RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1000128 SEPARATION DATE: 20040923

BOARD DATE: 20110524

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SPC (95B, Military Policeman), medically separated from the Army in 2004 for a right tibia and fibula (tib/fib) fracture*.* After injuring his right lower leg in a motorcycle accident, the CI underwent a number of surgeries, did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Right tib/fib fracture was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, anxiety disorder, was forwarded on the MEB submission as a medically acceptable condition. The informal PEB (IPEB) adjudicated the right tib/fib fracture condition as unfitting, rated 20% with application of the US Army Physical Disability Agency pain policy. The CI appealed to the formal PEB (FPEB), which made no rating changes and the CI was medically separated with a 20% disability rating.

CI CONTENTION: “I am writing you this letter in response to the decisions of my medical board. I believe there has been a era [sic] when I was rated. I was not rated on PTSD, or the migraine headache that I have been having that still persists today.” He goes on to explain that he believes that his headache condition is linked to a hyperthermic event he experienced during a blood transfusion and claims that he is now diagnosed with PTSD.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20040419** | | | **VA (1 Mo. After Separation) – All Effective Date 20040924** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Tib/Fib Fracture | 5261 | 20% | Tibial Plateau Fracture | 5262 | 30% | 20041019 |
| Anxiety Disorder | Not Unfitting | | Psychiatric Disorder | NSC | | 20070628 |
|  |  | | Low Back Pain | 5243 | 40%\* | 20050307 |
| ↓No Additional MEB/PEB Entries↓ | | | Bilateral Plantar Fasciitis | 5276 | 30%\* | 20041019 |
| Not Service Connected x 3 | | | 20041019 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

\* VA 40% rating [Back (10%) and feet (30%)] from 20000523 discontinued on AD 20001019

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ANALYSIS SUMMARY:

Knee Conditions.The CI had a motorcycle accident where he hit a deer and sustained a comminuted fracture of his tibial plateau and proximal fibula (knee joint) with compartment syndrome. Over the next two years the CI had numerous surgeries on the right tibia for relief of compartment pressure and fracture stabilization as well as treatment of infection and manipulation under anesthesia to regain range of motion of the knee. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the following chart.

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| R. Knee ROM (Normal) | MEB ~ 10 Mo. Pre-Sep | Addendum ~ 5 Mo. Pre-Sep | VA C&P ~ 1 Mo. Post-Sep |
| Flexion (0-140⁰) | 15⁰-80⁰ | 18⁰-90⁰ | 20⁰-85⁰ |
| Extension (0⁰) | 15⁰ | 18⁰ | 20⁰ |
| Comments | Well-healed scars; mild-to-mod edema and paresthesias RLE (*intact to major nerves*). DeLuca not documented. | Painful motion; edema; decr. Muscle Tib Ant/Peroneals 3+/5; decr PP & SD at heel; Hx locking/give-way | Swelling; + DeLuca (pain, fatigue, weakness, but not incoordination). Leg length R 99cm/L 100cm; decr. LLE sensory laterally |
| §4.71a Rating | 20% | 30% to 40% (FPEB 20%) | 30% (VA 30%) |

The MEB examiner documented normal strength of the muscles of the lower leg, but decreased sensation and patchy numbness in the distributions of the major nerves of the lower leg. He noted that there was joint contracture, loss of function, and early signs of arthritis. He opined that the CI was “unable to stand, walk, run or jump normally.” An addendum to the MEB submitted with the CI’s appeal of the IPEB adjudication included ROM measurement as above with findings of edema, muscular weakness of the tibialis anterior and the peroneals, minimal sensory loss at the heel, and a history of locking and give-way three times in the last seven months attributable to either the meniscal tear noted or heterotopic calcification noted on magnetic resonance imaging. Radiographs showed that the fracture had entered the joint space, that healing was suboptimal, and that “alignment is near anatomic. There is heterotopic calcification seen adjacent to the lateral and medial femoral condyles and tibia...as well as lateral meniscus degeneration and tear.” Findings on the VA examination were very similar to those of the MEB, without a subjective complaint of locking or giving-way. The VA examiner measured extension lacking 20⁰ and additionally noted swelling of the right knee and ROM impairment due to DeLuca factors. There was decreased sensory exam and unequal leg lengths by 1cm. No motor deficit was annotated. By the 7 March 2005 VA back C&P exam the CI was ambulating with a cane due to his back and right knee. None of the examiners noted instability of the knee, and despite in-service complaints of locking/give-way, no similar complaint was noted on the VA history.

In response to the CI’s appeal, the PEB further noted that the 18⁰ deficit of extension still fell below the 20⁰ deficit of extension required for a 30% rating. (The Board notes that rounding of ROMs IAW the VA Schedule for Rating Disabilities [VASRD] §4.71a, general rating formula for diseases and injuries of the spine note 4 is not applicable for other joints.) The PEB and VA chose different coding options for the condition which significantly impacted the ratings. The VA coded using 5262 (impairment of tibia and fibula) and rated the condition as malunion with marked knee disability. The CI’s underlying pathology was also most consistent with this code and rating. The Board considered that the knee is a unique joint IAW VASRD guidance and may have multiple (up to three) ratings for a single knee. The Board deliberated that alternate or additional coding options beyond 5261 at 20% for mechanically limited extension to 15°, were for 5260 at 10% for pain-limited flexion IAW VASRD §4.59 (painful motion), and/or 5299-5259 cartilage, semilunar, removal of, symptomatic at 10% for meniscal tear and symptoms of effusion, locking, and give-way. The Board adjudged that the documented minimal sensory impairment did not interfere with duty or rise to the level of an unfitting or ratable condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the right knee condition coded 5262, with no additional knee or lower extremity neurologic ratings.

Other PEB Conditions. One other condition, anxiety disorder (later claimed as PTSD and determined to be psychosis not service connected by the VA), was forwarded by the MEB and adjudicated as not unfitting by the IPEB and FPEB. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that any mental health condition significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the anxiety disorder condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for migraine headaches. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the headache condition interfered with duty performance to a degree that could be argued as unfitting. More importantly, the condition was not mentioned in the narrative summary, MEB history and physical, PEB appeal documents, or elsewhere in the Disability Evaluation System (DES) file. 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 Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. Other conditions identified in the DES file were plantar fasciitis, breathing problems and back pain. Several additional non-acute conditions or medical complaints were also documented. Both conditions pre-dated the CI’s latest period of active service with VA ratings of 30% for the feet and 10% for the back condition. Per history, the back condition was exacerbated by the same motorcycle crash as the CI’s unfitting knee condition. Neither of these conditions was clinically or occupationally significant during the MEB period, carried attached profiles or were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board, therefore, 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right knee condition, the Board unanimously recommends a rating of 30% coded 5262 IAW VASRD §4.71a. In the matter of the anxiety disorder condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the plantar fasciitis, breathing problems and back pain 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** |
| Comminuted Fracture of Proximal Right Tibia and Fibula | 5262 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100219 w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review



