RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100966 SEPARATION DATE: 20050111

BOARD DATE: 20121004

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Army National Guard SFC/E-7 (63B, Light-Wheel Vehicle Mechanic), medically separated for peripheral sensory neuropathy of upper and lower extremities. Immediately prior to deployment in October 2003, the CI received the required immunizations and within days of arriving at the deployed location, he began experiencing progressive numbness, tingling/weakness of both upper and lower extremities. His symptoms progressed to require hospitalization; however, with treatment, his condition stabilized but did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB identified the chronic sensory neuropathy condition as “significantly interfering with performance of duty”; with pes planus and correctable vision identified as “other conditions that meet retention standards.” All were forwarded to the Physical Evaluation Board (PEB) for adjudication. The PEB adjudicated the peripheral sensory neuropathy condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI attached a 6 page counsel pleading to his application which was reviewed by the Board and deemed to request consideration of his unfitting PEB condition and his vision condition.

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 condition Peripheral Sensory Neuropathy is a rated condition and meets the criteria prescribed in DoDI 6040.44 for Board purview. The Correctable Vision condition requested for consideration also meets the criteria prescribed in DoDI 6040.44 for Board purview. Both conditions are addressed below. 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:

|  |  |
| --- | --- |
| **Service PEB – Dated 20041207** | **VA (3 Mos. Post-Separation) – All Effective Date 20050112** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Peripheral Sensory Neuropathy | 8099-8011 | 10% | Guillain-Barre Syndrome | 8099-8025 | 30% | 20050425 |
| Correctable Vision | Not Unfitting | NO VA ENTRY |
| Pes Planus | Not Unfitting | NO VA ENTRY |
| ↓No Additional MEB/PEB Entries↓ | Not Service-Connected x 3 | 20050425 |
| **Combined: 10%** | **Combined: 30%\*** |

\* Added Major Depression 9434 at 30%, RUE neuropathy at 10%, LUE neuropathy at 10%, RLE neuropathy at 10%, LLE neuropathy at 10% and individual unemployability all effective 20060726 (combined 60%); added Tinnitus at 10% effective 20060926 (combined 70%)

ANALYSIS SUMMARY:

Peripheral Sensory Neuropathy Condition. The narrative summary (NARSUM) prepared 2 months prior to separation notes constant numbness and tingling in both hands and feet as he arrived in Afghanistan. In preparation for the deployment, the CI received multiple immunizations the week prior to deploying. The CI awoke one morning with loss of sensation in his legs up to his knees and in his hands up to his elbows. He was initially seen and evaluated in country then, as he progressively worsened becoming very weak, needing assistance to walk and having difficulty talking and swallowing, he was evacuated to Germany then to a major state-side Army medical center for treatment and evaluation within the Vaccine Healthcare Center. There he received intravenous immune-globulin treatment and the diagnosis of Guillain-Barre Syndrome (GBS) was made after extensive evaluation including a CT scan, magnetic resonance imaging (MRI) and lumbar puncture. The CI was discharged to convalescent leave at which time he underwent electro-diagnostic studies that confirmed a bilateral motor and sensory peripheral neuropathy specifically of the median, ulnar and radial sensory nerves of the upper extremity and bilateral peroneal & tibial nerves of both lower extremities. He was placed on chronic medication for control of his paresthesias, but gained no benefit. The NARSUM also states: “The paresthesias and sensory loss of the feet impair his ambulation especially over uneven ground and in the dark.” A neurologic evaluation 4 months prior to separation, and a month prior to the NARSUM exam, stated “he regained ambulatory status and good recovery of muscle strength; however, he has had persistent distal paresthesias of his hands and feet that prevent him from properly using his hands and he frequently drops objects and he is not able to run.”

At the MEB exam performed 3 months prior to separation, the CI reported “vision problem in left eye, hands and feet numb and tingling, pain/throbbing in feet/calves and hands, feet don’t always work like they should and always tired worn out;” all from GBS. The MEB physical exam noted decreased sensation bilateral hands and feet to cold/sharp with dysesthesias stocking/glove. Motor strength normal. Tandem gait (walk heel-to-toe) & Romberg (*balance*) slightly impaired. Slight decrease in dysdiodokinesis (repetitive alternating movement function most commonly). Finger to nose normal. The CI was right-handed.

At the VA Compensation and Pension (C&P) exam performed 3 months after separation, the CI reported constant numbness and tingling, abnormal sensation and weakness of the affected parts. He can’t hold objects or judge his strength. He can’t run or walk long distances. The examination was significant for both upper and lower extremities with symmetric normal reflexes and normal motor function. Upper extremities had normal sensory function while the lower extremities had abnormal sensory function with findings of hyperesthesia. A VA C&P exam 20 months remote from separationdocumented decreased sensation of the left face with slight left upper lip droop, slight loss of balance with Romberg, decreased 3/5 strength and mild diffuse sensory deficits in the upper and lower extremities.

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined peripheral sensory neuropathy of upper and lower extremities as the single unfitting and solely rated condition, coded analogously to 8011 (Poliomyelitis, anterior), with rating of 10% for minimal residuals of sensory neuropathy. The VA rated the same condition analogously to 8025 (Myasthenia gravis) at 30%, the minimum rating. A subsequent VA exam led to the addition of 10% peripheral nerve ratings (8025-8515 each arm and 8025-8520 each leg) for each extremity in addition to the 30% 8025 minimum rating. The Board adjudged that the “peripheral sensory neuropathy of upper and lower extremities …” condition was due to the diagnosis of Guillian-Barre Syndrome and was best considered analogous to disability code 8025 (Myasthenia gravis) rather than 8011 (Poliomyelitis, anterior), as the CI’s condition was not from an infectious disease and was not predominately paralytic.

Although the PEB approach may comply with AR 635.40 (B.104); the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition (each extremity) are achieved IAW VASRD §4.124a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each ‘unbundled’ condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting; and, that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB and provide for a higher rating than the minimum rating for disease residuals.

The Board considered that the exam had the highest probative value for rating. The initial VA C&P exam was less detailed and had no indication of testing of balance or rapid alternating movements. The Board first considered if the sensory neuropathy of the left and of the right upper extremities having been de-coupled from the combined PEB adjudication each remained independently unfitting.

The CI’s military occupation was a vehicle mechanic which requires both hands to be fully functional. As documented above, the CI’s hands were not fully functional and additionally, neither hand was significantly less impacted than the other. There was insufficient evidence in the record to overturn the PEB’s determination of a globally unfitting condition that included specific consideration of the hands, and the left hand and the right hand were adjudged as each unfitting. All members agreed that Sensory Neuropathy left upper extremity and the Sensory Neuropathy right upper extremity, would each have rendered the CI incapable of continued service within his MOS; and, accordingly merit a separate Service rating. VARSD code 8612 represents an inflammation of the lower radicular group, all intrinsic of the hands, and corresponds with the CI’s upper extremity symptoms and EMG findings. Each of the CI’s upper extremities is impaired with the CI experiencing painful sensations in both hands that prevent him from properly using his hands and he frequently drops objects. The Board adjudged the level of impairment of the right hand as mild and the left hand as mild each under the lower radicular group coding of 8612.

The Board then considered if, sensory neuropathy of the left and/or the right lower extremity having been de-coupled from the combined PEB adjudication remained independently unfitting as established above. As a military member, one must be able to run and perform operations during the night. As documented above, the CI’s ambulation was impaired especially at night and on uneven ground due to the sensory deficits present in each foot and additionally; there was insufficient evidence in the record to overturn the PEB’s determination of a globally unfitting condition that included specific consideration of both feet. All members agreed that sensory neuropathy left lower extremity and sensory neuropathy right lower extremity would have rendered the CI incapable of continued military service; and, accordingly each lower extremity merits a separate Service rating. VASRD code 8621 represents neuritis of the common peroneal nerve of the lower extremities which aligns with the EMG and physical exam findings. The Board adjudged the level of impairment of the right leg as mild and the left leg as mild, each under the external popliteal nerve (common peroneal) coding of 8621.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends the CI’s peripheral sensory neuropathy of upper and lower extremities be rated for each individual extremity with disability rating of Left upper extremity neuritis coded 8025-8612 at 20% (mild); right upper extremity neuritis coded 8025-8612 at 20% (mild); left lower extremity neuritis coded 8025-8621 at 10% (mild); and right lower extremity neuritis coded 8025-8621 at 10% (mild). This coding scheme is greater than the minimum 30% rating under VASRD code 8025, so no stand-alone 8025 rating is warranted.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was correctable vision. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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. This condition was not profiled, not implicated in the commander’s statement and not judged to fail retention standards. It was reviewed and considered by the Board. There was no indication from the record that this condition 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 correctable vision and, 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. 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 peripheral sensory neuropathy of limbs (all four extremities) condition, the Board unanimously recommends that it be rated for four separate unfitting conditions as follows: Left upper extremity neuritis coded 8025-8612 and rated at 20%, right upper extremity neuritis coded 8025-8612 and rated at 20%, left lower extremity neuritis coded 8025-8621 and rated at 10%, and right lower extremity neuritis coded 8025-8621 and rated at 10%, all IAW VASRD §4.123 and §4.124a. In the matter of the contended correctable vision condition, 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 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** |
| Peripheral Sensory Neuropathy…  | Lower Radicular Group – Right Upper Extremity | 8025-8612 | 20% |
| Lower Radicular Group – Left Upper Extremity | 8025-8612 | 20% |
| Common Peroneal – Right Lower Extremity | 8025-8621 | 10% |
| Common Peroneal – Left Lower Extremity | 8025-8621 | 10% |
| **COMBINED (w/ BLF)** | **50%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110404, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXX, AR20120019098 (PD201100966)

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 50% 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 50% 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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA