RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100854 SEPARATION DATE: 20040108

BOARD DATE: 20120703

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13B20/Cannon Crew Member), medically separated for pain in right medial thigh. He did not respond adequately to treatment 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). Exostosis of the medial aspect of the right femur was 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 the right medial thigh pain condition unfitting, rated 10% with application Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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. 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:

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| **Service PEB – Dated 20031024** | **VA (~2 weeks to 18 Months After Separation)** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Medial Thigh Pain | 5099-5003 | 10% | Myositis Ossificans, Right Thigh | 5252-5021 | 10%\* | 20060422 | 20050607 |
| ↓No Additional MEB/PEB Entries↓ | Partial Complex Seizure Disorder | 8911 | 40%\*\* | 20050615 | 20040125 |
| Hypertension | 7101 | 10% | 20050615 | 20010117 |
| Right Inguinal Hernia | 7338-7804 | 10%\* | 20050823 | 20050607 |
| 0% x 2/Not Service-Connected x 8 |
| **Combined: 10%** | **Combined: 50% from 20040125; 100% from 20050125** |

All ratings in effect prior to 20011127 discontinued for active duty from 20011127 to 20040125 (This is not 2004010 because his claim was received 20050125, more than a year after discharge).

\*Effective date of claim for increase, 20050607, as claim was received more than a year after separation from active duty.

\*\* Increased to 100% effective 20050125.

ANALYSIS SUMMARY: The Board wishes to clarify that it is subject to the same laws for 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 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.

Right Medial Thigh Pain Condition. The CI’s entire medical record from the last period of enlistment was lost and is not available for review. However, the PEB documents are available for review. The CI was injured during physical training in May 2002 when the knee of another Dmember struck his right thigh. He was initially treated conservatively, including physical therapy. X-ray results suggested myositis ossificans and a bone scan was negative. He was evaluated by orthopedic surgeon who opined surgery would be complicated and dangerous and most certainly would not result in the CI being able to return to full duty. A permanent L3 profile for right thigh Pain was issued and the CI initially went to a Military MOS Review Board (MMRB). However, he was subsequently referred for an MEB evaluation.

A MEB narrative summary (NARSUM) was completed 19 September 2003, approximately 4 months prior to separation. The NARSUM noted the clinical history described above. The NARSUM also reports a magnetic resonance imaging (MRI) showed the condition was not myositis ossificans but exostosis on the medial aspect of the femur and the mass was continuous with the cortex. The CI had weakness of the right leg, especially with prolonged physical activity and the CI was unable to run. He was unable to perform sit-ups without discomfort and had difficulty climbing and ruckmarching. His symptoms would increase whenever a load was required. Physical examination documented a palpable mass in the middle third of the right thigh with tenderness around the mass but not over the mass itself. Pressure at the mass produced a positive Tinel sign radiating to the medial aspect of the right leg. There was pain with abduction and with flexion of the hip and knee against resistance. Decreased sensation was noted in an area of five by ten centimeters over the area of the mass. Reflexes were noted to be normal and no other neurologic deficit was noted. The diagnosis was exostosis medial aspect right femur and the examiner opined the condition had existed prior to service (EPTS) but had been permanently aggravated by service with the blunt trauma during physical training. The commander’s statement dated 22 July 2003, noted the CI walked with a noticeable limp and experienced constant thigh pain. The CI would wince when getting out of chairs and climbing steps. After the thigh injury he was unable to perform his assigned duties.

Although the CI filed a VA claim on 25 January 2005, his VA Compensation and Pension (C&P) examination for this condition was not completed until 22 April 2006, approximately 28 months after separation. However he was seen at the VA clinic with complaints of a bone condition as early as 1 September 2004. In November 2004, an X-ray was consistent with myositis ossificans and the CI was referred to physical medicine and rehabilitation (PM&R) for exercises. A progress note from late November noted the myositis ossificans was causing myalgias that prevented the CI from driving, prolonged standing, or other prolonged activities. He was referred to physical therapy. A PM&R consult completed on 29 November 2004, noted the CI was able to ambulate safely with a cane and had normal muscle strength. Range-of-motion (ROM) was noted to be outside of normal limits but within functional limits. A single point cane was prescribed. Notes from multiple visits document severe right thigh pain. The CI was evaluated by orthopedics in June 2005 who noted no palpable mass in the right thigh but mild discomfort with deep squeeze to quads in mid-thigh. He also reported pain mostly with seated position when driving, numbness on the bottom of his foot, and pain in the back of his leg, especially with increased activity. The impression was possible myositis ossificans and a CT scan was ordered. The CI was seen again by orthopedics in October 2005 but had not had the CT scan done. A bone scan had been done but showed only a hint of increased activity. He now reported constant pain that never got better than 5/10 and increased with activity. The numbness and radiating pain continued. Some tenderness was noted. The impression was right leg pain with apparently mature myositis ossificans in the anterior femur and pain that was non-anatomic, more severe than expected, and of unclear etiology. A CT scan performed in October 2005 documented findings consistent with myositis ossificans over the anteromedial aspect of the right femur. In December 2005 follow-up examination was normal except for some decrease strength due to pain. A plan was made to repeat the bone scan in 3 months and as long as the scan was inactive, surgical removal would be scheduled. No further progress notes are available for review.

The VA C&P examination performed on 22 April 2006, noted a similar clinical history as that reported above. At the time of this examination he had constant, sharp, stabbing pain that averaged 10/10. He was taking nonsteroidal anti-inflammatory medication and Tramadol which did not help. No assistive devices were used but the condition interfered with daily activities such as walking, standing, climbing stairs, or sitting. A repeat bone scan in April 2006 showed no evidence of active myositis ossificans and X-rays from March 2006 showed no change when compared to a film from May 2005. The ROM measurements are noted in the chart below. Sensation, motor strength, and reflex examinations were all normal. The diagnosis was myositis ossificans, right thigh, although healing fracture was also in the differential diagnosis.

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

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| Date of Separation: January 8, 2004 |
| ROM – Right Hip (Thigh) | VA C&P Muscles ~25 Months Post-Separation(April 22, 2006) |
| Flexion (0-125) | 120⁰ mild pain inner thigh |
| Extension (10-20) | 20 ° (25⁰ minus 5 secondary pain) |
| Abduction (0-45) | 40⁰ no pain |
| Adduction (0-45) | 20⁰ pain inner thigh and anterior thigh and right greater trochanter area at 20 degrees minus 5 degrees |
| Comment | Normal neurologic examination |
| §4.71a Rating | 10% |

The PEB determined the CI was unfit for right thigh pain, which despite a history of trauma had EPTS. No deduction was made as the CI had met the requisite active duty time for 10 U.S.C. 1207a to apply. Exostosis was noted at the proximal medial femur near the insertion of the adductor longus with a clinical assessment of myositis ossificans. An MRI suggested exostosis and not myositis ossificans. The condition was rated at 10% under 5099-5003.

The CI filed a claim at the VA on 25 January 2005, more than a year after he separated. Prior to this enlistment, the CI had been receiving disability for partial complex seizure disorder, hypertension, and bilateral shin splints and all disability payments had been suspended while the CI was on active duty. All previously rated conditions were reinstated effective the date of this claim. A VA Rating Decision (VARD) dated 2 March 2006, stated the CI had filed a claim for depression, post-operative hernia, high cholesterol, and myositis conditions but the decisions for these conditions were deferred. A 28 April 2006 VARD stated the CI had also filed a claim for increased evaluation on 7 June 2005. This VARD included decisions regarding the right inguinal hernia and myositis ossificans but the remaining conditions continued to be deferred. Although there was no evidence of an intervening rating decision, the disability ratings for both the hernia and the myositis were effective on 7 June 2005, the day of the claim for increased evaluation, not the day of the original claim. While the VA used a different code than the PEB and determined he had myositis ossificans, they also rated the CI’s right thigh condition at 10% based on pain-limited motion of a major joint.

The Board directs attention to its rating recommendation based on the above evidence. While the PEB determined the condition EPTS, there is no clear evidence this was true. However the PEB did not make any deduction because the CI had surpassed 8 years of service. Additionally, even if the condition had EPTS, the CI was considered fit when he entered this period of enlistment. A determination of a 0% disability would be determined at the time of entry and therefore no deduction would be made from the disability rating at the time of separation. The VA did not consider the condition to have EPTS. While the PEB and VA used different coding, they both arrived at a 10% disability rating and neither coding method confers any advantage to the CI. 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 right medial thigh pain condition.

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 right medial thigh pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Right Medial Thigh Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110729, 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 XXXXXXXXXXXXXXXXX, AR20120012283 (PD201100854)

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 XXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA