RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100257 SEPARATION DATE: 20031210

BOARD DATE: 20111109

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13F, Fire Support) medically separated for left subclavian stent placement due to pseudoaneurysm and arteriovenous fistula. The CI suffered a grenade explosion while serving in Iraq and sustained shrapnel injuries to the left shoulder, left arm, left anterior axillary chest area, right anterior thigh and right foot. He underwent surgical repair of an arteriovenous fistula of the left axillary artery and was placed on duty limitations to preserve the graft. The CI was not able to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). Left subclavian stent secondary to pseudoaneurysm 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 left subclavian stent placement due to pseudoaneurysm and arteriovenous fistula condition as unfitting, rated 20% with application of Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The case was informally reconsidered based on U.S. Army Physical Disability Agency (USAPDA) Memorandum, and the second/final PEB rating was 0%. The CI made no appeals, and he was thus medically separated with a 0% combined disability rating.

CI CONTENTION. “At the time of my MEB the US Army would not acknowledge the multiple shrapnel injuries (muscle and nerve damage) PTSD, Tinnitus, or any other issues. Only the severed artery was considered in the rating that the Army gave. All of my disabilities are combat related and I paid back all of my severance pay to the government once my VA claim was granted.” “VA decision dated 9 April 2004. Only my stent placement was considered in my MEB/PEB.” “Currently I have a claim pending for muscle and nerve injuries with the VA. This due to shrapnel.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20031104** | **VA (3 Mo. Post-Separation) – All Effective Date 20031211** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Subclavian Stent Placement Due to Pseudoaneurysm and Arteriovenous Fistula | 7112-7199-7113 | 0% | Residuals, Left Subclavian Stent Placement, with Metallic Densities Along Mid-Clavicle and Overlying the Medial Left Clavicle | 7112-7121 | 10% | 20040331 |
| ↓No Additional MEB/PEB Entries↓ | Injury To Muscle Group III, Status Post Grenade Wound | 5303 | 20% | 20040331 |
| Residuals, Hemothorax | 6843 | 10% | 20040331 |
| Posttraumatic Stress Disorder | 9411 | 30% | 20040330 |
| Residuals Shrapnel Injury Rt. Foot | 7804 | 10% | 20040331 |
| Shell Fragment Wound, Rt Foot | 5284 | 10% | 20040331 |
| 0% x 4 / Not Service Connected x 1 | 20040408 |
| **Combined: 0%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the presence of left subclavian stent placement due to pseudoaneurysm and arteriovenus fistula as a currently rated condition by the Department of Veterans’ Affairs (VA), but notes that 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 Board also acknowledges the CI’s assertion that his shrapnel injuries are related to his unfitting Stent placement condition and therefore should be subject to additional disability rating; although, the Board must note that a causality linkage of these contended conditions with the unfitting primary condition, even if conceded, is not a basis in itself for separation disability rating. A concomitant condition of this nature must itself be independently unfitting to merit additional rating. 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 6040.44, 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.

Left Upper Extremity: (Left Subclavian Stent Placement Due to Pseudoaneurysm and Arteriovenous Fistula Condition): The CI sustained combat shrapnel injuries to the left shoulder, left arm, and left anterior axillary chest area (and right anterior thigh and right foot), from a grenade explosion. He required a stent to repair a vascular pseudoaneurysm and fistula in his shoulder area (subclavian or axillary artery). The vascular repair was successful and he had significant duty restrictions to protect the stent. The Board considered the entire left upper extremity injury and residuals as from a single injury and considered alternative rating and coding schemas. Of note, the VA rated the left upper extremity as three separate conditions under vascular, muscular, and lung/chest wall residuals. The Board independently assessed the fitness parameters of each portion of the injury.

The MEB exam five and half months prior to separation noted the vascular, musculoskeletal and neurological examinations were normal. The medical examiner stated “I can appreciate the stent in the left subclavian vessel”. The retained shrapnel in the left upper extremity, left anterior chest wall, were historically documented in the MEB and VA exam. The CI consistently sought treatment for pain medication and specialty care in orthopedics for his left arm and left finger. Shrapnel was not removed from the left upper extremity, but was controlled with pain medication. The MEB exam noted on review of systems that the CI suffered numbness in the third metacarpal phalangeal joint of his left hand, a normal neuromuscular exam and documented radiographs of multiple retained shrapnel wounds of the left shoulder and upper extremity. There was no indication of shortness of breath, no pulmonary function testing, and no restriction based on decreased aerobic capacity. The MEB documented the CI’s duty restrictions as “…may not carry a helmet, rucksack, and rifle or perform push-ups or sit-ups.” The records indicate that “additional surgery to remove scrap metal is not in best interest due to complexity and location.”

The VA exam three months after separation noted historically that the CI had complaints of tingling of his non dominant left finger. The physical revealed 15 blue to black colored shrapnel scars on his left upper shoulder, chest region and forearm that were non-tender and did not interfere with left shoulder motion. The left finger exam noted pain with pressure, but otherwise non-debilitating. There was a non-tender left medial chest wall chest tube scar. Radiographs revealed the stent and retained metallic shrapnel near the clavicle, of the upper left arm and of the left hand. VA records indicated shortness of breath with climbing hills and pulmonary function tests of FEV1/FVC of 80 percent. The shortness of breath with climbing hills was attributed by the CI as due to being out of shape.

The PEB found the left subclavian stent placement due to pseudoaneurysm and arteriovenous, fistula, pulses intact, to be unfitting and rated at 0% under VA codes 7112-7199-7113. The VA rated the left subclavian stent placement due to pseudoaneurysm fistula and retained clavicular shrapnel at 10% using 7112-7121 (**deep vein thrombosis** code). The VA supported this code as most closely resembling the CI’s condition. The VA also rated the left upper extremity as: Injury to muscle group III, status post grenade wound, code 5303 at 20% (moderate); and residuals of hemothorax, coded 6843 at 10%.

When weighing the evidence, the CI did have duty restrictions documented in his profile and commander’s statement for the left upper extremity and sought care for pain for his retained left upper extremity shrapnel, with treatment including narcotics. The initial injury required 12 days of hospitalization, was from multiple pieces of shrapnel, history of debridement, with some symptomatic retained shrapnel not amenable to removal.

The CI was treated for a traumatic pneumothorax with chest tube placement and mechanical ventilation at the time of his injury. He did not require prolonged ventilation and there were no STR entries reflecting residual pulmonary symptoms or disease. There was no DES-timeframe documentation of shortness of breath; however, the CI was restricted from most forms of aerobic exercise. The VA history of shortness of breath was most likely due to significant de-conditioning rather than the minimally abnormal pulmonary function noted on VA exam. All evidence considered, there is not sufficient evidence to adjudge that any pulmonary disability related to the shrapnel injury or chest tube was to the level of being unfitting.

The CI’s restrictions included no push-ups and no sit-ups and he was on narcotic pain medication for the left shoulder/arm area. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the left upper extremity muscle injury with retained shrapnel favors its recommendation as an additionally unfitting condition for separation rating. Injury to left muscle group III, status post grenade wound is appropriately coded 5303 and IAW §4.56 (evaluation of muscle disabilities) meets the VASRD §4.73 criteria for a 20% (moderate) rating.

The CI’s disability was principally related to duty restrictions to protect the stent and the CI had additional left hand retained shrapnel and not-unfitting paresthesia of the fingers. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the left subclavian stent placement due to pseudoaneurysm and arteriovenous fistula condition coded 7112-7121.

Right Lower Extremity Condition: The CI’s application asserts that compensable ratings should be considered for the multiple shrapnel injuries (muscle and nerve damage). The temporary profile L3 and P3 documented no running and AFPT restrictions. The commander’s statement also supports these duty restrictions. The MEB noted that the CI was having right foot pain especially when weight bearing prolonged walking and running. The MEB exam revealed a normal neuorologic exam, but did not specifically comment on the right thigh or right foot. There was retained shrapnel in the first metatarsal phalangeal joint and multiple small shrapnel pieces at the cuboid and the calcanel articulation. The STR reflects the CI received care for right foot cellulites at the time of his initial injury and was subsequently seen by orthopedics to care for problematic shrapnel that could not all be removal. The CI was taking chronic pain medications, including narcotics, for shrapnel pain.

The VA exam indicated complaints of right foot pain with shoe wear, prolong walking and running. Exam revealed two visible shrapnel pieces in the dorsum of the right foot, full ROM with a flexible flatfeet, and neurovascularly intact. There were also non-painful shrapnel in the CI’s right thigh area. The radiographs revealed multiple metallic shrapnel present overlying the cuboid bone and likely within the bony substance and adjacent soft tissue of the dorsum. Also shrapnel at the first metatarsal may be partly intraoeous. The VA rated this exam as 7804 at 10% and 5284 at 10%.

The Board’s threshold for adding new unfitting conditions is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. There was not sufficient evidence that foot scars were separately unfitting, but all foot disability was considered. After due deliberation, the Board majority agreed that there was insufficient evidence to adjudge that the functional impairment of right lower extremity condition was to the level of being a new and separately unfitting condition.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for PTSD and tinnitus. All of these conditions were reviewed by the action officer and considered by the Board. The CI did received treatment for sleep disturbances from mental health, but did not have formal diagnoses of PTSD at the time of his separation. There was also no evidence that his sleep disturbances interfered with his duty performance. The profile was S1 and the commander’s statement indicated “duty performance is excellent” (beyond physical impairments). There was no evidence for concluding that any mental health or hearing conditions interfered with duty performance to a degree that could be argued as unfitting. PTSD was 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 determined therefore that none of the stated conditions were subject to Service disability rating.

Remaining Conditions: Other conditions identified in the DES file were pneumothorax and back ache. Several additional non-acute conditions or medical complaints were also documented. The traumatic pneumothorax with chest tube was discussed in the left upper extremity section above. The CI suffered a back strain early in his military career requiring only conservative treatment with complete recovery. None of these conditions were significantly clinically or occupationally 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.

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 subclavian stent placement due to pseudoaneurysm and arteriovenous fistula condition, the Board unanimously recommends a rating of 10% coded 7112-7121 IAW VASRD §4.104. In the matter of the left upper extremity, injury to left muscle group III, status post grenade wound condition, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating; coded 5303 and rated 20% IAW VASRD §4.73. In the matter of the right lower extremity condition, the Board, by a vote of 2:1, recommends that it not be added as an additionally unfitting condition for separation rating. The single voter for dissent (who recommended it be unfitting coded 5284 at 10%) did not elect to submit a minority opinion. In the matter of the sleep disturbance, tinnitus and low 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** |
| Left Subclavian Stent Placement Due to Pseudoaneurysm and Arteriovenous Fistula | 7112-7121 | 10% |
| Injury to left Muscle Group III, Status Post Grenade Wound | 5303 | 20% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110405, 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

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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:

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

 d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 Deputy Assistant Secretary

 (Army Review Boards)