RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100442 SEPARATION DATE: 20060511

BOARD DATE: 20120918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard SGT/E-5 (88M, Heavy Equipment Driver), medically separated for a right biceps tendon tear with decreased elbow mobility. His unit was mobilized in 2004 for Iraq, and he injured his (dominant) right upper arm in a fall during training. He was diagnosed with a distal biceps tendon rupture which ultimately required surgical repair. He additionally suffered a right knee meniscal injury in 2004, for which surgery was recommended. Neither condition could be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent U3/L3 profile and referred for a Medical Evaluation Board (MEB). The right elbow and right knee conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The CI subsequently declined surgery for the right knee, stating that the pain had resolved; and an MEB addendum to that effect was forwarded to the PEB. Also addressed by the MEB and forwarded on the DA Form 3947 were four other conditions, listed in the rating comparison chart below, judged to meet retention standards. The PEB, via an administrative correction by the US Army Physical Disability Agency (USAPDA), adjudicated the right biceps tendon tear/elbow condition as unfitting; which it rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The right knee condition and the four remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The application states simply “Hyperlipidemia, Diabetes mellitus, Environmental allergies, Hearing impairment, Right knee pain, meniscus tear, Right cubital and carpal tunnel syndrome and pain, Right biceps tendon tear and avulsion repair/reconstruction”. There were no further comments or specific requests.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (DoDI) 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting right biceps tendon/elbow condition is addressed below. Although the application does not forthrightly request consideration of the listed conditions, the members judged that it was properly within the purview of the Board to assess the appropriateness of the fitness determinations for the listed conditions which were identified by the PEB (right knee, right cubital tunnel, right carpal tunnel, hyperlipidemia); and, recommend ratings if indicated. The other conditions listed in the application, or any condition or contention outside the Board’s defined scope of review; remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060414** | **VA (4½ Mos. Post-Separation) – Effective 20060512** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
|  Bicep Tendon Tear, Right Elbow | 5305 | 10% | S/P R Bicep Reconstruction | 5305 | 10% | 20060930 |
| Meniscus Tear, Right Knee  | Not Unfitting | DJD, R Knee S/P Meniscus Tear | 5260-5010 | 10% | 20060930 |
| Right Cubital Tunnel Syndrome | Not Unfitting | R Cubital Tunnel Syndrome | 8515 | NSC | 20060930 |
| Right Carpal Tunnel Syndrome | Not Unfitting | R Carpal Tunnel Syndrome | 8716 | 10% | 20060930 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 10% | 20060926 |
| Hyperlipidemia | Not Unfitting | Dyslipidemia | 7199-7101 | NSC | 20060926 |
| No Additional MEB/PEB Entries. | R Shoulder Tendonitis | 5201-5024 | 10% | 20060930 |
| DJD, L Shoulder | 5201-5010 | 10% | 20060930 |
| Chondromalacia, L Knee  | 5260-5014 | 10% | 20060930 |
| 0% X 3 / Not Service Connected (NSC) x 2 Additional | 20060930 |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s implied contention for ratings for the four conditions listed above which were determined to be not unfitting by the PEB, and notes that its recommendations in that regard must comply with governance for the Disability Evaluation System (DES). While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short the service member’s career; and the Board’s assessment of fitness determinations is premised on the MOS-specific functional limitations in evidence at the time of separation. The Department of Veteran Affairs (DVA), however, 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 his degree of impairment vary over time. Should the Board judge that any contested condition was most likely incompatible with MOS requirements; a disability rating IAW the VASRD will be recommended.

Right Biceps Tear/Elbow Condition. The CI was mobilized in February 2004; and, although the date of his injury is not clarified in the record, it occurred soon afterwards when he fell during physical training. A distal biceps tendon tear was identified on magnetic resonance imaging (MRI) during that period, but the surgical repair was not undertaken until March 2005. The CI underwent an extensive period of physical therapy (PT) and rehabilitation efforts post-operatively, but continued to suffer restricted use of his right elbow. Post-operative notes reflect adequate healing, without contractures or fascial defects. Numerous outpatient range-of-motion (ROM) measurements for flexion, extension, pronation, and supination of the right elbow are in evidence. All documented modest to moderate ROM reductions, but all were in the noncompensable or minimum compensable (10%) ranges; except for a significantly disparate PT exam 6 months prior to separation noting 90 degree flexion (ratable at 20% via code 5206) and 38 degree pronation (ratable at 30% via 5213). A statement from the Medical Officer of the CI’s Community Based Health Care Organization in September 2005 stated that optimal therapeutic benefit had been achieved and recommended return to duty. Clearly this did not occur, and there is no explanation on record. A comprehensive functional assessment was performed 2 months prior to separation, and is excerpted below.

He does obviously appear to have some limitation to his R elbow. He was measured at -10 degrees for right elbow extension and 130 degrees for flexion. He is very guarded and it makes it difficult to determine his true range of motion. … His efforts on grasp strength testing are strictly inconsistent and self limited.

It was concluded that “he does exhibit some limitations but also a behavioral component which may make him undesirable for continued service in the U.S. Army.” The narrative summary (NARSUM) characterized the pain as “severe” and aggravated by arm position. The physical exam was cursory, noting a nonspecific decreased ROM. The VA Compensation and Pension (C&P) exam (4-months post-separation) documented that the CI was working in a warehouse loading and unloading trucks, although using an elbow brace at work. His baseline pain was rated 4/10, with frequent flares to 8/10. The C&P exam noted a well healed surgical scar, but with a “lump deformity” of the contiguous biceps muscle. The ROM measurements were -10⁰ extension (minimal compensable -45 degree) and 120 degree flexion (minimal compensable 100 degree; 110 degree = 0%) with pain at terminal excursion.

Before addressing its rating recommendation for the biceps tendon injury at the elbow, the Board must acknowledge that there is clear evidence that the CI suffered a right shoulder injury during the training fall which was independent of the distal biceps tendon rupture. The service treatment record (STR) notes consistent complaints of shoulder pain associated with the elbow pain both after the injury and post-operatively. There was persistent ROM limitation at the shoulder, which was accurately rated at 10% by the VA. The Board deliberated if separate shoulder and elbow ratings could be recommended; but, there were significant impediments to separate shoulder rating. The biceps tendon injury at the elbow was the primary focus of treatment; it was the condition that was profiled; and, it was the condition triggering MEB proceedings. Establishing the shoulder as independently unfitting would thus require a considerable degree of speculation. Furthermore, since a distinct shoulder condition was neither adjudicated by the PEB nor requested in the application; there are self-apparent challenges to the Board’s scope for incorporating a separate shoulder rating in its recommendations. All members agreed therefore that a disability rating for the contiguous shoulder injury was not a viable recommendation.

The Board directs attention to its rating recommendation for the biceps tendon/elbow condition based on the above evidence. Members first deliberated the optimal coding choice. The PEB and the VA both rated under the 5305 muscle code, which is anatomically accurate for the site of the tendon injury and surgery. Both the PEB and the VA assessed the muscle disability as ‘moderate,’ yielding a 10% rating under 5305. Since pain and limited ROM at the elbow appear to be the unfitting disability; rating under any of the elbow limitation of motion codes (5206, 5207, 5213) would be appropriate to the case. Without assigning inappropriately weighty probative value to the outlier PT exam, however, none of these codes offer a rating advantage. None of the other joint codes available within VASRD §4.71a are applicable to the case. Since rating the muscle disability is not inappropriate considering the nature of the pathology, members concurred that Board rating under the 5305 code was appropriate. The next higher rating under 5305 is 30% for ‘moderately severe’ muscle disability. For ‘moderately severe,’ VASRD §4.56 (evaluation of muscle disabilities) describes a history of “hospitalization for a long period” which was not the case here; and, “loss of deep fascia, muscle substance, or normal firm resistance of muscles compared with sound side,” which was not in evidence (and would not be represented by the “lump deformity” noted by the VA examiner). Some of the functional limitations for ‘moderately severe’ muscle disability referenced in §4.56 were alluded to in the comprehensive functional assessment, but the examiner raised probative value concerns for that evidence as quoted above. Since the historical and physical criteria for the higher rating were not met, and the functional criteria were not compelling even if the probative value concerns were conceded; the members could not find adequate support for recommending a higher rating under 5305. 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 of the right biceps tendon injury/elbow condition.

Contended Right Knee Condition. The CI twisted his knee while running in July 2004. An MRI in August 2004 demonstrated a meniscal (cartilage) tear. An orthopedic note from September 2005 recommended arthroscopic repair, and subsequent entries document pre-operative planning. Knee motion was painful, and mild reduction in ROM was in evidence. There was no instability, locking, gait disturbance or other acute features. The condition was profiled L3 and initially judged to fail retention standards, but was not implicated in the commander’s statement. The MEB’s addendum regarding the condition is excerpted below.

[Preceded by clinical history and findings.] Based on these findings, SM was scheduled for a right knee arthroscopy and partial medial menisectomy that was to be performed on October 28th, 2005. On the day of his preoperative evaluation, October 25, he cancelled his surgery stating that he could not have it done and that it no longer hurting. He has not requested or had any additional visits for his knee since that time. Range of Motion attached [Extension 10⁰, Flexion 105⁰, both with pain, ROM’s noncompensable].

The Board’s main charge with respect to this condition is an assessment of the fairness of the PEB’s determination that it was not unfitting. 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. All members were satisfied that, in light of the CI’s refusal of clinically indicated surgery with the statement that the symptoms had subsided; the PEB was justified in its determination that the condition was no longer unfitting.

Remaining Contended Conditions (Hyperlipidemia, Right Cubital Tunnel Syndrome, Right Carpal Tunnel Syndrome). Hyperlipidemia is not a ratable condition IAW DoD and VA regulations and will not be discussed further. The right ulnar (cubital) and median (carpal) nerve symptoms were confined to pain and tingling, without motor involvement. These neuropathies may have been associated with the arm injury (or the ulnar with the surgery), although that is not clear. The NARSUM documents an abnormal EMG (nerve conduction study), although the source study is not in evidence. An EMG performed by the VA (4 months post-separation) was normal. Neither of these conditions was profiled and neither was judged to fail retention standards. The neuropathy conditions were reviewed by the action officer and considered by the Board. There was no performance based evidence from the record that either condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the right cubital and carpal tunnel syndromes; thus no additional disability ratings can be recommended.

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 biceps tear/elbow condition and IAW VASRD §4.56 and §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee, right cubital tunnel syndrome, right carpal tunnel syndrome, and hyperlipidemia conditions: the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Right Biceps Tendon Tear with Surgical Residuals at the Elbow  | 5305 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110601, 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 XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120017705 (PD201100442)

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA