RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100869 SEPARATION DATE: 20050101

BOARD DATE: 20120816

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard SFC/E-7 (63H4O, Track Vehicle Mechanic) medically separated for recurrent deep vein thrombosis (DVT) of the left lower extremity (LLE). He experienced recurrent DVT starting in 1992, and was diagnosed with an underlying coagulopathy mandating permanent anticoagulation. The treatment regimen and associated LLE disability were not compatible with the requirements of his Military Occupational Specialty (MOS); and, he was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The DVT condition, characterized as “thromboembolic disease, recurrent, secondary to hypercoagulable state: Factor V Leiden,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Eight other conditions (as identified in the rating chart below) were addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the DVT condition as unfitting, stating, “this disability existed prior to mobilization and was not permanently aggravated by service, but is compensable in accordance with 10 USC 1207a (eight year rule).” It was rated 20%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI withdrew an initial request for a Formal PEB (FPEB), and was released from active duty with a 20% disability rating.

CI CONTENTION: The application does not elaborate any specific comments or requests.

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 DVT condition is addressed below; and, since they were not requested for review, the conditions determined to be not unfitting by the PEB are not 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 (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040831** | **VA (~9 Mo. Post-Separation) – All Effective 20050102** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DVT, LLE / Factor V Mutation | 7121 | 20% | DVT, LLE / Factor V Mutation | 7704-7121 | 10% | 20050926 |
| Atherosclerosis | Not Unfitting | Atherosclerosis | 7005 | NSC | 20050926 |
| Hyperlipidemia | Not Unfitting | Hyperlipidemia | 7099-7005 | NSC | 20050926 |
| Obesity | Not Unfitting | Not VA ratable. | 20050926 |
| Retropatellar Pain, Right Knee | Not Unfitting | Retropatellar Pain, Right Knee | 5024 | 10% | 20050926 |
| Fatty Liver Infiltration | Not Unfitting | Fatty Liver Infiltration | 7399-7346 | NSC | 20050926 |
| Osteoarthritis, Left Knee | Not Unfitting | DJD, Left Knee | 5010-5260 | 10% | 20050926 |
| Right Finger Numbness | Not Unfitting | No VA Entry. | 20050926 |
| Left Ankle Sprain | Not Unfitting | Residuals, Left Ankle Injury | 5271 | 20% | 20050926 |
| No Additional MEB/PEB Entries. | Right Shoulder DJD | 5010-5201 | 20% | 20050926 |
| Carpal Tunnel Syndrome, R Wrist | 8515 | 10% | 20050926 |
| 0% x 2 / Not Service-Connected x 2 Additional | 20050926 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY:

DVT Condition. The CI was first diagnosed with DVT in 1992 and suffered recurrences (all in LLE) in 1998 and 1999. His last course of anticoagulant ended in 2000. In February 2004, shortly after activation, he once again experienced recurrent DVT (LLE). At this time he was diagnosed with Factor V Leiden deficiency (a hereditary hypercoagulable condition, predisposing to DVT); and committed to lifetime anticoagulation. At the time of the narrative summary (NARSUM), the condition was stable on medication without interim complications or recurrence. The physical examination noted mild edema of the LLE without skin changes. The VA Compensation and Pension (C&P) examiner, 9 months after separation, noted a continued stable course and similar physical findings.

The Board directs attention to its rating recommendation based on the above evidence. VASRD §4.104 (cardiovascular system) does not provide an overall code for rating the underlying disease in coagulapathies, but rather rates under specific sequelae such as DVT or pulmonary embolus. The clearly applicable code in this case is 7121 (post-phlebitic syndrome, specifying DVT). The PEB’s 20% rating was based on the criteria “persistent edema, incompletely relieved y elevation of extremity, with or without beginning stasis pigmentation or eczema.” The next higher rating of 40% requires “persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration.” The evidence does not support the presence of the skin findings requisite to the higher rating. It is unclear if the VA’s 10% rating referred to intermittent edema as described under 7121 or the 10% criteria “stable, with or without continuous medication” under 7704 (polycythemia vera; presumably as analogous to hypercoagulable state). 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 the DVT 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. 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 DVT/hypercoagulability condition and IAW VASRD §4.104, 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Recurrent Deep Venous Thrombosis, Left Lower Extremity | 7121 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110915, 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 XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015268 (PD201100869)

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA