RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100790 SEPARATION DATE: 20041029

BOARD DATE: 20120515

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (31B20/Military Police), medically separated for chronic left knee pain, status post (s/p) accidental gunshot wound (GSW from 9-mm pistol). The CI sustained a gunshot wound to his left thigh in Kuwait in March 2003; entrance was in the upper medial thigh and exit was in the lateral knee (patellar) area with a comminuted fracture of the femur. Following debridment and external fixation of the femur, he was evacuated from theater. He underwent a definitive intermedullay (IM) nail rod placement in the femur. He did not respond adequately to extensive therapy, had persistent leg and knee pain, was unable to run, and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Left knee pain, s/p gunshot wound, femur fracture, and s/p IM (intra medulary) nail placement were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated “chronic left knee pain, s/p accidental gunshot wound with nail placement for femur fracture” as unfitting, rated 10%; with specified application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Due to having a metal rod in my body there is a lot of pain when the weather changes. Also when lifting and carrying objects over 25 lbs there is pain. I recently had an MRI done and found Arthritis at the base of spine Doctors have informed me that it is uncommon to have arthritis at such a young age. Also I have noted in my military records that I have trouble sleeping and it wasn’t considered in my disability rating. Also when walking around or even exercising there is a lot of pain. I have gone to the doctor numerous times for the calcium build up in left knee. I have also received cortisone shot to help alleviate the pain. There are days when I wake up and my Left leg is still asleep and I have to stretch and bend it to wake it up. Also there are times when after work or exercise I have to ice down my knee due to swelling. I have gone to the doctor’s office because I am not able to sleep. I have been prescribed Ambient to help with the sleep problems.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The conditions concerning the left leg and knee as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below as part of the review of the service ratings for the unfitting gunshot wound condition. The other requested conditions of spine pain/arthritis and trouble sleeping are 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 PEB – Dated 20040728** | | | **VA (~1 Mo. After Separation) – All Effective Date 20041030** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Knee Pain, Status Post Accidental Gunshot Wound with Nail Placement for Femur Fracture | 5099-5003 | 10% | Retropatellar Syndrome, Assoc w/ Gunshot Wound | 5299-5260 | 10% | 20041208 |
| Residuals Muscle Injury, Lt Thigh | 5318 | 10% | 20041208 |
| Multiple Scars, Lt Thigh | 7804 | 10% | 20041208 |
| Residuals of Injury, Lt Hip w/ Limited ROM | 5299-5252 | 10% | 20041208 |
| Residuals, Fx Lt Femur GSW | 5252 | 0% | 20041208 |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service-Connected x 0 | | | 20041208 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The PEB combined all aspects of the CI’s left upper leg GSW including all knee, hip, muscle and nerve sequale as the single unfitting and solely rated condition, coded analogously to 5003 using the USAPDA pain policy. Although this approach complied with Army policy in place at the time; the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each component of the single traumatic injury are achieved IAW application of the VASRD for the total disability picture from the single GSW. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. All of the Department of Veterans’ Affairs (DVA) ratings above were secondary to the single GSW injury. The Board must exercise the prerogative of separate ratings in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. As discussed above, the issues for adjudication are the various components of the CI’s injury and which portions were unfitting and ratable at the time of separation. The DVA diagnoses of retropatella syndrome (left knee), left thigh muscle injury, multiple scars of the left thigh, left hip pain, and left peroneal neuropathy were all considered sequalae of the left thigh GSW and are considered below.

Left Upper Leg Gunshot Wound with Nail Placement for Femur Fracture: The CI had a 9-mm GSW with entrance in the left upper medial thigh and exit in the lateral knee (patellar) area that fractured the femur. The initial injury also produced an open knee joint wound. He underwent debridment and in-theater external fixation prior to aeromedical evacuation to Germany. Radiographs demonstrated a comminuted fracture through the distal femur, and surgery with an IM nail replaced the external fixitor. The CI underwent extensive physical therapy. Multiple treatment notes indicated hip and knee pain with swelling and crepitus, and asymmetric thigh muscles. The CI was able to walk and perform in-garrison duties and was on non-narcotic pain medications. The CI had complaints of persistent pain in the left knee and thigh especially with prolonged standing, inability to run, occasions of left knee and leg swelling, and the left knee giving out. There did not appear to be specific complaints or evaluations (until the VA exam after separation) of hip pain or lower leg radicular pain. There were leg and knee exams with range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. The narrative summary (NARSUM) and MEB physical (DD Forms 2807-1; 2808; and 2697) are combined as a single summary in the chart below.

|  |  |  |
| --- | --- | --- |
| ROM – Lt Knee | MEB ~4 Mo. Pre-Sep | VA C&P ~1 Mo. After-Sep |
| Flexion (140⁰ normal) | 135⁰ | 130⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ |
| Comment | “full range of motion 0-135 degrees with a goniometer and averaged”; + patellar grind; tender lateral GSW scar; calcific nodule lateral femoral condyle; DD Form 2808-mild L. gastrocnemius atrophy with decreased strength with 5⁰ loss of flexion; LLE sensory normal | 5 cm tender scar, “pain with flexion greater than 130 out of 140 degrees”; tender entrance wound medial thigh/exit wound left lateral patella; “tenderness over the left lateral tibia with pain radiating down his left leg consistent with mild peroneal neuropathy though sensation is intact at rest”; normal stability: L Hip – reduction of 10-20⁰ in abduction and IR from normal |
| §4.71a Rating (Joints-Knee) | 10% | 10% |
| §4.73 Rating (Muscle) | 10-20% | 10-20% (VA 10%) |
| §4.71a Rating (Joints-hip) | Not addressed | 0-10% (VA 10%) |
| §4.118 (Skin) | 10% | 10% |
| §4.124a (Nerve) | 0% | 0-10% (VA none) |

Left Knee Condition. Left knee pain appeared to be the principle component to the PEB unfit determination. All exams demonstrated either patellar grind, tenderness, or painful motion without reaching the flexion or extension limits for rating under the specific codes for the knee. All exams meet the 5003 and/or §4.59 (painful motion) criteria for a 10% rating. Absent the pain policy and IAW VASRD rating only, the PEB coding (5099-5003) is still valid IAW §4.71a (schedule of ratings—musculoskeletal system). The VA coding of 5299-5260 applied §4.59. The choice of VASRD code is irrelevant to rating and therefore no change from the PEB designation is recommended. 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 of 10% for the left knee condition.

Left Thigh Muscle Condition. The Board first considered if the left thigh muscle, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. All members agreed that the thigh muscle injury and open comminuted fracture of the femur with IM rod and nails was an integral part of the CI’s injury and disability that rendered the CI incapable of continued service within his MOS; and, accordingly merits a separate service rating. For rating the thigh muscle injury the Board considered the tenants of §4.55 (Principles of combined ratings for muscle injuries) and §4.56 (evaluation of muscle disabilities) to classify the injury as slight, moderate, moderately severe or severe. The CI had the cardinal signs and symptoms of muscle disability of slight weakness, lowered threshold of fatigue, and fatigue-pain. Impairment of coordination or uncertainty of movement may be related to the muscle pain or the knee pain. The CI had a history of hospitalization, debridement, comminuted femur fracture (open with GSW), and a through-and-through wound with painful entrance and exit scars. There was no evidence of loss of deep fascia or muscle substance or impairment of muscle tonus, or prolonged infection. The Board considered the §4.56, paragraph (a) that “an open comminuted fracture with muscle or tendon damage will be rated as a severe injury of the muscle group involved unless, for locations such as in the wrist or over the tibia, evidence establishes that the muscle damage is minimal,” and paragraph (b) “a through-and-through injury with muscle damage shall be evaluated as no less than a moderate injury for each group of muscles damaged.” The CI had an open comminuted fracture of the femur with overlying muscle injury, debridement, entry and exit wound scars and cardinal signs of muscle injury. There was no “extensive” debridement, prolonged infection, or sloughing of soft parts, intermuscular binding or muscle scarring. The Board majority considered the painful scar and hip painful motion to be as likely as not related to the thigh muscle condition and incorporated those symptoms to adjudicate that the CI’s thigh muscle condition was closest to the moderately severe (20%) rating level IAW §4.56 and §4.71a.

Left Hip Condition. The NARSUM and MEB/PEB did not address the left hip condition. There was no specific hip joint pathology, and the VA exam did not indicate any disability of the right hip. The VA rating for pain-limited motion was adjudged as better attributed to the thigh muscle injury as discussed above. The Board concluded therefore that the left hip condition could not be recommended for additional disability rating.

Painful Thigh Scars Condition. The MEB/PEB did not address the painful thigh scars. By precedent, the Board does not recommend service disability rating for scars unless their presence imposes a direct limitation on fitness. In this case the scars imposed an indirect effect of muscle pain and possible decreased hip and/or knee ROM which was addressed in the knee and thigh muscle discussions above. The Board concluded therefore that painful scars condition could not be recommended for additional disability rating.

Peripheral Nerve secondary to GSW Condition. There was no service documentation of peripheral nerve impairment. The VA exam documented “tenderness over the left lateral tibia with pain radiating down his left leg consistent with mild peroneal neuropathy though sensation is intact at rest.” The MEB exam left gastrocnemius atrophy and decreased strength was not attributed to a peripheral nerve impairment. The CI’s peripheral nerve condition was episodic pain only. The Board must establish a functional impairment linked to fitness in order to recommend separate service rating for radiculopathy associated with the unfitting GSW condition; a threshold clearly not reached by the evidence in this case. The Board concluded therefore that peripheral nerve condition could not be recommended for additional disability 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the left leg was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of “chronic left knee pain, status post accidental gunshot wound with nail placement for femur fracture condition,” as combined in the PEB adjudication, the Board unanimously agrees that it should be rated for two conditions: unanimously as left knee coded 5099-5003 at 10% IAW VASRD §4.71a.; and by a vote of 2:1 as left thigh muscle injury condition coded 5318 at 20% IAW VASRD §4.55 and §4.56. The single voter for dissent (who recommended 5318 at 10%) did not elect to submit a minority opinion. In the matter of the left hip, scars, and peripheral nerve conditions, as combined in the PEB adjudication, the Board unanimously agrees that they were not independently unfitting; and, therefore not ratable for service disability. There were no other conditions within the Board’s scope of review for consideration.

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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** |  | **VASRD CODE** | **RATING** |
| Chronic Left Knee Pain, Status Post Accidental Gunshot Wound with Nail Placement for Femur Fracture | Left Knee | 5099-5003 | 10% |
| Left Thigh Muscle | 5318 | 20% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXX

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 XXXXXXXXXXX, AR20120009654 (PD201100790)

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 XXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA