RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100288 SEPARATION DATE: 20060330

BOARD DATE: 20120203

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SPC/E-4 (31B, Military Police), medically separated for a right (dominant) wrist condition. He first injured his wrist during a deployment in March 2003. X-rays revealed a scaphoid fracture which was casted, but healed with nonunion. This was treated with bone growth stimulators, multiple casts, and two surgeries. Ultimately, the scaphoid bone required complete excision with surgical fusion. The wrist could not be adequately rehabilitated to satisfy the physical requirements of his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). “Chronic right wrist pain” and “limited right wrist range of motion” were forwarded to the Physical Evaluation Board (PEB) as separate medically unacceptable conditions IAW AR 40-501. Five other conditions, as identified in the rating chart below, were forwarded by the MEB as medically acceptable conditions. Two of these conditions, weight gain, and smoking are not ratable conditions IAW DoD and VA regulations and will not be discussed further. The PEB appropriately combined the MEB-submitted right wrist diagnoses as a single unfitting condition, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “Right wrist fusion with hip bursitis.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20060227** | **VA (9 Mo. Post-Separation) – All Effective Date 20060331** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Limited Range of Motion of Dominant Wrist | 5215 | 10% | Right Wrist, Status Post Scaphoid Fracture | 5010-5215 | 10%\* | 20070131 |
| Left Hearing Loss | EPTS | Left Ear Hearing Loss | 6100 | 0% | 20070208 |
| Insomnia | Not Unfitting | Adjustment Disorder, Anxiety and Insomnia | 9440-9411 | 10%\* | 20070131 |
| GERD | Not Unfitting | GERD with Hiatal Hernia | 7307-7346 | 0% | 20070131 |
| Weight Gain | Not Unfitting | No VA Entry | 20070131 |
| Smoking | Not Unfitting | No VA Entry | 20070131 |
| ↓No Additional MEB/PEB Entries↓ | Left Ear Tinnitus | 6260 | 10% | 20070208 |
| 0% x 7 | 20070131 |
| **Combined: 10%** | **Combined: 30%\*** |

**\***VA increased the right wrist rating to 30% + 10% (explained below), and increased the mental health rating to 30%; based on

 exams dated 20070808.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests a Service rating should be considered for hip disability. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Right Wrist Condition. The CI first injured his right wrist while transporting a detainee in March 2003. As noted in the summary above, he suffered a scaphoid fracture which was complicated by nonunion (failure of the broken halves to heal back together with an intact blood supply, a common complication of this injury). The nonunion did not respond to successive non-invasive modalities and surgical interventions; and, ultimately necessitated scaphoid excision and hardware stabilization. This procedure fused motion at the scaphoid interfaces, and resulted in marked limitation of all planes of motion at the wrist; although, the joint was not ankylosed (frozen) as a whole. There were two 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 chart below.

|  |  |  |
| --- | --- | --- |
| Right Wrist ROM | MEB ~2 Mo. Pre-Sep | VA C&P ~10 Mo. Post-Sep |
| Dorsiflexion/Extension (0-70⁰) | 5⁰ | 10⁰ |
| Palmar Flexion (0-80⁰) | 10⁰ | 0⁰ |
| Ulnar Deviation (0-45⁰) | 3⁰ | 0⁰ |
| Radial Deviation (0-20⁰) | 15⁰ | 0⁰ |
| Comment | Grip strength somewhat decreased.  | Unable to perform repetitive motions. |
| §4.71a Rating | 10% | 50% |

To the MEB examiner, the CI reported improved pain in his wrist (two out of ten). He was unable to fire a weapon, escort detainee personnel, lift heavy objects, or do pushups. Wrist joint ROMs were markedly limited as charted above; but, the examiner documented normal pronation and supination of the forearm. The neurovascular examination was intact. At the post-separation VA Compensation and Pension (C&P) examination, the CI reported occasional pain about once or twice a week. He was not taking any pain medication, but experienced increased pain when working with tools. He had not missed any time from work and denied any significant impairment to work performance due to the wrist condition. Most of the ROMs recorded by the VA examiner were worse than those recorded a year earlier by the Service, with essentially no motion in several planes. The PEB and VA initially chose similar coding options for the right wrist condition and arrived at the same rating recommendation. VASRD §4.71a provides only one code for limited motion at the wrist (5215), which confers only a 10% rating (independently of the severity of ROM impairment or whether it is the dominant extremity). Alternate coding with rating by 5003 criteria can be supported, but is not advantageous. The only higher rating for the wrist requires ankylosis (5214). The Board considered the highly restricted right wrist ROM; but, members agreed that the partial fusion was not equivalent to ankylosis of the joint; noting that the CI remained reasonably functional with his right hand. The Board notes that 18 months after separation the VA conferred an additional 30% rating for the condition under code 5213 for the dominant hand fixed in full pronation – a condition that results from fusion of the bones of the forearm at the elbow. This is clearly an error, as no such fusion or elbow pathology exists; and, full pronation and supination were well documented. The Board was left to conclude therefore that there is no §4.71a compliant pathway to a rating higher than 10%, although acknowledging the significant loss of joint mobility. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right wrist condition.

Other PEB Conditions. Three other conditions were forwarded by the MEB and adjudicated as not unfitting by the PEB: hearing loss, gastroesophageal reflux disease (GERD), and insomnia. The hearing loss carried a permanent H2 profile, but was not implicated in the commander’s statement or judged medically unacceptable by the MEB. It is relevant that the CI had excessive firearm exposure during his childhood and had pre-existing hearing loss; and, it should be noted that a compensable rating is not achievable irrespective of fitness determination. Neither of the remaining two conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. All three conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of them 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 any of the stated conditions.

Other Contended Conditions. The CI’s application implies that a compensable rating should be considered for hip bursitis. The CI began experiencing pain in the hip after a bone graft harvest for his right wrist in 2004. While this condition is mentioned in the narrative summary, it was not clinically active at the time of the MEB and not judged to be medically unacceptable. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that this condition was not subject to disability rating.

Remaining Conditions. 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 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 right wrist condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the hearing loss, gastroesophageal reflux, and insomnia conditions; the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the contended hip bursitis condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals and Limitation of Motion, Right Wrist | 5215 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110422, 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

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXX (PD201100288)

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:

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA