RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900165 BOARD DATE: 20100128

SEPARATION DATE: 20050208

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (helicopter crew chief) medically separated from the Army in 2005 after 14 years of combined service. The medical basis for the separation was a gunshot wound (GSW) injury of the left foot. The injury was sustained in 2002 during an OEF deployment to Afghanistan. It resulted in medical evacuation with definitive surgical management in CONUS. It was a through and through injury with nerve, fascia and tendon (but not bone) involvement. He had persistent neuralgia-type pain after initial interventions and was referred to neurosurgery at WRAMC, where he underwent additional surgery for excision of a neuroma. In spite of best efforts at conservative management and rehabilitation, he continued to have pain limiting his ability to perform in his MOS and was referred for a Medical Evaluation Board (MEB). The MEB also evaluated him for a right shoulder injury sustained during OEF from a hard aircraft landing. This was subsequently diagnosed as a partial tendon tear (non-surgical). The foot and shoulder conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501 on the DA 3947. Additional conditions supported in the disability evaluation System (DES) packet are discussed below, but were not forwarded for PEB consideration on the DA 3947. The PEB found the CI unfit for the foot injury only and he was medically separated with a disability rating of 20%.

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CI CONTENTION: The CI states: ‘Due to the debilitating nature of the nerve damage and subsequent neuropathy I feel that a rating of severe, rather than moderate that would qualify as on 20 percent, was called for from the Medical Evaluation Board. While doing the narrative summary Dr. [Name] described my injury and subsequent pain as severe in every instance however when rating the injury the MEB rated at a moderate level.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (~1 Mo. after Separation) – All Effective 20050209** | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| GSW L Foot with Neuropathic Pain and Gait Disturbance | 5284 | 20% | 20020411 | Muscle Damage…GSW L Foot and Neuroma Excision | 5310 | 20% | 20050323 |
| Scar 2⁰ to Same | 7804 | 0% | 20050323 |
| Partial Tear of the Right Supraspinatus Tendon | Not Unfitting | |  | Right Shoulder Strain | 5024 | 10% | 20050323 |
| No Additional DA 3947 Entries. | | | | Non-PEB X 3 / NSC X 0 | | |  |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** | | | |

ANALYSIS SUMMARY:

Left Foot Condition. The degree of impairment from the foot injury was well described by the orthopedist and is summarized in the following excerpt from the narrative summary (NARSUM). It also reflects the point raised by the CI in his contention.

He has severe pain on palpation and percussion along the scar in the medial left foot. He has tried multiple medications and has not been able to find anything that would give him relief that he could tolerate. For that reason he is presently talking no pain medication and is having severe pain daily. He has a severe limp. He cannot stand on the toes of the left foot at all and has to walk by locking the left foot and landing flat. If he lands on the toes of his left foot he has severe pain in the left arch area. He is unable to do any prolonged walking and can do no running. He has to be very careful about the amount of weight that he tries to lift because any increased pressure on the left foot causes severe pain. He is unable to perform his functions in the helicopter because he cannot get up and down or in and out of the helicopter.

The VA rating examiner provides a similar impression in this excerpt.

From the muscle injuries, he currently has loss of strength, weakness, easy fatigability, pain, impairment of coordination and inability to control the muscle injuries, including intramuscular scarring and adhesion of scar to the bone. ... From the above condition the functional impairment is inability to stand, run, jump or lift for significant distances or periods of time. Walk with limp. The condition resulted in inability to work for the past 2 1/2 years.

All of the Veterans Administration Schedule for Rating Disabilities (VASRD) coding options in this case are subject to opinion regarding the severity which determines rating. The PEB choice of coding (5284 - foot injuries, other) is rational, although different from that chosen by the VA. The PEB characterized the impairment as ‘moderately severe’ for the 20% rating, whereas ‘severe’ is rated 30%. Muscle codes, like the one applied in this case, are generally preferred for penetrating missile injuries by VA raters. For the muscle codes there is some more specific guidance directed at rating, as elaborated in VASRD §4.56 (evaluation of muscle disabilities). For the applicable muscle code (5310 - Group X), the rating scale is the same as that for 5284, i.e., ‘moderately severe’ rated 20% and ‘severe’ rated 30%. This case displays descriptors in the §4.56 language for both ratings. It is a better fit with the ‘moderately severe’ description of the nature of the wound, but a better fit with the ‘severe’ description of impairments. A convincing §4.3 (reasonable doubt) argument could be made for the higher rating, although the VA rater made a defensible determination in the assignment of the 20% rating. A very salient issue in this case, however, is that each of these codes is directed at the mechanical impairment from the trauma. Much, if not most, of the CI’s functional impairment was a consequence of the neuropathic pain. An argument can be made that had he not developed the neuropathic complication, his injury may not have resulted in unfitting limitations. Thus there was an unfitting peripheral nerve injury which can be coded and distinguished from both the 5284 and 5310 rating parameters. The neuropathy was confirmed by EMG as the medial plantar nerve. This nerve is a branch of the superficial peroneal nerve, coded 8722 (for neuralgia). This confers 0% for ‘mild’, 10% for ‘moderate’ and 20% for ‘severe’. Although there was no obvious motor deficit from the nerve injury as required to support a ‘severe’ rating, the intensity of the neuralgia would easily support the ‘moderate’ rating. If the 20% rating under either 5284 or 5310 is defended, it should be done so with the addition of a separate 10% rating for the peripheral neuralgia. It is cleaner, however, to simply incorporate the impairment from the neuralgia into the primary code and satisfy any reasonable doubt required for the ‘severe’ 30% rating. The Board debated both options and voted to split the conditions since the neuralgia component was such a significant contribution to unfitness. Consequently the Board recommends application of the muscle code since the peripheral nerve contribution to impairment is better reflected in the language of §4.56 and thus confidently separated without pyramiding. The factors favoring a 30% vs. 20% rating under 5310 are actually those which are more clinically attributable to the neuropathy. The Board therefore recommends a 5310 rating of 20% for moderately severe impairment plus an 8722 rating of 10% for moderate impairment.

Right Shoulder Condition. The shoulder was injured in 2002 as noted in the summary. MRI diagnosed a partial tear of the supraspinatus tendon. It was treated conservatively and did not require surgery. The NARSUM and the VA rating exam described some modest range-of-motion impairment, which was not compensable under any joint code. The VA rated 10% for painful motion. Although the NARSUM judged the shoulder to be medically unacceptable, it did not describe any physical limitations as were elaborated for the foot condition. The VA examiner stated, ‘cannot lift some objects and cannot wear backpack’. Similar restrictions were described on the physical profile, but they were presumably imposed because of the foot condition since the shoulder profile was U2 (generally not unfitting). The Commander’s statement documented a range of physical impairments but concluded ‘incapable of performing these requirements due to his foot and ankle condition’. The statement did not mention the shoulder or any other medical conditions impacting MOS performance. It is noteworthy that the NARSUM included this statement from the CI himself (also referable to some of the conditions discussed below), ‘He emphatically states that he has been able to perform all of his required MOS duties in spite of the neck pain, shoulder pain, numbness in the fingers, and lower back pains. He said these were aggravating but they certainly were not disabling in this highly motivated soldier.’ All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the shoulder condition.

Other Conditions. The only additional conditions documented in the DES packet were neck pain, back pain, intermittent right hand numbness, a right knee condition and a headache condition. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The initial VA determination rated the neck, back and knee conditions at 10% each and all three were chronic stable conditions. None of them were forwarded on the DA 3947 for PEB adjudication, and none were noted in the physical profile or mentioned in the Commander’s statement. The right hand sensory condition was subsequently considered by the VA and judged to be a distal nerve problem unrelated to his other conditions and not service connected. There was no link of this condition to fitness in evidence in the service records. The headache condition was mentioned in the MEB physical and described by the examiner as infrequent and resolving with lying down. No link to fitness is in evidence. The VA provided a scar code for the foot surgery and rated it 0%. It was noted to be exquisitely sensitive by the MEB examiner and tender by the VA examiner. Although a 10% rating for the scar code is easily supported, there is not enough link to fitness which would sustain a Board recommendation for additional rating at separation. There is no evidence that it prevented the wear of regulation foot gear, and the pressure sensitivity is subsumed under the neuralgia condition already rated. The VA subsequently applied an ankle rating secondary to the foot injury, but this was based on an exam performed over two years after separation. It presumably represents development of ankle arthritis from the gait disturbance caused by the foot injury, but there is no evidence that it was present at separation and it is not eligible for Board consideration as referenced above. This, or any other contended condition not already discussed, remains eligible for Board for Correction of Military Records (BMCR) consideration.

All evidence considered, the Board has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the left foot condition, the Board by a 2:1 vote recommends that it be coded and rated as two separately unfitting conditions. These consist of a) muscle and soft tissue damage coded 5310 and rated 20% IAW VASRD §4.73; and, b) peripheral nerve damage coded 8722 and rated 10% IAW VASRD §4.124a. The single voter for dissent (who recommended a consolidated rating of 30% under 5310) did not elect to submit a minority opinion. In the matter of the right shoulder condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the neck, back, intermittent right hand numbness, right knee and headache conditions or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Muscle and Soft Tissue Damage Secondary to Gunshot Wound Left Foot | 5310 | 20% |
| Peripheral Nerve Damage and Neuralgia Secondary to Gunshot Wound Left Foot | 8722 | 10% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090215, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

