

**Brief in Support of Mr. [REDACTED] [REDACTED] Application
for Service Connected Compensation**

I submit this brief on behalf of [REDACTED] [REDACTED] [REDACTED], in support of his application for service connected compensation for hearing loss and tinnitus. This brief supports Mr. [REDACTED] claim that these disabilities were caused by events that occurred during his active duty service as a member of the Army National Guard. Mr. [REDACTED] claim was originally filed through a Notice of Claim dated [REDACTED] which is attached hereto (Exhibit A – Notice of Claim). A copy of VA Form 21-22a assigning me as Mr. [REDACTED] representative is also attached.

Facts

Mr. [REDACTED] is a veteran of the Gulf War Era, and served in the Army National Guard from [REDACTED] through [REDACTED], when he was discharged under honorable conditions. He was deployed to Iraq, Kuwait and Afghanistan over the course of his service in the National Guard. During these deployments, he had at least 2 different Military Occupational Specialties (hereafter, “MOS”): (i) 92G or “Food Service Specialist” in Kuwait and Iraq [REDACTED] through [REDACTED]) and (ii) 11B “Infantryman” in Afghanistan ([REDACTED] to [REDACTED]).

During his [REDACTED] deployment to Kuwait and Iraq, Mr. [REDACTED] worked as a Food Service Specialist. While his MOS is not suggestive of a high probability of hazardous noise exposure, records show that Mr. [REDACTED] experienced hazardous noise exposure during his deployment. To begin, there was a loud generator in his tent all night, and he slept in close proximity to it. Next, he was close to both incoming and outgoing mortar fire. While Mr. [REDACTED] did not sustain bodily harm from the mortaring, his hearing was affected by his proximity to the explosions of the mortars. Moreover, he drove heavy, loud trucks. Sometimes there were ear plugs

in the trucks, and sometimes there weren't. When available, Mr. [REDACTED] used the ear plugs. When they were not available, Mr. [REDACTED] had no choice but to drive the truck without the protective benefit of the ear plugs.

Mr. [REDACTED] post-deployment records bear out the effects of this noise exposure on him. Mr. [REDACTED] Post-Deployment Assessment (See Exhibit B – Post-Deployment Health Assessment), dated [REDACTED], demonstrates he experienced the symptom of “Ringing of the ears” during this deployment. In addition, Mr. [REDACTED] exposure to “Loud noises” was “Often.” Moreover, an Audiogram was conducted on [REDACTED] (Exhibit C – Reference Audiogram), because Mr. [REDACTED] suffered “exposure in noise duties.” The Reference Audiogram also notes that Mr. [REDACTED] was “Routinely Noise Exposed” and experienced “Steady Noise Exposure” and “Impulse Noise Exposure.”

During his deployment to Afghanistan in [REDACTED], Mr. [REDACTED] MOS was 11B, Infantryman, which is rated in the Veteran's Administration's “Duty MOS Noise Exposure Listing” ([REDACTED]) as “highly probable” for exposure to hazardous noise. During this time, Mr. [REDACTED] experienced multiple instances of hazardous noise, including the explosions of outgoing and incoming mortars and outgoing rocket-propelled grenades. Mr. [REDACTED] also fired weapons numerous times, including a .50 caliber machine gun. During a few ambushes, he was also positioned right next to the gunner of a .50 caliber machine gun firing rapidly. Sometimes, he was inside of a truck, which would amplify the loudness of the noise, while the gunner was firing from inside the truck.

When Mr. [REDACTED] entered the Army National Guard, he did not complain of hearing loss, ringing in his ears, or any audiological disability. Since Mr. [REDACTED] discharge, the hearing in his ears has progressively worsened and the ringing in his ears has continued. On [REDACTED],

after being increasingly frustrated by his inability to hear and experiencing ringing in his ears, Mr. [REDACTED] received an audiological re-evaluation. (See Exhibit D – [REDACTED] Progress Notes from [REDACTED]). The consult shows a steady decline in hearing from his entrance into the military and is comparable to this exit hearing tests. It also confirms his tinnitus.

Mr. [REDACTED] claims that his current hearing loss and tinnitus were caused by his active service in the United States Army. On [REDACTED], Mr. [REDACTED] filed a claim with the Department of Veteran's Affairs in this regard. Such claim is attached hereto.

Service Connected Disabilities

Veterans are entitled to disability compensation if they were discharged under conditions other than dishonorable, their disease or injury was incurred or aggravated in the line of duty, and the disability is not a result of their own willful misconduct or drug use. Service connection may be granted for disability resulting from personal injury suffered or disease contracted in the line of duty or for aggravation of a preexisting injury or disease in the line of duty. 38 USCA § 1110; 38 C.F.R. § 3.303. Service connection may be granted with medical evidence of a current disability; medical, or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and medical evidence of a nexus between the claimed in-service disease or injury and the present disease or injury. *Caluza v. Brown*, 7 Vet App. 498, 506 (1995) aff'd, 78 F.3d 604 (Fed. Cir. 1996). Because symptoms of hearing loss and tinnitus are capable of lay observation, Veterans can report their own symptoms of hearing loss and tinnitus. *Charles v. Principi*, 16 Vet. App. 370 (2002); *Espiritu v. Derwinski*, 2 Vet. App. 492 (1992). Veterans' testimony regarding hearing loss and/or tinnitus may therefore be sufficient evidence that disabilities are service connected.

1. Mr. [REDACTED] was enlisted in the United States Army and was given honorable discharge.

Mr. [REDACTED] began active duty in [REDACTED] for boot camp at [REDACTED], [REDACTED]. He served in theater in Iraq, Kuwait, and Afghanistan. On [REDACTED], Mr. [REDACTED] was released from active duty by way of honorable discharge (See Exhibit E — DD-214 attached; there is an additional DD-214 on file with the VA).

2. Mr. [REDACTED] hearing loss and tinnitus was caused by his line of duty.

Mr. [REDACTED] hearing loss and tinnitus were caused by his line of duty in the United States Army. During Mr. [REDACTED] time of service, he had at least two military occupational specialties. His first MOS was 92G, Food Service Specialist. His second MOS was 11B, Infantryman. The 11B MOS is rated as "highly probable" to cause exposure to hazardous noise by the Veteran's Administration's "Duty MOS Noise Exposure Listing." During active duty, Mr. [REDACTED] was exposed to the extremely loud noise of rounds of fire and mortars firing directly next to his ear (especially during ambushes), in addition to incoming mortars, fire, and rocket-propelled grenades. Mr. [REDACTED] reports that during his active duty he was consistently and repeatedly exposed to extreme military noise (including as a result of a generator in close proximity while he slept and the noises of driving a loud truck), frequently without the benefit of hearing protection.

3. Mr. [REDACTED] established a causal connection between service and his disability.

Mr. [REDACTED] established that his current hearing loss and tinnitus were casually related to his active service in the United States Army. Mr. [REDACTED] was exposed to hazardous noise during his entire time of active service with the United States Army as both a Food Service Specialist and as an Infantryman. Through sixteen months of service in Afghanistan, Mr. [REDACTED] MOS was rated

“highly probable” for exposure to hazardous noise. While that rating alone is not absolute evidence of a causal connection, it creates a presumption of service connected injury. In a memorandum dated [REDACTED], [REDACTED] of The Department of Veteran’s Affairs clarified that when an MOS is “highly probable” to cause exposure to hazardous noise, exposure to such noise is conceded for purposes of establishing the in-service event. Therefore, since Mr. [REDACTED] 11B MOS was “highly probable” for exposure to hazardous noise, he established an in-service event related to audiological disability.

Finally, to successfully establish service connection for hearing loss and tinnitus, Mr. [REDACTED] need not prove his claim through medical evidence. (*Charles v. Principi*, 16 Vet. App. 370 (2002); *Espiritu v. Derwinski*, 2 Vet. App. 492 (1992). Lay evidence and Veteran’s own report of symptoms are sufficient to establish a causal connection. *Caluza v. Brown*, 7 Vet App. 498, 506 (1995) aff’d, 78 F.3d 604 (Fed. Cir. 1996). Taken together, the above factors firmly establish Mr. [REDACTED] hearing loss and tinnitus to be service connected.

4. Current Diagnosis:

Mr. [REDACTED] was seen by an audiologist on [REDACTED]. (See Exhibit D). On that date, his audiology report determined that Mr. [REDACTED] has experienced a steady decline in hearing from his entrance into the military and is comparable to his exit hearing tests. The report also confirms his tinnitus. (See Exhibit D).

Conclusion

Mr. [REDACTED] meets the requirements for service connected compensation for hearing loss and

tinnitus. He has shown sufficient evidence of current disability and records documenting “an event, injury, or disease” related to audiological disabilities. His military medical records, audiological examinations, and 11B MOS demonstrate in-service trauma resulting in hearing loss and tinnitus. Mr. [REDACTED] currently suffers from extreme hearing impairment and intermittent tinnitus which as shown above is service connected. His claim dated [REDACTED] should therefore be granted.

Respectfully Submitted

[REDACTED]

Enclosures

Exhibit A – Notice of Claim

Exhibit B – Post-Deployment Health Assessment

Exhibit C – Reference Audiogram

Exhibit D – [REDACTED] Progress Notes from [REDACTED]

Exhibit E — DD-214