RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX. BRANCH OF SERVICE: Army

CASE NUMBER: PD1100617 DATE OF TEMPORARY RETIREMENT: 20030726

BOARD DATE: 20120522 Date of Permanent SEPARATION: 20050211

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (95B, Dog Handler) medically separated for a left (non-dominant) hand/wrist and right ankle conditions. The right ankle was fractured during training in 1997, and required surgical intervention with permanent hardware. The CI was placed on an L3 profile at that time, which remained in-place as near as can be ascertained from the record. The hand condition resulted from a dog bite injury sustained on duty in 2001, which required surgical intervention and was complicated by complex regional pain syndrome (CRPS). The condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. A permanent U3 profile was added to the L3 profile, and the CI was referred for a Medical Evaluation Board (MEB). Both the left hand/wrist and right ankle conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Gastroesophageal reflux disease (GERD) was addressed by the MEB, and forwarded on the DA Form 3947 as “not ratable.” The PEB adjudicated both orthopedic conditions as unfitting; rating the left hand/wrist CRPS condition 20%, citing criteria of the Veterans’ Administration Schedule for Rating Disabilities (VASRD); and, rating the right ankle condition 10%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. No comment appeared on the PEB’s DA Form 199 regarding the GERD condition, and the CI was placed on the Temporary Disability Retired List (TDRL). After 19 months on the TDRL, the CI’s conditions were considered to be stable but still unfitting. At that time the PEB retained the 20% CRPS rating, but lowered the ankle rating to 0%. These determinations were affirmed by a Formal PEB (FPEB) on appeal; and, the CI was permanently separated with a combined disability rating of 20%.

CI CONTENTION: “The rating should be changed as the doctor at [military treatment facility] was negligent in his duties and did not complete a full examination of my injuries. He was more worried about impressing a young Army lieutenant in training at the hospital that was present during my appointment. The injuries I incurred while on duty stopped my progression in promotion. Also the doctor stated in his report that I was not taking medication for my condition. This is false. I was taking medication for the injuries. I was a career soldier and because of these injuries my career ended. I am not able to work in my profession in which the military trained me to do. This is due to the loss of full use of my right ankle and left wrist and hand. … [elaborates historical and clinical details of the two orthopedic conditions.] … The doctors at the VA hospital are amazed that my injuries were not rated higher by the military. I was discharged and deemed unfit for duty.” He does not contend for rating of his gastrointestinal disorder or other conditions. Subsequently forwarded by the CI, and reviewed by the Board, was a VA revaluation examination dated 7 December 2011.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 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 ratings for unfitting conditions will be reviewed in all cases. The gastrointestinal disorder (not requested for review), or any other conditions or contention outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service FPEB - 20050105** | | | | **VA (~3 Mo. Prior to Adjudication Date)\* – All Effective 20030727** | | | |
| **On TDRL - 20030314** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **Condition** | **TDRL** | **Sep.** |
| CRPS, Left Wrist/Hand | 8599-8514 | 20% | 20% | CRPS, Left Wrist/Hand | 8699-8615 | 20% | 20041201 |
| Chronic R Ankle Pain | 5099-5003 | 10% | 0% | Traumatic Arthritis, R Ankle | 5010-5271 | 10% | 20041201 |
| GERD | Forwarded “Not Ratable” | | | Duodenitis | 7399-7307 | 10% | 20041201 |
| **Combined: 20%** | | | | **Combined: 20%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected conditions continue to burden him, as further evidenced in the more recent VA rating evaluation which he forwarded. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Department of Veterans' Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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 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 6044.40, however, resides in evaluating the fairness of DES rating decisions for disability at the time of separation. Although the VA rating evaluations performed proximate to permanent separation (as charted above) are probative to the disability as permanently rated by the PEB, the VA evidence more distant to the date of permanent separation is significantly less probative. The Board further acknowledges the CI’s assertion that his medical evaluation was “negligent;” but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of the rating determinations at separation, as elaborated above.

Left Hand/Wrist Condition. The CI’s dog bite injury occurred in December 2001 and entailed complex lacerations, contaminated non-displaced fractures, and a radial nerve injury. Prompt surgical intervention included irrigation and debridement, but no tendon repair or hardware placement. Although the precise timing is not clear from the record, the complication of CRPS was recognized in 2002; and the CI was referred to a regional pain center. A nerve block procedure was discussed and deferred. CRPS is a fairly uncommon, but well recognized, peripheral nerve dysfunction following trauma. It is characterized by hypersensitivity of the involved nerves, and results in severe persistent pain out of proportion to that expected from the injury. There are no ancillary or exam findings which are expected to be abnormal or diagnostic. The CI’s case is typical for the diagnosis, and his reported severity of symptoms is concordant with the condition. The 2003 MEB examination noted radial hand and wrist tenderness, with decreased range of motion (ROM) of the thumb and index fingers (non-compensable), and significant ROM limitations at the wrist. Documented limitations included essential MOS impediments, as well as some activities of daily living. The TDRL reevaluation proximate to separation noted interim occupational therapy at the VA which was “coming along well.” Specific residual limitations were not elaborated. The physical examination was likewise not detailed. It noted “a hypersensitive scar on the dorsum of his left wrist secondary to an injury to the superficial radial nerve;” and, documented the following comments on ROM.

Passively he has full range of motion of wrist and all of his fingers. Actively he has virtually full range of motion of all but his index finger, which he holds in full extension. He states that he is unable to move it except with a great deal of thought and discomfort [followed by expressed skepticism regarding this limitation, based on the passive ROM].

The TDRL examiner’s overall impression was that the condition “has become quite stable” with “no adverse or change” and “if anything things have probably improved slightly since the last examination of July 2003.” A VA Compensation and Pension (C&P) examination performed two months after the TDRL reevaluation (and closer to the date of permanent separation) was significantly more detailed, and did not corroborate the relatively benign findings of the TDRL examiner. This was supplemented and corroborated by a joint C&P exam performed the same day, and a VA neurological consultation performed seven days later. The VA evidence noted chronic pain associated with “weakness and stiffness,” which had forced an occupational change from law enforcement to a supervisory role within his own business. Cited examples of impairment were use of some yard tools and difficulty with buttons. Dorsal hand/wrist tenderness and some hand/forearm atrophy were documented. Measured grip strength on the left was reduced to 18-20 pounds vs 150 pounds on the right (dominant); and, the neurologist documented motor deficits of 3/5 hand flexion and 2/5 extension, with sensory deficits of the hand and first 3 digits. Finger ROM limitations of flexion “only halfway to the palmar crease” were documented; as were modest reductions in goniometric measurements of all 4 planes of wrist motion.

The Board directs attention to its rating recommendations based on the above evidence. By virtue of its clinical features, CRPS should be rated as neuralgia under the applicable §4.124a peripheral nerve code; unless disabilities such as ROM limitation associated with coexistent orthopedic structural injuries achieve a higher rating under alternate criteria. The associated structural injuries in this case did not result in ratable impairments which would achieve a rating higher than 10%; nor, were any such impairments separately ratable without violation of VASRD §4.14 (avoidance of pyramiding). The Board is thus in agreement with rating the CRPS condition analogously for radial nerve impairment (8515, incomplete paralysis; or 8715, neuralgia), concordant with the PEB’s choice. The VA coding was analogous to median nerve impairment, of no import to rating, but not anatomically consistent with the clinical evidence. For the non-dominant extremity, 8515 (or 8715) yields a 20% rating for ‘mild’ or ‘moderate’ impairment; and the next higher rating is 40% for ‘severe’ impairment. The only higher rating (60%) would essentially represent a flaccid useless extremity. The DA Form 199 from the pre-TDRL PEB assessed ‘mild’ impairment, although paradoxically that from the FPEB noted ‘moderate’ impairment. The evidence confined to the TDRL examination would actually support a ‘mild’ characterization, although all members agreed that the proximate VA evidence was significantly more probative; both temporally and qualitatively. With the VA findings in mind, deliberations settled on whether ‘moderate’ (20%) or ‘severe’ (40%) most fairly characterized the CRPS impairment (for TDRL and at permanent separation). Severe impairment connotes debilitating pain with functional limitations on most occupational tasks and domestic chores, and on some essential activities of daily living. Moderate impairment connotes significant and constant pain with functional limitations on some occupational tasks and domestic chores, but little interference with essential activities of daily living. Members concluded that the ‘moderate’ characterization was the closest representation of the impairment in evidence. 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 TDRL or permanent rating determinations for the left hand/wrist CRPS condition. The action officer recommended, and the Board concurred with, application of the code 8799-8714 to reflect rating for neuralgia rather than partial paralysis.

Right Ankle Condition. The right ankle suffered spiral fractures at the distal tibia and fibula in 1997 from an injury during physical combat drills. The CI underwent an open reduction and internal fixation at the time, and he continued to suffer pain attributed to irritation from the hardware. An L3 profile was imposed post-operatively, and all subsequent profiles in evidence carried the same designation. Other than emergency room visits for a re-injury in 1998 and blisters from the hardware in 2001, there is no evidence in the medical record of ongoing treatment or complications. Per the MEB examiner, discussions regarding hardware removal for relief of symptoms had been pre-empted by the hand injury; and, the CI elected to defer that option at the time of TDRL placement. That examination documented the same limitations that were apparent in the longstanding profile. The physical exam noted tenderness over the hardware, with ankle plantar flexion of 55⁰ (normal 45⁰) and dorsiflexion of 15⁰ (normal 20⁰). The pre-separation TDRL examiner documented the following physical exam, “his ankle on the right side has full motion, no instability, no edema, no effusion and no irritability that I can detect.” The overall conclusion was identical to that quoted above for the left upper extremity condition. The pre-separation VA C&P joint examination, cited above for the hand condition, noted that the CI had to rest his foot at work and was able to “do his job satisfactorily but is uncomfortable.” The hardware remained in place. The physical exam noted a normal gait and no impairment of repetitive motion at the foot; tenderness and mild edema at the lateral malleolus; and, ROMs “with some discomfort” of 30-40⁰ plantar flexion and 10-20⁰ of dorsiflexion.

The Board directs attention to its rating recommendations based on the above evidence. The pre-TDRL PEB coded the ankle analogously to 5003 (degenerative arthritis) and rated it 10% for slight and frequent pain IAW the USAPDA pain policy. The DA Form 199 from the FPEB was silent regarding a rationale for its 0% rating. The VA conferred a 10% rating for ‘moderate’ limitation of motion under the single ROM based code for the ankle, 5271. All members agreed that the initial PEB fitness determination was quite open to challenge, given the preceding five years of success in the MOS under the same profile and stable clinical features. By firm precedent and legal opinion, however, the Board does not make an unfavorable recommendation with regard to a fitness determination. The permanent rating of 0% was presumably supported by the USAPDA pain policy, although the evidence from the TDRL reevaluation would not in itself support a compensable rating IAW VASRD §4.71a. The contemporary VA examination, however, was more complete and more proximate to date of final separation; and, reflected a clinical severity and ratable findings fairly equivalent to those documented in the original MEB examination. As per the discussion in the preceding section, members agreed that more probative value weight should go to the VA evidence proximate to permanent separation. Board consensus was that the ROM evidence from that exam could be fairly rated as ‘moderate’ limitation under 5271; and, regardless, either §4.59 (painful motion) or §4.40 (functional loss) were supported to achieve a minimal compensable rating of 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right ankle condition during the period of TDRL and at final separation. The Board agreed on application of the code 5299-5271.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right ankle condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the complex regional pain syndrome affecting the left hand and wrist, the Board unanimously recommends TDRL and permanent disability ratings of 20%, coded 8799-8714 IAW VASRD §4.124a. In the matter of the right ankle condition, the Board by a vote of 2:1 recommends TDRL and permanent disability ratings of 10%, coded 5299-5271 IAW VASRD §4.71a. The single voter for dissent (who did not believe that a compensable rating at permanent separation was supported by the evidence) did not elect to submit a minority opinion. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior TDRL and permanent separation determinations 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** | |
| **TDRL** | **FINAL** |
| Complex Regional Pain Syndrome, Left Hand and Wrist | 8799-8714 | 20% | 20% |
| Surgical Residuals, Right Ankle | 5299-5271 | 10% | 10% |
| **COMBINED** | **30%** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110725, 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 XXXXXXXXXXXXXXX, AR20120010166 (PD201100617)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA