RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100902 SEPARATION DATE: 20040401

BOARD DATE: 20120905

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Reserve SSGT/E-6 (77W30/Water Purification Specialist), medically separated for a left foot condition neuropraxia status post gunshot wound (GSW) to the left foot. The CI suffered an accidental M-16 GSW to the left foot on 6 June 2003 during a fall in the combat zone. He underwent two surgical procedures for wound care along with physical therapy both in theater and stateside. After all treatment was completed, the CI’s foot numbness, pain and weakness could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the left foot condition as the only condition for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the left foot neuropraxia condition as unfitting, rated 20% under code 5284, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The US Army Physical Disability Agency (USAPDA) returned the PEB for reconsideration, and the Reconsideration PEB determination was 10% coded 8799-8725. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “My pain rating was occasional and slight that is wrong. It was throbbing painful for gunshot wound for my left foot. I have still chronic numbness to distal plantar half of my left foot and all of my toes. It’s very painful to walk on it. I can’t bend my toes. I was push out of the army.”

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. The unfitting neuropraxia S/P GSW Left foot S/P GSW condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. Any conditions or contention not requested 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 Reconsideration PEB – Dated 20031208** | **VA (7 Mos. Pre-Separation) – All Effective Date 20040402** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Neuropraxia S/P GSW, Left Foot. Rated as Moderate | 8799-8725 | 10% | Residuals, Fractured First Cuneiform, S/P GSW, Left Ft | 5283 | 10% | 20030922 |
| Scars, Lft Ft | 7804 | 10% | 20030922 |
| Residuals, Fractured Medial Plantar Nerve, S/P GSW, Lft Ft | 8599-8523 | 10% | 20030922 |
| ↓No Additional MEB/PEB Entries↓ | PTSD | 9411 | 30% | STR & VA Rx through 20050518 |
| **Combined: 10%** | **Combined: 50%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his 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 further acknowledges the CI’s assertions that there may have been disability processing irregularities (“rushed out”). However, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of rating and fitness determinations at separation, as elaborated above.

Left Foot Condition: The record documents a through-and-through M-16 GSW to the left mid-foot. The CI received two surgical debridement procedures then physical therapy. After exhausting all conservative and surgical methods of treatment, the CI’s healed left foot was still too painful to run, march, jump or wear boots as “he does not demonstrate adequate sensation to the distal aspect of the plantar portion of this foot.” Examination of the left foot revealed entrance and exit wounds, top medial side to bottom of the mid-foot respectively, with good pulse in the foot and normal reflexes. There was numbness in the course of the median plantar nerve (bottom of the first, second, third and partially fourth digits to the mid-foot area). X-ray of the left foot revealed an “irregular fragment of bone just medial to the most medial cuneiform bone adjacent to first metatarsal cuneiform joint.”

In addition to the history noted above, at the joint military/VA pre-discharge examinations (PDE)” VA Compensation and Pension (C&P) exam, 7 months prior to separation, the CI reported decreased ROM of the foot and inability to wiggle his toes. Also, “he feels the foot is weak and has had difficulty pushing things with his foot.” The exam additionally noted a tender circular scar with adhesions on the sole of the foot, pain in the left foot and a little decrease in balance with heel standing and inability to stand on the toes of his left foot. “The CI does walk with a limp.” Evaluation of the left ankle revealed painful motion, slight limited motion, and slightly decreased strength.

The Board directs attention to its rating recommendation based on the above evidence. The initial PEB considered neuropraxia S/P GSW, left foot as the single unfitting and solely rated condition, coded under 5284 (foot injuries other) at 20% (moderately severe). This was changed to 10%, analogously coded to 8799-8725, neuralgia, posterior tibial nerve (moderate, 10% is the maximum IAW VASRD §4.124) per direction of the USAPDA. The VA coded the left foot GSW as three separate 10% conditions (combined 30%) under criteria for 5283 (tarsal or metatarsal bones), 7804 (painful/adherent scar), and 8523 (anterior tibial nerve). There was a single high velocity GSW injury to the left foot with overlapping specific diagnosed conditions responsible for the CI’s overall unfitting foot disability. Functional disability consisted of painful running/marching/jumping, inability to wear boots; with objective evidence of impaired gait, sensory deficit, pain, pain-limited motion ankle range-of-motion (ROM), decreased motor strength, decreased balance, tender scar and inability to stand on toes of left foot.

The Board deliberated on the level and severity of the foot disability and potential coding for these overlapping deficits. The Board first considered if coding under the Group X muscle disability condition, coded as 5310 with rating options of 20% vs. 30% IAW VASRD §4.73, better accounted for the complex of GSW symptoms. However, utilizing this coding scheme did not take into account the service-specified unfitting neuropraxia and would potentially require unbundling of parts of the CI’s disability picture from the GSW. The Board concluded that utilizing this “unbundled” coding scheme did not accurately capture the entirety of the CI’s disability, would potentially under-rate the foot, and involve undue debate and speculation regarding potions of the single GSW injury being unfitting versus not unfitting.

The Board unanimously favored VASRD Code 5284 (foot injuries, other) because it more accurately accounts for all of the functional loss and disability due to this GSW foot injury. The rating options of moderately severe vs. severe, 20% vs. 30% respectively, were considered at length. Deliberation focused on the degree of functional loss, sensory and motor dysfunction, scarring, presence of bone damage and total disability picture to arrive at a final recommendation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 30% coded 8725-5284 for the left foot 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 left foot condition, the Board, by a vote of 2:1, recommends a disability rating of 30%, coded 8725-5284 IAW VASRD §4.71a. The single voter for dissent (who recommended adopting the VASRD coding 8725-5284, but rated at 20%) did not elect to submit a minority opinion. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Foot Injuries, other with Neuropraxia | 8725-5284 | 30% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111012, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXX

 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, AR20120016850 (PD201100902)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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.

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

 d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA