RECORD OF PROCEEDINGS

PHYSICAL DISABILITY REVIEW BOARD

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900095 COMPONENT: ACTIVE

BOARD DATE: 20090610 SEPARATION DATE: 20070425

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Air Force in 2007 after 6 years of service. The medical basis for the separation was a torn hamstring muscle sustained as a sports injury in 2004. He developed progressive pain and swelling, and was treated conservatively during the balance of his duty tour in Germany. He persisted with significant pain and duty profiles on return to CONUS, resulting in a MEB evaluation. His condition was deemed permanent and inoperable. He was referred to the PEB, found unfit and separated at 10% disability. He received an initial 10% rating by the VA eight months after separation, which was raised to 40% a year later. Although there is a question as to whether the increase by the VA was partly on the basis of worsening, the rating increase ensued after submission to the VA of medical documentation dated concurrently with the MEB process and prior to PEB adjudication. This specifically included a civilian functional evaluation obtained by the Air Force, which demonstrated impairment of the hamstring muscle group which the VA referenced in its 40% rating decision. The CI has submitted an appeal to the VA to apply the 40% rating to the time of separation, and contends to the PDBR that the severity of his impairment warranted a higher PEB rating as well.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. Although rating rationales were not elaborated, it would appear that the PEB relied solely on the VASRD for its rating. The coding of the muscle injury was consistent between the PEB and both VA ratings. The Board applied the rating criteria elaborated in §4.56 of the VASRD for Group XIII muscle injuries, appropriate to this case. Evaluation was based solely on documented medical findings which preceded the PEB adjudication. The Board medically opines that the disparity between VA ratings of 2007 and 2008 is unlikely to be heavily attributable to the progression of severity of a chronic injury dating to 2004. The §4.56 rating criteria are more specific for penetrating combat-type trauma. Many of the elements elaborated are, therefore, not applicable to this CI’s type of injury and were disregarded. Of the applicable rating criteria, this injury more than meets all of the possible criteria for the Moderate (10%) rating applied by the PEB. Available documentation supports four of six possible criteria for the Moderately Severe (30% rating), and three of eight possible criteria for the Severe (40%) rating. The 40% rating, however, entails a more severe functional impairment than would appear to characterize the CI’s condition at separation. The Board judged unanimously that the 30% rating was most appropriate and that the mild 10% PEB rating could not be equitably justified under VASRD criteria.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board therefore recommends that the CI’s prior determination be adjusted as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **Unfitting Condition** | **VASRD Code** | **Rating** |
| Residuals, L hamstring rupture | 5313 | 30% |
| **Combined** | 30% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090130, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

President

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00095.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be recharacterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program. Unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

D:\Reading Room -- AF DDA Decisions\09-95 Directive (no WORD doc).tiff