RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: bRANCH OF SERVICE: Army

CASE NUMBER: PD1100456 SEPARATION DATE: 20050609

BOARD DATE: 20120210

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SFC/E-7 (91W, Health Care) medically separated for a soft tissue injury of the left leg and chronic back pain. He was treated for both conditions, but did not respond adequately to fully perform his required military duties. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Degenerative disc disease (DDD) of L4-L5, and healing skin graft of left leg were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (anemia and allergic rhinitis) were listed on DA Form 3947 as medically acceptable. The PEB found the soft tissue defect of left leg unfitting and rated it 20% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). Chronic back pain was also found unfitting, but it was found to have existed prior to service (EPTS) and was not permanently service aggravated beyond natural progression. The CI made no appeals, and was thus medically separated with 20% disability IAW applicable Army and DoD regulations.

CI CONTENTION: The CI states, “Experienced low back pain which eventually left me unable to complete the standard APFT. I received a P3 profile related to degenerative disc disease at the L4-L5 level. While on active duty for OIF/OEFa PEB found that due to the back pain and injuries sustained to my leg that I should be given a disability discharge. The MEB awarded me 20% disability but did not service connect the chronic back pain. After being discharged from the Army and evaluated by the VA, my chronic back pain was determined to be service connected by the VA. This resulted in a total disability rating of 30%. Had the chronic back pain been service connected by the Army, and a disability rating of 30% been awarded, I would have been medically retired from the Army. I feel that the chronic back pain should have been services connected due to the fact that I was on a P3 profile related to this condition, and the fact that the PEB was initiated related to this condition being potentially upgraded to a P4 profile due to changes in the physical profile form during 2004.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army IPEB – dated 20050503** | **VA (4 mo. After Separation) – All Effective 20050610** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Grafted Soft Tissue Defect, Left Lower Leg | 7801 | 20% | Residuals Left Ankle Surgery | 5271 | 10% | 20051025 |
| Scar, Anterior Left Lower Leg | 7801 | 10% | 20051025  |
| Chronic Back Pain | 5299-5242 | EPTS | L4-L5 Lumbar Disc Disease | 5003-5242 | 0%\* | 20051025 |
| Anemia Due to Blood Loss | Not Unfitting | No Corresponding VA Entry for Anemia | 20051025 |
| Allergic Rhinitis | Not Unfitting | No Corresponding VA Entry for Allergic Rhinitis | 20051025 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2 / Not Service Connected x 0 | 20051025 |
| **Combined: 20%** | **Combined: 20%** |

\*VA Rating for Lumbar Disc Disease was later increased to 10%, by a subsequent VA Rating Decision (dated 20060705)

ANALYSIS SUMMARY:

Left lower leg soft tissue injury. The CI cut his left leg with a chainsaw on 26 December 2004, sustaining a deep laceration to the soft tissues of his left lower leg. Three days later, a soleus muscle flap with split thickness skin graft was used to close the soft tissue defect on the left medial calf. Post-operatively, the wounds healed well but he continued to have mild pain. He was issued a permanent profile with restrictions that included no boot wear on the left foot. An MEB was initiated. At his February 2005 MEB evaluation, four months prior to separation, the CI reported mild pain and some loss of left ankle motion. Examination revealed a 14 cm X 6 cm scar at the injury site, and a small area of the wound was still healing. There was no sign of infection. Strength was full, but sensation was decreased in the S1 dermatome below the level of his wound. X-rays of the left leg showed no bony abnormalities. At the October 2005 VA Compensation and Pension (C&P) examination, four months after separation, the CI complained of constant pain and some loss of sensation, but no incapacitation or lost time from work. He was unable to run or do prolonged walking. The large scar on the left lower leg was measured at 17.7 cm X 10.2 cm (13 square inches). The second, smaller scar on the left lower leg measured 8 cm X 2 cm. The skin graft donor site measured 14.8 cm X 7 cm. There was no limitation of function due to fatigue, weakness, lack of endurance or incoordination.

The Board carefully reviewed all evidentiary information available. The February 2005 MEB evaluation was only seven weeks after surgery. The scars were not fully healed and rehabilitation had not been completed. From February to June 2005, the CI continued to improve. On 6 June 2005, three days prior to separation, his plastic surgeon stated that the CI “has done very well. Wound is completely healed….he has full range of motion (ROM) of the leg and ankle joint. He is resuming his normal activities of daily living.” The Board agreed with the PEB determination that the CI’s left leg injury should be considered a deep scar because of the underlying soft tissue damage. The scar measured greater than 12 square inches, but less than 72 square inches, and thus fit the VASRD §4.118 criteria for a 20% rating under code 7801. The Board explored whether a higher rating could be attained by treating the CI’s condition as a muscle injury, and using a muscle code from VASRD §4.56. However, the CI exhibited none of the cardinal signs of muscle disability (loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement). Therefore, his disability must be considered “slight.” The muscle wound, with the subsequent soleus flap, could best be described as a Group XI muscle injury. Under VASRD code 5311, slight impairment is rated 0%. Thus, evaluating the CI’s condition as a muscle injury would not be advantageous. After due deliberation, the Board unanimously recommends a 20% rating for the soft tissue injury of the left leg. It is appropriately coded 7801, and IAW VASRD §4.118, meets criteria for the 20% rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB’s adjudication of the left lower leg soft tissue injury.

Chronic low back pain (LBP). The CI developed back pain in 1997-1998. There was no record of any specific injury or trauma to his back. In 1999, he was treated with chiropractic care and his pain improved. In 2001 he was seen by a civilian spine specialist who diagnosed L4-L5 degenerative disc disease (DDD). The CI was treated non-operatively, with physical therapy and medication. In 2002, he was issued a permanent L2 profile for chronic LBP, with restrictions to include no running or sit-ups. In February 2003, the CI’s division surgeon found him qualified for service. A note by the civilian spine specialist on 29 April 2003 stated that the CI “has done well and now has very little in the way of low back discomfort…. this will not impair him in any way in performing his duties in the Army which he loves.” On 13 July 2003, the division surgeon cleared him for all medical conditions, and continued his L2 profile for LBP. At a pre-deployment health review in December 2004, the CI was deemed deployable within his profile limitations.

At his February 2005 MEB evaluation, four months prior to separation, the CI reported intermittent back pain for 6 years, worsening over the previous 12 months. The pain radiated into the left hip and was exacerbated by prolonged sitting or standing. On examination there was diffuse tenderness to palpation (TTP) from L1 to S1, with no spasm, abnormal contour or abnormal posture. Straight leg raise (SLR) was negative. The neurologic examination was normal, except for diminished sensation distal to the soft tissue wound. Thoracolumbar ROM was mildly limited (see chart below). Signs of intervertebral disk syndrome were absent. The examiner opined that the CI’s “symptoms will likely improve and resolve with activity modifications and time. However it is unlikely that he will be able to resume active duty and military training and service without reoccurrence and/or progression of his symptoms.”

At the October 2005 VA C&P examination, four months after separation, the CI did not complain of back pain. His back was not examined and no diagnosis was given for the back. The February 2006 VA rating decision found service connection of low back (L4-L5) DDD based on the service treatment record, and assigned a 0% disability rating, coded 5242 (degenerative arthritis of the spine). At the June 2006 C&P examination, 12 months after separation, the CI complained of LBP that radiated into the left hip. The pain was not incapacitating and he was able to function with medication. The examiner noted normal gait, posture and spinal contour. There was no muscle spasm, no tenderness, and no radiating pain on movement. In the record, the Board found two relevant ROM exams, and they are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – Thoracolumbar (T-L) | MEB – 4 mo. Pre-Sep(20050215) | VA C&P – 12 mo. Post-Sep(20060613) |
| Flexion (90⁰ is normal) | 90⁰ | 90⁰ |
| Extension (30⁰ is normal) | 30⁰ | 30⁰ |
| Combined (240⁰ is normal) | 210⁰ | 240⁰ |
| Comment | Limited Motion | Painful Motion |

The Board carefully reviewed all the evidence. As noted above, the Army PEB found the LBP condition unfitting. However, it was found to have existed prior to service (EPTS) and was not permanently service aggravated (PSA) beyond natural progression. The Board’s authority for recommending a change in the service’s EPTS determination is not specified in DoDI 6040.44, but is considered adjunct to its DoD-specified obligation to review service fitness adjudications. As with its consideration of fitness adjudications, the Board’s threshold for countering service EPTS 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 Board noted that no valid line of duty (LOD) investigation was in the record to support the CI’s contention that his back pain originated while service eligible. A treatment note dated 15 December 1999 makes no mention of an injury while on inactive duty training (IDT) status or while on active duty. It also says that the back pain has been ongoing. In his statement to the MEB dated 14 March 2005, the CI himself states, “I am aware that this condition was not discovered on active duty.” He also indicates that the back pain was present before 1997-1998. The Board unanimously agreed that the available evidence supports the PEB’s adjudication of the chronic LBP condition as EPTS. Additionally, there is no evidence to support the argument that the chronic LBP was permanently service aggravated beyond normal progression. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB adjudication of the chronic LBP condition. The Board unanimously recommends that the chronic LBP condition be considered EPTS, and therefore ineligible for separation disability rating.

Left ankle condition: At the February 2005 MEB evaluation, the CI complained of mild pain and some loss of motion in the left ankle. On examination, left ankle ROM was restricted, as per the chart below. However, he was only seven weeks post-operative at that point. As his rehabilitation continued, his left ankle ROM gradually returned to normal. On 6 June 2005 (three days prior to separation) his plastic surgeon stated, “he has full range of motion of the leg and ankle joint.” At the October 2005 VA C&P examination, the ankle was normal in appearance. There was full ROM, with no limitation of function due to fatigue, weakness, incoordination, or lack of endurance. Two left ankle ROM exams were in the record, and are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –Left Ankle | MEB – 4 mo. Pre-Sep(20050215) | VA C&P – 4 mo. Post-Sep(20051025) |
| Dorsiflexion (20⁰ is normal) | 0⁰ | 20⁰ |
| Plantar Flexion (45⁰ is normal) | 25⁰ | 45⁰ |

The Board carefully reviewed all the evidence with regard to the left ankle. It was clear that after adequate time had passed to allow for proper healing and rehabilitation, the left ankle had improved remarkably. There was insufficient evidence that the ankle condition caused significant interference with the satisfactory performance of military duties. The Board unanimously agreed that the left ankle condition was not unfitting at the time of separation.

Other PEB Conditions. Anemia and allergic rhinitis were both adjudicated by the PEB as not unfitting. Neither of these conditions were profiled, 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 either of these conditions significantly interfered with satisfactory performance of military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for either of these conditions.

Remaining Conditions. Bronchitis, palpitations, pre-hypertension, left foot foreign body, nerve damage to left lower extremity, scar on left upper thigh (donor site), scar on medial left lower leg, and several other conditions were also noted in the Disability Evaluation System file. None of these conditions were clinically significant during the MEB/PEB period, none carried 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. 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 left lower leg soft tissue injury and IAW VASRD §4.118, the Board recommends no change in the PEB adjudication. In the matter of the chronic back pain condition and IAW VASRD §4.71a, the Board recommends no change in the PEB adjudication. In the matter of the left ankle pain, anemia, allergic rhinitis, bronchitis, palpitations, left foot foreign body, pre-hypertension, 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Soft Tissue Defect of Left Lower Leg  | 7801 | 20% |
| Chronic Back Pain | 5299-5242 | EPTS |
| **COMBINED** | **20%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110522, 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

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

 Deputy Assistant Secretary

 (Army Review Boards)