RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1001129 SEPARATION DATE: 20030718

BOARD DATE: 20111005

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air National Guard member, SSgt/E-5 (3E351 / Structures), medically separated for a right elbow condition (lateral epicondylitis). Orthopedics evaluations and conservative management (brace, ICE, oral medication, steroid injections, physical limitations, and extensive physical therapy) failed to resolve the condition. The CI was unable to perform his Air Force Specialty (AFS) or meet physical fitness standards, was issued a temporary U4 profile and underwent a Medical Evaluation Board (MEB). The MEB listed “Right Lateral Epicondylitis” as the single diagnosis forwarded to the Physical Evaluation Board (PEB) on AF Form 356. The Informal PEB (IPEB) adjudicated the “Right Lateral Epicondylitis” condition as unfitting, and rated at 10% with probable application of DoDI 13332.39 (E2.A1.5). The CI initially requested a Formal PEB (FPEB), but (apparently) withdrew the appeal as there was no FPEB accomplished, and was medically separated with a 10% disability rating. It was not clear from the record if the CI accepted medical separation or if he selected a Reserve retirement in lieu of discharge with severance pay.

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CI CONTENTION: The CI states: “The MEB Board refused to consider other Disabling Conditions present at that time. Since that time I have been awarded 80% Service Connection for those disabling conditions effective 20030701”.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20030414** | **VA (9 Mos. After Separation) – All Effective 20030701** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Lateral Epicondylitis | 5306 | 10% | R. Elbow Epicondylitis (Major)  | 5024-5206 | 0% | 20040419 |
| ↓No Additional MEB/PEB Entries↓ | Residual R Ankle Sprain | 5299-5271 | 10% | 20040419 |
| Hypothyroidism | 7903 | 10% | 20040419 |
| Obstructive Sleep Apnea (OSA) | 6847 | 50%\* | 20041015 |
| Fibromyalgia | 5025 | 40%\* | 20040419 |
| DJD Left Knee and Traumatic DJD Right Clavicle due to Fx | 5010 | 10% | 20040419 |
| 0% x 4 / Not Service Connected x 5 | 20040419 |
| **Combined: 10%** | **Combined: 80%** |

\* OSA and Fibromyalgia ratings determined by Decision Review Officer (DRO) 20060829

ANALYSIS SUMMARY: The Board notes the CI’s assertions that the MEB did not consider all other conditions present at that time and that his conditions worsened or were rated higher by the VA. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12 month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Right Elbow Condition. There were three elbow exams with range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM R Elbow | PT ~ 8 Mo. Pre-Sep(20021004) | MEB ~ 3 Mo. Pre-Sep (20030422) | VA C&P ~ 10 Mo. After Sep(20040419) |
| Flexion (0-145) | 74⁰ | “Full ROM” | 0⁰-115⁰ |
| Supination(0-90) | No data | “Full ROM” | 0⁰-80⁰ |
| Pronation(0-90) | No data | “Full ROM” | 0⁰-80⁰ |
| Comment | Grip strength symmetrical | Full ROM; strength equal to asymptomatic arm; grip strength normal; neurovascular intact; tenderness over extensor origin right forearm | Pain free with exception of generalized aching forearms / upper arms |
| §4.71a Rating | 20% | 10% | 0% |

The CI was first seen for right elbow epicondylitis in April 2002. At that time, the CI noted that there was pain over the lateral elbow and dorsal forearm. He was treated conservatively and then referred to an Orthopedist. Orthopedics exam in June 2002 documented findings of tenderness over the extensor origin, pain with resisted wrist extension and pain with resisted MP extension of the middle finger; however, there was full elbow motion as well as forearm rotation. At this visit, the diagnosis of right lateral epicondylitis was confirmed and a steroid injection was given. A review of the service treatment records noted that although the CI had persistent right elbow pain, an MRI of the right elbow was negative, and an electromyelogram (EMG) done in November 2002 was essentially normal. The MEB exam, three months prior to separation, indicated that the CI had radiation of his right elbow pain more proximally precipitated by left cervical rotation. The CI only achieved a moderate improvement in pain.

The VA Compensation & Pension exam, 10 months after separation, noted that the CI stated that when the long arm splint was removed from his right elbow, the pain returned. The CI indicated that he had morning stiffness and burning in the epicondyle with arm movement, mild swelling in the right hand fatigability and lack of endurance due to muscle fatigue with lifting weights as little as five pounds or lifting grocery bags weighing ten pounds or more. The CI’s symptoms were attributed to repetitive motion work.

The PEB and the VA chose different coding options for the condition. The PEB chose to code the CI’s elbow condition as 5306 muscle Group VI (elbow muscles) and apply a rating of 10% for moderate. At the time of the MEB exam, the CI had complained of pain, had pain with resisted motion, and had tenderness on exam. The VA rating based on the C&P exam conducted 10 months after separation reflects a coding based on limited motion as degenerative arthritis and rated at 0%. The VA elected not to apply §4.59 (painful motion) to achieve a minimal compensable rating for the right elbow absent specific painful motion on exam. All evidence considered there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 10% rating assigned by the PEB for the right elbow condition.

Fibromyalgia: The fibromyalgia condition was not documented in the DES file. Complaints of fatigue ability, weakness, and right hand swelling were frequent symptoms of the CI’s unfitting right elbow condition. The NARSUM was specific to the right upper extremity, the profile was U4, and the commander’s comments referred only to profile limitations. There was no MEB history and physical; however, the 20010926 SF 507 (Addendum to Medical History) was considered part of the DES; it did not mention fibromyalgia or Gulf War Syndrome-like symptoms. The CI’s letter of exception to the MEB requested additional time and specialty evaluation for non-specific symptoms and “getting worse”. A consult from Dr N---, a non-Rheumatologist physician who specialized in anthrax related diseases*,* approximately eight days after the PEB determination, indicated a diagnosis of Gulf War Syndrome, fibromyalgia syndrome and indicated the CI met the criteria for fibromyalgia.

The VA C&P exam in April 2004, 10 months after separation, noted that the CI was seen by this specialist (Dr N---) who told him that he had side effects from anthrax and myalgias or fibromyalgia. The Board determined that there was not sufficient evidence that fibromyalgia or Gulf War Syndrome diagnoses were part of the DES file. The Board adjudicated that the fibromyalgia condition was not mentioned in the DES package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendation for any condition not considered by the DES. The Board thus has no basis for recommending any additional unfitting condition for separation rating. Fibromyalgia or Gulf War Syndrome, and any other contended conditions not associated with the recommendations already rendered by the Board, remain eligible for consideration by the Air Force Board for Corrections of Military Records (AFBCMR).

OSA: The OSA condition as identified by the VA proximal to separation was not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendation for any condition not considered by the DES. The Board thus has no basis for recommending any additional unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were high blood pressure, and thyroid prescription (hypothyroid). Hypertension was well controlled and the thyroid condition was being treated with medication. None of these conditions were occupationally significant during the MEB period, none were the basis for limited duty and none 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. Additionally degenerative joint disease (DJD) of the left knee; DJD right clavicle and, residual right ankle strain were rated by the VA rating decision proximal to separation, but were not documented in the 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.

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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. In the matter of the Right Lateral Epicondylitis condition, the Board unanimously recommends no recharacterization of the PEB adjudication. In the matter of the hypertension and hypothyroidism 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.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Lateral Epicondylitis  | 5306 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100924, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-01129.

 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 appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings