DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

[redacted]

VA File Number
[redacted]

Rating Decision
06/23/2023

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from March 21, 2002 to March 13, 2007 and from April 10, 2008 to November 27, 2011. You filed a new claim for benefits that was received on May 31, 2023. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for migraine including migraine variants (claimed as headache) is granted with an evaluation of 50 percent effective May 23, 2023.

2. Service connection for tinnitus is granted with an evaluation of 10 percent effective May 23, 2023.

3. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from May 23, 2023.

4. A decision on entitlement to compensation for left hip degenerative arthritis (claimed as left hip) is deferred.

5. A decision on entitlement to compensation for right hip degenerative arthritis (claimed as right hip condition) is deferred.

6. A decision on entitlement to compensation for right knee condition is deferred.

7. A decision on entitlement to compensation for traumatic brain injury is deferred.

EVIDENCE

- Rating decision dated June 15, 2023
- Rating decision dated May 31, 2023
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation
- Benefits, received May 31, 2023
- VAMC (Veterans Affairs Medical Center) treatment records, Charleston from Nov 13, 2017
- to Nov 30, 2021, received August 29, 2022
- Disability Benefit Questionnaire, Examination Back (Thoracolumbar Spine) Conditions, received May 31, 2023 conducted September 14, 2021
- Disability Benefit Questionnaire, right knee And Lower Leg, received May 31, 2023 conducted September 14, 2022
- Disability Benefit Questionnaire (right hip condition), received May 31, 2023 conducted September 14, 2021
- Disability Benefit Questionnaire (left hip condition), received May 31, 2023 conducted September 14, 2021
- Disability Benefit Questionnaire (migraine headaches), received May 31, 2023 conducted September 14, 2021
- Disability Benefit Questionnaire traumatic brain injury (TBI), received May 31, 2023 conducted September 14, 2021
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received May 23, 2023
- Service Treatment Records, from March 21, 2002 through March 13, 2007
- Service Treatment Records, from April 10, 2008 through November 27, 2011

REASONS FOR DECISION

1. Service connection for migraine including migraine variants (claimed as headache).

Service connection for migraine including migraine variants (claimed as headache) has been established as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

The effective date of this grant is May 23, 2023. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 50 percent is assigned from May 23, 2023.

We have assigned a 50 percent evaluation for your headache based on:
• Very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability

This is the highest schedular evaluation allowed under the law for migraines. (38 CFR 4.120, 38 CFR 4.124a)

2. Service connection for tinnitus.

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

The effective date of this grant is May 23, 2023. Service connection has been established from the day VA received your intent to file (ITF) a claim for compensation. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA receives the intent to file when a prescribed form is received within a year of the ITF. (38 CFR 3.155, 38 CFR 3.400)

An evaluation of 10 percent is assigned from May 23, 2023.

We have assigned a 10 percent evaluation for your tinnitus based on:
• Recurrent

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head.

This is the highest schedular evaluation allowed under the law for tinnitus. (38 CFR 4.87)

3. Eligibility to Dependents' Educational Assistance under 38 U.S.C. Chapter 35 based on permanent and total disability status.

Eligibility for Dependents' Educational Assistance is derived from a Veteran who was discharged under other than dishonorable conditions; and has permanent and total service-connected disabilities; or permanent and total disabilities existed at the time of death; or the Veteran died as a result of service-connected disabilities. Also, eligibility exists for a service member 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. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Basic eligibility for Dependents' Educational Assistance is granted as the evidence shows you currently have a totally disabling service-connected disability or disabilities, permanent in

nature. (38 USC Chapter 35, 38 CFR 3.807, 38 CFR 21.3021)

Evidence we have used to grant permanent and total disability status:

The available treatment records and examinations dated September 14, 2021, documents the current severity of your migraine including migraine variants (claimed as headache), left knee status post anterior cruciate ligament (ACL) transplant and subtotal meniscectomy with limited flexion, numbness, left knee, status post left knee surgery also including left lower radiculopathy, sciatic nerve, lumbar strain, radiculopathy, right lower extremity, post-traumatic stress disorder, scars, status post meniscectomy, left knee, onychomycosis of the bilateral toenails, left knee status post anterior cruciate ligament (ACL) transplant and subtotal meniscectomy and tinnitus. Your overall combined evaluation is 100% disabling, and there is no evidence showing any service-connected disability affecting your combined 100 percent evaluation is likely to improve in the near future.

4. Compensation for left hip degenerative arthritis (claimed as left hip).

The issue of compensation for left hip degenerative arthritis (claimed as left hip) is deferred for the following information: development

5. Compensation for right hip degenerative arthritis (claimed as right hip condition).

The issue of compensation for right hip degenerative arthritis (claimed as right hip condition) is deferred for the following information: development

6. Compensation for right knee condition.

The issue of compensation for right knee condition is deferred for the following information: develpoment

7. Compensation for traumatic brain injury.

The issue of compensation for traumatic brain injury is deferred for the following information: additional development

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.

June 29, 2023

[redacted]

We made a decision on your VA benefits.

Dear [redacted]

This letter will guide you through the information you should know and steps you may take now that VA has made a decision about your benefits.

Your Benefit Information:

- Service connection for migraine including migraine variants (claimed as headache) is granted with an evaluation of 50 percent effective May 23, 2023.
- Service connection for tinnitus is granted with an evaluation of 10 percent effective May 23, 2023.
- Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from May 23, 2023.
- A decision on entitlement to compensation for left hip degenerative arthritis (claimed as left hip) is deferred.
- A decision on entitlement to compensation for right hip degenerative arthritis (claimed as right hip condition) is deferred.
- A decision on entitlement to compensation for right knee condition is deferred.
- A decision on entitlement to compensation for traumatic brain injury is deferred.

Your combined rating evaluation is:

Combined Rating Evaluation	Effective Date
0%	Mar 14, 2007
20%	Nov 28, 2011
60%	Aug 19, 2014
70%	Jul 7, 2015

We have included with this letter:

1. Explanation of Payment
2. Additional Benefits
3. Where to Send Your Correspondence
4. VA Form 20-0998
5. Rating Decision - Narrative (06/23/2023)
6. Veteran's Service Organization Information
7. Fraud Prevention Attachment

Contact information:

Web: www.vets.gov
Phone: 1-800-827-1000
TDD: 711
To send questions online: visit https://iris.custhelp.com/

Social Media:

Twitter: @VAVetBenefits
Facebook: www.facebook.com/VeteransBenefits

How to obtain representation:

We have no record of you appointing an accredited representative. Accredited representatives are trained to help you understand and apply for VA benefits. For more information about how an accredited representative can help you, please visit: https://www.vets.gov/disability-benefits/apply-for-benefits/help/

If you or someone you know is in crisis, call the *Veterans Crisis Line* at 1-800-273-8255 and press 1.

Combined Rating Evaluation	Effective Date
70%	Feb 10, 2017
80%	Feb 12, 2021
90%	Feb 19, 2021
90%	Aug 26, 2022
90%	May 23, 2023
100%	May 31, 2023

How VA Combines Percentages

If you have more than one condition, VA will combine percentages to determine your overall disability rating. The percentages assigned for each of your conditions may not always add up to your combined rating evaluation. The following website has additional information about how VA combines percentages: http://www.benefits.va.gov/compensation/rates-index.asp#howcalc.

See **Rating Decision** to find out why we made this decision.

You may be eligible for VA life insurance benefits. Call the Insurance toll free number, 1-800-669-8477, or visit the Insurance website, www.benefits.va.gov/insurance, for further information.

Your dependents may be eligible for Dependents Educational Assistance (Chapter 35). For more information on this program, please visit the following web site: https://www.va.gov/education/survivor-dependent-benefits/dependents-education-assistance/ or call 1-888-GIBILL-1 (1-888-442-4551).

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason
$4,573.82	Jun 1, 2023	Compensation Rating Adjustment
$4,473.48	Nov 7, 2024	Minor Child Adjustment
$4,373.14	Jul 25, 2026	Minor Child Adjustment
$4,272.80	Sep 26, 2027	Minor Child Adjustment
$4,172.46	Oct 5, 2029	Minor Child Adjustment
$4,072.12	May 21, 2032	Minor Child Adjustment

OMB Control No. 2900-0747
Respondent Burden: 25 minutes
Expiration Date: 11/30/2025

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 14 before completing the form. Use this form to determine your eligibility for compensation. For more information, you can contact us online through Ask VA: https://ask.va.gov. Ask us a question online or call us toll-free at 1-800-827-1000 (TTY: 711). If you prefer you may complete and submit the form online at www.va.gov. VA forms are available at www.va.gov/vaforms.

1. SELECT THE TYPE OF CLAIM PROGRAM/PROCESS THAT APPLIES TO YOU. **NOTE**: Your claim will be processed as described on pages 1 through 8 unless one of the following special programs is selected. See Instruction pages 1 through 3 for definitions of the Fully Developed Claim (FDC) Program (Optional Expedited Process) or the Standard Claim Process.

☑ FDC PROGRAM ☐ STANDARD CLAIM PROCESS
☐ IDES (Select this option ***only*** if you have been referred to the IDES Program by your Military Service Department)
☐ BDD Program Claim (Select this option ***only*** if you meet the criteria for the BDD Program specified on Instruction Page 5)

SECTION I: VETERAN'S IDENTIFICATION INFORMATION
(If claim is not an original claim, only Section I, IV (if applicable), V and a signature are required)

NOTE: You may *either* complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly, insert one letter per box, and completely fill in each applicable check box to help expedite processing of the form.

2. VETERAN/SERVICEMEMBER'S NAME (First, Middle Initial, Last)
[redacted] [redacted]

3. VETERAN'S SOCIAL SECURITY NUMBER (SSN)	4. HAVE YOU EVER FILED A CLAIM WITH VA?	5. VA FILE NUMBER
[redacted]	☑ YES ☐ NO (If "Yes," provide your file number in Item 5)	[redacted]

6. DATE OF BIRTH (MM-DD-YYYY)	7. VETERANS SERVICE NUMBER (if applicable)
[redacted]	

8. **BDD CLAIMSONLY: PROVIDE THE DATE OR ANTICIPATED DATE OF RELEASE FROM ACTIVE DUTY** (MM-DD-YYYY)	9. TELEPHONE NUMBER (Optional) (Include Area Code)
	[redacted] Enter International Phone Number (If applicable)

10. CURRENT MAILING ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*

No. & Street [redacted]

Apt./Unit Number

City [redacted]

State/Province [redacted] Country **US** ZIP Code/Postal Code [redacted]

11. E-MAIL ADDRESS (Optional) ☑ I agree to receive electronic correspondence from VA in regards to my claim.
[redacted]

☐ 12. IF YOU ARE CURRENTLY A VA EMPLOYEE, CHECK THE BOX (Includes Work Study/Internship) (If you are not a VA employee skip to Section II, if applicable)

SECTION II: CHANGE OF ADDRESS

NOTE: If you are temporarily or permanently changing your address, complete Items 13A through 13C.

13A. TYPE OF ADDRESS CHANGE (Complete if applicable) (Check only one box)

☐ TEMPORARY ☐ PERMANENT

13B. NEW ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street

Apt./Unit Number

City

State/Province Country ZIP Code/Postal Code

13C. EFFECTIVE DATE(S) OF NEW ADDRESS (If your change of address is **temporary**, complete both the beginning and ending date of your temporary address) (If your change of address is **permanent**, please enter your effective date in the beginning date only)

	Month	Day	Year		Month	Day	Year
BEGINNING DATE:				**ENDING DATE:**			

VETERANS SOCIAL SECURITY NO [redacted]

SECTION III: HOMELESS INFORMATION

IMPORTANT: The following questions (Items 14A through 14F) should only be completed if you are currently homeless or at risk of becoming homeless. If this item does not apply to you, skip to Section IV.

14A. ARE YOU CURRENTLY HOMELESS?

☐ YES (If "Yes," complete Item 14B regarding your living situation)

☐ NO

14B. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION:

☐ LIVING IN A HOMELESS SHELTER
☐ NOT CURRENTLY IN A SHELTERED ENVIRONMENT (e.g., living in a car or tent)
☐ STAYING WITH ANOTHER PERSON
☐ FLEEING CURRENT RESIDENCE
☐ OTHER (Specify):

14C. ARE YOU CURRENTLY AT RISK OF BECOMING HOMELESS?

☐ YES (If "Yes," complete Item 14D regarding your living situation)
☐ NO

14D. CHECK THE BOX THAT APPLIES TO YOUR LIVING SITUATION:

☐ HOUSING WILL BE LOST IN 30 DAYS
☐ LEAVING PUBLICLY FUNDED SYSTEM OF CARE (e.g., homeles shelter)
☐ OTHER (Specify)

14E. POINT OF CONTACT (Name of person VA can contact in order to get in touch with you)

14F. POINT OF CONTACT TELEPHONE NUMBER (Include Area Code)

( )

Enter International Phone Number (If applicable)

SECTION IV: EXPOSURE INFORMATION

15A. ARE YOU CLAIMING ANY CONDITIONS RELATED TO TOXIC EXPOSURES? **NOTE**: See Page 4 of the Instructions for further information on the evidence needed to support your claim for presumptive service connection. (You can also refer to the following websites for more information: PACT ACT (https://www.va.gov/PACT) and PUBLIC HEALTH MILITARY EXPOSURES (https://www.publichealth.va.gov/exposures/index.asp))

☑ YES (If "Yes," complete Items 15B, 15C, 15D and 15E) ☐ NO (If "No," skip to Item 16, Section V: Claim Information)

15B. DID YOU SERVE IN ANY OF THE FOLLOWING GULF WAR HAZARD LOCATIONS?

Iraq; Kuwait; Saudi Arabia; the neutral zone between Iraq and Saudi Arabia; Bahrain; Qatar; the United Arab Emirates; Oman; Yemen; Lebanon; Somalia; Afghanistan; Israel; Egypt; Turkey; Syria; Jordan; Djibouti; Uzbekistan; the Gulf of Aden; the Gulf of Oman; the Persian Gulf; the Arabian Sea; and the Red Sea.

☑ YES ☐ NO

	FROM:	TO:
WHEN DID YOU SERVE IN THESE LOCATIONS? (MM-YYYY) Note: Please provide an approximate time frame (month and year).	**09-2002**	**08-2003**

15C. DID YOU SERVE IN ANY OF THE FOLLOWING HERBICIDE (e.g., Agent Orange) LOCATIONS?

Republic of Vietnam to include the 12 nautical mile territorial waters; Thailand at any United States or Royal Thai base; Laos; Cambodia at Mimot or Krek; Kampong Cham Province; Guam or American Samoa; or in the territorial waters thereof; Johnston Atoll or a ship that called at Johnston Atoll; Korean demilitarized zone; aboard (to include repeated operations and maintenance with) a C-123 aircraft known to have been used to spray an herbicide agent (during service in the Air Force and Air Force Reserves).

☐ YES ☑ NO Please list other location(s) where you served, if not listed above:

	FROM:	TO:
WHEN DID YOU SERVE IN THESE LOCATIONS? (MM-YYYY) Note: Please provide an approximate time frame (month and year).		

15D. HAVE YOU BEEN EXPOSED TO ANY OF THE FOLLOWING? (Check all that apply)

☐ ASBESTOS ☐ MUSTARD GAS ☐ RADIATION
☐ SHAD (Shipboard Hazard and Defense) ☐ MILITARY OCCUPATIONAL SPECIALTY (MOS)-related toxin ☐ CONTAMINATED WATER AT CAMP LEJEUNE
☐ OTHER (Specify)

	FROM:	TO:
WHEN WERE YOU EXPOSED? (MM-YYYY) Note: Please provide an approximate time frame (month and year).		

15E. IF YOU WERE EXPOSED MULTIPLE TIMES, PLEASE PROVIDE ALL ADDITIONAL DATES AND LOCATIONS OF POTENTIAL EXPOSURE

Iraq 01/2005 to 03/2005. Iraq 12/2009 to 01/2011.

SECTION V: CLAIM INFORMATION
(For additional space, use Section XIII: Claim Information (Addendum))

16. LIST THE CURRENT DISABILITY(IES) OR SYMPTOMS THAT YOU CLAIM ARE RELATED TO YOUR MILITARY SERVICE AND/OR SERVICE-CONNECTED DISABILITY (If applicable, identify whether a disability is due to a service-connected disability; confinement as a prisoner of war; exposure to Agent Orange, asbestos, mustard gas, ionizing radiation, or Gulf War environmental hazards; or a disability for which compensation is payable under 38 U.S.C. 1151)

NOTE: List your claimed conditions below. **See the following three examples for guidance on how to complete Section V.**

EXAMPLES OF DISABILITY(IES)	EXAMPLES OF EXPOSURE TYPE	EXAMPLES OF HOW THE DISABILITY(IES) RELATE TO SERVICE	EXAMPLES OF DATES
Example 1. HEARING LOSS	NOISE	HEAVY EQUIPMENT OPERATOR IN SERVICE	JULY 1968
Example 2. DIABETES	AGENT ORANGE	SERVICE IN VIETNAM WAR	DECEMBER 1972
Example 3. LEFT KNEE, SECONDARY TO RIGHT KNEE		INJURED LEFT KNEE WHEN BRACE ON RIGHT KNEE FAILED	6/11/2008

VETERANS SOCIAL SECURITY NO [redacted]

SECTION V: CLAIM INFORMATION (Continued)
(For additional space, use Section XIII: Claim Information (Addendum))

	CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation, burn pits)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENED
1.	**********ATTENTION!********** Please read the enclosed Private DBQ Election.	*********ATTENTION!******** Please read the enclosed Private DBQ Election.	**********ATTENTION!********** Please read the enclosed Private DBQ Election.	Private DBQs enclosed.
2.	1. RIGHT KNEE CONDITION - to include degenerative arthritis rated 20 percent FLEXION (DC 5003-5260), 20 percent EXTENSION (DC 5003-5261), and 10 percent INSTABILITY (DC 5257) all effective 08/26/2022 (ITF date).	Developed arthritis after spine.	Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.	Private DBQs enclosed.
3.	2. RIGHT HIP CONDITION - to include degenerative arthritis rated 30 percent FLEXION (DC 5003-5252), 20 percent THIGH IMPAIRMENT (DC 5003-5253), and 10 percent EXTENSION (DC 5003-5251) all effective 08/26/2022 (ITF date).	Developed arthritis after spine.	Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.	Private DBQs enclosed.
4.	3. LEFT HIP CONDITION - to include degenerative arthritis rated 20 percent FLEXION (DC 5003-5252), 20 percent THIGH IMPAIRMENT (DC 5003-5253), and 10 percent EXTENSION (DC 5003-5251) all effective 08/26/2022 (ITF date).	Developed arthritis after spine.	Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.	Private DBQs enclosed.
5.	4. TRAUMATIC BRAIN INJURY - DC 8045 rated 70 percent effective 08/26/2022 (ITF date).	Blast exposure during combat deployments to Iraq.	Direct service connection 38 CFR 3.304.	Private DBQs enclosed.
6.	5. HEADACHE CONDITION - to include migraine headaches (DC 8100) rated 50 percent effective 08/26/2022 (ITF date).	Blast exposure and Gulf War exposure during combat deployments to Iraq.	Direct service connection 38 CFR 3.304 or presumptive service connection under 38 CFR 3.317.	Private DBQs enclosed.
7.	6. TINNITUS - DC 6260 rated 10 percent effective 08/26/2022 (ITF date).	Noise exposure during combat deployments to Iraq.	Direct service connection 38 CFR 3.304.	Private DBQs enclosed.
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

17. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) LISTED IN ITEM 16 AND PROVIDE APPROXIMATE BEGINNING DATE (Month andYear) OF TREATMENT. IF ADDITIONAL SPACE IS NEEDED ATTACH A SEPARATE SHEET AND INCLUDE YOUR NAME, SOCIAL SECURITY NUMBER AND ITEM NUMBER.

NOTE: If treatment began from 2005 to present, you do not need to provide dates in Item 17B.

A. ENTER THE DISABILITY TREATED AND NAME/LOCATION OF THE TREATMENT FACILITY	B. DATE OF TREATMENT (MM-YYYY)	C. CHECK THE BOX IF YOU DO NOT HAVE DATE(S) OF TREATMENT
		☐ Don't have date
		☐ Don't have date
		☐ Don't have date

Private DBQ:
Headaches opinion

ATTENTION
Evidence Intake Center:
Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Department of Veterans Affairs

INTERNAL VETERANS AFFAIRS USE
MEDICAL OPINION DISABILITY BENEFITS QUESTIONNAIRE

IMPORTANT - THE DEPARTMENT OF VETERANS AFFAIRS (VA) ***WILL NOT PAY*** OR ***REIMBURSE*** ANY EXPENSES OR COST INCURRED IN THE PROCESS OF COMPLETING AND/OR SUBMITTING THIS FORM. PLEASE READ THE PRIVACY ACT AND RESPONDENT BURDEN INFORMATION ON REVERSE BEFORE COMPLETING FORM.

NAME OF PATIENT/VETERAN	PATIENT/VETERAN'S SOCIAL SECURITY NUMBER
[redacted] [redacted]	[redacted]

Note to examiner The Veteran is applying to the U.S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim.

Is this questionnaire being completed in conjunction with VA 21 2507, C&P examination request? ☐ Yes ☒ No

How was the examination completed? (check all that apply)

- ☒ In person examination
- ☒ Records reviewed
- ☐ Examination via approved video telehealth
- ☒ Other, please specify in comments box:

Comments: Refer to the remarks in the appendix.

ACCEPTABLE CLINICAL EVIDENCE (ACE)

Indicate the method used to obtain medical information to complete this document:

- ☐ Review of available records (without in person or video telehealth examination) using the Acceptable Clinical Evidence (ACE) process because the existing medical evidence provided sufficient information on which to prepare the questionnaire and such an examination will likely provide no additional relevant evidence.
- ☐ Review of available records in conjunction with an interview with the Veteran (without in person or telehealth examination) using the ACE process because the existing medical evidence supplemented with an interview provided sufficient information on which to prepare the questionnaire and such an examination would likely provide no additional relevant evidence.

EVIDENCE REVIEW

Evidence Reviewed (check all that apply):

- ☐ Not requested
- ☐ No records were reviewed
- ☒ VA claims file (hard copy paper C file)
- ☐ VA e folder
- ☒ VA electronic health record
- ☒ Other, please identify other evidence reviewed:

Refer to the remarks in the appendix.

Evidence Comments:

Refer to the remarks in the appendix.

SECTION I - DEFINITIONS

AGGRAVATION OF PREEXISTING NONSERVICE CONNECTED DISABILITIES. A PREEXISTING INJURY OR DISEASE WILL BE CONSIDERED TO HAVE BEEN AGGRAVATED BY ACTIVE MILITARY, NAVAL, OR AIR SERVICE, WHERE THERE IS AN INCREASE IN DISABILITY DURING SUCH SERVICE, UNLESS THERE IS A SPECIFIC FINDING THAT THE INCREASE IN DISABILITY IS DUE TO THE NATURAL PROGRESS OF THE DISEASE.

AGGRAVATION OF NONSERVICE CONNECTED DISABILITIES. ANY INCREASE IN SEVERITY OF A NONSERVICE CONNECTED DISEASE OR INJURY THAT IS PROXIMATELY DUE TO OR THE RESULT OF A SERVICE CONNECTED DISEASE OR INJURY, AND NOT DUE TO THE NATURAL PROGRESS OF THE NONSERVICE CONNECTED DISEASE, WILL BE SERVICE CONNECTED.

SECTION II - RESTATEMENT OF REQUESTED OPINION

2A. INSERT REQUESTED OPINION FROM GENERAL REMARKS:

HEADACHE CONDITION service connection:
Refer to the remarks in the appendix.

2B. INDICATE TYPE OF EXAM FOR WHICH OPINION HAS BEEN REQUESTED *(e.g. skin diseases):* Headache DBQ.

SECTION III - MEDICAL OPINION FOR DIRECT SERVICE CONNECTION

CHOOSE THE STATEMENT THAT MOST CLOSELY APPROXIMATES THE ETIOLOGY OF THE CLAIMED CONDITION.

☒ 3A. THE CLAIMED CONDITION WAS AT LEAST AS LIKELY AS NOT (50 percent or greater probability) INCURRED IN OR CAUSED BY THE CLAIMED IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

☐ 3B.THE CLAIMED CONDITION WAS LESS LIKELY THAN NOT (less than 50 percent probability) INCURRED IN OR CAUSED BY THE CLAIMED IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

3C. RATIONALE:

Refer to the remarks in the appendix.

SECTION IV - MEDICAL OPINION FOR SECONDARY SERVICE CONNECTION

☐ 4A. THE CLAIMED CONDITION IS AT LEAST AS LIKELY AS NOT (50 percent or greater probability) PROXIMATELY DUE TO OR THE RESULT OF THE VETERAN'S SERVICE CONNECTED CONDITION. PROVIDE RATIONALE IN SECTION C.

☐ 4B. THE CLAIMED CONDITION IS LESS LIKELY THAN NOT (less than 50 percent probability) PROXIMATELY DUE TO OR THE RESULT OF THE VETERAN'S SERVICE CONNECTED CONDITION. PROVIDE RATIONALE IN SECTION C.

4C. RATIONALE:

N/A

SECTION V - MEDICAL OPINION FOR AGGRAVATION OF A CONDITION THAT EXISTED PRIOR TO SERVICE

☐ 5A. THE CLAIMED CONDITION, WHICH CLEARLY AND UNMISTAKABLY EXISTED PRIOR TO SERVICE, WAS AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY AN IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

☐ 5B. THE CLAIMED CONDITION, WHICH CLEARLY AND UNMISTAKABLY EXISTED PRIOR TO SERVICE, WAS CLEARLY AND UNMISTAKABLY NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY AN IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

5C. RATIONALE:

N/A

SECTION VI - MEDICAL OPINION FOR AGGRAVATION OF A NONSERVICE CONNECTED CONDITION BY A SERVICE CONNECTED CONDITION

6A. CAN YOU DETERMINE A BASELINE LEVEL OF SEVERITY OF (claimed condition/diagnosis) BASED UPON MEDICAL EVIDENCE AVAILABLE PRIOR TO AGGRAVATION OR THE EARLIEST MEDICAL EVIDENCE FOLLOWING AGGRAVATION BY (service connected condition)?

☐ YES ☐ NO

IF "YES" TO QUESTION 6A, ANSWER THE FOLLOWING:

I. DESCRIBE THE BASELINE LEVEL OF SEVERITY OF (claimed condition/diagnosis) BASED UPON MEDICAL EVIDENCE AVAILABLE PRIOR TO AGGRAVATION OR THE EARLIEST MEDICAL EVIDENCE FOLLOWING AGGRAVATION BY (service connected condition):

N/A

II. PROVIDE THE DATE AND NATURE OF THE MEDICAL EVIDENCE USED TO PROVIDE THE BASELINE:

N/A

III. IS THE CURRENT SEVERITY OF THE (claimed condition/diagnosis) GREATER THAN THE BASELINE?

☐ YES ☐ NO

IF YES, WAS THE VETERAN'S (claimed condition/diagnosis) AT LEAST AS LIKELY AS NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY (insert "service connected condition")?

☐ YES (provide rationale in section 6B.)

☐ NO (provide rationale in section 6B.)

SECTION VI - MEDICAL OPINION FOR AGGRAVATION OF A NONSERVICE CONNECTED CONDITION BY A SERVICE CONNECTED CONDITION (continued)

IF "NO" TO QUESTION 6A, ANSWER THE FOLLOWING:

I. PROVIDE RATIONALE AS TO WHY A BASELINE CANNOT BE ESTABLISHED (e.g. medical evidence is not sufficient to support a determination of a baseline level of severity):

N/A

II. REGARDLESS OF AN ESTABLISHED BASELINE, WAS THE VETERAN'S (claimed condition/diagnosis) AT LEAST AS LIKELY AS NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY (insert "service connected condition")?

- ☐ YES (provide rationale in section 6B.)
- ☐ NO (provide rationale in section 6B.)

6B. PROVIDE RATIONALE:

N/A

SECTION VII - OPINION REGARDING CONFLICTING MEDICAL EVIDENCE

7. I HAVE REVIEWED THE CONFLICTING MEDICAL EVIDENCE AND AM PROVIDING THE FOLLOWING OPINION:

Refer to the remarks in the appendix.

Appendix

Service connection for HEADACHE CONDITION

[redacted]

Question:
Is a causal nexus established for service connection of MIGRAINE HEADACHES?

Opinions:
According to my analysis of the relevant evidence, it is MORE LIKELY THAN NOT that:
- the "existence of a present disability" is established for MIGRAINE HEADACHES.
- the MIGRAINE HEADACHES have persisted from the time of their first manifestation and continue as the current disability of MIGRAINE HEADACHES.

Theory 1:
- there was an in-service event of significant blast exposure while on active duty.
- reliable scientific sources indicate that the present disability is "proximately due to or the result of" the in-service event.
- a causal nexus is established under 38 CFR 3.304 for direct service connection of MIGRAINE HEADACHES due to blast exposure.

Theory 2:
- the present disability exhibits objective indications of a qualifying chronic disability resulting from a 'medically unexplained chronic multisymptom illness' (MUCMI) (38 CFR 3.317(a)(1)).
- the MUCMI became manifest to a degree of 10 percent or more not later than December 31, 2026 (38 CFR 3.317(a)(1)(i)).
- the MUCMI cannot be attributed to the development of any other known clinical diagnosis by history, physical examination, and laboratory test; an exhaustive and complete diagnostic workup has been completed without revealing any etiology other than service in Southwest Asia (38 CFR 3.317(a)(1)(ii)).
- the MUCMI is defined by a cluster of signs or symptoms (38 CFR 3.317(a)(2)(i)(B)).
- the MUCMI consists of the diagnosed illness of MIGRAINE HEADACHES (38 CFR 3.317(a)(2)(ii)).
- the MUCMI does not have a conclusive pathophysiology or etiology (38 CFR 3.317(a)(2)(ii)).
- the MUCMI does not have an etiology and pathophysiology that are both partially understood (38 CFR 3.317(a)(2)(ii)).
- the MUCMI has had at least a 6-month period of chronicity (38 CFR 3.317(a)(4)).

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- the MUCMI has no affirmative evidence of being incurred outside service in Southwest Asia (38 CFR 3.317(a)(7)(i)).
- the MUCMI has no affirmative evidence of being caused by a supervening condition or event that occurred between the most recent departure from active duty with service in Southwest Asia and the onset of the disability (38 CFR 3.317(a)(7)(ii)).
- the MUCMI has no affirmative evidence of being the result of willful misconduct or the abuse of alcohol or drugs (38 CFR 3.317(a)(7)(iii)).
- the MUCMI has no other risk factors for its development (other than blast exposure), nor did it manifest before service in Southwest Asia.
- reliable scientific sources indicate that the etiology of the MUCMI has a strong association with the various exposures known to occur during service in Southwest Asia.
- a causal nexus is established under the Persian Gulf presumption of 38 CFR 3.317 for direct service connection of MIGRAINE HEADACHES as a MUCMI.
- the direct and presumptive theories of service connection have equal merit.

Note: In the context of this opinion, the phrase "more likely than not" has a meaning that is equivalent to "a preponderance of the evidence" or "a likelihood or probability of greater than 50 percent." In addition, this opinion was formed according to the guidance found in the following: Lynch v. McDonough, 21 F.4th 776; Jones v. Shinseki, 23 Vet. App. 382; Shedden v.Principi, 381 F.3d 1163; 38 USC 5107; 38 CFR 3.102.

Rationale:
During Mr. [redacted] deployments to Iraq, he was exposed to a major blast when a rocket propelled grenade (RPG) hit his tank and pierced the depleted uranium armor. This level of equipment damage indicates that he experienced a large blast wave. In Iraq as well as during his training as a 19K Armor Crewman, he also had frequent blast exposure from firing the main gun of his tank. All of these events are entirely consistent with the circumstances and demands of Mr. [redacted] duties and assignments in the U.S. Army.

The relationship between chronic blast exposure and headaches has been extensively studied by medical science (citations 1 through 3). The prevalence of both phenomena has risen sharply during the recent wars in Iraq and Afghanistan. The survivability of warfighters during these conflicts is higher than in past wars, meaning that more of those exposed to blasts survive the war and go on to experience the residual effects of those blasts. The nature of modern warfare has also evolved technologically and tactically in ways that expose warfighters to more blasts as a matter of course. The studies on this relationship between blasts and headaches have revealed acute effects measurable in the blood of spiking levels of cytokines and other inflammatory markers as well as a broad range of increased RNA expression in domains associated with acute injury response. Long-term blast effects have also been observed with significant alterations in

(continued on next page)

DNA methylation and other epigenetic processes. This indicates an enduring effect at the cellular, tissue, and [redacted] levels. The effects of these widespread pathophysiological changes ultimately include observable signs and symptoms such as headaches. There is expert consensus that these headaches result from alteration in specific genetic expression pathways related to microvascular function as well as global disruption of pathways that suppress pain sensitivity and inflammation. Alternatively, and just as likely, Mr. [redacted] migraine headaches can be service connected as a Gulf War medically unexplained chronic multisymptom illness (MUCMI). Mr. [redacted] served multiple tours in Iraq. Those deployments in the Southwest Asia theater of operations (38 CFR 3.317(e)(2)) during the Persian Gulf War (38 CFR 3.2(i)) qualifies him for application of the Persian Gulf presumption (38 CFR 3.317) for direct service connection of MUCMIs. In addition, the current credible peer-reviewed medical literature supports service connection (citations 4 through 7). The treatises I reviewed were representative of an expert consensus. It is also reasonable to apply the conclusions of these treatises to Mr. [redacted] because he shares many similarities with the subjects of the studies.

I completed my analysis and formed my opinion based upon the following:
- a comprehensive in-person face-to-face examination that I personally conducted.
- credible lay history and competent lay observations from Mr. [redacted]
- holistic consideration of actual functional limitations.
- clinical expertise from my many years of treating patients with the same or similar conditions.
- military expertise from my twenty years of service in a variety of operational and support roles.
- extensive review of the relevant records, facts, and circumstances.
- extensive review of the relevant current credible peer-reviewed scientific literature.
- extensive review of the relevant consensus opinion of qualified experts.
- sound medical principles that are generally accepted among physicians.

Conflicting evidence:

Not applicable.

Citations:

1. Woodall JLA, et al. Repetitive Low-level Blast Exposure and Neurocognitive Effects in Army Ranger Mortarmen. Mil Med. 2021 Sep 24: 394. PM: 34557921.
2. Tsao JW, et al. Effect of concussion and blast exposure on symptoms after military deployment. Neurology. 2017 Nov 7;89(19):2010-2016. PM: 29030450.
3. Wang Z, et al. Acute and Chronic Molecular Signatures and Associated Symptoms of Blast Exposure in Military Breachers. J Neurotrauma. 2020 May 15;37(10):1221-1232. PM: 31621494.
4. Institute of Medicine. 2014. Chronic Multisymptom Illness in Gulf War Veterans: Case Definitions Reexamined. Washington, DC: The National Academies Press.

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5. National Academies of Sciences, Engineering, and Medicine. 2016. Gulf War and Health: Volume 10: Update of Health Effects of Serving in the Gulf War, 2016. Washington, DC: The National Academies Press.
6. Murphy FM, et al. The health status of Gulf War veterans: lessons learned from the Department of Veterans Affairs Health Registry. Mil Med. 1999 May;164(5):327-31. PM: 10332170.
7. Kerr KJ. Gulf War illness: an overview of events, most prevalent health outcomes, exposures, and clues as to pathogenesis. Rev Environ Health. 2015;30(4):273-86. PM: 26598939.

Appendix

Remarks - Evidence review:

My evidence review consisted of all relevant and available records from Mr. [redacted] entry into service, through his separation, and up to the present time. The documents included military personnel records, service treatment records (STR), various private medical records, his entire VA health record, all correspondence related to his VA claims, and a variety of other documents from the C-file. Due to the nature of his disabilities, the theories by which they are service connected, and the timeline of signs and symptoms by which his disabilities have manifested, I have a high degree of certainty that my review encompassed all the records that are necessary to form a sufficient factual basis for my conclusions. It is very unlikely that any additional records would make any difference whatsoever with regard to my observations and opinions. NB: In the governing caselaw regarding evidence review - that is, Nieves-Rodriguez v. Peake, 22 Vet. App. 295 - it very clearly states that private examiners are not required to review any particular set of records or even to review the C-file at all: "... the claims file is not a magical or talismanic set of documents … Accordingly, the Court holds that claims file review, as it pertains to obtaining an overview of the claimant's medical history, is not a requirement for private medical opinions … There are even instances where claims file review may be irrelevant to the medical issue at hand."

Appendix

Remarks - Examination method:

Mr. [redacted] resides in [redacted] He traveled to my clinic where I performed a comprehensive face-to-face history and physical exam [redacted] This DBQ is private medical evidence from a physician Independent Veteran Examiner (IVE). I completed this examination solely for the purpose of producing expert evidence for Mr. [redacted] to use in support of his claim with the VA. At no time did I form a doctor-patient relationship with Mr. [redacted] My opinion and observations in this matter are, by design, free from any corrupting bias. My fee has been paid in full without any further remuneration contingent on a prevailing claim. My opinions are completely unencumbered by that or any other benefit whatsoever that might derive from the final decision in this matter. In addition, as is my usual custom when forming expert opinions, I purposefully avoided all undue influence and intentionally restricted my perspective to one of disinterest, objectivity, and fairness. I have observed and reported the truth in this matter to the highest degree afforded by my skill and training.

Appendix

Remarks - Date of diagnosis:

The dates of diagnosis on this DBQ may differ from those found elsewhere, especially in C&P exams. The VA provides clear and unambiguous direction on this matter in a note in the diagnosis section on all DBQs: "**Date of diagnosis can be. . . .AN APPROXIMATE DATE DETERMINED THROUGH RECORD REVIEW OR REPORTED HISTORY.**" It is common practice for C&P examiners to disregard this guidance along with the reported history from the Veteran. Instead, they often record the date when a medical record first contains a diagnosis despite no requirement whatsoever from the VA to have such a correspondence on the DBQs. In contrast, I have completed a careful record review and medical history to determine the approximate date of some observable sign or symptom that was the first manifestation of a disability. This date most accurately reflects the beginning of impairment. It often long precedes the date in a medical record, sometimes by many years.

Appendix

Remarks - Veteran credibility & competence:

During my detailed clinical interview I was able to make an accurate judgment of Mr. [redacted] overall level of credibility as well as his competence to make appropriate lay observations about medical conditions. His demeanor throughout the interview was always trustworthy. For example, I did not detect any misrepresentation, embellishment, or exaggeration nor any effort to misdirect or deceive me in any way. His statements were consistently coherent, logical, and forthright, and they correlated well with my independent observations and conclusions. His reports about relevant events were consistent with the known facts and circumstances of his military service and the nature of his disabilities. His description of symptoms and disease course was compatible with the natural history that is generally known to medicine concerning his condition. During his professional life in the military and as a civilian, he has been entrusted with various positions of responsibility and authority that have also required a high degree of technical skill. His success in these assignments indicates that he has a keen attention for detail and a well-developed preference for ethical conduct over personal gain. My opinion to a high degree of certainty is that he is eminently credible as well as entirely competent to make medical observations that befit a layperson. I have therefore treated his oral and written statements as a reliable source of data for my analysis.

Appendix

Remarks - Examiner background:

[redacted] Based on my diverse professional experience and advanced education spanning multiple domains of knowledge, I have gone on to develop a particular expertise regarding medical issues that affect Veterans. This expertise also extends to the regulatory framework surrounding the complex VA claims process which poses significant scientific, legal, and philosophical challenges. The documents that I compose strongly address those challenges and exceed the VA's requirements for evidence that is thorough, adequate, sufficient, fully informed, and contemporaneous. Additional specific details about my credentials can be found in the included curriculum vitae.

Appendix

Remarks - Clarifications:

All clarification requests should be directed to me since I am best suited to address them. I am naturally the most familiar with this report and the evidence on which it is based. I may possess the only existing evidence on a material issue and there is some likelihood that I possess information that is not otherwise accessible or that is absent from the evidence of record. I would like the chance to respond to any inquiry whatsoever with any information I have that might affect the probative value of my work. Please note that when "the missing information is relevant, factual, and objective - that is, not a matter of opinion" and "when a private medical report is the only evidence on a material issue, and material medical evidence can no longer be obtained as to that issue, yet clarification of a relevant, objective fact would render the private medical report competent for the assignment of weight," then the VA becomes legally obligated and ***MUST ATTEMPT TO OBTAIN SUCH CLARIFICATION*** directly from the medical provider who authored the report or must "clearly and adequately explain why such clarification is unreasonable" (Carter v. Shinseki, 26 Vet. App. 534; Savage v. Shinseki, 24 Vet. App. 259; 38 USC 5103A). If clarifications are instead requested from C&P examiners (especially those without any familiarity with the case or who are less qualified by their academic and professional credentials), such action "reasonably could be construed" as procuring evidence "for the sole purpose of denying the veteran's claim" - that is, "developing to deny" (Mariano v. Principi, 17 Vet. App. 312; 1 Veterans L. Rev. 94; M21-1 Part V, Subpart ii, 3.B.1).

Private DBQ:
Headache DBQ

ATTENTION
Evidence Intake Center:
Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Department of Veterans Affairs

HEADACHES (INCLUDING MIGRAINE HEADACHES) DISABILITY BENEFITS QUESTIONNAIRE

NAME OF PATIENT/VETERAN	PATIENT/VETERAN'S SOCIAL SECURITY NUMBER
[redacted] [redacted]	[redacted]

IMPORTANT THE DEPARTMENT OF VETERANS AFFAIRS (VA) ***WILL NOT PAY OR REIMBURSE*** ANY EXPENSES OR COST INCURRED IN THE PROCESS OF COMPLETING AND/OR SUBMITTING THIS FORM.

Note The Veteran is applying to the U.S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim. VA may obtain additional medical information, including an examination, if necessary, to complete VA's review of the veteran's application. VA reserves the right to confirm the authenticity of ALL questionnaires completed by providers. **It is intended that this questionnaire will be completed by the Veteran's provider.**

Are you completing this Disability Benefits Questionnaire at the request of:

☒ Veteran/Claimant

☒ Other: please describe

Refer to the remarks in the appendix.

Are you a VA Healthcare provider? ○ Yes ◉ No

Is the Veteran regularly seen as a patient in your clinic? ○ Yes ◉ No

Was the Veteran examined in person? ◉ Yes ○ No

If no, how was the examination conducted?

Refer to the remarks in the appendix.

EVIDENCE REVIEW

Evidence reviewed:

○ No records were reviewed

○ Records reviewed

Please identify the evidence reviewed (e.g. service treatment records, VA treatment records, private treatment records) and the date range.

Refer to the remarks in the appendix.

SECTION I - DIAGNOSIS

DOES THE VETERAN NOW HAVE OR HAS HE OR SHE EVER BEEN DIAGNOSED WITH A HEADACHE CONDITION?

☒ YES ☐ NO *(If "Yes," complete Item 1B)*

IF YES, SELECT THE VETERAN'S CONDITION *(check all that apply):*

☒	Migraine including migraine variants	ICD Code:	G43.719	Date of Diagnosis:	2004.
☐	Tension	ICD Code:		Date of Diagnosis:	
☐	Cluster	ICD Code:		Date of Diagnosis:	
☐	Other *(specify type of headache):*	ICD Code:		Date of Diagnosis:	
Other Diagnosis #1:		ICD Code:		Date of Diagnosis:	
Other Diagnosis #2:		ICD Code:		Date of Diagnosis:	

IF THERE ARE ADDITIONAL DIAGNOSES THAT PERTAIN TO A HEADACHE CONDITION, LIST USING ABOVE FORMAT:

N/A

SECTION II - MEDICAL HISTORY

2A. DESCRIBE THE HISTORY *(including onset and course)* OF THE VETERAN'S HEADACHE CONDITIONS *(brief summary):*

Refer to the remarks in the appendix.

2B. DOES THE VETERAN'S TREATMENT PLAN INCLUDE TAKING MEDICATION FOR THE DIAGNOSED CONDITION?

☒ YES ☐ NO IF YES, DESCRIBE TREATMENT *(list only those medications used for the diagnosed condition):*

Refer to the remarks in the appendix.

SECTION III - SYMPTOMS

3A. DOES THE VETERAN EXPERIENCE HEADACHE PAIN?

☒ YES ☐ NO

(If "Yes," check all that apply to headache pain):

- ☐ Constant head pain
- ☒ Pulsating or throbbing head pain
- ☐ Pain localized to one side of the head
- ☒ Pain on both sides of the head
- ☒ Pain worsens with physical activity
- ☐ Other, describe: N/A

3B. DOES THE VETERAN EXPERIENCE NON HEADACHE SYMPTOMS ASSOCIATED WITH HEADACHES? *(Including symptoms associated with an aura prior to headache pain)*

☒ YES ☐ NO

(If "Yes," check all that apply):

- ☒ Nausea
- ☐ Vomiting
- ☒ Sensitivity to light
- ☒ Sensitivity to sound
- ☒ Changes in vision *(such as scotoma, flashes of light, tunnel vision)*
- ☐ Sensory changes *(such as feeling of pins and needles in extremities)*
- ☒ Other, describe: Refer to the remarks in the appendix.

SECTION III - SYMPTOMS *(Continued)*

3C. INDICATE DURATION OF TYPICAL HEAD PAIN

- [x] Less than 1 day
- [ ] 1 2 days
- [ ] More than 2 days
- [ ] Other, describe: N/A

3D. INDICATE LOCATION OF TYPICAL HEAD PAIN

- [ ] Right side of head
- [ ] Left side of head
- [x] Both sides of head
- [ ] Other, describe: N/A

SECTION IV - PROSTRATING ATTACKS OF HEADACHE PAIN

4A. MIGRANE / NON MIGRAINE DOES THE VETERAN HAVE CHARACTERISTIC PROSTRATING ATTACKS OF MIGRAINE / NON MIGRAINE HEADACHE PAIN?

[x] YES [ ] NO

(If "Yes," indicate frequency, on average, of prostrating attacks over the last several months):

Refer to the remarks in the appendix.

4B. DOES THE VETERAN HAVE VERY PROSTRATING AND PROLONGED ATTACKS OF MIGRAINES/NON MIGRAINE PAIN PRODUCTIVE OF SEVERE ECONOMIC INADAPTABILITY?

[x] YES [ ] NO

SECTION V - OTHER PERTINENT PHYSICAL FINDINGS, COMPLICATIONS, CONDITIONS, SIGNS, SYMPTOMS, AND SCARS

5A. DOES THE VETERAN HAVE ANY OTHER PERTINENT PHYSICAL FINDINGS, COMPLICATIONS, CONDITIONS, SIGNS OR SYMPTOMS RELATED TO THE CONDITIONS LISTED IN THE DIAGNOSIS SECTION ABOVE?

[x] YES [ ] NO

IF YES, DESCRIBE (*brief summary*):

Refer to the remarks in the appendix.

5B. DOES THE VETERAN HAVE ANY SCARS (*surgical or otherwise*) RELATED TO ANY CONDITIONS OR TO THE TREATMENT OF ANY CONDITIONS LISTED IN THE DIAGNOSIS SECTION ABOVE?

[ ] YES [x] NO

IF YES, ARE ANY OF THESE SCARS PAINFUL OR UNSTABLE; HAVE A TOTAL AREA EQUAL TO OR GREATER THAN 39 SQUARE CM *(6 square inches)*; OR ARE LOCATED ON THE HEAD, FACE OR NECK? (An "unstable scar" is one where, for any reason, there is frequent loss of covering of the skin over the scar.)

[ ] YES [ ] NO

IF YES, ALSO COMPLETE VA FORM 21 0960F 1, SCARS/DISFIGUREMENT.

IF NO, PROVIDE LOCATION AND MEASUREMENTS OF SCAR IN CENTIMETERS.

LOCATION: N/A MEASUREMENTS: length N/A cm X width N/A cm.

NOTE: If there are multiple scars, enter additional locations and measurements in Comment section below. It is not necessary to also complete a Scars DBQ.

5C. COMMENTS, IF ANY:

N/A

SECTION VI - DIAGNOSTIC TESTING

NOTE: Diagnostic testing is not required for this examination report; if studies have already been completed, provide the most recent results below.

ARE THERE ANY OTHER SIGNIFICANT DIAGNOSTIC TEST FINDINGS AND/OR RESULTS?

☒ YES ☐ NO

IF YES, PROVIDE TYPE OF TEST OR PROCEDURE, DATE AND RESULTS *(brief summary):*

Refer to the remarks in the appendix.

SECTION VII - FUNCTIONAL IMPACT

DOES THE VETERAN'S HEADACHE CONDITION IMPACT HIS OR HER ABILITY TO WORK?

☒ YES ☐ NO *(If "Yes," describe impact of the veteran's headache condition, providing one or more examples):*

Refer to the remarks in the appendix.

SECTION VIII - REMARKS

8. REMARKS *(If any)*

Refer to the remarks in the appendix.

SECTION IX - EXAMINER'S CERTIFICATION AND SIGNATURE

Appendix

HEADACHES DBQ

[redacted]

Medical history:
See associated medical opinion.

Medications:
Ibuprofen and caffeine.

Non-headache symptoms:
Other: An aura precedes the headaches with worsening visual acuity, especially a decrease in far-sightedness.

Frequency and other findings:
Many of Mr. [redacted] headaches have very severe acute pain along with intense non-headache symptoms as described below:
- His CHARACTERISTIC PROSTRATING headache attacks cause extreme exhaustion, powerlessness, and debilitation and/or incapacitation, along with a SUBSTANTIAL INABILITY to engage in ordinary activities. Over the last several months, these have occurred 10 times a month, on average.
- His COMPLETELY PROSTRATING headache attacks are prolonged and have even more severe pain and non-headache symptoms. They cause such extreme exhaustion or powerlessness that there is an ESSENTIALLY TOTAL inability to engage in ordinary activities. Over the last several months, these have occurred 3 times a month, on average.

Diagnostic testing:
Quantitative symptom assessments were administered (MIDAS and HIT-6). The results are included in an appendix. CT scans of the head in 2023 and 2020 were also negative.

Functional impact:
Mr. [redacted] has SEVERE ECONOMIC INADAPTABILITY from headaches due to absenteeism and from lack of productivity when he does continue working. During a CHARACTERISTIC PROSTRATING or COMPLETELY PROSTRATING headache attack, the headache and non-headache symptoms are so intense that ordinary activity such as work becomes next to impossible.

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There are almost no regular businesses that could reasonably accommodate this disability due to its severity. Mr. [redacted] is self-employed which must be considered "sheltered employment" since he has great latitude and flexibility to accommodate the limitations of his condition. Even if he continues trying to work during a prostrating headache, he is essentially entirely unproductive for the duration of the attack.

General remarks:

- I reviewed Mr. [redacted] symptom assessments and also conducted a thorough clinical interview. I found him to be very credible. His reports about his symptoms appeared authentic and accurate. Refer to the remarks in the appendix for further discussion.
- The severity of Mr. [redacted] disability was evaluated according to guidance from relevant case law including Jones v. Shinseki, 26 Vet. App. 56. The Jones case applies to headache conditions and instructs examiners to ignore symptom improvement from medication when assessing the level of disability since the ameliorative effects of medication are not contemplated in the rating schedule under the applicable diagnostic code.

Private DBQ:
Tinnitus opinion

ATTENTION
Evidence Intake Center:
Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Department of Veterans Affairs

INTERNAL VETERANS AFFAIRS USE
HEARING LOSS AND TINNITUS
DISABILITY BENEFITS QUESTIONNAIRE

IMPORTANT THE DEPARTMENT OF VETERANS AFFAIRS (VA) WILL NOT PAY OR REIMBURSE ANY EXPENSES OR COST INCURRED IN THE PROCESS OF COMPLETING AND/OR SUBMITTING THIS FORM. PLEASE READ THE PRIVACY ACT AND RESPONDENT BURDEN INFORMATION BEFORE COMPLETING FORM.

NAME OF PATIENT/VETERAN	PATIENT/VETERAN'S SOCIAL SECURITY NUMBER
[redacted] [redacted]	[redacted]

Your patient is applying to the U. S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim. Please note that this questionnaire is for disability evaluation, not for treatment purposes.

IS THIS QUESTIONNAIRE BEING COMPLETED IN CONJUNCTION WITH A VA21 2507, C&P EXAMINATION REQUEST?

☐ YES ☒ NO

How was the examination completed? (check all that apply)

- ☒ In person examination
- ☒ Records reviewed
- ☐ Examination via approved video telehealth
- ☒ Other, please specify in comments box:

Comments: Refer to the remarks in the appendix.

ACCEPTABLE CLINICAL EVIDENCE (ACE)

INDICATE METHOD USED TO OBTAIN MEDICAL INFORMATION TO COMPLETE THIS DOCUMENT:

☐ Review of available records (without in person or video telehealth examination) using the Acceptable Clinical Evidence (ACE) process because the existing medical evidence provided sufficient information on which to prepare the questionnaire and such an examination will likely provide no additional relevant evidence.

☐ Review of available records in conjunction with an interview with the Veteran (without in person or telehealth examination) using the ACE process because the existing medical evidence supplemented with an interview provided sufficient information on which to prepare the questionnaire and such an examination would likely provide no additional relevant evidence.

EVIDENCE REVIEW

EVIDENCE REVIEWED (check all that apply):

- ☐ Not requested
- ☒ VA claims file (hard copy paper C file
- ☐ VA e folder (VBMS or Virtual VA
- ☒ CPRS
- ☒ Other (please identify other evidence reviewed):
- ☐ No records were reviewed

Refer to the remarks in the appendix.

EVIDENCE COMMENTS:

Refer to the remarks in the appendix.

NOTE: This form is only for use by VHA staff or contract examiners.

This exam is for:

- ☒ Tinnitus only (audiologist or non audiologist clinician) If this exam is for tinnitus only, complete section 2 only. Otherwise complete entire form.
- ☐ Hearing loss and/or tinnitus (audiologist, performing current exam)
- ☐ Hearing loss and/or tinnitus (audiologist or non audiologist clinician, using audiology report of record that represents Veteran's current condition)

If using audiology report of record, date audiology exam was performed: Remarks.

SECTION 1: HEARING LOSS (HL)

Note: All testing must be conducted in accordance with the following instructions to be valid for VA disability evaluation purposes.

Instructions: An examination of hearing impairment must be conducted by a state licensed audiologist and must include a controlled speech discrimination test (specifically, the Maryland CNC recording) and a puretone audiometry test in a sound isolated booth that meets American National Standards Institute standards (ANSI S3.1.1999 [R2004]) for ambient noise. Measurements will be reported at the frequencies of 500, 1000, 2000, 3000, and 4000 Hz.

The examination will include the following tests: Puretone audiometry by air conduction at 250, 500, 1000, 2000, 3000, 4000, 6000 Hz and 8000 Hz, and by bone conduction at 250, 500, 1000, 2000, 3000, and 4000 Hz, spondee thresholds, speech discrimination using the recorded Maryland CNC Test, tympanometry and acoustic reflex tests (ipsilateral and contralateral), and, when necessary, Stenger tests. Bone conduction thresholds are measured when the air conduction thresholds are poorer than 15 dB HL. A modified Hughson Westlake procedure will be used with appropriate masking. A Stenger must be administered whenever puretone air conduction thresholds at 500, 1000, 2000, 3000, and 4000 Hz differ by 20 dB or more between the two ears.

Maximum speech discrimination will be reported with the 50 word VA approved recording of the Maryland CNC test. The starting presentation level will be 40 dB re SRT. If necessary, the starting level will be adjusted upward to obtain a level at least 5 dB above the threshold at 2000 Hz, if not above the patient's tolerance level.

The examination will be conducted without the use of hearing aids. Both ears must be examined for hearing impairment even if hearing loss in only one ear is at issue.

When speech discrimination is 92% or less, a performance intensity function must be obtained.

A comprehensive audiological evaluation should include evaluation results for puretone thresholds by air and bone conduction (500 8000 Hz), speech reception thresholds (SRT), speech discrimination scores, and acoustic immittance with acoustic reflexes (ipsilateral and contralateral reflexes). Tests for non organicity must be performed when indicated.

1. OBJECTIVE FINDINGS

A. PURETONE THRESHOLDS IN DECIBELS (AIR CONDUCTION):

Instructions: Measure and record puretone threshold values in decibels at the indicated frequencies (air conduction). Report the decibel (dB) value, which ranges from 10 dB to 105 dB, for each of the frequencies. Add a plus behind the decibel value when a maximum value has been reached with a failure of response from the Veteran. In those circumstances where the average includes a failure of response at either the maximum allowable limit (105 dB) or the maximum limits of the audiometer, use this maximum decibel value of the failure of response in the puretone threshold average calculation.

If the Veteran could not be tested (CNT), enter CNT and state the reason why the Veteran could not be tested. Clearly inaccurate, invalid or unreliable test results should not be reported.

The puretone threshold at 500 Hz is not used in calculating the puretone threshold average for evaluation purposes but is used in determining whether or not for VA purposes, hearing impairment reaches the level of a disability. The puretone threshold average requires the decibel levels of each of the required frequencies (1000 Hz, 2000 Hz, 3000 Hz, and 4000 Hz) be recorded for the test to be valid for determination of a hearing impairment.

RIGHT EAR

A	B	C	D	E	F	G	
500 Hz*	1000 Hz*	2000 Hz*	3000 Hz*	4000 Hz*	6000 Hz*	8000 Hz*	Avg Hz (B E)**
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

LEFT EAR

A	B	C	D	E	F	G	
500 Hz*	1000 Hz*	2000 Hz*	3000 Hz*	4000 Hz*	6000 Hz*	8000 Hz*	Avg Hz (B E)**
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

*The puretone threshold at 500 Hz is not used in determining the evaluation but is used in determining whether or not a ratable hearing loss exists.
**The average of B, C, D, and E.
***CNT Could Not Test

B. WERE THERE ONE OR MORE FREQUENCY(IES) THAT COULD NOT BE TESTED?

☐ YES ☐ NO If yes, enter CNT in the box for frequency(ies) that could not be tested, and explain why testing could not be done:

N/A tinnitus only.

C. VALIDITY OF PURETONE TEST RESULTS:

☐ Test results are valid for rating purposes.

☐ Test results are not valid for rating purposes (not indicative of organic hearing loss).

If invalid, provide reason:

N/A tinnitus only.

D. SPEECH DISCRIMINATION SCORE (MARYLAND CNC WORD LIST)

Instructions on pausing: Examiners should pause when necessary during speech discrimination tests, in order to give the Veteran sufficient time to respond. This will ensure that the test results are based on actual hearing loss rather than on the effects of other problems that might slow a Veteran's response. There are a variety of problems that might require pausing, for example, the presence of cognitive impairment. It is up to the examiner to determine when to use pausing and the length of the pauses.

RIGHT EAR	N/A	%
LEFT EAR	N/A	%

E. APPROPRIATENESS OF USE OF WORD RECOGNITION SCORE (MARYLAND CNC WORD LIST):

RIGHT EAR:

IS WORD DISCRIMINATION SCORE AVAILABLE?

☐ YES ☐ NO

☐ Use of speech discrimination score is appropriate for this Veteran.

☐ The use of the speech discrimination score is not appropriate for this Veteran because of language difficulties, cognitive problems, inconsistent speech discrimination scores, etc., that make combined use of puretone average and speech discrimination scores inappropriate.

LEFT EAR:

IS WORD DISCRIMINATION SCORE AVAILABLE?

☐ YES ☐ NO

☐ Use of speech discrimination score is appropriate for this Veteran.

☐ The use of the speech discrimination score is not appropriate for this Veteran because of language difficulties, cognitive problems, inconsistent speech discrimination scores, etc., that make combined use of puretone average and speech discrimination scores inappropriate.

F. AUDIOLOGIC FINDINGS

Summary of Immittance (Tympanometry) Findings:

	RIGHT EAR		LEFT EAR	
ACOUSTIC IMMITTANCE	☐ Normal	☐ Abnormal	☐ Normal	☐ Abnormal
IPSILATERAL ACOUSTIC REFLEXES	☐ Normal	☐ Abnormal	☐ Normal	☐ Abnormal
CONTRALATERAL ACOUSTIC REFLEXES	☐ Normal	☐ Abnormal	☐ Normal	☐ Abnormal
UNABLE TO INTERPRET REFLEXES DUE TO ARTIFACT	☐		☐	
UNABLE TO OBTIAN / MAINTAIN SEAL	☐		☐	

2. DIAGNOSIS

RIGHT EAR

☐ Normal hearing		
☐ Conductive hearing loss	ICD CODE:	
☐ Mixed hearing loss	ICD CODE:	
☐ Sensorineural hearing loss (in frequency range of 500 4000 Hz)*	ICD CODE:	N/A tinnitus only
☐ Sensorineural hearing loss (in frequency range of 6000 Hz or higher frequencies)**	ICD CODE:	
☐ Significant changes in hearing thresholds in service***	ICD CODE:	

LEFT EAR

☐ Normal hearing		
☐ Conductive hearing loss	ICD CODE:	
☐ Mixed hearing loss	ICD CODE:	N/A tinnitus only
☐ Sensorineural hearing loss (in frequency range of 500 4000 Hz)*	ICD CODE:	
☐ Sensorineural hearing loss (in frequency range of 6000 Hz or higher frequencies)**	ICD CODE:	
☐ Significant changes in hearing thresholds in service***		

NOTES:

*The Veteran may have hearing loss at a level that is not considered to be a disability for VA purposes. This can occur when the auditory thresholds are greater than 25 dB at one or more frequencies in the 500 4000 Hz range.

** The Veteran may have impaired hearing, but it does not meet the criteria to be considered a disability for VA purposes. For VA purposes, the diagnosis of hearing impairment is based upon testing at frequency ranges of 500, 1000, 2000, 3000, and 4000 Hz. If there is no HL in the 500 4000 Hz range, but there is HL above 4000 Hz, check this box.

***The Veteran may have a significant change in hearing threshold in service, but it does not meet the criteria to be considered a disability for VA purposes. (A significant change in hearing threshold may indicate noise exposure or acoustic trauma.)

3. ETIOLOGY

☐ ETIOLOGY OPINION NOT INDICATED AS: ☐ SERVICE CONNECTED CONDITION ☐ VBA DID NOT REQUEST ETIOLOGY

RIGHT EAR

WAS THERE A PERMANENT POSITIVE THRESHOLD SHIFT (WORSE THAN REFERENCE THRESHOLD) GREATER THAN NORMAL MEASUREMENT VARIABILITY AT ANY FREQUESCY BETWEEN 500 AND 6000 HZ FOR THE RIGHT EAR?

☐ YES ☐ NO

OPINION PROVIDED FOR THE RIGHT EAR:

☐ YES ☐ NO

3. ETIOLOGY *(continued)*

RIGHT EAR (continued)

IF PRESENT, IS THE VETERAN'S RIGHT EAR HEARING LOSS AT LEAST AS NOT (50% PROBABILITY OR GREATER) CAUSED BY OR A RESULT OF AN EVENT IN MILITARY SERVICE?

- ☐ YES
- ☐ NO
- ☐ CANNOT DETERMINE A MEDICAL OPINION REGARDING THE ETIOLOGY OF THE VETERAN'S RIGHT EAR HEARING LOSS WITHOUT RESORTING TO SPECULATION:

RATIONALE (Provide rationale for either a yes, no answer or speculation reason):

N/A tinnitus only.

DID HEARING LOSS EXIST PRIOR TO SERVICE?

☐ YES ☐ NO

IF YES, WAS THE PRE EXISTING HEARING LOSS AGGRAVATED BEYOND NORMAL PROGRESSION IN MILITARY SERVICE?

☐ YES ☐ NO

PROVIDE RATIONALE FOR BOTH YES OR NO:

N/A tinnitus only.

LEFT EAR

WAS THERE A PERMANENT POSITIVE THRESHOLD SHIFT (WORSE THAN REFERENCE THRESHOLD) GREATER THAN NORMAL MEASUREMENT VARIABILITY AT ANY FREQUESCY BETWEEN 500 AND 6000 HZ FOR THE LEFT EAR?

☐ YES ☐ NO

OPINION PROVIDED FOR THE LEFT EAR:

☐ YES ☐ NO

IF PRESENT, IS THE VETERAN'S LEFT EAR HEARING LOSS AT LEAST AS NOT (50% PROBABILITY OR GREATER) CAUSED BY OR A RESULT OF AN EVENT IN MILITARY SERVICE?

- ☐ YES
- ☐ NO
- ☐ CANNOT DETERMINE A MEDICAL OPINION REGARDING THE ETIOLOGY OF THE VETERAN'S LEFT EAR HEARING LOSS WITHOUT RESORTING TO SPECULATION:

RATIONALE (Provide rationale for either a yes, no answer or speculation reason):

N/A tinnitus only.

DID HEARING LOSS EXIST PRIOR TO SERVICE?

☐ YES ☐ NO

IF YES, WAS THE PRE EXISTING HEARING LOSS AGGRAVATED BEYOND NORMAL PROGRESSION IN MILITARY SERVICE?

☐ YES ☐ NO

PROVIDE RATIONALE FOR BOTH YES OR NO:

N/A tinnitus only.

4. FUNCTIONAL IMPACT OF HEARING LOSS

NOTE: Ask the Veteran to describe in his or her own words the effects of disability (i.e., the current complaint of hearing loss on occupational functioning and daily activities). Document the Veteran's response without opining on the relationship between the functional effects and the level of impairment (audiogram) or otherwise characterizing the response. Do not use handicap scales.

DOES THE VETERAN'S HEARING LOSS IMPACT ORDINARY CONDITIONS OF DAILY LIFE, INCLUDING ABILITY TO WORK?

☐ YES ☐ NO

IF YES, DESCRIBE IMPACT IN THE VETERAN'S OWN WORDS:

N/A tinnitus only.

5. REMARKS, IF ANY, PERTAINING TO HEARING LOSS:

N/A tinnitus only.

SECTION 2: TINNITUS

1. MEDICAL HISTORY

DOES THE VETERAN REPORT RECURRENT TINNITUS?

☒ YES ☐ NO

DATE AND CIRCUMSTANCES OF ONSET OF TINNITUS:

Refer to the remarks in the appendix.

2. ETIOLOGY OF TINNITUS

SELECT ANSWER BELOW AND PROVIDE RATIONALE WHERE REQUESTED:

☐ ETIOLOGY OPINION NOT INDICATED AS: ☐ SERVICE CONNECTED CONDITION ☐ VBA DID NOT REQUEST ETIOLOGY

☐ THE VETERAN HAS A DIAGNOSIS OF CLINICAL HEARING LOSS, AND HIS OR HER TINNITUS IS AT LEAST AS LIKELY AS NOT (50% PROBABILITY OR GREATER) A SYMPTOM ASSOCIATED WITH THE HEARING LOSS, AS TINNITUS IS KNOWN TO BE A SYMPTOM ASSOCIATED WITH HEARING LOSS.

☐ LESS LIKELY THAN NOT (LESS THAN 50% PROBABILITY) A SYMPTOM ASSOCIATED WITH THE VETERAN'S HEARING LOSS
RATIONALE:

N/A

☒ AT LEAST AS LIKELY AS NOT (50% PROBABILITY OR GREATER) CAUSED BY OR A RESULT OF MILITARY NOISE EXPOSURE
RATIONALE:

Refer to the remarks in the appendix.

☐ AT LEAST AS LIKELY AS NOT (50% PROBABILITY OR GREATER) DUE TO A KNOWN ETIOLOGY (such as traumatic brain injury)
RATIONALE:

N/A

☐ LESS LIKELY THAN NOT (LESS THAN 50% PROBABILITY) CAUSED BY OR A RESULT OF MILITARY NOISE EXPOSURE
RATIONALE:

N/A

☐ CANNOT PROVIDE A MEDICAL OPINION REGARDING THE ETIOLOGY OF THE VETERAN'S TINNITUS WITHOUT RESORTING TO SPECULATION
REASON SPECULATION REQUIRED:

N/A

3. FUNCTIONAL IMPACT OF TINNITUS

NOTE: Ask the Veteran to describe in his or her own words the effects of disability (i.e., the current complaint on occupational functioning and daily activities). Document the Veteran's response without opining on the relationship between the functional effects and the level of impairment (audiogram) or otherwise characterizing the response. Do not use handicap scales.

DOES THE VETERAN'S TINNITUS IMPACT ORDINARY CONDITIONS OF DAILY LIFE, INCLUDING ABILITY TO WORK?

☒ YES ☐ NO

IF YES, DESCRIBE IMPACT IN THE VETERAN'S OWN WORDS

Refer to the remarks in the appendix.

4. REMARKS, IF ANY, PERTAINING TO TINNITUS

Refer to the remarks in the appendix.

Appendix

Remarks - Medical opinion - Service connection of TINNITUS

Functional impact:
The tinnitus interferes with all sedentary and physical occupations due to distraction and lack of concentration due to a constant ringing-in-the-ears sensation that has intermittent fluctuations of intensity.

[redacted]

Medical history:
The tinnitus had its onset after noise exposure during multiple combat deployments to Iraq and before leaving active duty in 2012.

Question:
Is a causal nexus established for service connection of TINNITUS?

Opinions:
According to my analysis of all relevant evidence, it is MORE LIKELY THAN NOT that:
- the "existence of a present disability" is established for TINNITUS.
- there was exposure to acoustic trauma from extremely high noise levels while on active duty.
- reliable scientific sources indicate that the present disability is "proximately due to or the result of" the in-service exposure.
- there was a chronic disability of TINNITUS while on active duty.
- the in-service TINNITUS has persisted from the time of its first manifestation and developed into the current disability of TINNITUS.

- A causal nexus is established for direct service connection of TINNITUS under 38 CFR 3.304.

Note: In the context of this opinion, the phrase "more likely than not" has a meaning that is equivalent to "a preponderance of the evidence" or "a likelihood or probability of greater than 50 percent." In addition, this opinion was formed according to the guidance found in the following: Lynch v. McDonough, 21 F.4th 776; Jones v. Shinseki, 23 Vet. App. 382; Shedden v.Principi, 381 F.3d 1163; 38 USC 5107; 38 CFR 3.102.

Rationale:

The STRs do not indicate diagnosis or treatment of TINNITUS. However, Mr. [redacted] service in MOS 19K as an "M1 Armor Crewman" or "tanker" is entirely consistent with a very heavy noise exposure while on active duty. This is especially the case when there are multiple combat deployments like Mr. [redacted] did. In fact, Mr. [redacted] reports that the TINNITUS [redacted] before he left active duty in 2011. He is competent to attest that he has had tinnitus since before 2011 and there is no reason to question his veracity. However, Mr. [redacted] did not report the TINNITUS to a medical provider while on active duty, as he was reluctant at the time to seek medical care for every single problem that occurred. This behavior is common among members of the military who are trained to be warriors and to have a high level of physical toughness. The current TINNITUS is etiologically linked to the acoustic trauma exposure that happened on active duty. The development of TINNITUS from acoustic trauma exposure from extremely high noise levels is a well-described subject in the current credible professional peer-reviewed medical literature (citations 1 through 4). There is enough similarity between Mr. [redacted] and the individuals studied in these investigations to generalize the study information to him.

I completed my analysis and formed my opinion based upon the following:
- a comprehensive in-person face-to-face examination that I personally conducted.
- credible lay history and competent lay observations from Mr. [redacted]
- holistic consideration of actual functional limitations.
- clinical expertise from my many years of treating patients with the same or similar conditions.
- military expertise from my twenty years of service in a variety of operational and support roles.
- extensive review of the relevant records, facts, and circumstances.
- extensive review of the relevant current credible peer-reviewed scientific literature.
- extensive review of the relevant consensus opinion of qualified experts.
- sound medical principles that are generally accepted among physicians.

Conflicting evidence:

Not applicable.

Citations:

1. Humes L, et al. Noise and Military Service: Implications for Hearing Loss and Tinnitus. Washington, DC: National Academies Press; 2005.
2. Liberman MC, et al. Acute and chronic effects of acoustic trauma: Cochlear pathology and auditory nerve pathophysiology. In: Hamernik RP, et al, editors. New Perspectives on Noise-Induced Hearing Loss. 1982.
3. Alamgir H, et al. The impact of hearing impairment and noise-induced hearing injury on quality of life in the active-duty military population: challenges to the study of this issue. Mil Med Res. 2016 Apr 12;3:11. PM: 27076916.
4. Yankaskas K. Prelude: noise-induced tinnitus and hearing loss in the military. Hear Res. 2013 Jan;295:3-8. PM: 22575206.

Private DBQ:
P&T Status opinion

ATTENTION
Evidence Intake Center:
Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Department of Veterans Affairs

INTERNAL VETERANS AFFAIRS USE
MEDICAL OPINION DISABILITY BENEFITS QUESTIONNAIRE

IMPORTANT - THE DEPARTMENT OF VETERANS AFFAIRS (VA) ***WILL NOT PAY*** OR ***REIMBURSE*** ANY EXPENSES OR COST INCURRED IN THE PROCESS OF COMPLETING AND/OR SUBMITTING THIS FORM. PLEASE READ THE PRIVACY ACT AND RESPONDENT BURDEN INFORMATION ON REVERSE BEFORE COMPLETING FORM.

NAME OF PATIENT/VETERAN	PATIENT/VETERAN'S SOCIAL SECURITY NUMBER
[redacted]	[redacted]

Note to examiner The Veteran is applying to the U.S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim.

Is this questionnaire being completed in conjunction with VA 21 2507, C&P examination request? ☐ Yes ☒ No

How was the examination completed? (check all that apply)

- ☒ In person examination
- ☒ Records reviewed
- ☐ Examination via approved video telehealth
- ☒ Other, please specify in comments box:

Comments: Remark 5.

ACCEPTABLE CLINICAL EVIDENCE (ACE)

Indicate the method used to obtain medical information to complete this document:

☐ Review of available records (without in person or video telehealth examination) using the Acceptable Clinical Evidence (ACE) process because the existing medical evidence provided sufficient information on which to prepare the questionnaire and such an examination will likely provide no additional relevant evidence.

☐ Review of available records in conjunction with an interview with the Veteran (without in person or telehealth examination) using the ACE process because the existing medical evidence supplemented with an interview provided sufficient information on which to prepare the questionnaire and such an examination would likely provide no additional relevant evidence.

EVIDENCE REVIEW

Evidence Reviewed (check all that apply):

- ☐ Not requested
- ☒ VA claims file (hard copy paper C file)
- ☐ VA e folder
- ☒ VA electronic health record
- ☒ Other, please identify other evidence reviewed:
- ☐ No records were reviewed

Remark 4.

Evidence Comments:

Remark 4.

SECTION I - DEFINITIONS

AGGRAVATION OF PREEXISTING NONSERVICE CONNECTED DISABILITIES. A PREEXISTING INJURY OR DISEASE WILL BE CONSIDERED TO HAVE BEEN AGGRAVATED BY ACTIVE MILITARY, NAVAL, OR AIR SERVICE, WHERE THERE IS AN INCREASE IN DISABILITY DURING SUCH SERVICE, UNLESS THERE IS A SPECIFIC FINDING THAT THE INCREASE IN DISABILITY IS DUE TO THE NATURAL PROGRESS OF THE DISEASE.

AGGRAVATION OF NONSERVICE CONNECTED DISABILITIES. ANY INCREASE IN SEVERITY OF A NONSERVICE CONNECTED DISEASE OR INJURY THAT IS PROXIMATELY DUE TO OR THE RESULT OF A SERVICE CONNECTED DISEASE OR INJURY, AND NOT DUE TO THE NATURAL PROGRESS OF THE NONSERVICE CONNECTED DISEASE, WILL BE SERVICE CONNECTED.

SECTION II - RESTATEMENT OF REQUESTED OPINION

2A. INSERT REQUESTED OPINION FROM GENERAL REMARKS:

P&T STATUS - entitlement: Remark 2.

2B. INDICATE TYPE OF EXAM FOR WHICH OPINION HAS BEEN REQUESTED *(e.g. skin diseases)*: N/A

SECTION III - MEDICAL OPINION FOR DIRECT SERVICE CONNECTION

CHOOSE THE STATEMENT THAT MOST CLOSELY APPROXIMATES THE ETIOLOGY OF THE CLAIMED CONDITION.

☐ 3A. THE CLAIMED CONDITION WAS AT LEAST AS LIKELY AS NOT (50 percent or greater probability) INCURRED IN OR CAUSED BY THE CLAIMED IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

☐ 3B.THE CLAIMED CONDITION WAS LESS LIKELY THAN NOT (less than 50 percent probability) INCURRED IN OR CAUSED BY THE CLAIMED IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

3C. RATIONALE:

N/A

SECTION IV - MEDICAL OPINION FOR SECONDARY SERVICE CONNECTION

☒ 4A. THE CLAIMED CONDITION IS AT LEAST AS LIKELY AS NOT (50 percent or greater probability) PROXIMATELY DUE TO OR THE RESULT OF THE VETERAN'S SERVICE CONNECTED CONDITION. PROVIDE RATIONALE IN SECTION C.

☐ 4B. THE CLAIMED CONDITION IS LESS LIKELY THAN NOT (less than 50 percent probability) PROXIMATELY DUE TO OR THE RESULT OF THE VETERAN'S SERVICE CONNECTED CONDITION. PROVIDE RATIONALE IN SECTION C.

4C. RATIONALE:

Remark 3.

SECTION V - MEDICAL OPINION FOR AGGRAVATION OF A CONDITION THAT EXISTED PRIOR TO SERVICE

☐ 5A. THE CLAIMED CONDITION, WHICH CLEARLY AND UNMISTAKABLY EXISTED PRIOR TO SERVICE, WAS AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY AN IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

☐ 5B. THE CLAIMED CONDITION, WHICH CLEARLY AND UNMISTAKABLY EXISTED PRIOR TO SERVICE, WAS CLEARLY AND UNMISTAKABLY NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY AN IN SERVICE INJURY, EVENT, OR ILLNESS. PROVIDE RATIONALE IN SECTION C.

5C. RATIONALE:

N/A

SECTION VI - MEDICAL OPINION FOR AGGRAVATION OF A NONSERVICE CONNECTED CONDITION BY A SERVICE CONNECTED CONDITION

6A. CAN YOU DETERMINE A BASELINE LEVEL OF SEVERITY OF (claimed condition/diagnosis) BASED UPON MEDICAL EVIDENCE AVAILABLE PRIOR TO AGGRAVATION OR THE EARLIEST MEDICAL EVIDENCE FOLLOWING AGGRAVATION BY (service connected condition)?

☐ YES ☐ NO

IF "YES" TO QUESTION 6A, ANSWER THE FOLLOWING:

I. DESCRIBE THE BASELINE LEVEL OF SEVERITY OF (claimed condition/diagnosis) BASED UPON MEDICAL EVIDENCE AVAILABLE PRIOR TO AGGRAVATION OR THE EARLIEST MEDICAL EVIDENCE FOLLOWING AGGRAVATION BY (service connected condition):

N/A

II. PROVIDE THE DATE AND NATURE OF THE MEDICAL EVIDENCE USED TO PROVIDE THE BASELINE:

N/A

III. IS THE CURRENT SEVERITY OF THE (claimed condition/diagnosis) GREATER THAN THE BASELINE?

☐ YES ☐ NO

IF YES, WAS THE VETERAN'S (claimed condition/diagnosis) AT LEAST AS LIKELY AS NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY (insert "service connected condition")?

☐ YES (provide rationale in section 6B.)

☐ NO (provide rationale in section 6B.)

SECTION VI - MEDICAL OPINION FOR AGGRAVATION OF A NONSERVICE CONNECTED CONDITION BY A SERVICE CONNECTED CONDITION (continued)

IF "NO" TO QUESTION 6A, ANSWER THE FOLLOWING:

I. PROVIDE RATIONALE AS TO WHY A BASELINE CANNOT BE ESTABLISHED (e.g. medical evidence is not sufficient to support a determination of a baseline level of severity):

N/A

II. REGARDLESS OF AN ESTABLISHED BASELINE, WAS THE VETERAN'S (claimed condition/diagnosis) AT LEAST AS LIKELY AS NOT AGGRAVATED BEYOND ITS NATURAL PROGRESSION BY (insert "service connected condition")?

- ☐ YES (provide rationale in section 6B.)
- ☐ NO (provide rationale in section 6B.)

6B. PROVIDE RATIONALE:

N/A

SECTION VII - OPINION REGARDING CONFLICTING MEDICAL EVIDENCE

7. I HAVE REVIEWED THE CONFLICTING MEDICAL EVIDENCE AND AM PROVIDING THE FOLLOWING OPINION:

Refer to the remarks in the appendix.

Appendix

Remarks - Medical opinion - Entitlement to PERMANENT AND TOTAL (P&T) STATUS

[redacted]

Question:
Is entitlement established for P&T STATUS?

Opinions:
- It is more likely than not that the total impairment will persist indefinitely at a severity equal to or worse than the current level (M21-1 Part V, Subpart ii, 3.D.4).
- It is more likely than not that there is clear and specific evidence that the total impairment is permanent (M21-1 Part XIII, Subpart i, 1.A.1).
- It is more likely than not that no reexamination is warranted since there is no reasonable likelihood of improvement of these disabilities.
- It is more likely than not that entitlement to P&T STATUS is established.

Note: In the context of this opinion, the phrase "more likely than not" has a meaning that is equivalent to "a preponderance of the evidence" or "a likelihood or probability of greater than 50 percent." In addition, this opinion was formed according to the guidance found in the following: Lynch v. McDonough, 21 F.4th 776; Jones v. Shinseki, 23 Vet. App. 382; Shedden v.Principi, 381 F.3d 1163; 38 USC 5107; 38 CFR 3.102.

Rationale:
Mr. [redacted] service connected disability evaluations combine to 100 percent. Consideration of permanence immediately follows from the finding that an overall rating is total, thus making P&T STATUS an ancillary rating issue (M21-1 Part XIII, Subpart i, 1.A.1; Part V, Subpart ii, 3.D.4). I have thoroughly studied the underlying pathophysiology of Mr. [redacted] conditions and how they specifically manifest themselves in his case. His conditions do not have a temporary or transient nature. All reliable evidence from the medical literature, expert consensus, and sound medical principles indicates his conditions have no reasonable prognosis for substantial improvement that is sustainable, though their intensity may wax and wane around an average. Instead, his conditions are expected to remain symptomatic and progressively decline over time and with age. His total impairment therefore meets the criteria of permanence: "reasonably certain to continue throughout the life of the disabled person" (38 USC 3501; 38 CFR 3.340, 4.15, & 21.3021); "permanent in character and of such nature that there is no likelihood of improvement" (38 CFR 3.327); "manifestations reasonably certain to continue throughout the lifetime of the individual" (M21-1 Part V, Subpart ii, 3.D.4); and "evidence at the time of

evaluation affirmatively shows that the total disability will continue for the remainder of the person's life" (M21-1 Part V, Subpart ii, 3.D.4).

I completed my analysis and formed my opinion based upon the following:
- a comprehensive in-person face-to-face examination that I personally conducted.
- credible lay history and competent lay observations from Mr. [redacted]
- holistic consideration of actual functional limitations.
- clinical expertise from my many years of treating patients with the same or similar conditions.
- military expertise from my twenty years of service in a variety of operational and support roles.
- extensive review of the relevant records, facts, and circumstances.
- extensive review of the relevant current credible peer-reviewed scientific literature.
- extensive review of the relevant consensus opinion of qualified experts.
- sound medical principles that are generally accepted among physicians.

Conflicting evidence:

Not applicable.

PRIVATE DBQ ELECTION

ATTENTION
Evidence Intake Center:
Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Appendix to 10210 Lay Statement - Private DBQ Election

I assert the following three legal privileges and thereby exercise my right to the adjudication of my claim with neither C&P exams nor ACE process C&Ps:

- Privilege #1: Private DBQ Election
- Privilege #2: Exemption from C&Ps
- Privilege #3: Waiver of C&Ps

Privilege #1: Private DBQ Election

The privilege to make a Private DBQ Election arises from M21-1 Part IV, Subpart i, 2.C.1. This policy, which implements the section of 38 USC 5101 amended in 2021 that contains the statutory basis for requiring the VA to weigh private DBQs and C&P examinations equally, states the following:

> If the examination facility cancels a pending examination request based on a Veteran's election to submit a privately prepared disability benefits questionnaire (DBQ) in lieu of reporting for a clinical appointment, then follow guidance as it appears in M21-1 Part IV, Subpart i, 2.C.1.e [directing the VA wait for 30 days for submission of the private DBQs].

The effect here is formalization of a process for declining C&P examinations and instead submitting private DBQs as the medical evidence for a claim. This policy declares that canceling or declining C&Ps examinations as part of a private DBQ election **does not** constitute a failure to report requiring the claim to be denied:

> Note: Contract examination vendors use clarification requests with a variety of narrative reason values to denote examination appointment scheduling irregularities. The ***only*** such reason value that may be appropriately considered equivalent to a failure to report for examination, thus warranting application of procedures discussed in M21-1, Part IV, Subpart i, 2.G [referencing 38 CFR 3.655] is *No Show*.

Since I am giving ample notice that I am declining to report for any future C&P examinations, the 'narrative reason value' for cancellation would not be 'No Show.' Also, since my election precedes any C&P appointments, I certainly cannot be treated as a 'No Show' for exams that have not happened yet. It is clear that a Veteran who makes a private DBQ election is not then penalized for canceling or declining C&P examinations. In effect, there is now an alternate pathway to Rating Decisions wherein a private DBQ election permits adjudication of a claim with neither C&P examinations nor ACE process C&Ps.

Privilege #2: Exemption from C&Ps

The plain language of 38 USC 5103A is what establishes the privilege for exemption from C&P examinations. In general, that statute describes the VA's various duties for helping Veterans with their claims. It also contains the following provision at (b)(3):

> [The duty-to-assist]. . . .***shall not apply*** if the evidence. . . .allows for the. . . .highest evaluation assignable in accordance with the evidence. . . .as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date. . . .

If it was the intent of Congress to have the statute applied uniformly in every case without exception, then this highly specific language would be absent. Although the wording does not use the exact term of "exemption," the effect of the language is to provide an exemption. After all, this provision enumerates the criteria for when the parent statute should ***not*** be applied. It should be obvious that the intent here is to relieve the VA of any duty-to-assist tasks that are clearly unnecessary and perhaps counterproductive.

The private DBQs I have submitted meet these exemption requirements completely - that is, they are competent, adequate, and sufficient evidence for evaluation of my claim. In addition, they meet all of the other requirements for private medical evidence found in 38 USC 5125, 38 CFR 3.159 & 3.326, and M21-1 Part V, Subpart ii, 1.A.3. As such, they obviate the need for C&P examinations and the duty-to-assist is therefore truncated with regard to providing them.

Privilege #3: Waiver of C&Ps

The privilege for waiver of C&Ps also originates from within 38 USC 5103A but this time by application of precedential caselaw. The relevant legal concept here is referred to as the "equitable doctrine of waiver." The basis for it is an 1873 decision from the U.S. Supreme Court (Shutte v. Thompson, 82 U.S. 151):

> But it is obvious that all the provisions made in the statute. . . .were introduced for the protection of the party. . . .It is not to be doubted that he may waive them. A party may waive any provision either of a contract or of a statute, intended for his benefit. . . .consistent with the rule, that a party may waive any conditions that are intended for his sole benefit. . .

This case remains good law and it applies just as clearly to the VA's duty-to-assist, the provisions of which are unambiguously intended for the sole benefit of Veterans.

The Shutte opinion was quoted and confirmed in 2001 by the U.S. Court of Appeals for Veterans Claims when it decided Janssen v. Principi, 15 Vet. App. 370, a precedent that allows Veterans to waive beneficial duty-to-assist provisions for their compensation claims:

> . . . .absent some affirmative indication of Congress' intent to preclude waiver. . . .[the Court must] presume that statutory provisions are subject to waiver (United States v. Mezzanato, 513 U.S. 196). . . .this Court has long accepted the ability of appellants to waive certain procedural rights. . . .an appellant can expressly waive. . . .due process rights. . . .if. . . .he wishes to do so (Bowling v. Principi, 15 Vet. App. 1). . . .If he believes he can obtain nothing more. . . .in terms of development. . . .the Court finds no legal reason. . . .not to permit him

to make that choice. . . .the Court will permit the. . . .appellant to waive this Court's consideration of any duty-to-assist. . . .rights potentially afforded to him. . . .

The Court goes on to state in the Janssen opinion that waivers must especially be considered when the privilege is asserted explicitly:

Surely an express waiver, such as we have in the instant case, is simply an emphatic way of saying "I choose not to raise this issue". . . .if informed implied waivers are permissible as to this Court's consideration. . . .then so must be expressed waivers. To permit otherwise would be bizarre. . . .

The Court also gave specific consideration in Janssen to waiver of C&P examinations, perhaps because they foresaw that these exams would be critical fulcrums in nearly every future claim:

. . . .the Court understands that there may be compelling reasons why. . . .a claimant may reach an informed conclusion, from the unique position he or she occupies, that further development of the claim may not only be unhelpful, but that it may be harmful to that claim. ***The same may be true as to a physical examination or medical opinion provided by VA***. . . .He has made clear that he believes that the claim under review has been developed as fully and completely as is necessary (or as much as he wishes it to be). . . .and that he considers further development of the facts. . . .to be of no benefit to him.

The Janssen Court also makes a straightforward description of the conditions under which a Veteran can assert a waiver privilege:

. . . .the appellant must first possess a right, he must have knowledge of that right, and he must intend, voluntarily and freely, to relinquish or surrender that right (United States v. Olano, 507 U.S. 725). . . .if that is his or her clearly stated, informed, and voluntary desire. . . .and has expressed his intention clearly and unequivocally. . . .Nothing further is required (McCall v. U.S. Postal Service, 839 F.2d 664).

Such is the case with the duty-to-assist right to C&P examinations. Therefore, I hereby affirmatively assert my waiver privilege by stating the following: 1) I knowingly possess a statutory right to C&P exams as part of the duty-to-assist; 2) I intend, voluntarily and freely, to relinquish and surrender that right; 3) I have a clear and unequivocal desire to waive C&P examinations for the claims listed at the beginning of this statement.

Right to adjudication without C&Ps

While it is mandatory for the VA to provide C&Ps when indicated, according to the foregoing analysis it is clearly not mandatory for a Veteran to attend those C&Ps in order to prevail on their claim. When the three aforementioned privileges (election, exemption, and waiver) are asserted together, it gives rise to a procedural right to demand adjudication of claims without C&P examinations or ACE process C&Ps. I am hereby exercising that right.

It is reasonable for me to construe that the ordering of any C&P examinations for my claim is a poorly-disguised effort at developing-to-deny, a practice that directly violates many aspects of the governing caselaw and policy, as described by the following:

- Because it would not be permissible for VA to undertake such additional development if a purpose was to obtain evidence against an appellant's case, VA must provide an adequate statement of reasons or bases for its decision to pursue further development where such development reasonably could be construed as obtaining additional evidence for that purpose (Mariano v. Principi, 17 Vet. App. 312).
- Decision makers may not arbitrarily or capriciously refuse to assign weight to a claimant's evidence or develop with the purpose of obtaining evidence to justify a denial of the claim (M21-1 Part V, Subpart ii, 3.B.1).
- . . . .additional evidence should not be procured for the sole purpose of denying the veteran's claim (1 Veterans L. Rev. 94).

Significantly, in its own policy at M21-1 Part V, Subpart ii, 1.A.6, the VA has pledged that it will:

. . .award benefits where supported under the facts and law or when the evidence is in relative equipoise or balance while denying only when we must under the facts and law that require it.

The facts and law, the evidence of record, and this private DBQ election require the VA to proceed with adjudicating my claim without developing its own medical evidence in the form of C&P examinations.

Private DBQ Election

From: Veteran

To: C&P exam contractor

SECTION III: STATEMENT
(Use this section to submit your statement, or a statement from someone else writing on your behalf)

NOTE: If you would like to submit an additional statement on your own behalf or if you have more than one witness writing on your behalf, use a separate form (VA Form 21-10210) for each statement.

17. STATEMENT (Note: Describe what you yourself know or have observed about the facts or circumstances relevant to this claim before VA)

To: VA C&P exam contractor

Re: Private DBQ Election

- I have submitted a Private DBQ Election to the VA for my claim.

- I am using private DBQs in lieu of C&P exams.

- I decline to report for the C&P exams scheduled with you.

- You must now cancel the VA's request for your C&P exams.

- You must use 'Private DBQ Election' as the narrative reason for cancellation.

- You must not use 'No show' as the narrative reason for cancellation.

- You must not use 'Failure to report' as the narrative reason for cancellation.

- Refer to M21-1 section IV.i.2.C.1 (attached) for further information.

Legal brief
for
[redacted]
526EZ claim
with
statement of good cause

<u>ATTENTION</u>
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Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

Appendix

Legal brief for [redacted] 526EZ claim

I am submitting this legal argument in support of the [redacted] 526EZ Claim which I filed on 05/31/2023 in order to clarify the issues being claimed and all matters that should be considered when deciding these claims.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Issues on 526EZ Claim:

1. RIGHT KNEE CONDITION - to include degenerative arthritis rated 20 percent FLEXION (DC 5003-5260), 20 percent EXTENSION (DC 5003-5261), and 10 percent INSTABILITY (DC 5257) all effective 08/26/2022 (ITF date). Developed arthritis after spine. Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.
2. RIGHT HIP CONDITION - to include degenerative arthritis rated 30 percent FLEXION (DC 5003-5252), 20 percent THIGH IMPAIRMENT (DC 5003-5253), and 10 percent EXTENSION (DC 5003-5251) all effective 08/26/2022 (ITF date). Developed arthritis after spine. Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.

3. LEFT HIP CONDITION - to include degenerative arthritis rated 20 percent FLEXION (DC 5003-5252), 20 percent THIGH IMPAIRMENT (DC 5003-5253), and 10 percent EXTENSION (DC 5003-5251) all effective 08/26/2022 (ITF date). Developed arthritis after spine. Direct service connection 38 CFR 3.304 with arthritis rule M21-1 V.iii.1.C.2.b.

4. TRAUMATIC BRAIN INJURY - DC 8045 rated 70 percent effective 08/26/2022 (ITF date). Blast exposure during combat deployments to Iraq. Direct service connection 38 CFR 3.304.

5. HEADACHE CONDITION - to include migraine headaches (DC 8100) rated 50 percent effective 08/26/2022 (ITF date). Blast exposure and Gulf War exposure during combat deployments to Iraq. Direct service connection 38 CFR 3.304 or presumptive service connection under 38 CFR 3.317.

6. TINNITUS - DC 6260 rated 10 percent effective 08/26/2022 (ITF date). Noise exposure during combat deployments to Iraq. Direct service connection 38 CFR 3.304.

It is useful to review my claim procedural history with the VA, which is as follows:

03/28/2007 526EZ claim
??/??/2007 Possible C&P exam; date unknown
07/26/2007 Rating Decision
02/25/2011 526EZ claim
??/??/2011 Possible C&P exam; date unknown
02/01/2012 Rating Decision
08/19/2014 526EZ claim
01/19/2015 C&P exam
02/09/2015 Rating Decision
08/07/2015 526b claim
09/10/2015 C&P exam
09/23/2015 Rating Decision
02/11/2016 Statement of the Case (SOC)
02/10/2017 526b claim
04/21/2017 Rating Decision
09/15/2017 686c claim
11/16/2017 Statement of the Case (SOC)
02/05/2018 Rating Decision
03/09/2018 Intent to File (ITF)
11/16/2020 Board of Veterans Appeals (BVA) remand
02/12/2021 C&P exam
02/19/2021 C&P exam
03/03/2021 Supplemental Statement of the Case (SSOC)
03/03/2021 Rating Decision
08/20/2021 Intent to File (ITF)
07/15/2022 686c claim
08/26/2022 526EZ claim
08/26/2022 Intent to File (ITF)
09/07/2022 C&P exam
09/29/2022 Rating Decision
11/30/2022 Rating Decision
01/10/2023 Rating Decision

526EZ Right knee issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim. It should also be noted that I am making this claim for arthritis of the right knee as being associated with the arthritis in the thoracolumbar spine. The back condition is already service connected as "lumbar strain" but the service connected diagnosis for the back should now be "thoracolumbar spine degenerative arthritis." This would then allow service connection of the right knee according to the M21-1 arthritis rule (M21-1 V.iii.1.C.2.b). Please note that the thoracolumbar spine remains an open issue based on the 0995 Supplemental Claim that has been submitted. Therefore, the service connected diagnosis for the thoracolumbar spine should be changed from "lumbar strain" to "degenerative arthritis" as part of these pending claims.

526EZ Right hip issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim. It should also be noted that I am making this claim for arthritis of the right hip as being associated with the arthritis in the thoracolumbar spine. The back condition is already service connected as "lumbar strain" but the service connected diagnosis for the back should now be "thoracolumbar spine degenerative arthritis." This would then allow service connection of the right hip according to the M21-1 arthritis rule (M21-1 V.iii.1.C.2.b). Please note that the thoracolumbar spine remains an open issue based on the 0995 Supplemental Claim that has been submitted. Therefore, the service connected diagnosis for the thoracolumbar spine should be changed from "lumbar strain" to "degenerative arthritis" as part of these pending claims.

526EZ Left hip issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim. It should also be noted that I am making this claim for arthritis of the left hip as being associated with the arthritis in the thoracolumbar spine. The back condition is already service connected as "lumbar strain" but the service connected diagnosis for the back should now be "thoracolumbar spine degenerative arthritis." This would then allow service connection of the left hip according to the M21-1 arthritis rule (M21-1 V.iii.1.C.2.b). Please note that the thoracolumbar spine remains an open issue based on the 0995 Supplemental Claim that has been submitted. Therefore, the service connected diagnosis for the thoracolumbar spine should be changed from "lumbar strain" to "degenerative arthritis" as part of these pending claims.

526EZ TBI issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim. It should also be noted that I am still pursuing a diagnosis of TBI from one of the 4 approved specialists. It has been very difficult for me to obtain this piece of evidence. I will submit this evidence as soon as I have it.

526EZ Headache issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim. It should be noted that service connection for this issue can be based on either blast exposure or the Gulf War presumption.

526EZ Tinnitus issue:

The effective date for this issue should be 08/26/2022. On that date, a 526EZ claim was filed, but an Intent to File (ITF) was also filed. It is VA policy that if a claim and an ITF are filed on the same day, then the ITF is used to set the effective date for the next claim that is submitted, which would be this claim.

FOIA/PA
request for C-file
and
C&P examiner CVs

ATTENTION
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Maintain this package as a single document in VBMS. Do not separate it into multiple documents.

OMB Approved No. 2900-0877
Respondent Burden: 5 Minutes
Expiration Date: 10/31/2023

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

FREEDOM OF INFORMATION ACT (FOIA) OR PRIVACY ACT(PA) REQUEST

INSTRUCTIONS: Read the Privacy Act and Respondent Burden information on Page 4 before completing the form. This form must be signed by the requester, authorized organization, or third party who has been authorized by the requester. For additional information on VA FOIA and PA requests visit our website at https://www.va.gov/FOIA/Requests.asp . You may also contact the VA at https://iris.custhelp.va.gov or call us toll-free at 1-800-827-1000. If you use a Telecommunications device for the deaf (TDD),the Federal Relay number is 711. VA forms are available at www.va.gov/vaforms.

SECTION I: REQUEST FOR INFORMATION ON YOURSELF

(If you are seeking information on yourself, complete Sections I, III, V and VI. Complete Section IV, if applicable.)

NOTE: You may complete the form on-line or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and completely fill in each applicable circle to help expedite processing of the form.

1. NAME (First, Middle Initial, Last)

[redacted]

2. SOCIAL SECURITY NUMBER	3. ALIEN REGISTRATION NUMBER (A-number) (If applicable)	4. VA FILE NUMBER (If applicable)
[redacted]		[redacted]

5. DATE OF BIRTH	6. PLACE OF BIRTH (Provide City and State, County and State or City and Country)
[redacted]	[redacted]

7. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street [redacted]

Apt./Unit Number

City [redacted]

State [redacted] Country **US** ZIP Code/Postal Code [redacted]

8A. TELEPHONE NUMBER (Include Area Code)	8B. FAX NUMBER (If applicable)
[redacted] Enter International Phone Number (If applicable)	[redacted] Enter International FAX Number (If applicable)

9. E-MAIL ADDRESS [redacted]

☑ I agree to receive electronic correspondence from VA in regards to my claim.

SECTION II: REQUEST FOR INFORMATION ON A PERSON OTHER THAN YOURSELF

(If you are seeking information on an individual other than yourself, complete Sections II, III, V and VII or VIII. Complete Section IV, if applicable.)

10. NAME (First, Middle Initial, Last) OR YOUR ORGANIZATION'S NAME

11. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street

Apt./Unit Number

City

State/Province Country **US** ZIP Code/Postal Code

12A. TELEPHONE NUMBER (Include Area Code)	12B. FAX NUMBER (If applicable)
Enter International Phone Number (If applicable)	Enter International FAX Number (If applicable)

SECTION II: REQUEST FOR INFORMATION ON A PERSON OTHER THAN YOURSELF (Continued)

(If you are seeking information on an individual other than yourself, complete Sections II, III, V and VII or VIII. Complete Section IV, if applicable.)

NOTE: Items 13 through 16 must be completed to inform VA on whom the person is you are requesting the information about.

13. NAME OF THE PERSON YOU ARE REQUESTING INFORMATION ON (First, Middle Initial, Last)

14. SOCIAL SECURITY NUMBER	15. ALIEN REGISTRATION NUMBER (A-number) (If applicable)	16. VA FILE NUMBER (If applicable)

SECTION III: RECORDS YOU ARE SEEKING

(This information is required in order to complete the request)

17. SELECT THE TYPE(S) OF RECORDS YOU ARE REQUESTING, BELOW:

- [x] CLAIMS FILE (C-FILE)
- [ ] SERVICE TREATMENT RECORDS / MILITARY TREATMENT RECORDS
- [ ] VOCATIONAL REHABILITATION AND EMPLOYMENT RECORDS
- [ ] PENSION BENEFIT DOCUMENTS
- [x] OTHER (Specify)
- [ ] DD FORM 214
- [ ] LIFE INSURANCE RECORDS
- [ ] FIDUCIARY SERVICES RECORDS
- [ ] EDUCATION BENEFIT RECORDS
- [ ] HUMAN RESOURCE RECORDS
- [ ] HOME LOAN BENEFIT RECORDS
- [ ] MILITARY TO CIVILIAN TRANSITION (TAP) DOCUMENTS
- [ ] FINANCIAL RECORDS
- [ ] LIFE INSURANCE BENEFIT RECORDS (If applicable, enter policy number in Section IV, Item 18, Remarks)
- [ ] DISABILITY EXAMINATIONS (C & P EXAMS) (If applicable enter date of exam in Section IV, Item 18, Remarks)

See item 18 (Remarks).

SECTION IV: REMARKS

18. REMARKS (If any)

In addition to my C-file, I request all information reasonably attainable by VBA or its contractors relating to the competency, education, training, and expertise of my examiners for C&Ps before the date of this FOIA/PA request. I request the same information for any examinations that occur between the date of this request and the date it is answered. At a minimum (but without limiting the scope of my request), I am seeking a curriculum vitae (CV) for each examiner. These requests are to be submitted by email (contractexam.vbavaco@va.gov; subj: C&P Examination Inquiries) with as much detail as possible, including: examiner name, credentials (e.g., MD, DO, PhD, DMD, DDS, etc.), contract vendor (or VHA), and location (VISN, state, and facility).

SECTION V: WILLINGNESS TO PAY FEES

19. **IMPORTANT**: For the purpose of fees only, FOIA divides requesters into three categories: (1) commercial requesters may be charged fees for searching for records, reviewing the records, and photocopying them; (2) educational, non-commercial scientific institutions, and representatives of the news media are charged for photocopying after the first 100 pages; (3) all other requesters (requesters who do not fall into any of the other two categories) are charged for photocopying after the first 100 pages and for time spent searching for records in excess of two hours. VA charges $0.15 per single-sided page for photocopying. Actual costs are charged for a format other than paper copies.

An agency may grant fee waivers if the requester successfully demonstrates that the disclosure of information is in the publics interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

- [x] **I AM WILLING** TO PAY THE APPLICABLE FEES UP TO THE AMOUNT OF $ **1** .00
- [ ] IF YOU BELIEVE YOU ARE ENTITLED TO A FEE WAIVER OR EXPEDITED PROCESSING, INDICATE HERE:

SECTION VI: REQUESTER CERTIFICATION AND SIGNATURE

I CERTIFY THAT I have completed this FOIA/PA request and declare it is true and correct to the best of my knowledge and belief.

20A. REQUESTER'S SIGNATURE *(REQUIRED)*	20B. DATE SIGNED Month Day Year **05/30/2023**

SECTION VII: THIRD-PARTY CERTIFICATION AND SIGNATURE
(Valid only if Section II has been completed and requester has an authorized third party)

I CERTIFY THAT the requester has authorized me as the undersigned representative and certifies that the truth and completion of the information contained in this document is to the best of the requesters knowledge and belief.

NOTE: A third-party signature will not be accepted unless a valid VA Form 21-0845, *Authorization to Disclose Personal Information to a Third Party* is of record or completed and attached to this request. A third-party may be a family member or other designated person who is not a Power of Attorney, agent, or fiduciary.

21A. THIRD-PARTY SIGNATURE	21B. DATE SIGNED Month Day Year

SECTION VIII: POWER OF ATTORNEY (POA) CERTIFICATION AND SIGNATURE
(Valid only if Section II has been completed and requester has authorized POA representation)

I CERTIFY THAT the requester has authorized me as the undersigned representative and certifies the truth and completion of the information contained in this document to the best of the requesters knowledge and belief.

NOTE: A POA's signature ***will not*** be accepted unless a valid VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative* or VA Form 21-22a, *Appointment of Individual as Claimant's Representative* is of record or attached to this request.

22A. POA/AUTHORIZED REPRESENTATIVE SIGNATURE)	22B. DATE SIGNED Month Day Year

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact knowing it to be false, or for fraudulent receipt of any document to which you are not entitled.

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is voluntary.

RESPONDENT BURDEN: We need this information to identify and obtain the information you are requesting. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain . If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

Challenge to C&P examiner competency

ATTENTION
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as a single document in VBMS.
Do not separate this package
into multiple documents.

SECTION III: STATEMENT
(Use this section to submit your statement, or a statement from someone else writing on your behalf)

NOTE: If you would like to submit an additional statement on your own behalf or if you have more than one witness writing on your behalf, use a separate form (VA Form 21-10210) for each statement.

17. STATEMENT (Note: Describe what you yourself know or have observed about the facts or circumstances relevant to this claim before VA)

Challenge to C&P Examiner Competency

- It is well known in the Veteran community that C&P exams are usually completed in a cursory manner that trivializes, minimizes, and ignores signs and symptoms, which was certainly the case for the C&P exams that I have attended. Generally, C&P examinations do not meet the quality standards described in the governing statutes, case law, and regulations. VA's 'Duty to Assist' requires C&Ps that are a "thorough and contemporaneous medical examination" (38 USC 5103A; Pond v. West, 12 Vet. App. 341 (citing Green v. Derwinski, 1 Vet. App. 121)). Additionally, once the VA provides an examination, the examination must be adequate (Barr v. Nicholson, 21 Vet. App. 303 (citing Daves v. Nicholson, 21 Vet. App. 46)). Adequacy here is defined as "based upon consideration of the veteran's prior medical history and examinations and also describes the disability in sufficient detail so that the 'evaluation of the claimed disability will be a fully informed one'" (Barr v. Nicholson, 21 Vet. App. 303 (quoting Ardison v. Brown, 6 Vet. App. 405); Gill v. Shinseki, 26 Vet. App. 386; Gardin v. Shinseki, 613 F.3d 1374).

- My past C&Ps were inadequate and I expect any future C&Ps to also be inadequate. I therefore challenge the competency of any C&P examiners who have assessed me in the past or might assess me in the future (Francway v. Wilkie, 940 F.3d 1304). I further expressly rebut the general presumption of competence of any C&P examiners with exams in my C-file or who have submitted or will submit any evidence at any time to anyone with regard to my claims with the VA (38 CFR 3.159(a)(1)). They do not merit this presumption.

- I allege that any past or future C&P exams present in my C-file contain harmful errors that include, but are not limited to, at least one of the following examiner deficiencies:
- not qualified to perform the exam, or less qualified than another examiner of record.
- failed to consider my credible testimony and competent lay observations regarding signs and symptoms, onset, chronicity, continuity, and/or history.
- failed to provide an adequate rationale for a conclusion.
- drew a conclusion about a non-medical fact.
- relied on an inaccurate factual premise.
- gave an inconclusive opinion without explaining why a conclusion could not be reached.
- used an improperly high evidentiary standard.
- did not address all legal theories of entitlement to service connection.
- did not provide the detail required by 38 CFR 4.40 and 4.45 when describing the effects of pain or other impairments on joint motion.
- did not properly perform all of the examination components required by 38 CFR 4.59 for joint assessment.