RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200101 SEPARATION DATE: 20081202

BOARD DATE: 20121002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (19K10/Armor Crewman), medically separated for contact dermatitis to rubber due to a skin sensitivity to carba mix and thiuram contained in rubber gloves and chemical and biological protective gear including the chemical protective mask. The CI developed contact dermatitis due to exposure to rubber and the condition culminated in an anaphylactic reaction in 2007. The condition precluded the wear of required chemical and biological protective gear and the CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Anxiety disorder, not otherwise specified (NOS); bilateral knee pain and ankle pain; and gastroesophageal reflux disease (GERD) conditions, identified in the rating chart below, were identified as meeting retention standards and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the contact dermatitis condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The other conditions were adjudicated as not unfitting. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Knee pain, sleep apnea, PTSD, Anxiety all of which were present at time of separation and was causing issues in my performance”

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 ratings for unfitting conditions will be reviewed in all cases. The knee pain and anxiety conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below, in addition to a review of the ratings for the unfitting condition of contact dermatitis. The other contended conditions, sleep apnea and posttraumatic stress disorder (PTSD), 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 20080821** | **VA (~1-4 Months After Separation) – All Effective Date 20081203** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Contact Dermatitis to Rubber | 7806 | 10% | Rubber Allergy with Contact Dermatitis | 7806 | 0% | 20090121 |
| Anxiety Disorder, NOS | Not Unfitting | Anxiety Disorder Not Otherwise Specified | 9413 | 70%\* | 20090326 |
| Bilateral Knee Pain and Ankle Pain | Not Unfitting | Left Knee Strain  | 5260 | 10%  | 20090406 |
| Right Knee Strain  | 5260 | 10% | 20090406 |
| left Knee Strain with Ligament Laxity | 5257 | 20% | 20090406 |
| Right Knee Strain with Ligament Laxity | 5257 | 20% | 20090406 |
| Left Ankle Condition | 5271 | NSC | 20090121 |
| Right Ankle Condition | 5271 | NSC | 20090121 |
| Gastroesophageal Reflux Disease | Not Unfitting | Gastroesophageal Reflux Disease (GERD) | 7399-7346 | 0% | 20090121 |
| ↓No Additional MEB/PEB Entries↓ | Obstructive Sleep Apnea | 6847 | 50% | 20090121 |
| Stress Headaches | 8199-8100 | 10% | 20090121 |
| Tinnitus | 6260 | 10% | 20090121 |
| Not Service Connected x 2 others | 20090121 |
| **Combined: 10%** | **Combined: 100%****Bilateral factor of 4.8% for 5260, 5260, 5257, 5257** |

\*Anxiety disorder 9413 increased to 100% effective 20110601 and decreased to 70% effective 20110901.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his conditions continues to burden him. The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Contact Dermatitis Condition. The first report of an allergic reaction to rubber was in 2002 when the CI noticed swelling of his hands and face after cleaning vehicles at the wash rack using rubber gloves. The condition continued and worsened over time with an episode of anaphylaxis in November 2007. Subsequent testing revealed positive reactions to carba mix and thiuram mix which are found in mission operations protective posture (MOPP) gear and nitrile and rubber gloves. He was not allergic to latex. On multiple occasions, the CI had erythema and swelling beyond the area that had been in contact with the rubber (upper arms and face) as well as systemic symptoms. At the time of the MEB narrative summary (NARSUM) performed in July 2008 and the allergy consultation performed in May 2008, the skin was normal and without rash. The C&P skin exam performed in January 2009 documented telangiectasias and scattered lentigines on the back.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and the VA rated this condition using VASRD code 7806, Dermatitis. The PEB applied a 10% disability rating based on lesions that, when present, covered more than 5% but less than 20% of the body and required intermittent systemic therapy with corticosteroids. The condition of contact dermatitis is manifested by a rash only when the skin has been in contact with the offending substance. The VA applied a 0% rating because no rash was present at the time of the C&P exam. 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 PEB adjudication for the contact dermatitis condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were bilateral knee pain and anxiety disorder, NOS. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. 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. Neither of these conditions was profiled; neither was implicated in the commander’s statement; and neither was judged to fail retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions 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 either of the contended conditions 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 contact dermatitis condition and IAW VASRD §4.118, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended bilateral knee pain and anxiety disorder NOS conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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** |
| Contact Dermatitis to Rubber | 7806 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110703, 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 / XXXXXXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20120019257 (PD201200101)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA