RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101049 SEPARATION DATE: 20051116

BOARD DATE: 20120911

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a right-handed Active Guard/Reserve (AGR) Army National Guard SGT/E-5 (42A/Personnel Services), medically separated for left arm ulnar neuralgia, mild. The CI developed pain with paresthesias in the nondominant left forearm and underwent corrective elbow surgery. Post-operatively an ulnar nerve condition developed which could not be adequately rehabilitated with treatment to meet the physical requirements of the CI’s Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Residual ulnar neuropathy, left ulnar nerve and left elbow pain/weakness with normal motion conditions were identified and forwarded as separate conditions by the MEB. The Physical Evaluation Board (PEB) combined these two conditions, added subjective weakness of the hand and adjudicated this summation *en gros* as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI contended, “First off the original MRB was preformed [*sic*] in Ft. Bliss TX a very long way from home. At the time I just wanted to complete the process and get home. I did not push for a review since I was told I would have to remain in med hold for up to 1 yr. The board did not address any other medical issues. When the VA rated me they considered all medical issue. The VA rated me for ulnar nerve entrapment, major depressive disorder secondary to ulnar nerve, patellofemoral pain both knees, and chronic lumbosacral strain on L3-4. The combined ruling was 60% no where [*sic*] near the 10% from the Army. Since that time I have become 100% total permanent due to all previous issues and the addition of Multiple Scoliosis [*sic*]. The VA has service connected this per federal regulations that members who develop within 7yrs of discharge must be service connected. This addition has just complicated these issues just that much more. At the time I had just signed up for another 5yrs 9 mo and 5 days of service and planned to retire. When I did the MRB my life had been ripped from me and I lost my dream to retire. After a period of time I went to work for the state of Oregon until I had major problems arise from the MS that the VA connects to my service. Now my service has taken my ability to work and hopes to ever retire. My rating was not inclusive and no where [*sic*] near correct. Just by comparison with my VA rating my ruling was way off.”

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 remaining conditions rated by the VA at separation and listed on the DA Form 294 application are not within the Board’s purview. 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 IPEB – Dated 20051026** | | | **VA (2 Mos. Post-Separation) – All Effective Date 20051117** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Residual neuralgia left ulnar nerve transposition; left elbow pain and weakness with normal motion; subjective weakness of hand | 8716 | 10% | Ulnar nerve entrapment, left elbow, with history of ulnar nerve transposition with residual pain and numbness | 8716 | 10% | 20060119 |
| ↓No Additional MEB/PEB Entries↓ | | | Major depressive disorder associated with ulnar nerve entrapment, left elbow | 9434 | 30% | 20060111 |
| Chronic lumbosacral strain superimposed on degenerative changes at L3-L4 | 5237 | 20% | 20060119 |
| Patellofemoral pain disorder, left knee | 5299-5020 | 10% | 20060119 |
| Patellofemoral pain disorder, right knee | 5299-5020 | 10% | 20060119 |
| 0% X 0 / Not Service-Connected x 0 | | |  |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. 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 nor for conditions determined to be service connected by the Department of Veteran Affairs (DVA), but not determined to be unfitting by the PEB. However the operating under a different set of laws (Title 38, United States Code), the DVA is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Ulnar Neuralgia (minor) Mild Condition. The Board notes the CI to be right hand dominant. The CI developed pain in left elbow with forearm and hand paresthesias in 2000 following routine physical activity (push-ups). On evaluation X-rays were normal and nerve studies revealed mild compression of the ulnar nerve at the elbow. Surgical release of this compression was undertaken in May 2001 with resolution of symptoms. Symptoms recurred intermittently with vigorous activity in preparation for deployment in 2005. Neurology evaluation, conducted on 26 August 2005, documented decreased sensation in the left arm in the distribution of the ulnar nerve, mild weakness of left wrist extension, and a positive Tinel’s sign (a clinical sign suggestive of ulnar nerve compression). The examining neurologist deemed the CI ‘fit for duty’ and began medication to reduce symptoms. The CI was reexamined at clinic appointments on 7 September 2005 and 19 September 2005 (hand clinic) where both documented normal strength, sensation and negative Tinel’s sign. A detailed evaluation of the hand on the 19 September visit specifically revealed no changes due to ulnar neuropathy, and full range-of-motion (ROM) of the wrist and fingers (except chronic fixation of the distal most area of the little finger). At the MEB narrative summary (NARSUM) examination, performed on 4 October 2005, 2 months before separation, the CI reported some pain in the medial and posterior left elbow with associated intermittent tingling into the small and ring fingers. He noted subjective weakness in the elbow and hand with reduced ability to do his job. The CI reported difficulty firing weapon and pain with repetitive movement affecting his ‘’military duties” but no difficulties with garrison or “home unit duties.” On physical examination, left elbow was stable with a well healed scar, normal (ROM), normal strength and no findings of swelling or ulnar nerve compression. Grip strength, sensation and motor function of the hand were normal. At the VA Compensation and Pension (C&P) evaluation performed 2 months after separation; the CI reported continued pain in the left elbow and numbness in the fourthand fifth digits of the left hand and along the forearm. The elbow pain was increased with repetitive movement without additional loss of motion or incoordination. He noted his grip could be “weak at times” with resultant dropping of items. Findings on physical examination included no pain on movement or repetition, normal grip strength and some decreased sensation over the medial forearm and fourth and fifth digits.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the condition 10% under VASRD code 8716, ulnar nerve, neuralgia (minor/nondominant), mild. The PEB cited pain and subjective weakness of the hand and the, VA, sensory symptoms, in reaching their adjudications. Both agreed the condition to be mild. A higher rating of 20%, the highest achievable under this coding, requires the condition to be moderate and was not supported by the record. The PEB combined the residual ulnar neuralgia and left elbow pain and weakness conditions as a single unfitting condition. Not uncommonly this approach by the PEB reflected its judgment that the constellation of conditions was unfitting, and there was no need for separate fitness adjudications or implied adjudication that each condition was separately unfitting. The Board undertakes to determine if individual assessments of the bundled conditions would provide rating benefit to the CI. The Board agreed with the adjudication of the residual ulnar neuropathy condition under VASRD §4.123 based on history and physical findings of extremity tingling in both the PEB and C&P evaluations. The Board agreed that the elbow pain and weakness condition was not compensable under VASRD §4.40, §4.45 (DeLuca), §4.59 (Painful Motion), §4.71a or §4.118 (Scars) given the normal ROM without pain, normal strength, and stable linear scar on the MEB evaluation. The Board noted that the PEB included subjective weakness of the hand as a manifestation of the neuralgia condition. The Board opined that the hand condition was subsumed under the rating for the ulnar nerve. Following discussion, the Board unanimously agreed that unbundling of the ulnar and elbow pain conditions was of no rating benefit to the CI and that no higher disability rating was extant under any VASRD code. 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 for the ulnar neuralgia 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 residual neuralgia with subjective hand weakness and elbow pain with normal motion conditions IAW VASRD §4.123, 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Residual Neuralgia Left Ulnar Nerve Transposition With Elbow Pain and Weakness | 8716 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111117, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016891 (PD201101049)

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