RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100779 SEPARATION DATE: 20080621

BOARD DATE: 20120530

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SFC/E-7 (31B40/Military Police), medically separated for neuropathic pain right inguinal region*.* The CI had a right inguinal hernia that was initially repaired in July 2004. The hernia was successfully treated but he developed chronic right groin pain that was refractory to all surgical and medical treatment and significantly interfered with his ability to perform required tasks or wear military gear. The neuropathic pain right inguinal region condition did not improve adequately with treatment (including pain management) and the CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Back pain, posttraumatic stress disorder (PTSD), gastroesophageal reflux disease (GERD), hypertension, and hyperlipidemia conditions, identified in the rating chart below, were determined to be medically acceptable by the MEB and the PEB determined none of these conditions were unfitting. The PEB adjudicated the neuropathic pain right inguinal region condition as unfitting, rated 0%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI appealed and a Reconsideration PEB recommended an increased rating of 10%. A formal hearing had been scheduled for 27 February 2008 but did not occur and he was medically separated with a 10% disability rating.

CI CONTENTION: “I was informed by my representative from the disability board that my condition does not exist in the current format that the Army used for disability ratings. That is was [*sic*] out of date and nerve damage was not in there so there could be no higher rating given for it.” “Due to my injuries from active duty and from the surgeries done I am not longer able to work. l was home on medical for the last year and a half of active duty. I had my last surgery done in Oct 2006 and since then I have had pain from the nerve damage from the surgery. There were more than two nerves cut and I will have little to no quality of life. I am not taken care of by a VA caregiver which is my spouse since I have to have her over 40 hours a week to help me shower, shave, get dressed etc since the pain is consistently 6-8 with my narcotic pain meds. I cannot drive or barely walk. I have a wheelchair and a walker for inside the house. I proudly served my country for over 22 years and would have continued to do so if not for this disability. I loved the Army and my job as military policemen and instructor. The ratings should be revamped due to new conditions arising from the current conflicts and not WW2.”

He additionally lists his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) 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 back pain, PTSD, GERD, hypertension and hyperlipidemia conditions requested for consideration and the unfitting neuropathic pain right inguinal region condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining contended right wrist condition is not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise 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:

|  |  |
| --- | --- |
| **Service Recon PEB – Dated 20080222** | **VA (1 Month Post-Separation) – All Effective Date 20080622** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neuropathic Pain Right Inguinal Region | 8630 | 10% | Hernia Repair with Neuropathy Lower Abdomen | 7338-8630 | 10% | 20080723  |
| Residual Surgical Scar Right Inguinal Area | 7804 | 10% | 20080723 |
| Back Pain | Not Unfitting | Degenerative Disc Disease Lumbar Spine | 5243 | NSC | 20080723  |
| Post Traumatic Stress Disorder | Not Unfitting | Major Depressive Disorder Single Episode | 9434 | NSC\* | 20080723  |
| Gastroesophageal Reflux Disease | Not Unfitting | NO VA ENTRY |
| Hypertension | Not Unfitting |
| Hyperlipidemia | Not Unfitting |
| ↓No Additional MEB/PEB Entries↓ | Healed Right Wrist Fracture (Major) | 5215 | 0%\* | 20080723 |
| Not Service Connected x 12 |
| **Combined: 10%** | **Combined: 20%\*** |

\*PTSD added at 70% and right wrist increased to 10% effective 20101013 with combined rating increased to 80% effective 20101013.

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 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 DVA 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.

Neuropathic Pain Right Inguinal Region. The CI first noted right groin pain in April 2004 during mobilization for deployment to Iraq. He underwent surgical exploration and repair of a right groin hernia in July 2004. Two wound infections occurred post-operatively and resolved by August 2004. However, he continued to have significant pain and returned to the operating room in March 2005 for probable nerve entrapment. The ilioinguinal nerve was thought to be incorporated in the mesh form the previous surgery and it was ligated. The hernia repair was replaced. The CI reported his pain had improved and he felt he could join his unit in Iraq. He did join his unit but continued to have pain. He underwent a third surgery for groin exploration and nerve ligation in October 2006. However, he had no pain relief after this surgery and his pain now radiated up the right lateral abdominal wall and included muscle spasms of the lateral abdominal wall. He was referred to pain management but remained on narcotic pain medications without much relief and he remained unable to perform any significant physical exercise. He was taking both Percocet and Morphine tablets daily. He was not able to perform sit-ups or wear any restrictive clothing across the abdomen and groin area including individual ballistic protection, chemical suits, or other military gear. The MEB narrative summary (NARSUM) examination completed on 8 December 2007 documented tenderness to palpation over the inguinal canal region and no hernia was noted.

At the time of the VA Compensation and Pension (C&P) exam on 23 July 2008, a month after separation, the CI’s pain management specialist had added Gabapentin and Flexeril to the nonsteroidal anti-inflammatory and narcotic medications to treat his pain and muscle spasms. However, the CI only had a fair response to the treatment and his pain was getting progressively worse, up to 8/10. Physical exam revealed a well healed but tender scar, 8cm by 0.3cm in the right inguinal area. Tenderness to palpation was noted in the right inguinal area but abdominal exam was otherwise normal. Neurologic exam was normal with normal strength and reflexes examinations. The CI remained unemployed and the hernia repair with residual pain with history of three surgeries affected the CI’s abilities to perform usual daily activities. Sports were completely prevented and there was a moderate effect on household chores, shopping, exercise, recreation, and traveling.

The initial PEB on 7 January 2008, determined this condition was unfitting noting chronic pain and profile prevented the CI from training for APFT. It rated the condition as 8730 neuritis of ilioinguinal nerve and rated the disability at 0% as equivalent to moderate incomplete paralysis. The CI non-concurred with the findings and requested representation by counsel, and a formal hearing. A Reconsideration PEB convened 22 February 2008 and recommended rating 8630 at 10% as equivalent to severe, incomplete paralysis based on severe, at times excruciating, pain. The VA determined a disability rating for 7338-8630 hernia repair with neuropathy lower abdomen at 10% based on paralysis of the ilioinguinal nerve, noting this is the highest possible rating for injury to this nerve. The VA also rated the tender surgical scar as 7804 rated at 10% based on a painful scar.

The maximum rating for ilioinguinal nerve neuropathy is 10% for severe incomplete paralysis is warranted in this case as it was applied by both the PEB and the VA. However, both the CI’s permanent profile and MEB NARSUM note he is unable to wear chemical defense equipment and other required military gear and this can be attributed to the painful scar. Therefore, a second rating of 10% under 7804 is warranted as well. 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 PEB adjudication for the neuropathic pain right inguinal region condition. However, the Board also concluded that the condition of tender surgical scar should also be rated as 7804 at 10% IAW VASRD §4.118.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were back pain, PTSD, GERD, hypertension, and hyperlipidemia. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness 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. All were reviewed by the action officer and considered by the Board. A statement certifying fitness for duty relative to mental health issues dated 7 December 2007 and signed by the chief of community mental health was present in the record. None of these conditions were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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 neuropathic pain right inguinal region condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the painful scar right inguinal area condition, the Board unanimously recommends a disability rating of 10%, coded 7804 IAW VASRD §4.118. In the matter of the contended back pain, PTSD, GERD, hypertension and hyperlipidemia conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Neuropathic Pain Right Inguinal Region | 8630 | 10% |
| Painful Scar Right Inguinal Region | 7804 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110816, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXX

 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, AR20120010164 (PD201100779)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

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.

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA