RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100844 SEPARATION DATE: 20040926

BOARD DATE: 20120802

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve member, SGT/E-5 (31U, Signal Support), medically separated for a right wrist condition. He sustained a fracture/dislocation of his (dominant) right wrist and forearm in Kuwait in 2003, requiring surgical intervention. The condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501; and, no other conditions were submitted by the MEB. The PEB adjudicated the right wrist condition as unfitting, rated 0%, referencing the US Army Physical Disability Agency (USAPDA) pain policy The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: “Right wrist Osteotomy - 10%.” He does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting right wrist condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040804** | **VA (4 Mo. Pre Separation) – All Effective 20040927** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Wrist (Surgical Residuals) | 5099-5003 | 0% | Right Wrist Osteotomy | 5215 | 10% | 20040521 |
| No Additional MEB/PEB Entries | Acid Reflux Disease | 7399-7346 | 10% | STR |
| Acne Keloids, Scalp | 7800 | 10% | 20040521 |
| 0% X 1 / Not Service-Connected x 3 | 20040521 |
| **Combined: 0%** | **Combined: 30%** |

ANALYSIS SUMMARY:

Right Wrist Condition. The fracture failed to heal in a cast and the CI was redeployed; undergoing a radial osteotomy (removal of a portion of the bone) and placement of hardware in July 2003. He responded favorably to that intervention, but functionality could not be adequately restored for continued service. Post-operative X-rays noted healed fractures, intact hardware, and “anatomical alignment.” The MEB’s narrative summary (NARSUM) noted complaints that the “right hand and wrist seem weaker than before;” of “some pain in the right hand and wrist from time to time with certain exercises;” and that he “has noticed obvious defects in the range of motion.” The physical examination noted tenderness, “obvious deformity,” “obvious pronation and supination defects,” some light touch sensory deficits of the 3rd and 4th fingers, and a 50% reduction in grip strength. The VA Compensation and Pension (C&P) examiner noted similar symptoms of “pain, weakness, and limited range of motion;” and documented, “He states his condition does not cause incapacitation.” The VA physical findings were confined to a meticulous description of the tender surgical scar, and documentation of painful motion. The goniometric range-of-motion (ROM) evidence from both examiners, which the Board weighed in arriving at its rating recommendation, is charted below.

|  |  |  |
| --- | --- | --- |
| Right Wrist ROM | MEB ~5 Mo. Pre-Sep | VA C&P ~4 Mo. Pre-Sep |
| Dorsiflexion (Normal 70⁰) | 55⁰ | 45⁰ |
| Palmar Flexion (80⁰) | 40⁰ | 60⁰ |
| Ulnar Deviation (45⁰) | 25⁰ | 5⁰ |
| Radial Deviation (20⁰) | 10⁰ | 20⁰ |
| §4.71a Rating | 10% | 10% |

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 0% rating was supported by the USAPDA pain policy, but was not consistent with VASRD §4.71a criteria for the evidence under consideration. There is adequate documentation that VASRD §4.59 (painful motion) was supported to achieve a minimum compensable rating of 10%. The VASRD only offers two joint codes for the wrist: 5214 (ankylosis) and 5215 (limitation of motion). The 5215 code offers a maximum rating of 10%. Only the 5214 code is available for a higher rating. Although analogous rating for ankylosis can be entertained for mobile, but functionally frozen joints, the evidence makes it clear that significant joint excursion was retained in this case. The Board therefore cannot justify an analogous rating under code 5214. Although a sensory neurologic deficit was noted by the MEB examiner; all members agreed that there was no separately ratable neuropathy for disability, since no functional impairment linked to fitness was in evidence. 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 wrist condition. The action officer recommended, and the Board concurred with, the 5215 code for its compatibility with the disability in evidence.

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 wrist condition was operant in this case, and the condition was adjudicated independently of that policy by the Board. In the matter of the right wrist condition, the Board unanimously recommends a disability rating of 10%, coded 5215 IAW VASRD §4.71a. 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, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Right Wrist | 5215 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110928, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXX, AR20120013948 (PD201100844)

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 10% 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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA