RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101021 SEPARATION DATE: 20041031

BOARD DATE: 20120830

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (21J, Construction Equipment Operator) medically separated for a bilateral hip condition. He experienced an onset of right hip pain in 2002 which was ultimately suspected to be a stress fracture of the pubic bone. Over time he developed bilateral hip pain which could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The condition, characterized as “history of right superior pubic ramus stress fracture with continued bilateral chronic hip pain”, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The Informal PEB (IPEB) adjudicated the bilateral hip condition as unfitting, rated 10%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The CI appealed to a Formal PEB (FPEB) which conferred a 20% rating, also referencing the USAPDA pain policy; and, he was medically separated with that disability rating.

CI CONTENTION: The application states only “Hip/pelvic pain.” The CI 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 bilateral hip condition is addressed below; and, no additional conditions are 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20040819** | | | **VA (1 Mo. Pre-Separation) – All Effective 20041101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Hip Pain | 5099-5003 | 20% | Bilateral Hip Pain | 5099-5010 | 20% | 20051005 |
| No Additional MEB/PEB Entries | | | Low Back Strain | 5237 | 20% | 20051005 |
| Bilateral DJD of Knees | 5010 | 10% | 20051005 |
| Pes Planus / Plantar Fasciitis | 5276 | 10% | 20051005 |
| Tinnitus | 6260 | 10% | 20050922 |
| Hypertension | 7101 | 10% | 20051005 |
| Not Service Connected x 1 | | | 20051005 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY:

Bilateral Hip Condition. After the CI’s right hip pain failed to respond to profile limitations and conservative therapy, magnetic resonance imaging (MRI) was obtained in June 2003; which demonstrated “severe stress reaction or perhaps an occult stress fracture” of the “right symphysis pubis extending slightly into the right inferior pubic ramus.” A follow-up bone scan failed to demonstrate uptake in that area. There are no surgical indications for pathology of this nature. All clinical entries in the outpatient records referred to right hip pain, until a note dated 3 months prior to separation which documented a 2-month history of bilateral hip pain. The narrative summary (NARSUM) noted constant “bilateral anterior groin pain, right greater than left;” worse with walking and standing, and progressing over the course of the day. The physical exam noted a “slow antalgic gait,” tenderness over the pubic rami (right > left), and mildly decreased strength with thigh flexion and extension (4+/5) on the right. The VA Compensation and Pension (C&P) examiner (1 month prior to separation) did not identify or address a left hip condition; nor did he note bilateral complaints. The VA examiner documented “constant pain in the right groin region (points to the anterior side of the right hip)”, rated 5/10, with flares to 8/10 “if he stands for over 30 minutes.” It was noted that the CI “denies that flare-ups incapacitate him completely,” and “denies any Doctor ordered periods of incapacitation in the past 12 months.” The VA physical exam noted a “limping” gait (corroborated by shoe wear pattern) and tenderness over the anterior right hip and groin. Motor strength was recorded as 5/5, but the CI “was unable to squat or stoop.” There were incomplete goniometric range-of-motion (ROM) measurements from the MEB, and no left measurements from the VA; but, the ratable ROM evidence available to the Board is charted below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Hip ROM | MEB ~7 Mo. Pre-Sep | | VA ~1 Mo. Pre-Sep | |
| Left | Right | Left | Right |
| Flexion (125⁰ Normal) | 75⁰ | 50⁰ | Not addressed. | 90⁰ |
| Extension (20⁰) | - | - | - | 20⁰ |
| External Rotation (45⁰) | - | - | - | 35⁰ |
| Abduction (45⁰) | 45⁰ | 35⁰ | - | 35⁰ |
| Adduction (45⁰) | - | - | - | 10⁰ |
| Comments | “decreased due to severe pain” | | Guarding; “pain throughout” | |
| §4.71a Rating\* | 10% | 10% | - | 10% |

\* IAW §4.59 (painful motion); no compensable ROM limitations.

The Board directs attention to its rating recommendation based on the above evidence. IAW VASRD §4.7 (higher of two evaluations), the Board must consider separate ratings for PEB bilateral joint adjudications; although, separate fitness assessments must justify each disability rating. There is a good argument to be made from the above evidence that the left hip was not independently unfitting, especially since the clinical pathology was confined to the right pubic girdle; but, rather that is was unfitting only in concert with the clinically implicated right hip (combined effect). It must be noted, however, that a bilateral rating greater than 10% is not VASRD compliant in this case. The PEB’s rating of 20% was derived from the pain criteria of the USAPDA pain policy. The VA rating decision (VARD) invoked Service evidence to justify a bilateral rating, and only a right hip rating could have been derived from the C&P examination. Furthermore, the VARD cited the criteria for a 20% rating under 5003 (degenerative arthritis) which stipulates “2 or more major joints … with occasional incapacitating exacerbations.” The Board can find no Service evidence for incapacitation (as defined by the VASRD); and, two separate C&P entries specifically exclude this criterion. Therefore a bilateral rating under 5003 (for which there was, incidentally, no x-ray confirmation) would only meet the 10% criteria. Since the Board is bound by DoDI 6040.44 to comply with the VASRD in effect, and may not lower the PEB’s combined rating; members agreed that separate joint ratings, irrespective of fitness considerations, was the obligated recommendation. Although the overall disability is significant in this case, there is no VASRD compliant pathway to a rating higher than 10% for each hip joint. Given the lack of compensable ROM limitations under the hip ROM codes, there are no available joint codes under VASRD §4.71a which provide for a rating greater than 0%; barring application of VASRD §4.59 (painful motion) or §4.40 (functional loss) to achieve the minimum compensable rating of 10%. There is, however, sufficient evidence to support application of either §4.59 or §4.40 to achieve separate 10% ratings. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separate disability ratings of 10% each for the left and right hips. The action officer recommended, and the Board concurred with, the code 5099-5022 (periostitis) for the right hip and code 5099-5024 (tenosynovitis) for the left hip.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the bilateral hip condition was operant in this case; and it was adjudicated independently of that policy by the Board. In the matter of the bilateral hip condition, the Board unanimously recommends that it be rated as two separate conditions: the right hip coded 5099-5022 with a disability rating of 10%; and, the left hip coded 5099-5024 and with a disability rating of 10%; both IAW VASRD §4.71a. 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** |
| Pubis Stress Fracture, Right Hip | | 5099-5022 | 10% |
| Contiguous Pain and Limitation of Motion, Left Hip | | 5099-5024 | 10% |
| **COMBINED (w/ BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111031, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXXXXXX

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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120016886 (PD201101021)

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 description without modification of the combined rating or 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