RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200241 SEPARATION DATE: 20020730

BOARD DATE: 20120822

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (73C3H/Finance Specialist), medically separated for chronic left shoulder pain, chronic right knee pain and chronic right ankle pain. The CI’s medical issues began in 1993 with right knee pain then right ankle pain in 1999 and experienced left shoulder pain in 2001. The CI underwent peroneal nerve release surgery for the knee and ankle pain without resolution. These various orthopedic conditions could not be adequately treated or rehabilitated and the CI did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U4 and L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded degenerative joint disease (DJD), left shoulder, right knee pain, right ankle pain, stable complex partial seizure disorder, chronic right epididymitis, irritable bowel syndrome (IBS), hemorrhoidal disease, chronic tonsillitis and first degree AV block conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic left shoulder pain, chronic right knee pain and chronic right ankle pain conditions as unfitting, rated 10%, 0% and 0% respectfully, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) and the U.S. Army Physical Disability Agency (USAPDA) pain policy. The PEB adjudicated the remaining conditions as not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The MRB did not pass adequate judgment on all my medical conditions. These conditions were “found to be unfitting (sic) and therefore not notable”. Furthermore, I did not get adequate judgment on my right foot pain. First, at the time of my separation, my Irritable Bowel Syndrome (IBS) was wrecking havoc on my body (it still greatly affects my current quality of life). I had (still have to) to remain near a rest room or risk defecating on myself due to not being able to control my bowels. Second, due to IBS causing me to constantly defecate, my hemorrhoids reoccurred almost as bad as they were prior to hemorrhoid surgery. My hemorrhoids bled and constantly hurt me (they still do to this day). The pain and bleeding especially occurred after physical training. As far as my foot pain, at that time I walked with a noticeable limp due to the pain in my right foot. The pain was in my actual foot, not my ankle. Don’t get me wrong, I had significant pain with my right ankle and it “popped and cracked” with every step I took, but the “ball” of my right foot also caused great pain. The Veterans Administration granted me 30% disability on my first look in August 2002. The first look was based on my separation “disabilities” and did not include all my health problems. On my second look in early 2004, my disability was increased to 50% due to looking at all my health problems and increased pain in my right foot. I am currently 60% with two pending decisions: 1) increased pain in my right foot and 2) hearing loss and tinnitus in both ears.”

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 IBS and hemorrhoid disease complex partial seizure disorder, chronic R epididymitis S/P epididymctomy, chronic tonsillitis, S/P tonsillectomy, and first degree AV block 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 chronic left shoulder pain, chronic right knee pain and chronic right ankle pain conditions. The right foot pain condition is only addressed in relation to the unfitting right ankle condition; the Morton’s neuroma diagnosed after separation is not within the Board’s purview. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and referred to on the DD Form 294 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 the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB (Revised) – Dated 20020626** | **VA (~4 Mos. Post-Separation) – All Effective Date 20020731** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic L Shoulder Pain due DJD | 5003 | 10% | DJD, Left AC Joint (Minor) | 5003 | 10%\* | 20021211 |
| Chronic R Knee Pain | 5099-5003 | 0% | Tendonitis, R Knee w/Medial Meniscus Degeneration | 5024 | 10% | 20021211 |
| Chronic R Ankle Pain | 5009-5003 | 0% | R Ankle Sprain/Strain | 5271 | 0%\* | 20021211 |
| Complex Partial Seizure Disorder | Not Unfitting | Complex Partial Seizures | 8999-8911 | 0% | 20021211 |
| Chronic R Epididymitis S/P Epididymctomy | Not Unfitting | Chronic R Epididymitis, S/P Epididymctomy | 7525 | 0% | 20021211 |
| IBS | Not Unfitting | IBS | 7319 | 10% | 20021211 |
| Hemorrhoidal Disease | Not Unfitting | Hemorrhoids S/P Hemorrhoidectomy | 7336 | 0%\* | 20021211 |
| Chronic Tonsillitis, S/P Tonsillectomy | Not Unfitting | No VA Entry | 20021211 |
| First Degree AV Block | Not Unfitting | First Degrees AV Block w/o Cardiac Symptoms | 7015 | NSC | 20021211 |
| ↓No Additional MEB/PEB Entries↓ | 0% X 2 (not included above)Not Service-Connected x 3 | 20021211 |
| **Combined: 10%** | **Combined: 30%\*** |

\*Effective 20040513: DJD, Left AC joint changed to 5003-5201 and increased to 20; R Ankle Sprain/Strain changed to 5003-5271 and increased to 10%; Hemorrhoids, 7336 increased to 10% (combined 60%).

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred conditions continue to burden him, that his conditions worsened, and that 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 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 DVA, operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 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.

Left Shoulder Pain due to DJD Condition. CI is right hand dominant. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Left Shoulder ROM | MEB ~2 Mos. Pre-Sep | VA C&P ~4 Mos. Post-Sep |
| Flexion (0-180⁰) | 170⁰ | 120⁰ |
| Abduction (0-180⁰) | 145⁰ | 120⁰ |
| Comments | + Painful motion;+ crepitus at left A-C joint | Some tenderness to palpation anterior shoulder |
| §4.71a Rating\* | 10% | 10% |

 \* §4.59 (painful motion)

The narrative summary (NARSUM) finalized 2 months prior to separation, notes the CI’s left shoulder pain began in October 2001. The shoulder pain was primarily located in the left acromioclavicular (AC) joint and service treatment records (STRs) suggest it was an overuse injury. There was pain with all motion of the shoulder that limited overhead work, push-ups and any lifting greater than 20lbs. There were no paresthias of the left upper extremity. The CI was treated by physical therapy and evaluated by orthopedics with no improvement in his pain. In addition to non-steroidal anti-inflammatory drugs (NSAIDS), intermittent narcotic medications were required for pain control. Plain film x-rays revealed mild degenerative changes of the AC joint.

At the VA Compensation and Pension (C&P) exam performed 4 months after separation, the CI reported daily left shoulder pain with popping and grinding sensation that makes it difficult for him to carry things. This C&P exam states that the pain began in 1995 with CI’s first treatment in 1998. Pain is usually 4/10 with flares to 7/10 one to two times weekly. No history of surgical procedures, dislocation or subluxation. The physical examination findings of the left shoulder are summarized in the chart above. They were not present on the initial C&P examination and were added approximately 5 months later via addendum after review of provider notes.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA coded the CI’s left shoulder pain using code 5003 and rated it 10%. The documentation in evidence notes non-compensable ROM measurements on both the NARSUM and VA C&P examinations. Satisfactory evidence of painful motion (IAW VASRD §4.59) and pain-limited motion of the left shoulder is present and IAW VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion.” There is no route to a rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the left shoulder pain under a separate code. Thus, the PEB choice of VASRD code 5003 was not detrimental to arriving at the highest achievable rating IAW VASRD §4.71a. 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 left shoulder pain condition.

Right Knee Pain Condition. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| --- | --- | --- |
| Right Knee ROM | MEB ~2 Mos. Pre-Sep | VA C&P ~4 Mos. Post-Sep |
| Flexion (140⁰ Normal) | 135⁰ | 150⁰  |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ |
| Comment | No tenderness to palpation, no laxity; DD Form 2807-1 provider section “pain restricts movement”  | + tenderness to palpation over patella; + painful motion; no ligamentous laxity |
| §4.71a Rating\* | 10% (PEB 0%) | 10% |

 \*§4.59 (painful motion)

The NARSUM finalized 2 months prior to separation, notes initial right knee pain in 1993 that continued and resulted in temporary profile action in March 1996. No acute injury was identified. The CI underwent conservative treatment consisting of NSAID use, physical therapy and temporary profiles. The CI then began complaining of numbness and tingling in his right lower leg into the ankle. Magnetic resonance imaging (MRI) in December 1999 indicated possible compression of the peroneal nerve*.* There was no weakness of the right lower leg and his EMG/NCS were normal. He then underwent a right peroneal nerve exploration which did not change his pain and he never fully recovered his functional status. Examination revealed no tenderness to palpation and no laxity of the right knee. The MEB provider stated “pain restricts movement” as noted in the summary chart above.

At the VA C&P exam the CI reported an injury, prior to military service, during physical training in 1973 as the injury that began his right knee pain. Initial treatment was an elastic wrap. The exam documents that he started to have pain and numbness from the knee down from 1994 to 1999 and “he was diagnosed with a pinched nerve and had a surgical procedure in which they attempted to relieve the pinched nerve.” The CI complained of pain going up and down stairs and weakness, stiffness and occasional giving away of the knee. No recurrent dislocation or subluxation. The CI had normal plain film x-rays and normal bone scan of the right knee. MRI of the right knee revealed a small joint effusion, chronic tendinosis of the iliotibial band, degeneration, posterior horn medical meniscus and fat pad changes likely related to past arthroscopic surgery. Pertinent physical exam findings are summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. There are several temporary profiles in the record for limitations due to the right knee pain and the commander’s statement specifically notes the CI’s inability to stand for long periods of time as “greatly reduces his ability to deploy and fight in all types of environments.” The PEB coded the chronic right knee pain analogously as 5099-5003 and assigned a rating of zero disability description stating “without loss of motion” or X-ray evidence of arthritis. The documentation in evidence notes non-compensable limited ROM measurements in the NARSUM and painful motion in the VA C&P examination. MRI indicated degeneration of the meniscus and chronic tendonitis. Satisfactory evidence of painful (§4.59) or pain-limited motion of the right knee was present and VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion.” After due deliberation, considering all of the evidence the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination of unfitting and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right knee condition.

Right Ankle Pain Condition. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| --- | --- | --- |
| Right Ankle ROM | MEB ~2 Mos. Pre-Sep | VA C&P ~4 Mos. Post-Sep |
| Dorsiflexion (0-20⁰) | 10⁰ | 20⁰ |
| Plantar Flexion (0-45⁰) | 45⁰ | 40⁰ |
| Comment | TTP over lateral malleolus, DD Form 2808 noted+ligament snapping anterior to lateral malleolus; DD Form 2807-1 provider section “pain restricts movement”  | TTP over bilateral malleoli; + crepitus; normal gait; no painful motion noted |
| §4.71a Rating | 0%-10% (PEB 0%) | 0% |

The NARSUM notes a long history of right ankle pain described as numbness and tingling. There was no acute injury identified. Conservative treatment with NSAIDS, physical therapy and temporary profiles did not relieve the symptoms. Orthopedic evaluation noted a link between exacerbations in the right knee pain and right ankle pain and the possibility of compression of the peroneal nerve was evaluated. In spite of a normal EMG/NCS study, the CI underwent a peroneal nerve exploration without relief of his symptoms. Profile action taken 3 months prior to separation was primarily for the right knee but included restrictions in consideration of the right ankle also. The MEB provider stated “pain restricts movement” and ROMs were limited as noted in the summary chart above. X-rays showed a calcaneal spur.

At the VA C&P exam the CI reported right ankle pain since 1995 and that “his ankle hurts when his knee hurts” Ankle pain is daily, rated at 4/10 with flare-ups one to two times weekly to 6-7/10, and associated with cracking and popping sensation. The CI takes NSAID medication when the pain flares-up. The VA exam after separation as summarized in the chart above, showed no painful or pain-limited ROM and the VA coded this exam at 0% using 5271 (upon later examination, subsequent VA rating increased to 10%, effective 13 May 2004).

The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the chronic right ankle pain as unfitting, coded it analogously using 5099-5003 and rated it 0% specifically citing the USAPDA pain policy. The Board deliberated if there was sufficient in-service evidence of functional loss (§4.40) or painful motion (§4.59) of the right ankle for application of a 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right ankle condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were IBS, hemorrhoidal disease, complex partial seizure disorder, chronic R epididymitis S/P epididymctomy, chronic tonsillitis, S/P tonsillectomy, and first degree AV block. 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.

IBS Condition: The CI’s initially sought medical care for his IBS in 1998. He complained of periods alternating between diarrhea and constipation with bloating and abdominal pain. The NARSUM finalized 2 months prior to separation, indicated the CI “has for the greater part of his adult life complained of alternating diarrhea and constipation, bloating, and abdominal pain. Patient has lived with these symptoms for a long time until he finally sought medical care in November 1998.” The NARSUM indicated several gastrointestinal diagnostic studies and medications were used to diagnose and treat his IBS (STR indicated colonoscopy, stool studies, EGD and positive H. pylori testing with subsequent treatment) without significant change in symptoms. The examiner stated, “over the past 6 months patient has done relatively well with his irritable bowel syndrome, noting cycling between constipation and diarrhea. He takes Elavil 20mg a day.” Exam indicated diffuse abdominal tenderness, negative blood in stool, with large rectal skin tags. The commander’s statement indicated: “his irritable bowel syndrome prevents him from being an effective leader in a field environment. The IBS restricts him to the command post/tactical operations center for the entire field/deployment timeframe.” The DD Form 2807-1 report of medical history indicated IBS onset in 1998 and diagnosis in 2001. The VA C&P exam documented a history of IBS with onset in 1998 and a similar workup with the following description: “these cycles (alternating diarrhea and constipation) can range anywhere from two times a week to not having a period for approximately 3 weeks. The patient states that when he has diarrhea he may have three to five loose stools in a day associated with cramping, bloating and anorexia. The patient also reports periods of fecal leakage associated with the irritable bowel syndrome.” The IBS condition was never profiled. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the IBS condition as additionally unfitting for disability rating.

Remaining Conditions: Complex partial seizure disorder was diagnosed in 1993 and well controlled on medications. Medications were tapered and the CI had no seizures, off medications since 1998. The CI was released from urology care in June 2000 for chronic R epididymitis following epididymctomy. Hemorroids were surgically corrected approximately 4 years prior to separation with significant reduction in symptoms. The CI had a tonsillectomy in early 2001 (for chronic tonsillitis) without post-surgical chronic residuals. The CI had no cardiac symptoms from an EKG finding of first degree AV Block. None of the remaining conditions were profiled or implicated in the commander’s statement. There was no documentation that indicated any duty limiting symptoms from any of these conditions. 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 determinations for the complex partial seizure disorder, chronic R epididymitis S/P epididymectomy, hemorrhoidal disease, chronic tonsillitis, S/P tonsillectomy or first degree AV block conditions and therefore, 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. As discussed above, PEB reliance on the USAPDA pain policy for rating chronic right ankle pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB 10% adjudication. In the matter of the right knee condition, the Board unanimously recommends a disability rating of 10%, coded 5099-5003, IAW VASRD §4.71a. In the matter of the chronic right ankle condition the Board unanimously recommends a disability rating of 10%, coded 5099-5003, IAW VASRD §4.71a. In the matter of the contended IBS, hemorrhoid disease, complex partial seizure disorder, chronic R epididymitis S/P epididymctomy, chronic tonsillitis, S/P tonsillectomy, and first degree AV block 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 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Shoulder Pain due DJD | 5003 | 10% |
| Chronic Right Knee Pain | 5099-5003 | 10% |
| Chronic Right Ankle Pain | 5099-5003 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120305, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), WRAMC, 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015643 (PD201200241)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA