RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD10-00064 SEPARATION DATE: 20040713

BOARD DATE: 20120601

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (31B, Military Police) medically separated for complications of a right inguinal hernia. He was first diagnosed with the hernia in 2000, with surgical repair that same year. He suffered persistent pain, and in 2001 underwent further surgical intervention which included an ilioinguinal nerve resection. He suffered continuing pain which failed to improve with additional measures; and, was diagnosed with a persistent neuropathy for which surgery was not recommended. He was unable to fully satisfy the physical requirements of his Military Occupational Specialty (MOS); was issued a permanent P3 profile; and, was referred for a Medical Evaluation Board (MEB). The condition, characterized as “chronic right inguinal pain status hernia repair, exploration with nerve resection,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated “chronic right inguinal pain” (also elaborating the operative details and complications) as unfitting, rated 0%, citing criteria of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with that Service disability rating.

CI CONTENTION: The application referred directly to a 76 page brief from counsel which was reviewed by the Board and considered in its recommendations. This contends that the CI’s unfitting hernia condition was inappropriately characterized and rated, specifying that the rating should have been 60% under code 7338 (hernia inguinal); and, further contends that the CI should have received a combined rating incorporating the conditions of bilateral hearing loss, tinnitus, hypertension, right ankle injury, post-traumatic stress disorder, and anxiety. The legal brief additionally states that the CI “now has extensive back problems, and has undergone numerous surgeries to correct problems that may be causally related to the hernia he incurred during service to his country.” It concludes with the statement, “Based on the foregoing, [CI] respectfully requests that the PDBR review the accuracy and fairness of his disability rating and recommend that his disability rating be advanced to at least 60 percent and that he be medically retired from the Armed Forces.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those conditions “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions are thus reviewed in all cases; and, the PEB’s nomenclature of “chronic right inguinal pain” is broad enough to include consideration of a rating recommendation for the surgical and/or peripheral neuralgia features of this presentation. This is addressed below, and goes to the arguments for a higher rating of that condition as summarized above in the contention. The other requested conditions, as specified above, and the post-separation conditions considered to be sequelae of the service-incurred hernia condition are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20040312** | | | **VA (5 Mos. Pre-Separation) – All Effective Date 20040714** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Inguinal Pain | 8799-8730 | 0% | Right Inguinal Hernia\* | 7338 | 10% | 20040203 |
| Residuals, R Ilioinguinal [TENS Implant]\*\* | 7804 | 10% | 20050614 |
| No Additional MEB/PEB Entries | | | Tinnitus | 6260 | 10% | 20040220 |
| 0% X 1 / Not Service-Connected x 2 | | | 20040203 |
| **Combined: 0%** | | | **Combined: 30%** | | | |

\* In a VA rating decision dated 20070206, referencing an examination 11 months post-separation, the condition was changed

to incorporate “mononeuritis” with code change to 7338-8730; but, the 10% rating and effective date were unchanged.

\*\* Added retroeffectively via same rating decision and examination referenced in preceding footnote.

ANALYSIS SUMMARY:

Right Inguinal Condition. Per the MEB’s narrative summary (NARSUM), the CI experienced an abrupt onset of right groin pain in February 2000 while manning a heavy shield during training. A bulging hernia was noted, and he underwent a standard surgical repair that March. The right inguinal pain did not resolve with surgery, and in October 2001 “a small amount of bulging” was noted over the operative site. In December 2001 he underwent surgical groin exploration which included release of adhesions and resection of the peripheral ilioinguinal nerve; no recurrent hernia was identified. With no post-operative resolution of the pain, a diagnosis of ilioinguinal nerve neuropathy was confirmed by transient ablation of the pain with anesthetic injection of the nerve. In February 2002 the CI was placed on a P2 profile, but his pain continued to worsen with any strenuous activity. In December 2003 he was reevaluated, and was “recommended no further surgical interventions because further surgery could likely worsen the condition.” At that point, the profile was upgraded to P3 and the MEB initiated. The CI was referred to a regional pain center for further management. At the time of the NARSUM, he was scheduled for implantation of a transcutaneous electrical nerve stimulator (TENS). The VA Compensation and Pension (C&P) exam completed prior to separation, preceded the NARSUM and was referenced by it. The narrative history of the C&P examination was less comprehensive, but consistent with the NARSUM. The CI reported constant pain rated 6/10 to the VA examiner and 4/10 to the MEB examiner, exacerbated to 8/10 and 6/10 respectively by strenuous activity or any use of the groin muscles. Both physical exams noted local inguinal tenderness without evidence of recurrent hernia. Pain was elicited by hip flexion, abduction and external rotation; but, measured range-of-motion (ROM) of the hip was normal in all planes. The TENS unit was implanted in May 2004 (2 months prior to separation); and, a follow-up note from the pain specialist (a month prior to separation) is excerpted below.

The patient slates that he has absolutely no pain whatsoever in his right groin. He states the peripheral nerve stimulator has gotten rid of his groin pain, but the implantation of the pump itself has caused him to have pain when he sits down, and around the edges of the pump. He is also having some pain where the electrodes are connected.

Approximately 11 months after separation, a VA examiner (the same exam prompting the changes footnoted in the rating chart) stated, “he reports pain in right groin without use of stimulator [TENS] at 8/10. When stimulator is in use, pain is reduced to 1-2/10.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB conferred its 0% rating via the analogous code 8730 (neuralgia, ilioinguinal nerve). For rating the diagnosis of a post-operative ilioinguinal neuropathy, the 8730 code is unequivocal; and, confers a maximum rating of 10% for ‘severe’ peripheral nerve impairment. The PEB’s 0% rating is accurate for ‘moderate’ impairment as quoted in the DA Form 199. Given that there

was no compensable ROM impairment for the associated pain with hip motion, the only additional code applicable to this case is 7338 (hernia, inguinal). The contended 60% rating under this code is for a hernia that is “large, postoperative, recurrent, not well supported under ordinary conditions and not readily reducible, when considered inoperable.” The 30% rating language is “small, postoperative recurrent, or unoperated irremediable, not well supported by truss, or not readily reducible;” and, 10% is “postoperative recurrent, readily reducible and well supported by truss or belt.” The problem with attempting to assign a rating under 7338 for this case is that the code clearly provides for rating the disability of an existing hernia, with compensation depending on its severity and responsiveness to surgical or mechanical reduction. The word “pain” does not appear under this code. The evidence makes it abundantly clear that there was no post-operative hernia to which to apply the code. The descriptors “large,” “small,” and “reducible” refer to an existing hernia; and, the word “inoperable” (as stressed in the contention) refers to an inability to surgically repair the hernia. Surgical reduction was successful; pain relief was not. The VA’s initial 10% rating under 7338 (per the criteria cited above) does not reconcile the fact there was no hernia at that time (evidenced by the C&P and all concurrent exams) to be “reducible,” and no indication for a truss or belt. The only clinically accurate description under 7338 is “small, reducible, or without true hernia protrusion” for a rating of 0%. It is also noted that the VA’s updated coding (footnoted in rating chart) assigned 7338 as a prefix with rating criteria defaulting to 8730. The additional 10% rating conferred by the VA was under the 7804 scar code; and, it was derived from the 11 month C&P identification of a “painful scar at the site of stimulator implantation.” Members agreed that any unfitting consequences of the scar would have overlapped the pain from the anatomically co-located neuralgia to an extent not countenanced by VASRD §4.14 (avoidance of pyramiding). Since no compensable rating is achievable via 7338 criteria and there was no other ratable surgical residual; and, since the evidence clearly shows that the unfitting disability was in fact the pain associated with the residual ilioinguinal neuralgia; the Board concluded that its recommendation must appropriately be confined to disability rating for the neuralgia, for which VASRD §4.124a explicitly provides rating under 8730 (or linked neuralgia and neuritis codes). Although the PEB’s characterization of the peripheral nerve impairment as ‘moderate’ (i.e., 0%) can be defended as a detached clinical opinion, it must be recognized that the ‘incomplete paralysis’ benchmarked under peripheral nerve ratings does not have a clean counterpart for rating neuritis or neuralgia under these codes. Furthermore VASRD §4.124 provides for a maximum rating of ‘moderate’ for neuralgia, although §4.123 provides for ‘severe’ rating as neuritis. All members agreed, especially considering the §4.124a constraints and not inconsequential physical limitations in evidence, that the maximum 10% rating available within the VASRD sanctioned options should be recommended. Since §4.123 specifies “constant pain, at times excruciating” for neuritis, members agree that analogous rating under 8699-8630 was justified and achieves the maximum rating (10%). Also noted by the Board was the contention that the separation rating was premature; pointing out accurately that the PEB rating preceded an assessment of response to the already planned TENS therapy; and, rightfully maintaining “It is the soldier’s condition at the time of separation, not the PEB proceedings, that determines the eligibility for disability.” The clinical entries after the procedure (on the eve of separation and within 12 months after separation), however, would suggest that the disability was more likely less at separation than at the time of PEB rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right inguinal condition under VASRD code 8699-8630.

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 right inguinal condition (neuropathy complicating hernia repair), the Board unanimously recommends a disability rating of 10%, coded 8699-8630 IAW VASRD §4.124a. There were no other conditions within the Board’s scope of review for consideration.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Ilioinguinal Neuralgia, Residual of Right Inguinal Hernia Repair | 8699-8630 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100107, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXX, AR20120011847 (PD201000064)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA