RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100845 SEPARATION DATE: 20070507

BOARD DATE: 20120925

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (13B10/Cannon Crewmember), medically separated for chronic non-radiating low back pain (LBP) and chronic left forearm and wrist pain. The CI first developed LBP in 2004 while lifting heavy cargo while deployed to Afghanistan. He was still receiving physical therapy (PT) when he was injured in a motor vehicle accident in October 2005. He sustained a closed left radial shaft fracture and closed left sided L1 and L2 transverse process fractures. The radial fracture was treated operatively with an open reduction and internal fixation and the fracture healed with anatomic alignment. However, the CI developed chronic left forearm and wrist pain that did not respond to treatment. Additionally, his chronic LBP persisted despite continued rehabilitation. No further surgical treatment was indicated. Neither condition was adequately rehabilitated. 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 U3/L3 profile and referred for a Medical Evaluation Board (MEB). Costochondritis and hypertrophic scar, left forearm conditions, identified in the rating chart below, were also identified and forwarded by the MEB. On 23 January 2007 an Informal PEB (IPEB) initially determined the chronic LBP secondary to left transverse process fractures of L1 and L2 was unfitting, rated 10%, and all other conditions were determined to be not unfitting. The CI did not concur and requested a Formal PEB (FPEB) and this was scheduled to occur on 01 March 2007. However, no record of any FPEB is present in the record. An updated MEB narrative summary (NARSUM) completed 20 January 2007 was submitted as an addendum to the original NARSUM. An Informal Reconsideration PEB of 1 March 2007 adjudicated both the chronic non-radiating LBP and the chronic left forearm and wrist pain conditions as unfitting, rated 10% each, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) for the back pain condition and the US Army Physical Disability Agency (USAPDA) pain policy for the left forearm and wrist pain condition.

CI CONTENTION: “L1&L2 Fracture; Disc Desiccation and Height Loss of L1 and L2; Keloid Scar Left Forearm; Residuals Left Radius Fracture; Urinary Frequency; PTSD”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. The conditions L1 & L2 fracture, disc desiccation, height loss L1 and L2, keloid scar left forearm, and residuals radius fracture as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and are addressed below in addition to a review of the Service ratings for the unfitting conditions. The requested conditions of PTSD and urinary frequency 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 Correction of Military Records.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070301** | | | **VA (2 Months After Separation) – All Effective Date 20070508** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Non-Radiating Low Back Pain | 5235 | 10% | Intervertebral Disc Desiccation and Disc Height Loss of L1 and L2, and L1-L2 Transverse Process Fractures | 5235 | 100%\* | 20070731 |
| Chronic Left Forearm and Wrist Pain | 5099-5003 | 10% | Residuals Left Radius Fracture | 5299-5211 | 10% | 20070801 |
| Hypertrophic Scar, Left Forearm | Not Unfitting | | Keloid Scar Left Forearm | 7801 | 10% | 20070801 |
| Costochondritis | Not Unfitting | | Costochondritis | 5321 | 0% | 20070801 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service Connected x 0 | | | 20070801 |
| **Combined: 20%** | | | **Combined: 100%** | | | |

\*100% continued after scheduled future 20090325 C&P examination but after C&P examination on 20100302 decreased to 10% effective 20100901.

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 acknowledges the CI’s contention that suggests 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 Veteran 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 his 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 and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Low Back Pain with Disc Degeneration and Fractures of the L1 and L2 Transverse Processes Condition. A similar clinical history of worsening back pain after a motor vehicle accident in October 2005 with transverse process fractures of L1 and L2 is reported in the original NARSUM of 20 October 2006, the updated NARSUM addendum of 29 January 2007, and the VA Compensation and Pension (C&P) examination of 31 July 2007. Surgery was not indicated and the CI did not respond to conservative therapy. There were four range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB  ~ 7 Months  Pre-Separation | MEB Addendum  ~ 4 Months  Pre-Separation | VA C&P  ~ 2 Months  Post-Separation | VA C&P  ~ 22 Months  Post-Separation |
| Flex (0-90) | 85⁰ (100, 95, 85) | 90⁰ | 20⁰ | 35°, ↓ to 25° |
| Ext (0-30) | 20⁰ (20, 20, 25) | Not Measured | 10⁰ | 15°, ↓ to 10° |
| R Lat Flex (0-30) | 30⁰ (45, 50, 40) | 30⁰ (50) | 10⁰ | 25° (24), ↓ to 20° |
| L Lat Flex 0-30) | 30⁰ (50, 55, 50) | 30⁰ (50) | 10⁰ | 20° |
| R Rotation (0-30) | 30⁰ (30, 30, 30) | 30⁰ (45) | 10⁰ | 20° (22) |
| L Rotation (0-30) | 30⁰ (30, 30, 30) | 30⁰ (45) | 10⁰ | 20° |
| COMBINED (240) | 225⁰ | N/A | 70⁰ | 135° |
| Comment | Flexion and bilateral flexion limited by pain, others limited by mechanical or organic. Moderate pain to deep palpation of thoracolumbar spine and paraspinal muscles; motor 5/5; reflexes normal and symmetric; sensation normal to light touch and pinprick; Waddell’s sign 0/5 | Examiner stated ROM values were the averages of 3 goniometric measurements but these measurements were not available in the record. Mild tenderness to palpation along lumbar spine and paraspinal muscles; negative straight leg raise bilaterally; reflexes 2+ and equal bilaterally; motor 5/5; sensation intact in L2 to S1 dermatomes. X-rays and MRI normal. | Bilateral spasm, pain with motion, and tenderness; Normal posture, spinal curvature, and gait; had a cane; motor 5/5; normal sensation to vibration, pinprick, light touch, and position sense; reflexes normal and symmetric; no ankylosis; | Flexion, extension, and right lateral flexion all decreased after three repetitions. Back brace on and walking with a cane. Gait favors left side because of right knee condition; normal posture and spinal contour; no ankylosis; pain with motion and bilateral guarding and tenderness; motor 5/5, normal sensation, normal reflexes. One positive Waddell’s sign. |
| §4.71a Rating | 10% | 10% | 40% | 40% |

The 31 July 2007 VA C&P was signed by the examiner on 09 August 2007 and it noted the CI had fee-based EMG on 08 August 2007 that was normal and lumbar spine CT on 01 August 2007 showing no definite evidence of discogenic disease.

Both the initial IPEB and the reconsideration IPEB applied a 10% disability rating for the LBP based on full but painful ROM. Although the 31 July 2007 VA C&P examination ROM measurements support a 40% disability rating, the VA assigned a 100% rating. This was based on the rapid worsening of the condition that this C&P examination documented when compared to the NARSUM addendum examination performed 6 months previously and the condition was considered unstable. The VA rating officer noted the VA examination showed the CI’s functional capacity was severely limited for strenuous activity and his past occupation in civilian life was a construction worker and he had a high school education. In light of these facts, the VA determined it would not be feasible for him to work in his usual occupation. The 100% evaluation was not considered permanent and a future examination was planned. A repeat VA C&P examination was performed on 25 March 2009 with results noted in the chart above. Again the ROM measurements supported a 40% rating. However, the 100% rating was continued as the VA rating officer opined that while there was some improvement, sustained improvement had not been definitively established. A future examination was planned and was completed on 2 March 2010. This examination documented markedly improved ROM measurements with flexion to 75 degrees, extension to 20 degrees, and bilateral flexion and rotation all at 30 degrees. No pain on active ROM was noted, but there was pain after repetitions of motion. The following was also noted: “He walks calmly with a normal heel to toe gait, followed by placing his cane on the ground. He has non-antalgic transfers. He is wearing an LSO back brace up around lower thoracic spine. While sitting in chair, his cane which was resting against adjacent treatment table started to fall. He was able to reach with his hand and foot to catch cane without any apparent difficulty or increase in pain.” The examiner opined the CI presented subjective complaints out of proportion to clinical findings and that his finding had been noted in other recent VA treatment records. The VA notified the CI that they planned to reduce the evaluation for this condition and did so with a 10% rating effective 1 September 2010, 60 days after the final notification of the intent to decrease the rating. The VA rating decision dated 9 June 2010, noted several findings from the CI’s treatment record that supported pain out of proportion to clinical findings.

The Board directs attention to its rating recommendation based on the above evidence. The final VA C&P examination is consistent with the NARSUM and the NARSUM addendum examinations and all support a 10% rating. The two service examinations have no evidence of nonorganic findings or subjective complaints out of proportion to objective findings and both appear to be reliable examinations. The initial VA examination has no mention of Waddell’s signs or any indication of unreliability. However, it is highly unlikely that the CIs condition could have worsened this significantly without an intervening injury or serious illness such as cancer. The two later VA C&P examinations both contain findings suspicious for embellishment. In light of this evidence and the fact that all VA examinations were completed after separation, the Board places a higher probative value on the two Army examinations. 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 chronic non-radiating LBP condition.

Chronic Left Forearm and Wrist Pain with History of Radial Fracture Condition. Both the NARSUM Addendum of 29 January 2007 and the VA C&P examination of 1 August 2007 noted a similar clinical history of a left radial fracture sustained during a motor vehicle accident in October 2005. Surgical treatment with open reduction and internal fixation was required. Anatomic alignment with complete union and intact hardware was documented on follow-up radiographs as late as October 2006. However, the CI continued to have chronic left forearm and left wrist pain despite rehabilitation. The NARSUM addendum examination noted the absence of tenderness over the distal radial ulnar joint, a negative Watson’s test for scapholunate instability, and a negative Kleinman’s Shear test for triquetrolunate instability. Full ROM of fingers of both hands was also noted. This examination did not include motor, sensory or reflex examination of the upper extremities. The previously completed NARSUM examination documented bilateral upper and lower extremity findings of 5/5 motor strength, normal sensation to light touch and pinprick, and normal, equal, and symmetric reflexes. The VA C&P exam documented the CI was right hand dominant. It noted the absence of impaired strength or dexterity in both hands. Neurologic exam noted no motor or sensory loss and normal and symmetric reflexes of the upper extremities. VA X-rays noted the hardware was intact and there was good alignment of the fracture fragments. It also noted nonunion of the ulnar styloid process versus ulnar styloid ossicle.

There was one ROM evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| MEB Addendum ~ 4 Months Pre-Separation | | |
| Elbow Normal | Left Elbow ROM | Right Elbow ROM |
| Flexion (0-145⁰) | 145⁰ (150) | 145⁰ (150) |
| Wrist Normal | Left Wrist ROM | Right Wrist ROM |
| Dorsiflexion (0-70⁰) | 60⁰ | 60⁰ |
| Palmar Flexion (0-80⁰) | 70⁰ | 70⁰ |
| Ulnar Deviation (0-45⁰) | 30⁰ | 30⁰ |
| Radial Deviation (0-20⁰) | 20⁰ | 20⁰ |
| Forearm Normal | Left Forearm ROM | Right Forearm ROM |
| Pronation (0-80⁰) | 80⁰ (85) | Not Measured |
| Supination (0-85⁰) | 85⁰ | Not Measured |

The PEB rated the wrist and forearm together, applying a 10% disability rating for slight/frequent pain utilizing the USAPDA pain policy. The PEB noted full motion and normal strength; however, the ROM exam did not include full ROM. Wrist dorsiflexion, palmar flexion, and ulnar deviation were all slightly decreased, but equal in both the left and the right wrist. There was not mention of the presence or absence of painful motion. The VA rated the residuals of left radius fracture analogous to VASRD code 5211 Ulnar, impairment of, based on “malunion of the ulna with bad alignment.” This is most likely due to the X-ray report of a either an ulnar styloid process nonunion or an ulnar styloid ossicle. However, the CI never had an ulnar fracture and the X-ray finding most likely represents an ossicle.

The Board directs attention to its rating recommendation based on the above evidence. With the CI’s history of chronic pain, painful motion can be assumed and this supports a 10% rating. There is no evidence available to support a rating greater than 10%. After due deliberation, considering all of the evidence and being 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 chronic left forearm and wrist pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were costochondritis and hypertrophic scar, left forearm. 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. Neither of these conditions was profiled or mentioned in the commander’s statement; and, neither was determined by the MEB to fail retention standards. Both were reviewed by the action officer and considered by the Board. 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 either costochondritis or hypertrophic scar, left forearm. 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 chronic non-radiating LBP condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic left forearm and wrist pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended costochondritis and hypertrophic scar, left forearm conditions, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Non-Radiating Low Back Pain | 5235 | 10% |
| Chronic Left Forearm and Wrist Pain | 5099-5003 | 10% |
| **COMBINED** | **20%** |

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

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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 XXXXXXXXXXXXXXXXXXXX, AR20120018077 (PD201100845)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA