RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100477 SEPARATION DATE: 20060622

BOARD DATE: 20120111

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SSG/E-6 (25U30, Signal Support System Specialist), medically separated for gout. The CI’s initial symptoms of “pain and swelling on the right big toe” developed in March 2003. He did not respond adequately to treatment nor was he able to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). Gout with flares once per month to every other month, pain (moderate/constant) during a flare was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated gout with flares every one to two months as unfitting, rated 20%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal and was medically separated with a 20% combined disability rating.

CI CONTENTION: “As my VA medical records indicate, my condition and its effect on my health has worsened since the original rating. Gout has caused damage to other joints in my body including my fingers and elbows. I had surgery on my right knee to remove gout crystallization that will likely have to be repeated in the future. I am often incapacitated and utilize a cane or walker for mobilization. My health often hinders my ability to function effectively at gainful employment and causes financial hardship for my family”. He also lists eczema at 10%.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20060510** | **VA (1 Mo. After Separation) – All Effective 20060623** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Gout | 5017 | 20% | Gout | 5017 | 40%\* | 20060717 |
| ↓No Additional MEB Entries↓ | Right Knee Patella Femoral Pain Syndrome | 5024-5258 | 20% | 20060717 |
| 0% x 1  | 20060717 |
| **Final Combined: 20%** | **Total Combined: 60%\*** |

\*Initially 20%, increased to 40%, retroactive to 20060623 due to continuous appellate status, based on the 20070713 exam which indicated deterioration; combined increased from 40%.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the military DES operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for other conditions documented at the time of separation. 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. The 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 the degree of impairment vary over time. The Board notes that the date of separation is not clear in the record and that there is no final DD 214. It therefore used the 22 June 2006 separation date noted in VA rating decision.

Gout. The CI first complained of gout in March 2003, two months after being mobilized. It manifested with pain and swelling of the right big toe. Initially, he was thought to have an ankle sprain and then insect bite before the diagnosis of gout was made. He was treated with allopurinol daily and colchicine and indomethicin for flares. The flares were noted to average once a month, but occasionally he would skip a month and sometimes have two flares in a month. Each lasted around one week. Borderline high uric acid levels were noted as well as increased excretion. Bony erosion consistent with gout was documented on the left second metatarsal phalangeal joint left that correlated with increased uptake on a bone scan. The narrative summary (NARSUM) exam was accomplished 17 February 2006, four months prior to separation. No swelling, effusion or redness was present and range-of-motion was full. Examination of the right foot was otherwise unremarkable with normal sensory, motor, neurological and vascular exams. It was noted that between flares, he could do all soldiering activities, but that he was on limited duty during a flare which would impact his ability to deploy. The VA Compensation and Pension (C&P) exam was 17 July 2006, one month after separation. Flares were noted to last three days and to require the use of a cane during a flare. Again, the frequency was noted to vary between once every one to two months. Examination of both feet was normal with no erythema, tenderness or effusion noted. Sensory and motor exams were normal. Laboratory results at the time of the C&P examination showed the uric acid was elevated at 9.8 and indicates the CI was not taking his allopurinol as significantly lower levels were previously documented with treatment. The IPEB and VA both rated the gout at 20% and coded it 5017, gout. The VA, however, increased the rating to 40% on 2 November 2007, retroactive to separation, based both on the increased frequency and duration as well as additional affected joints, all documented on the 13 July 2007 exam, over one year after separation. The Board noted that the difference between 20% and higher ratings hinges upon incapacitating flares as well as the total number. The MEB narrative documented that “when he does have a flare-up…many times he will use a cane to ambulate and puts on flip-flops.” It was noted that his real problem “lies when he has (a) flare-up of his gout, however, which requires that he have limited duty, ambulate with a cane and occasionally requires quarters, wearing soft shoes…” The commander noted that he “has been able to perform duties assigned to him within the limits of his profile.” No periods of incapacitation were documented in the NARSUM or the C&P history. The Board considered if flares occurring 6-12 times a year with occasional quarters met the 40% criteria of three incapacitating episodes per year. It noted that he was placed on quarters three times in the year prior to separation: 7 September 2005, 18 April 2006 and 30 May 2006. The Board reviewed the clinical notes for each visit and notes that at the 18 April 2006 visit, the CI was noted to “be in no acute distress” and “did not appear uncomfortable.” It is not clear from the record why he was placed on quarters; however, the record does not support that he was incapacitated from gout. After due deliberation, in consideration of the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that this threshold has not been met and that there was insufficient cause to recommend a change from the PEB fitness adjudication for the gout condition.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for eczema and his right knee. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined, therefore, that none of the stated conditions were subject to Service disability rating.

Remaining Conditions: Other conditions identified in the DES file were low back pain (LBP) and shortness of breath with exercise. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically significant 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. No other conditions were noted in the VA rating decision proximal to separation. 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 gout condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the right knee pain, eczema, LBP and shortness of breath with exercise or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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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** |
| Gout | 5017 | 20% |
| **COMBINED** | **20%** |

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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

 President Physical Disability Board of Review

