RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100384 SEPARATION DATE: 20090526

BOARD DATE: 20120601

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B, Infantry) medically separated for right pubic osteitis. He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile, and was referred for a Medical Evaluation Board (MEB). Right pubic osteitis was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Eight other conditions, identified below, were listed on the DA Form 3947 as not disqualifying. The PEB found the right pubic osteitis unfitting, and rated it 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The other eight MEB/PEB conditions were all adjudicated as not unfitting. The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI’s CONTENTION: “I was rated 90% through the VA. My rating from the Army did not include everything that was affected by the injury incurred.”

SCOPE OF REVIEW: The Board’s scope of review, as defined in DoDI 6040.44, is limited to those conditions which were determined by the PEB to be unfitting for continued military service; or, when requested by the CI, those condition(s) identified but not determined to be unfitting by the PEB. In this case; right pubic osteitis, hearing loss, patellofemoral syndrome (PFS), concussion, left hip pain, and stress reaction were judged to meet the criteria prescribed in DoDI 6040.44 for Board purview, and are addressed below. Hemorrhoids, allergic rhinitis, old left leg fracture (1984), and tinnitus are outside the Board’s scope of review, but remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20090317** | | | **VA (6 mos. Post-Separation) – All Effective 20090527** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Pubic Osteitis | 5099-5003 | 10% | Pubic Osteitis | 5016-5010 | 10% | 20091123 |
| Hearing Loss | Not Unfitting | | Tinnitus | 6260 | 10% | 20091123 |
| Patellofemoral Syndrome | Not Unfitting | | Rt. Patellofemoral Syndrome | 5010 | 10% | 20091123 |
| Left Patellofemoral Syndrome | 5010 | 10% | 20091123 |
| Concussion | Not Unfitting | | Residuals of TBI | 8045 | 70% | 20091123 |
| Left Hip Pain | Not Unfitting | | Degenerative Changes of L Hip | 5252-5010 | 10% | 20091123 |
| Hemorrhoids | Not Unfitting | | Hemorrhoids | 7336 | 0% | 20091123 |
| Allergic Rhinitis | Not Unfitting | | Allergic Rhinitis | 6522 | 0% | 20091123 |
| Reaction to Chronic Stress | Not Unfitting | | No VA Entry for Stress Reaction |  |  |  |
| Fracture of Left Leg (1984) | Not Unfitting | | Fracture of Left Tibia and Fibula | 5010-5262 | 10% |  |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 30% | 20091123 |
| 0% X 3 / Not Service-Connected x 3 | | | 20091123 |
| **Combined: 10%** | | | **Combined: 90%** | | | |

ANALYSIS SUMMARY:

Right Pubic Osteitis. In July 2007, the CI injured his right pelvis while he was deployed to Afghanistan. After return to the U.S. a bone scan showed pronounced uptake in the right pelvis, and he was diagnosed with right pubic osteitis. The injury was treated conservatively, with physical therapy (PT) and nonsteroidal anti-inflammatory drugs. In spite of treatment, his pain persisted and an MEB was initiated. At his December 2008 MEB exam, the CI reported pain in the right groin and right hip. The pain was 2/10 at rest, and 4/10 with activity. His pain improved with stretching, but was worse with cold weather. He denied any swelling or redness of the affected area. There was marked tenderness to palpation (TTP) of the right pubic ramus. Both hips had full range-of-motion (ROM), but the right hip was painful with motion. As noted above, the Army PEB found him unfit due to right pubic osteitis. He was separated from service on 26 May 2009. Six months later, at his November 2009 VA Compensation and Pension (C&P) exam, the CI’s gait and posture were normal. He reported that he was using acetaminophen (Tylenol) & ibuprofen (Motrin) to help control the pain. Examination of the right hip was within normal limits. X-rays showed mild degenerative changes at the symphysis pubis.

The Board carefully reviewed all evidentiary information available, and noted that the right hip had full ROM, and therefore failed to reach compensable levels for the VASRD codes specific to the hip & thigh (5250 through 5255). Thus there was no compensable ROM impairment for the right hip. However; IAW VASRD §4.40, §4.45 and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. After due deliberation, considering all of the evidence, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a rating of 10% for the right hip condition, IAW VASRD §4.40, §4.45, §4.59, and §4.71a.

Left hip condition. The Board then directed its attention to the left hip. At his Army MEB exam, the CI reported that he was having some left hip pain. It was adjudicated by the PEB as not unfitting. In November 2009, 6 months after separation, the CI complained of his left hip giving way about two to three times per month. He reported that the left hip was worse with cold and dampness. The CI was not using any assistive devices for ambulation. Gait and posture were normal, and there was no evidence of acute distress. On examination of the left hip, there was good ROM, but the CI did have pain with motion, especially internal rotation. The Board’s first charge with respect to the left hip condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering fitness determinations 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. The left hip condition was not implicated in the commander’s statement or noted as failing retention standards. There was no indication from the record that it significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the left hip condition.

Remaining Conditions. Hearing loss, patellofemoral syndrome (PFS), concussion, and stress reaction were all adjudicated by the PEB as not unfitting. Just as with the left hip pain, the Board must assess the appropriateness of the PEB’s fitness adjudication of these other remaining conditions. None of these other conditions were implicated in the commander’s statement or noted as failing retention standards. They were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of these other PEB conditions. 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 right pubic osteitis, and IAW VASRD §4.40, §4.45, §4.59, and §4.71a; the Board unanimously recommends no change in the PEB adjudication. In the matter of the left hip pain, hearing loss, PFS, concussion, and stress reaction; the Board unanimously recommends no change in the PEB determination as not unfitting.

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** |
| Right Pubic Osteitis | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110513, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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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 XXXXXXXXXXXXXXX, AR20120011832 (PD201100384)

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 XXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA