly coded as 5293-5292 is increased to 60 percent disabling effective January 31, 2003.

A 60 percent evaluation is assigned from January 31, 2003. A 60 evaluation is assigned for incapacitating episodes having a total duration of at least 6 weeks during the past 12 months. A higher evaluation of 100 percent is not assigned unless there is unfavorable ankylosis of the entire spine.

We have particularly considered Dr. Bash's comments that you require daily bed rest for your back. The various recent examinations, VA and private, show severe limitation of your spine. Dr. Kime reports that you are completely disabled. It is pretty clear that he means you are disabled due to your back disability.

We have based the January 31, 2003 effective date on your report that you became totally disabled during January 2003.

2. Entitlement to individual unemployability.

Entitlement to individual unemployability is granted because the claimant is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

We have based this decision on reports from several doctors, including Doctors Kime and Bash, as well as your own reports. They show that you are totally disabled, and unable to work, due to your service connected back disability.

You reported that you last worked some time during January 2003. We have therefore granted this entitlement from the last day of January 2003.

This makes you "permanently and totally disabled" for VA purposes.

3. Eligibility to Dependents' Educational Assistance under 38 U.S.C. chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a veteran who was discharged under other than dishonorable conditions; and, has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power.

Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has a total service-connected disability, permanent in nature.

The grant is effective January 31, 2003, which is also the effective date of the grant of permanent and total disability.

4. Evaluation of Sciatica, Left Lower Extremities currently evaluated as 20 percent disabling.

The evaluation of Sciatica, Left Lower Extremities is continued as 20 percent disabling. {38 CFR 3.321(a); 38 CFR 3.321(b)(1)}

An evaluation of 20 percent is assigned from January 17, 2003. An evaluation of 20 percent is assigned for incomplete paralysis below the knee which is moderate. A higher evaluation of 40 percent is not warranted unless there is evidence of incomplete paralysis below the knee which is moderately severe.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.