RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Air force

CASE NUMBER: PD1100526 SEPARATION DATE: 20070924

BOARD DATE: 20120127

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air National Guard SSgt/E-5 (13P051, Security Forces Craftsman) medically separated for a left wrist condition. He injured his left wrist during a training excise, and later underwent surgical repair of a torn ligament (scapholunate). Rehabilitation measures were fairly successful; but, the orthopedic surgeon advised that the CI would not progress to a level of function commiserate with the physical demands of his Air Force Specialty (AFS) or AF physical fitness standards. He was issued P2 and U4 profiles and referred for a Medical Evaluation Board (MEB). Left wrist pain was forward to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the left wrist condition as unfitting, rated 10% referencing the Veterans Administration Schedule for Rating Disabilities (VASRD); and, adjudicated obesity as category III – a condition that is not separately unfitting and not compensable or ratable. Since this condition is not ratable IAW DoD or VA regulations, it will not be discussed further. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “I was deemed unfit because the injury to my wrist was determined to be severe enough that I could no longer perform my duties as a security forces member (3P071). I *was* also deemed permanently unqualified for world-wide deployment, which meant that I could not be cross-trained into another career field. I had almost 13 years of total service when I was discharged, and was 7 years short of retirement eligibility. Due to the injury of the wrist, I was not able to get any type of civilian job that required me to carry a weapon. I was a criminal justice major in college, and have worked my entire professional career in the criminal justice field. … I feel that due to the fact that I lost my military career as well as having the choices in my chosen career field limited because of my injury, my rating should have been higher than 10 percent. … In my current job, I do a large amount of typing, which is a major part of my work, and the wrist is in pain from beginning to end. … I also received a 0 percent rating for hypertension, which I was not diagnosed with until I was sent home early form [sic] my deployment due to my hand injury. I was placed on high blood pressure medication, and still continue to take it today to help keep it under control. Without the medication, my readings are very high, and the my [sic] risk for heart problems increases.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070710** | | | **VA (~1 Mo. After Separation) – All Effective 20070925** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Wrist Pain | 5099-5003 | 10% | Residuals, Left Wrist | 5215 | 10% | 20080107 |
| Obesity | CAT III | | No VA Entry | | | 20080107 |
| No Additional MEB/PEB Entries | | | 0% x 2 / Not Service Connected x 1 | | | 20080107 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

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 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 of 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 further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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.

Left Wrist Condition. The CI initially injured his wrist in a fall from atop a tactical vehicle onto his outstretched left hand. Subsequent radiographs showed evidence of scaphoid-lunate instability; and, he underwent surgical repair of a torn scapholunate interosseous ligament with good results. After 10 months of rehabilitation, however, he did not achieve sufficient restoration of left wrist function to perform critical duties associated with his AFS. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. The contralateral measurements are included in the summary chart below for comparison purposes.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Wrist ROM | PT ~3 Mo. Pre-Sep | | VA C&P ~3 Mo. Post-Sep | |
| Left | Right | Left | Right |
| Dorsiflexion/Extension (0-70⁰) | 34⁰ | 85⁰ | 40⁰ | 45⁰ |
| Palmar Flexion (0-80⁰) | 50⁰ | 88⁰ | 30⁰ | 45⁰ |
| Ulnar Deviation (0-45⁰) | 30⁰ | 45⁰ | 10⁰ | 10⁰ |
| Radial Deviation (0-20⁰) | 20⁰ | 27⁰ | 5⁰ | 10⁰ |
| §4.71a Rating\* | 10% | --- | 10% | --- |

\* Conceding §4.59 (painful motion) as below.

At the MEB exam the CI reported improvement in strength and ROM of the left wrist; but, continued pain with activity, and impediment of critical AFS functions such as properly clearing his weapon or subduing an assailant. Formal functional testing conducted seven months prior to separation confirmed diminished functional capacity of the left wrist, but also described significant inconsistencies in both effort and function during and after testing. The MEB examiner noted decreased range of motion with extension and flexion, dorsal tenderness, and a well-healed surgical scar. Formal ROM measurements were performed by physical therapy. At the post-separation VA Compensation & Pension (C&P) exam the CI described daily wrist pain with heavy activity; but, no interval history of additional injury, trauma, or surgery to the wrist. He was employed as a probation officer with no lost work time. ROM measurements for the injured left wrist and the uninjured right wrist were similar. Both wrists were stable. There was no evidence of additional loss of motion with repetitions (DeLuca deductions). VA radiographs were normal other than expected post-surgical findings. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The Board first considered the PEB’s rating under the analogous 5003 code (degenerative arthritis). Given the non-compensable loss of ROM of the left wrist, radiographic and intra-operative evidence of damage, and adequate evidence of painful motion; both the coding and 10% rating are adequately justified. The VA rating decision indicates that the 10% rating was based on a compensable loss of ROM, but that is clearly incorrect. However, with application of §4.59 (painful motion) a 10% rating under the 5215 code is justified. There is no alternative coding or rating option available IAW VASRD §4.71a that would yield a higher rating for the wrist condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the left wrist condition.

Other Contended Conditions. The CI’s application asserts that a service rating should be considered for hypertension. The service medical file at separation reveals that the blood pressure during the MEB period was sub-optimally controlled, but not dangerously elevated; and, it should be noted that the CI had recently been switched to a new medication due to side effect. The blood pressure recorded on the narrative summary (NARSUM) was 142/92. There were no medical complications or symptoms related to hypertension at separation; and, the condition was accurately rated 0% by the VA immediately following separation. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the hypertension condition was not subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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 wrist condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended hypertension condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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** |
| Left Wrist Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110717, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXXXXXXXXX

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2011-00526

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

XXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings