RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100851 SEPARATION DATE: 20090823

BOARD DATE: 20120807

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (21W, Carpenter) medically separated for bilateral epididymitis/scrotal pain; which was a complication of a vasectomy performed in 2008. The chronic pain could not be adequately controlled to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The condition, characterized as “chronic scrotal pain s/p vasectomy,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. Three other conditions (obstructive sleep apnea [OSA]), hypertension, and a right knee meniscal tear) were addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated “bilateral epididymitis with persistent scrotal pain status post vasectomy” as unfitting, rated 0%, IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: “My conditions [*sic*] has worsen since I was medically discharge. I am in constant pain each hour of the day. I have to take pain medications constantly everyday for pain. My marriage and day to day activities have greatly been change.” 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 epididymitis/scrotal pain condition is addressed below. The Board judged that the plural ‘conditions’ (as quoted in the contention above) was a syntax error when taken in context; and, did not constitute a formal request for rating consideration of the conditions adjudicated as not unfitting. Thus no additional conditions are within the DoDI 6040.44 defined purview of the Board. Those, or any conditions or contention not requested in this application, remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090515** | | | **VA (5 Mo. Pre -Separation) – All Effective 20090824** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Epididymitis | 7525 | 0% | Bilateral Epididymitis | 7525 | 0% | 20090330 |
| OSA | Not Unfitting | | OSA | 6847 | 50% | 20090330 |
| Hypertension | Not Unfitting | | Hypertension | 7101 | 0% | 20090330 |
| Right Knee Meniscal Tear | Not Unfitting | | Degenerative Arthritis, R Knee | 5260 | 10% | 20090330 |
| No Additional MEB/PEB Entries | | | Osteitis Pubis of the Left Hip | 5252-5024 | 10% | 20090330 |
| 0% X 4 / Not Service-Connected x 1 | | | 20090330 |
| **Combined: 0%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected condition continues to burden him. 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 DVA evidence proximate 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 determinations for the disability existing at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability at the time of separation.

Bilateral Epididymitis/Scrotal Pain Condition. A vasectomy was performed in January 2008; and, 6 weeks post-operatively the CI continued to experience severe pain. Follow-on evaluations included testicular ultrasounds which demonstrated good flow and no etiologic findings; a nuclear scan which was normal; and, abdominal imaging which demonstrated only a right fatty inguinal hernia (judged to be incidental and not surgical). A left epididymectomy (surgical removal of epididymis) was performed in August 2008, and provided a period of relief for the left sided pain; but, even that returned to baseline severity. The pain was variably responsive to neuralgia type analgesics (neurontin, Lyrica™). An outpatient note, dated 6 months prior to separation, documented “pain that is dominant on the right side, not the surgical side.” A right ilio-inguinal nerve block was performed which provided “complete relief of pain in the correct distribution within 10 minutes of the procedure.” At the time of the narrative summary (NARSUM) evaluation, performed 2 months after the preceding entry, the examiner recorded that the CI “continues to experience constant scrotal pain at a level of 6-7 that is relieved somewhat by rest and pain meds and exacerbated by physical activity as well as performance of activities of daily living.” At the VA Compensation and Pension (C&P) evaluation, performed 5 months prior to separation, the examiner recorded a “progressively worse” clinical course since onset and “pain going down both testicles.” The physical exam noted bilateral testicular tenderness. No service or VA provider documented a specific etiologic diagnosis for the pain.

The Board directs attention to its rating recommendation based on the above evidence. The VASRD code chosen for rating by both the PEB and the VA was 7525 (chronic epididymo-orchitis); which is a reasonable clinical analogy and the only available code applicable to rating the specific diagnosis of epididymitis. Code 7525; however, defaults to rating under the criteria for urinary tract infection which reflect renal and infectious complications; which are not a clinical fit for the case, and do not yield a compensable rating. The action officer judged that the better clinical fit for the pain and attendant disability, if not actually the more precise diagnosis (response to neuralgia-directed pharmacology and to ilio-inguinal nerve block; absent epididymis, yet recurrent pain on the left), is code 8730 (ilio-inguinal neuralgia). VASRD §4.124 permits a maximum rating for “moderate” impairment under neuralgia coding; and, the maximum rating available for the ilio-inguinal nerve is 10% for ‘severe’ impairment; thus no compensable rating is achievable via this coding route.

It is defensible, however, to rate the disability in this case as analogous to neuritis (code 8630); which IAW VASRD §4.123 may encompass “constant pain, at times excruciating;” not an unreasonable characterization of the symptoms on record. This analogous coding approach allows a 10% rating under 7525-8630. This option, as well as separate right and left ratings under the same code, was deliberated. Members concluded that a compensable rating analogous to ilio-inguinal neuritis was the fair recommendation; but, did not agree that this approach could be reasonably stretched to bilateral ratings; since, that pathology was clinically confirmed only for the right ilio-inguinal nerve. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and VASRD §4.7 (higher of two evaluations), the Board recommends a disability rating of 10% for the bilateral epididymitis/scrotal pain condition under code 7525-8630.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral epididymitis/scrotal pain condition, the Board unanimously recommends a disability rating of 10%, coded 7525-8630 IAW VASRD §4.124a. 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** |
| Bilateral Epididymitis/Scrotal Pain | 7525 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110929, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX

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 XXXXXXXXXXXXXXXXXXXXXX, AR20120015665 (PD201100851)

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA