RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100157 SEPARATION DATE: 20050409

BOARD DATE: 20120110

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active member, SPC/E-4 (19K10 / Tank Crewman), medically separated for ulcerative colitis. He did not respond adequately to treatment and was unable to fulfill the physical demands of his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Ulcerative colitis (UC) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the UC condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule of Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB) which upheld the IPEB adjudication. He was then medically separated with a 10% combined disability rating.

CI CONTENTION: “Ulcerative colitis currently 30%; 50% for PTSD.” He also noted that he was working on his TBI claim.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20050217** | **VA (4 Mo. After Separation) – All Effective Date 20050410** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Ulcerative Colitis | 7323 | 10% | Ulcerative Colitis | 7323 | 10%\* | 20050831 |
| ↓No Additional MEB/PEB Entries↓ | Chronic Strain, Anterior Talofibular Ligament, Right Ankle | 5299-5271 | 10% | 20050831 |
| Tinnitus | 6260 | 10% | 20050831 |
| 0% x 4/Not Service Connected x 3 | 20050831 |
| **Final Combined: 10%** | **Total Combined: 30%** |

\* Ulcerative Colitis 7323 increase to 30% effective 20091115 (combined 60%)

PTSD added 30% effective 20080204 increased to 50% effective 20090828 (combined 70%)

Post concussive cluster HA’s due to TBI added 30% and TBI added 0% effective 20091119 (combined 100%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his Service-incurred ulcerative colitis condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the 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), operating under a different set of laws (Title 38, United States Code). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD) conditions currently rated by the VA. While the DES considers all of the Service member's medical conditions, compensation can only be offered for those medical conditions that cut short a Service member’s career, and then only to the degree of severity present at the time of final disposition. The VA, however, is empowered to compensate all Service connected conditions and without regard to fitness and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time.

Ulcerative Colitis. In June 2004 the CI was diagnosed with ulcerative colitis (UC) confirmed with colonic biopsies after suffering a three to four week history of frequent bowel movements, liquid stools with blood, urgency and bilateral lower abdominal cramping. He responded well to medication enemas and the oral medication Mesalamine. The MEB physical exam completed four and a half months prior to separation noted that the CI was only taking Mesalamine and experiencing one to two bowel movements per day with occasional small amounts of blood in the stool and occasional lower abdominal achy discomfort. His physical exam and laboratory findings were unremarkable. Specifically, there were no ocular, oral, musculoskeletal or cutaneous physical findings and no laboratory evidence of active inflammation, anemia or malnutrition. He denied systemic symptoms such as fever or chills. The gastroenterologist opined that this was a life-long disease that runs a variable course and that the ability to perform his work duties would depend on the activity of the disease. His recommendation was to forward his case to the PEB. The VA Compensation and Pension (C&P) examination completed almost five months after separation, noted a similar history, physical exam and laboratory findings. The CI was taking two medications Mesalamine and Prednisone and eating a bland diet. Neither the NARSUM nor VA exams documented flares or exacerbations. Both the FPEB and VA adjudicated the UC condition at 10% and coded it 7323 (colitis, ulcerative.) All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the FPEB fitness adjudication for the ulcerative colitis condition.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for TBI and PTSD. These conditions were reviewed by the action officer and considered by the Board. Although there is documentation of treatment of a mild blunt head injury with head laceration and no loss of consciousness while in Service (November 2002), there is no evidence in service treatment records for a TBI diagnosis, to include post-concussive headaches or a psychiatric condition, or treatment for these conditions. Post-concussive cluster headaches as TBI sequelae were not identified until four and half years after separation. The CI was not identified with symptoms of PTSD until nearly three years after separation. His commander noted that, other than his physical limitations (from the UC); he “put forth his best effort” and “has great potential as a soldier.” The Board acknowledges the presence of PTSD, TBI and post concussive cluster headaches as conditions currently rated by the VA, but the scope of its recommendations does not extend to conditions which were not diagnosed or in evidence at the time of medical separation. This includes conditions which may have had early manifestations during active service, since such sub-clinical conditions cannot be correlated with a fitness determination requisite for a Service rating. The condition, especially since it is contended that the symptoms were not properly addressed by the Service, remains eligible for appeal to the Army Board of Correction of Military Records (ABCMR).

Remaining Conditions: Other conditions identified in the DES file were the following: shortness of breath, decrease hearing, bilateral ankle pain, locking of knees, dizziness, and rectal bleeding. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none carried attached profiles 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 tinnitus, left thigh muscle sprain and several other non-acute 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 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.

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 ulcerative colitis condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the PTSD and TBI conditions or any other condition 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** |
| Ulcerative colitis | 7323 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110320, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100157)

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

CF:

( ) DoD PDBR

( ) DVA