RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101051 SEPARATION DATE: 20060814

BOARD DATE: 20120830

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (21B/Engineer), medically separated for chronic pain and slightly decreased range-of-motion (ROM) in left forearm and wrist. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the chronic pain in the left forearm and wrist as medically unacceptable; no other conditions were forwarded for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic pain and reduced ROM in left forearm and wrist condition as unfitting, rated 10%. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “I was deployed to Iraq in Feb of 2004, in Nov of 2004. While on route clearance patrol, I was shot in my left forearm. After the incident I was sent to the hospital, where I had multiple operations. Which included a 10in x 3in skin graph, a bone graph. I also had a metal plate, screws, and wires inserted into my arm. As a result of the bullet striking my arm, my artery was also severed, as a result, my artery couldn’t be repaired, so therefore it had to be tied off. I also had a claim for sleep apnea with the military, but I received a 0% rating for it upon my medical discharge.”

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 CI stated that the PEB rated the sleep apnea condition at 0%. In fact, this was neither considered nor rated by the PEB and is therefore outside the scope 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 the Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060601** | | | **VA (2 Mo After Separation) – All Effective Date 20060814** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain …Wrist | 5099-5003 | 10% | GSW to Left Forearm … | 5307 | 30%\* | 20061011 |
| No Additional MEB/PEB Entries | | | Residual, Scar… S/P ORIF | 7804 | 10% | 20070920 |
| Sleep Apnea | 6847 | 30% | 20061011 |
| Anxiety Disorder … PTSD | 9413 | 30% | 20070920 |
| Not Service-Connected x 1 | | | 20061011 |
| **Combined: 10%** | | | **Combined: 70%\*** | | | |

\*The initial VA rating for left forearm muscle injury due to GSW was 10%. The rating was increased to 30% per VARD dated 20071004 effective 20060814 based on C&P examination 20070920.

ANALYSIS SUMMARY:

Chronic Pain and Slight Decreased Range of Motion in Left Forearm and Wrist Condition. The CI sustained a through and through gunshot wound (GSW) to the left forearm in November 2004 while in Iraq, also sustaining a comminuted fracture of the mid-shaft of the left radius. He was treated with debridement, open reduction and internal fixation (ORIF) of the radius and skin grafting to the wound. There was loss of muscle and subcutaneous fat. Despite extensive rehabilitation, he continued to have limitations in motion, diminished strength and pain which impaired his ability to meet the requirements of his MOS. He was determined to have a medically unacceptable condition, issued a U3 profile and referred to an MEB. At the MEB narrative summary (NARSUM) examination, performed on 10 February 2006, the CI reported symptoms of decreased strength, reduced range-of-motion (ROM), sensory loss and hypersensitivity. The MEB examiner noted that the right hand dominant CI had reduced ROM and strength of the forearm, wrist and fingers. Left forearm supination was recorded to be 90 degrees (noted to be previously limited to 65 degrees), pronation was 75 degrees. There was hypersensitivity of the graft site with secondary hyperextension contractures of the wrist and fingers on the left. An occupational therapy examination on 19 November 2005, documented a detailed ROM examination: left forearm supination 60 degrees, pronation 70 degrees; left wrist dorsiflexion 50 degrees, palmar flexion 30 degrees. Grip and pinch strength were reduced. The CI was able to make a composite fist with his left hand and oppose all digits to his thumb without difficulty. Muscle fibrillations were observed in the left forearm and there was numbness over the skin graft area of the forearm and over the top of the wrist. In a subsequent email sent 3 months prior to separation, the MEB examiner, an orthopedic surgeon, opined that the reduced ROM was secondary to soft tissue scarring rather than neurological injury or mechanical blockage.

At the VA Compensation and Pension (C&P) examination, performed on 11 October 2006, 2 months after separation, the CI reported pain and reduced ROM and strength. On examination, he was noted to have reduced grip strength at 4/5 with diminished deep tendon reflexes of the left upper extremity. No muscle spasm was observed. Another C&P examination was performed in September 2007, 13 months after separation. The CI complained of pain and decreased function. Loss of muscle and subcutaneous fat was noted. Fatigue and pain were noted on examination. He was noted to have had damage to the flexor tendons. Forearm supination was 45 degrees and pronation was 65 degrees. The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the condition as 5099-5003, analogous to arthritis, and rated it at 10% utilizing the USAPDA pain policy which has since been rescinded. The VA initially rated the left arm at 10% as well, but coded it 5307 for moderate dysfunction of the group VII muscle group. After the second C&P, the VA raised the rating to 30% still using the 5307 code for severe muscle injury, retroactive to separation. The Board considered the coding options 5212, 5213, and 5215 for diminished ROM of the forearm and wrist, but noted that none provided a rating advantage to the 10% rating awarded by the PEB. The Board then considered rating the condition based on impaired muscle function (5307, muscle group VII). It noted that the clinical description clearly met the 20% disability rating criteria for a moderately severe disability and that the CI also met a number of the 30% criteria for a severe disability. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), §4.40 (functional loss), and utilizing VASRD §4.56, the Board determined that the degree of impairment was better described by the description of a severe level of disability and recommends a disability rating of 30% for the left forearm condition, coded 5307.

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 left forearm and wrist was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left forearm and wrist condition, the Board unanimously recommends a disability rating of 30%, coded 5307 IAW VASRD §4.73 and §4.56 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** |
| Chronic Pain, Slightly Reduced ROM in the Left Forearm and Wrist | 5307 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111107, 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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120016403 (PD201101051)

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