RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100519 SEPARATION DATE: 20050331

BOARD DATE: 20120328

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Guard Reserve (AGR) SSG/E-6(79R, Recruiter), medically separated for Crohn’s disease*.* The CI’s condition stabilized with initiation of medications; however, he was not able to perform his daily duties as a recruiter, was issued a permanent P3/L2 profile, and underwent a Medical Evaluation Board (MEB). The MEB forwarded “Crohn’s disease” to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as conditions meeting retention standards. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated “Crohn’s disease” as unfitting, rating it 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The “pes planus and bilateral patellofemoral syndrome (PFS)” conditions forwarded by the MEB were adjudicated by the PEB to be not unfitting. The CI made no appeals and was medically separated with a 10% disability rating.

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CI CONTENTION: The CI states: “I was never rated for the condition of depression anxiety. Pes planus, back pain, knee pain, my Crohn’s was rated lower than the VA.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20041214** | **VA (14 Mo. Pre & 6 After Separation) – All Effective Date 20050401** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Crohn’s Disease | 7299-7323 | 10% | Crohn’s Disease with Hiatal Hernia | 7346-7323 | 30% | 20050930 |
| Pes Planus | Not Unfitting | Bilateral Pes Planus | 5276 | 10%\* | 20040217 |
| Bilateral Patellofemoral Syndrome | Not Unfitting | Left Knee Patellofemoral Syndrome | 5024 | 10% | 20040217 |
| Right Patellofemoral Syndrome | 5024 | 10% | 20040217 |
| ↓No Additional MEB/PEB Entries↓ | Depression & Anxiety Disorder Associated with Crohn’s Disease with Hiatal Hernia | 9400-9434 | 70%\*\* | 20050930 |
| Chronic Thoracolumbar Strain | 5237 | 10% | 20040217 |
| 0% x 3 |
| **Combined: 10%** | **Combined: 90%\*** |

\*Increased to 30% effective 20060120. This did not affect the overall rating of 90%.

\*\*Rating was initially 50% and later was increased to 70% effective 20050401, the day after separation.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition merits consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Crohn’s Disease Condition. The CI developed symptoms of abdominal pains, weight loss, and bloody diarrhea in September 2003. After a 5 month gap in medical care, the CI was seen by a community GI specialist who performed a colonoscopy in March 2004. The colonoscopy revealed findings that were nonspecific; however, early inflammatory bowel disease, particularly Crohn’s disease could not be entirely excluded. The pathology from the colonoscopy revealed no crypts or foci of inflammation which was consistent with Crohn’s disease. During this time, the GI specialist noted in May 2005, that the CI had lost 15-20 pounds and the GI specialist noted that during stressful periods Crohn’s could exacerbate and flare-up. The GI specialist further opined that the CI was not ready to return to the Army until his weight was improved. The CI lost thirty-nine pounds and he was started on medication (Asacol and Aciphex) for the prevention of symptoms associated with Crohn’s disease. The commander’s statement in September 2004 indicated that the CI was limited from the Crohn’s disease as he required frequent physician visits and was unable to maintain the flexible schedule pertinent to his MOS. His stamina was limited and prevented him from keeping up with the fast pace of his environment such as the risk of spending a lot of time on the road in the morning and later in the evening.

The MEB examination 5 months prior to separation indicated that the CI’s condition had stabilized with the initiation of medications and subsequent weight gain, although the CI still suffered from slight occasional abdominal pain. His weight had previously been 253 and had decreased as low as 215 and his current weight was noted to be 239. A weight of 235 was recorded on the VA Compensation and Pension (C&P) examination dated February 2004. The MEB examiner further noted that the CI was not able to consume MRE’s and that he would require frequent evaluations of the Crohn’s disease ranging from serial colonoscopies to oral medications and eventually intravenous medication. The Crohn’s disease caused the significant functional limitations of an inability to consume continuous MRE’s--the CI would require dietary flexibility and he was unable to perform vigorous aerobic activity. In September 2005, the CI underwent an esophagogastroduodenoscopy (EGD) for worsening gastroesophageal reflux (GERD) and was found to have a moderate sized hiatal hernia and gastritis.

The VA C&P examination 6 months after separation noted that the CI had total remission of his disease approximately 4 months out of the year. During the remainder of the year he would have flare-ups on the average of once every 3 to 4 months with 8 to 10 stools daily with bloody material and abdominal cramping which would last for a week at a time with spontaneous stoppage. His food intake would decrease during these flare-ups as the physical act of eating would trigger a bowel movement and he would therefore eat less. This examination also documented a decrease in weight from 250 to 190 pounds over the previous 6 months; this is 25 pounds less than the minimum weight noted on the MEB examination and 49 pounds less than the current weight noted on the MEB examination. This documents a 49 pound weight loss over 10 months. The CI also required dietary restrictions of reduced fiber and fruit. A VA note in December 2005 indicated that the CI’s Crohn’s disease was controlled with medication; however, there was stooling four times a day and diarrhea approximately every three weeks.

The PEB coded the Crohn’s disease 7299 analogous to 7323 colitis, ulcerative rated at 10% (moderate; with infrequent exacerbations) and the VA coded the Crohn’s disease with hiatal hernia as 7346 Hernia, hiatal analogous to 7323 Colitis, ulcerative at 30% (moderately severe; with frequent exacerbations). The commander’s statement indicated that the CI’s condition required frequent physician visits for the Crohn’s disease, thus implying frequent exacerbations.

While the narrative summary (NARSUM) indicated that the CI suffered from slight occasional abdominal pain, it did not specify the frequency of disease flare-ups with periods of increased cramping and frequency of diarrhea. The VA C&P examination provided a thorough history of the CI’s frequency of Crohn’s disease exacerbations and documented a 49 pound weight loss from the time of the MEB examination. During 8 months of the year the CI would have significant flare-ups every 3 to 4 months that lasted for a week. During these flare-ups he would have 8 to 10 bloody stool stools per day along with abdominal cramping. He was unable to maintain adequate intake of food due to these flare-ups. The VA considered this to be moderately severe disease with frequent exacerbations and applied a 30% rating. The next highest rating requires severe disease with numerous attacks a year and malnutrition with health only fair during remissions. Although the CI had significant weight loss, there is no evidence of malnutrition or ill health during his periods of remission and these criteria are not met. The VASRD prohibits separate ratings for Crohn’s disease and hiatal hernia and therefore the VA rated on the predominant symptoms of Crohn’s disease. The Board reviewed the criteria for a 10% rating versus a 30% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the Crohn’s disease condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were pes planus and bilateral PFS conditions. These conditions were profiled; however, the profile was designated as an L2 for both of these conditions. This level of profile does not require a medical evaluation board and in general, does not render a Soldier unfit for continued service. Neither condition was implicated in the commander’s statement or noted as failing retention standards. Both conditions 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 required duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should also be considered for back pain and depression. Both of these conditions were reviewed by the action officer and considered by the Board. These conditions were not profiled, implicated in the commander’s statement, or noted as failing retention standards. 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 neither of the stated conditions was subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were hay Fever, chest pain and hiatal hernia. neither hay fever nor chest pain was significantly clinical during the MEB period, neither carried attached profiles, and neither was implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating. The VASRD prohibits separate ratings for Chrohn’s disease and hiatal hernia. 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 Crohn’s disease condition, the Board unanimously recommends a rating of 30% coded 7299-7323 IAW VASRD §4.114. In the matter of the pes planus and bilateral PFS conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the back pain, depression, hiatal hernia, hay fever, and chest pain, 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 as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Crohn’s Disease | 7299-7323 | 30%  |
| **COMBINED** | **30%**  |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110713, 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

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 30% 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 30% 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

 Deputy Assistant Secretary

 (Army Review Boards)