RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101022 SEPARATION DATE: 20060312

BOARD DATE: 20120926

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (15J, Aviation Safety NCO) medically separated for right (dominant) wrist and lumbar spine conditions. He fractured his wrist from a fall 2000; ultimately requiring a surgical fusion, followed by surgical revision; and, was left with persistent pain and limitation of motion. He experienced an atraumatic onset of back pain in 2003; which was ultimately diagnosed as disc disease (non-surgical); and, which responded poorly to conservative interventions. Neither condition could 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 U3/L3 profile and referred for a Medical Evaluation Board (MEB). The right wrist and lumbar spine conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions (as identified in the rating chart below) were identified by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the right wrist and lumbar spine conditions as unfitting, rated 10% each; citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD) for both conditions. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The application states in part (redacted for brevity, with preservation of content relevant to the Board’s scope and recommendations), “Was not allowed to go into Medical Hold while receiving treatments. Right hand surgery complete failure, discharged without further surgery and/or treatment. Surgical report shows doctor error… Discharged with failed surgery… item one of MEB Proceedings states "marked loss of function." This was right hand of a right-handed person. All conditions were not evaluated and taken into consideration. Right Trapezius strain (right shoulder injury) not listed for MEB. … Left knee pain not listed although had been a medical issue noted in medical file since 2003… [Elaborates severity and clinical course of back condition; then notes interference of other medical priorities with full resolution of the back condition.] … Urinary retention had not been properly addressed as treatments with doctors were not allowed to be continued. … Found to be Neurogenic bladder secondary to back injuries. … When discharged I had many injuries that had not been fully addressed. It took a matter of years to get all addressed through a very strained V A system resulting in my now 80% disability rating.” There were also extensive remarks in block 15 of the DD Form 294 application reinforcing the above contentions; but, containing no reference to additional specific conditions requested for Board review.

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 the unfitting right wrist (and/or hand) and lumbar spine conditions are addressed below. Of the conditions indentified and determined to be unfitting by the PEB, only the condition of urinary retention (due to prostatism or otherwise) was specified sufficiently in the application to meet the DoDI 6040.44 scope requirements. The gastroesophageal reflux disease (GERD), right hernia, nephrolithiasis and pneumonia conditions were not alluded to in the application; e.g., they do not satisfy scope requirements. The right shoulder and left knee conditions specified in the application were not identified and adjudicated by the PEB; e.g., they do not satisfy scope requirements. The above conditions which were excluded from scope, any other conditions intended in request for Board consideration, or any condition or contention outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records (ABCMR).

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20051219** | | | **VA (~8 Mo. Post-Separation) – Effective 20060313** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Wrist Injury | 5099-5003 | 10% | Fracture Right Wrist | 5010-5215 | 10% | 20061104 |
| Low Back Pain w/ Disc Disease | 5299-5237 | 10% | Arthritis, Lumbar Spine | 5237 | 10% | 20061104 |
| Prostatism, Urinary Retention | Not Unfitting | | Neurogenic Bladder | 7542 | 10% | 20060929 |
| GERD | Not Unfitting | | GERD | 7346 | 10% | 20060929 |
| Asymptomatic Nephrolithiasis | Not Unfitting | | Nephrolithiasis | 7508 | 0% | 20060929 |
| Right Inguinal Hernia | Not Unfitting | | Inguinal Hernia | 7338 | 0% | 20060929 |
| History of Pneumonia | Not Unfitting | | Residuals of Pneumonia | 6899-6843 | NSC | 20060927 |
| No Additional MEB/PEB Entries | | | Right Trapezius Strain | 5201-5010 | 10% | 20061104 |
| 0% x 1 Additional / Not Service Connected (NSC) x 1 | | | 20060929 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for his service-connected conditions and his request for service rating of urinary retention (determined by the PEB to be not unfitting); and, must clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. The 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximate to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of service rating determinations for disability at the time of separation. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short the member’s service career; and then only to the degree of severity present at the time of separation. The DVA, however, 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 opinion regarding service medical error and incomplete evaluation and treatment of his conditions, with the implication that the disability rating should provide for remedy. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected service improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. Redress in excess of the Board’s scope of recommendations must be addressed by the ABCMR and/or the United States judiciary system.

Right Wrist Condition. The CI fell on his outstretched right hand in August 2000, suffering an initially undiagnosed scaphoid (wrist bone) fracture. With persistent and worsening wrist pain, suspected non-union of the scaphoid was identified in January 2001. After failed response to casting, he underwent scaphoid/trapezoid/trapezium (STT) fusion and pinning in September 2001. Initial surgical results were satisfactory, but he suffered recurrent pain in April 2005 following a successful deployment. At that time he was diagnosed with separation at the scaphoid/trapezium and underwent surgical revision with a bone graft. This procedure was complicated by a retained drill guide within the scaphoid bone which had broken off intraoperatively. Post-operative recovery was unsatisfactory. The narrative summary (NARSUM) documented “virtually constant” right hand and wrist pain, rated 5/10 at rest and 8/10 “with usage.” The physical exam noted tenderness over the first metacarpal and STT carpals. The MEB range-of-motion (ROM) measurements were dorsiflexion (extension) 45⁰ (normal 70⁰; minimal compensable = 15⁰ = 10%), palmar flexion 30⁰ (normal 80⁰; minimal compensable = 0⁰ = 10%), ulnar deviation 30⁰ (normal 45⁰; not ratable), and radial deviation 0⁰ (normal 20⁰; not ratable). Similar ROM excursions were corroborated in outpatient notes. In addition to the metacarpal tenderness noted above, there was some modest (non-compensable) reduction in thumb mobility. At the VA Compensation and Pension (C&P) exam (~8 months post-separation), the examiner noted constant pain with flares rated 3-4/10 which occurred “2–3 times a week.” The VA ROM measurements were significantly improved: dorsiflexion 75⁰, palmar flexion 90⁰, ulnar deviation 45⁰, and radial deviation 20⁰. Painful motion was documented at both the MEB and VA examinations.

The Board directs attention to its rating recommendation based on the above evidence. VASRD §4.71a provides only one code for limited motion at the wrist (5215), as applied by the VA, which confers only a 10% rating (independently of the degree of ROM impairment or hand dominance). Application of VASRD §4.59 (painful motion) is supported in this case to achieve a 10% rating under 5215. Alternate coding and rating under 5003 (degenerative arthritis), as per the PEB, can be supported; but, is not advantageous. The only higher rating for the wrist requires ankylosis (5214). Although *analogous* rating for ankylosis can be entertained for mobile, but functionally frozen joints, the evidence makes it clear that significant joint excursion was retained in this case. The Board therefore cannot justify an analogous rating under 5214. Any additional rating for hand (or thumb) impairment in this case is not supported by §4.71a or justified on fitness grounds. The Board was left to conclude therefore that there is no §4.71a compliant pathway to a rating higher than 10%, although acknowledging a significant loss of mobility of the (dominant) wrist. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), members agreed that there was insufficient cause to recommend a change in the PEB adjudication for the right wrist condition.

Lumbar Spine Condition. Low back pain began insidiously in 2003 and was managed with physical therapy, chiropractic modalities and temporary profiles until the 2005 deployment. On redeployment there was recalcitrant pain with left leg radiation; and, magnetic resonance imaging (MRI) demonstrated a “tiny” central disc extrusion at L4-5 “without stenosis or nerve root displacement” and “minimal facet sclerosis without hypertrophy at L5-S1.” There were no surgical indications, and the pain did not respond to epidural injections or continued conservative measures. The NARSUM noted “lower back pain [which] radiates to [left] hip, leg and foot” rated “5-8/10 on medications at rest and with activity.” Neurologic testing per the NARSUM was normal except for “4+/5” strength on the left vs. 5/5 on the right. Several contemporary outpatient neurologic exams noted no motor deficits or other positive findings. The post-separation VA C&P examiner noted “daily” pain rated 5/10 with flares to 8/10. The goniometric ROM measurements and ratable physical findings from the NARSUM and VA evaluations are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | NARSUM ~4 Mo. Pre-Sep | VA C&P ~8 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 65⁰ | 90⁰ |
| Combined (240⁰) | 155⁰ | 240⁰ |
| Comments | Normal gait, + tenderness, painful motion. | No gait/contour abnormality, spasm, tenderness, or painful motion. |
| §4.71a Rating | 10% | 0%\* |

\* See below for derivation of VA rating of 10%.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating was compliant with VASRD §4.71a for the ROMs under consideration. As charted above, §4.71a criteria would not yield a compensable rating from the findings of the C&P examiner. The VA rating decision cited 5003 criteria for its 10% rating, although the coding choice does not reflect that; and, also made note of the MEB flexion. The MEB’s ROM evaluation was consistent with the severity and findings noted in the outpatient record, and was temporally closer to separation; therefore it was assigned the dominant probative value in this case. The Board considered whether additional service rating could be recommended under a peripheral nerve code for the residual sciatic radiculopathy at separation. Firm Board precedence requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to service disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. There was no sensory impairment documented; and, any motor weakness was either intermittent or relatively minor and cannot be linked to significant functional consequence. There is thus no evidence of a separately ratable functional impairment (with fitness implications) from the residual radiculopathy; and, the Board cannot support a recommendation for an additional disability rating on this basis. There was no documentation of incapacitating episodes in this case which would provide for a higher rating under that formula. After due deliberation, members agreed that there was insufficient cause to recommend a change in the PEB adjudication of the lumbar spine condition.

Contended Urinary Retention Condition. The CI developed urinary frequency and urgency during the MEB period. There was no nocturia or incontinence. MEB urological evaluation noted prostatic enlargement, and the condition was partially responsive to a dilatory medication (Flomax). These would suggest a non-neurogenic cause; as would the MRI findings. The VA C&P examiner cited a VA urologic opinion that the condition was neurogenic, although the source exam for that conclusion was not in evidence. Urinary frequency was quantified to “4-5/day” on the C&P exam. The etiology of the condition is moot since the Board’s main charge with respect to this condition is an assessment of the fairness of the PEB’s determination that it was not unfitting. The Board’s threshold for countering fitness determinations is higher than the reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The condition was judged to meet retention standards, was not profiled, and was not implicated in the commander’s statement. There was no performance based evidence from the record that it significantly interfered with satisfactory duty performance; nor, would there be an expectation based on the relatively mild symptomatology that the condition would have rendered the CI incapable of continued service in his MOS. 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 urinary retention condition; thus no additional disability rating 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 right wrist condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended urinary retention condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional disability rating. 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** |
| Residuals of Scaphoid Fracture, Right Wrist | 5099-5003 | 10% |
| Chronic Low Back Pain with Multilevel Degenerative Disc Changes | 5299-5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111101, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120018605 (PD201101022)

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