RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1000978 SEPARATION DATE: 20030701

BOARD DATE: 20120208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31L, Cable and Wire) medically separated for left thoracic outlet syndrome (TOS). He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). TOS was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB found the TOS unfitting, and rated it 20% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with 20% disability.

CI CONTENTION: The CI states, “Request is in reference to the regulation governing the PDBR DOD instruction (6040.44)- board will review not only conditions on which ratings are based but conditions identified by the PEB this should include any condition listed in the narrative summary of the medical evaluation board to the PEB which set the ratings. I believe that the MEB did not list my multiple disabilities that were diagnosed and well documented and could have all been reasons for separation. Each disability that are listed in the narrative summary and patient questionnaire were gone over with the medical examiner where he made special notes to the noted disabilities. Reference Examiner's summary and Elaboration of all Pertinent Data. The disabilities that are listed should have been all considered for my rating. They are all VA service connected and rated. Reference VA determination and ratings.” The CI then lists all of his VA conditions and ratings. He goes on to discuss the fact that the VA may have erred in their decision to not service connect his TOS. He concludes by stating, “I am currently still receiving medical treatment for this disability and I am presently in physical therapy for it. This injury will require long term treatment and will affect my future employment reference permanent profile. I strongly believe a higher rating decision is warranted.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20030505** | **VA (7 mo. after Separation) – All Effective 20030702** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left TOS | 8599-8513 | 20% | Left TOS | 5237 | NSC | 20040211 |
| ↓No Additional MEB/PEB Entries↓ | Sleep Disturbance & Apnea | 6847 | 50% | 20040211 |
| Tinnitus | 6260 | 10% | 20040211 |
| Hiatal Hernia, and Reflux | 7346 | 10% | 20040211 |
| GERD | 7346 | 10% | 20040816 |
| 0% x 6/Not Service Connected x 16 | 20040816 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his conditions continue to burden him. The Board is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations at the time of separation. The Board also acknowledges the CI’s contention for Service ratings for other conditions, and notes that its recommendations in that regard must also comply with the same governance. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a Service member’s career, and then only to the degree of severity present at the time of separation. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Left thoracic outlet syndrome (TOS). In December 2001, this right-handed soldier fell down a flight of stairs and fractured his left clavicle. The fracture was treated with 12 weeks of external fixation. Following radiographic healing, he continued to have pain in the left trapezius region. He also had symptoms of numbness, tingling, and coolness in the left arm when the shoulder was raised. He underwent a thorough evaluation. Numerous imaging studies were done which were all essentially negative. The CI was seen by a thoracic surgeon who confirmed the diagnosis of TOS and recommended against surgery. The CI continued to have symptoms and an MEB was initiated. At his April 2003 MEB evaluation, examination of the left shoulder revealed some tenderness to palpation (TTP) but no pain with shoulder motion. There was no muscle atrophy or skin changes. He had normal shoulder range-of-motion (ROM), and normal sensation in the upper arm, forearm and hand. With abduction of his shoulder, he had pain in the trapezius and numbness in his hand, consistent with TOS. As noted above, the Army PEB found him unfit due to left TOS, and he was separated with a rating of 20%.

The CI underwent a VA Compensation and Pension (C&P) exam in February 2004, seven months after separation. ROM testing of the left shoulder revealed some loss of motion. There was 135⁰ of forward flexion (180⁰ is normal), and 145⁰ of abduction (180⁰ is normal). Some crepitus was noted at the acromioclavicular (AC) joint. The remainder of the exam was essentially negative. The shoulder, arm, and hand functioned normally with normal muscle strength, normal joint motion of the distal joints, and normal finger dexterity. His symptoms of left upper extremity numbness were brief, and lasted only as long as the arm was elevated.

The Board carefully examined all evidentiary information available. The PEB and the VA coded and rated TOS differently. The PEB used VASRD code 8599-8513 (nerve condition analogous to cervical radiculopathy). The VA coded it 5237 (cervical strain) and decided that the TOS was not service connected, due to the lack of chronic disability. After due deliberation, and consideration of all the evidence, and mindful of VASRD §4.3 (reasonable doubt), all Board members agreed that IAW VASRD §4.124a, 20% was the most appropriate rating. Therefore, the Board unanimously recommends 20% for the left TOS condition. It is appropriately coded 8599-8513, and meets criteria for the 20% rating level (incomplete, mild).

Other Contended Conditions. In his contention, the CI asserts that compensable ratings should be considered for sleep disturbance, insomnia, apnea, continuous positive airway pressure (CPAP), periodic limb movement, tinnitus, hiatal hernia, gastroesophageal reflux disease (GERD), erosive esophagitis, variceal bleeding, tonsillectomy, and left clavicle fracture. These conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of these conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore, that none of the stated conditions were subject to Service disability rating.

Remaining Conditions. Hearing loss, septoplasty, and other conditions were also noted in the DES file. These conditions were reviewed by the action officer and considered by the Board. There was insufficient evidence that any of these other conditions significantly interfered with satisfactory performance of required military duties. The Board determined that none of the conditions were unfitting at the time of separation. Additionally, certain other conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority 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.

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. In the matter of the Left TOS condition, the Board unanimously recommends no change in the PEB’s adjudication decision. In the matter of the sleep disturbance, insomnia, apnea, CPAP, periodic limb movement, Tinnitus, Hiatal hernia, GERD, Erosive esophagitis, Variceal bleeding, Tonsillectomy, clavicle fracture, hearing loss, septoplasty, or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION:

The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Thoracic Outlet Syndrome (TOS) | 8599-8513 | 20% |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100830, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)