RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100424 PLACED ON TDRL: 19980628

BOARD DATE: 20120411 PERMANENTLY DISCHARGED: 20030627

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (98J, Military Intelligence) medically separated for sarcoidosis and hip osteonecrosis. The CI was diagnosed with sarcoidosis in February 1996. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). Stage I sarcoidosis and myositis were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition (degenerative joint disease) was listed on the DA Form 3947 as medically acceptable. In October 1996, the PEB found him unfit, and recommended placement on the Temporary Disability Retired List (TDRL). Shortly thereafter, he was diagnosed with bilateral hip osteonecrosis. A PEB reconsideration on 1 April 1998 found both the osteonecrosis and the sarcoidosis unfitting, and rated them 40% and 30% respectively. The CI was placed on the TDRL, effective 28 June 1998. In 2004, it was determined that his conditions had sufficiently stabilized for permanent rating. A PEB was convened, and found him unfit due to osteonecrosis and sarcoidosis, both rated at 0%. The CI did not accept the PEB findings, and he demanded a formal hearing. The Formal PEB (FPEB) found him unfit due to osteonecrosis and sarcoidosis, both rated at 0%. The case was then reviewed by the U.S. Army Physical Disability Agency (USAPDA) and the CI was medically discharged with a 20% combined disability rating.

CI’s CONTENTION: “Upon review of my records from DoD they decided to give me 20 percent disability and put me out with severance pay. This was a surprise, as I was already receiving 100 percent disability from DVA. This after being diagnosed with PTSD, Graves’ disease, eye disorder, dental disorder, bilateral shoulder, bilateral hip, rectal bleeding, headaches, chronic lower back pain, other acute sinusitis, impotence, hemorrhoids, shortness of breath, rhabdomyolysis, cellulitis, and abscess, GERD, DJD-NOS, B12 and folate deficiency, B-complex deficiency, upper respiratory infections, leg, knees and feet injuries, avascular necrosis, bilateral femoral heads, radiation poisoning, right hand condition, pseudofoliculitis barbae, Reynaud’s disease, nightmare, restless leg syndrome, kidney disorder, liver disorder, chronic fatigue, broke ribs, broken nose, head injury, exposure to DU and other elements of the first Gulf War.” The CI has also submitted a four-page memo which was reviewed and considered by the Board.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Admin. Correction to the Army FPEB – dated 20050222** | | | | **\*VA – Effective 19980628** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **(on TDRL – 19980628)** |  | **TDRL** | **Sep.** |
| Bilateral Hip Osteonecrosis | 5099-5003 | 40% | 20% | Diffuse, Progressive, Connective Tissue Disease | 6399-6350 | 100% | 19981215 |
| Sarcoidosis, with Myopathy | 6846 | 30% | 0% |
| Degenerative Joint Disease (DJD) | | Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | | |  | | |  |
| **Combined: 20%** | | | | **Combined: 100%** | | | |

\*VA Rating Decision (dated 19990512) most proximal to CI’s separation from active duty status

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that service disability ratings should be considered for other conditions. The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final separation. However the Department of Veterans’ Affairs (DVA) is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. Furthermore, the Board’s recommendations are made after assessment of the service’s rating determination. The sole basis for the Board’s permanent disability recommendation is the optimal rating for disability at the time the CI is permanently separated from service. In TDRL cases, the Board must also adhere to the DES standard that only those conditions which were present and unfitting at the time of temporary retirement may be considered for compensation and rating at the time of permanent discharge.

Sarcoidosis with Myopathy. In 1995, the CI was diagnosed with myopathy due to muscle weakness and elevated serum levels of creatine phosphokinase (CPK). In May 1995 he had a full evaluation; including muscle biopsy, electromyogram (EMG), and magnetic resonance imaging (MRI). The CPK returned to normal and no specific etiology was identified. Due to his symptoms of fatigue and shortness of breath (SOB), the CI underwent a comprehensive clinical evaluation in February 1996 at Portsmouth Naval Medical Center. Chest x-ray showed mediastinal and hilar adenopathy compatible with sarcoidosis. Transbronchial lung biopsy revealed interstitial granuloma. Muscle biopsy showed non-specific findings. A neurology evaluation did not find a specific cause for his muscle weakness. He was diagnosed with sarcoidosis and the myopathy was determined to be secondary to sarcoidosis. The CI was treated with an oral corticosteroid (Prednisone). Due to his chronic symptoms, an MEB was initiated. At his September 1996 MEB examination, the CI complained of SOB and diffuse myalgias. He was unable to do significant amounts of exercise or strenuous activity. On exam, his lungs were clear to auscultation. Chest x-ray showed bilateral hilar adenopathy with normal appearing lung parenchyma, consistent with stage I sarcoidosis. Pulmonary function tests (PFTs) were normal. The CPK was mildly elevated at 480. Another MEB evaluation was done in February 1998. At that time, prednisone had been discontinued and the CI was using Atrovent (ipratropium), an inhaled bronchodilator that is frequently used for obstructive lung disease. As noted above, the Army PEB found his stage I sarcoidosis unfitting, and he was placed on the TDRL. The sarcoidosis was re-evaluated on 25 November 2003. The examiner stated that the CI’s pulmonary condition had not changed significantly since 1998. The CI was using an albuterol inhaler three times a day, and severent diskus inhaler twice a day. His oxygen saturation on room air was 98%, and lungs were clear to auscultation. PFTs showed a mild restrictive pattern with a mild-moderate diffusion defect. However, the examiner stated that the PFTs were suboptimal, and he opined that they reflected a lack of patient effort. Chest x-ray was normal.

The Board carefully reviewed all available evidentiary information, including the PEB reconsideration that was done on 1 April 1998. The Board determined that the adjudication on 1 April 1998, rating sarcoidosis at 30%, was correct and appropriate. Then the Board directed its attention to its permanent rating recommendation, based upon the evidence described above. In 2003, at the end of the TDRL period, the examiner stated that the CI’s condition had not changed significantly and had stabilized. At that time, lung diffusion testing with carbon monoxide (DLCO) was 58% of predicted. IAW the VA Schedule for Rating Disabilities (VASRD) §4.97, diagnostic code (DC) 6846, the CI should be asymptomatic and have no physiologic impairment for a 0% rating. Furthermore, IAW the VASRD §4.97 general rating formula for restrictive lung disease, a DLCO of 58% warrants a 30% rating. After due deliberation, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a permanent separation disability rating of 30% for the sarcoidosis with myopathy. It is appropriately coded 6846, and meets criteria for the 30% level.

Hip Condition. In April 1997, the CI was evaluated for hip pain. MRI revealed bilateral osteonecrosis of the femoral heads. He underwent a core decompression procedure on both of his femurs. The CI did well post-operatively, but he continued to have bilateral hip pain. It was decided to add the hip condition to his MEB. At his February 1998 MEB exam, his hip scars were well healed. Range-of-motion (ROM) is summarized in the chart below. Both hips had a positive Stinchfield test (pain with hip flexion against resistance), and both had pain at the extremes of motion. His hips were re-evaluated in November 2003. At that exam, he was able to stand and sit without difficulty. He could squat to 40-45 degrees of hip flexion. Strength testing of his lower extremities was 5/5. X-rays showed relatively well preserved hip joints without evidence of femoral head collapse. There was no evidence of increasing sclerosis or subchondral cyst formation, and joint space was well preserved. Hip ROM is shown below.

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| Goniometric ROM –  Hips | MEB  (19980205) | TDRL Re-eval  (20031112) |
| Flexion (125⁰ is normal) | Right=90⁰ / Left=100⁰ | Right=100⁰ / Left=100⁰ |
| Extension (0⁰ is normal) | (not measured) | Right=10⁰ / Left=10⁰ |
| Abduction (45⁰ is normal) | (not measured) | Right=35⁰ / Left=35⁰ |
| Comment | Pain with motion | No mention of pain |

Once again, the Board carefully reviewed all of the evidence. The Army PEB combined the CI’s bilateral hip pain into a single unfitting condition called “bilateral osteonecrosis of the femoral heads.” The Board evaluated whether or not it was appropriate for the two hips to be “bundled” together. The Board must determine if the PEB’s approach of combining the hips under a single code and rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW the VASRD. If the Board judges that two or more separate ratings are warranted; however, it must satisfy the requirement that each “unbundled” condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that the chronic painful condition in each hip, separately, would have rendered the CI unable to perform his required military duties. Accordingly, the Board recommends a separate service disability rating for each hip. The Board then examined the PEB reconsideration that was done on 1 April 1998. The Board determined that the adjudication on 1 April 1998, rating the osteonecrosis at 40% (20% for each hip) was correct and appropriate. The Board then directed its attention to its permanent rating recommendation, based upon the evidence described above. In November 2003, after the TDRL period, the CI’s hip condition was re-evaluated at Womack Army Medical Center, Fort Bragg, NC. The hip condition had improved from the previous evaluation in 1998. The limitation of hip motion was essentially non-compensable based on the VASRD §4.71a diagnostic codes for loss of hip motion (5250 through 5253). 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. At that time (November 2003), the CI was using a cane to ambulate and complained of bilateral hip pain with motion. After due deliberation, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a permanent separation disability rating of 10% for each hip, appropriately coded 5299-5255 IAW VASRD §4.40, §4.45, §4.59, and §4.71a.

Remaining Conditions. Degenerative joint disease (DJD), posttraumatic stress disorder (PTSD), Graves’ disease, uveitis, myositis, dental disorder, shoulder pain, rectal bleeding, headaches, low back pain (LBP), sinusitis, erectile dysfunction (ED), hemorrhoids, rhabdomyolysis, cellulitis, abscess, gastroesophageal reflux disease (GERD), vitamin B-12 deficiency, folic acid deficiency, upper respiratory infection (URI), injuries to both lower extremities, radiation poisoning, right hand condition, pseudofolliculitis barbae (PFB), Raynaud’s disease, nightmares, restless leg syndrome (RLS), kidney disorder, liver disorder, chronic fatigue, broken ribs, broken nose, head injury, exposure to DU, Gulf War Syndrome (GWS), hypertension (HTN), and several other conditions were also noted in the file. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined that none of the stated conditions were subject to service disability rating. The Board does not have the authority 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. In the matter of the sarcoidosis, the Board unanimously recommends a permanent separation rating of 30%, coded 6846 IAW VASRD §4.97. In the matter of the hip condition, the Board unanimously recommends permanent separation rating of 10% for each hip, coded 5299-5255 IAW VASRD §4.40, §4.45, §4.59, and §4.71a. In the matter of the DJD, PTSD, Graves’ disease, uveitis, myositis, dental disorder, shoulder pain, rectal bleeding, headaches, LBP, sinusitis, ED, hemorrhoids, rhabdomyolysis, cellulitis, abscess, GERD, vitamin deficiencies, URI, injuries to both legs, radiation poisoning, right hand condition, PFB, Raynaud’s disease, nightmares, RLS, kidney disorder, liver disorder, chronic fatigue, broken ribs & nose, head injury, DU exposure, GWS, HTN, or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified to reflect a permanent combined 40% disability retirement as below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **PERMANENT**  **RATING** |
| Sarcoidosis, with Myopathy | 6846 | 30% |
| Osteonecrosis, Right Femoral Head | 5299-5255 | 10% |
| Osteonecrosis, Left Femoral Head | 5299-5255 | 10% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110530 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 XXXXXXXX, AR20120007689 (PD201100424)

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 40% 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 40% 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 XXXXXXX

Deputy Assistant Secretary

(Army Review Boards)