RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200246 SEPARATION DATE: 20061202

BOARD DATE: 20120822

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Reserve SPC/E-4 (21F10/Heavy Construction Crane Operator), on a temporary tour of active duty, medically separated for scarring, status post improvised explosive device (IED) blast injury which occurred on 28 June 2005, with residual scarring on his right and left upper extremities. The CI completed treatment that consisted of surgical skin grafting, burn rehabilitation and occupational therapy. The residual discomfort and swelling of his hands made it difficult to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded 11% total body surface burns as the only medically unacceptable condition for Physical Evaluation Board (PEB) adjudication, with six other conditions, charted below, listed as medically acceptable. The PEB adjudicated the scarring as unfitting, rated 0%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The six other conditions forwarded by the MEB were adjudicated by the PEB as not unfitting, not rated. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “The same disabilities were evaluated by the VA at a higher level.”

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 hearing loss and tinnitus, posttraumatic stress disorder (PTSD), and shrapnel wounds as requested for consideration, meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below, as is the VA rated Raynaud’s syndrome. The issues of low back pain (LBP), left wrist pain and healed left perforated tympanic membrane are not within the Boards 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.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20061017** | **VA (~2 Mos. Post-Separation) – All Effective Date 20061203** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Scarring, S/P IED Blast Injury | 7802 | 0% | Scarring, Rt Forearm & Hand | 7801 | 20% | 20070126 |
| Scarring, Lt Forearm & Hand | 7801 | 20% | 20070126 |
| Raynaud’s SXs, B/L Hands | 7199-7117 | 40% | 20070126 |
| Perforated Lt Tympanic Membrane, Healed  | Not Unfitting | NO VA ENTRY | 20070126 |
| Hearing Loss & Tinnitus | Not Unfitting | Tinnitus | 6260 | 10% | 20070126 |
| B/L Hearing Loss | 6100 | NSC | 20070126 |
| PTSD | Not Unfitting | PTSD | 9411 | 10%\* | 20070128 |
| LBP | Not Unfitting | LBP | 5237 | NSC | 20070126 |
| Lt Wrist Pain | Not Unfitting | NO VA ENTRY | 20070126 |
| Shrapnel Wounds, Rt Leg, Lt Forearm, Neck | Not Unfitting | Shrapnel Scar, Lt Upper Neck | 7800 | 10% | 20070126 |
| Scar, Shrapnel Injury Residuals, Rt Shin | 7805 | 0% | 20070126 |
| ↓No Additional MEB/PEB Entries↓ | 0% X 5 / Not Service-Connected x 2 (includes above) | 20070126 |
| **Combined: 0%** | **Combined: 70%\*** |

\* PTSD (9411) increased to 30% then 100% effective 20100709 (VARD 20101118 and 20101118) with combined 100%

ANALYSIS SUMMARY: This case was adjudicated IAW the VASRD criteria in effect on 2 December 2006 which pre-dates the skin and scar coding changes to the current VASRD which were effective 20081023. 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 disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), 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’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Scarring, Status Post IED Blast Injury Condition. The narrative summary (NARSUM) notes the CI suffered first, second and third degree burns to his face and both upper extremities when burned by an improvised explosive device explosion on 28 June 2005. He was initially treated in Iraq, then air evacuated to a US Army Burn Center for definitive treatment. There he underwent excision and skin grafting of both forearms and hands. His recovery was complicated by a cellulitis of the left forearm and the donor site; however, both were treated with antibiotics and resolved. The facial burns were first degree and healed without sequelae.

At the MEB exam performed approximately 4 months prior to separation, the CI reported “feelings of pins and needles” at the dorsum of both hands with excessive sweating and edema causing mild difficulty with activities of daily living, recreation and leisure activities. The MEB physical exam noted minimal hypertrophic scarring to dorsum of both hands with normal active range-of-motion (ROM). Bilateral forearms showed no hypertrophic scarring and “ROM within normal limits.” The scars were measured at: left upper extremity, dorsal hand 30 square inches (sq. in.) and forearm 24 sq. in.; right upper extremity, dorsal hand 24 sq. in. and forearm 12 sq. in. ROM was not limited, but noted left ulnar forearm pain with flexion of the left small finger. Also noted under strength examination was “patient with slightly diminished grip and pinch strength bilaterally due to partial and full thickness burn injury. Overall strength grossly within normal limits” and under present condition “his hand burns demonstrate only mild hypertrophic raised borders.” Diagnosis included “8% first and second-degree burns to face and hands, 3% full thickness burn on extensor side of left hand.”

At the VA Compensation and Pension (C&P) exam performed approximately 2 months after separation, the CI reported both hands turn purple with cold weather, vigorous exercise or using hands frequently. This color change occurs daily, can last 15 min and is associated with pins and needles sensation of the hands. He self treats with rubbing and massage. The scars were documented as: left forearm 162 sq cm non-tender scar with adherence to underlying tissue in the mid forearm area and soft tissue damage; right forearm 162 sq cm non-tender scar without adherence to underlying tissue and no soft tissue damage. Both hands have graft scarring measuring 209 sq cm involving the entire dorsal surface of the hand and all five digits. The hands are mildly disfigured with mild limitation of motion due to scarring and skin inflexibility. EMG/NCS testing was performed and produced normal results.

The PEB combined left upper extremity scarring and right upper extremity scarring as the single unfitting and solely rated condition, coded under 7802 at 0%. Although this approach complies with AR 635-40; the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition are achieved IAW VASRD-only rating. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting. The Board adjudged that the left upper extremity and the right upper extremity conditions were each unfitting.

The PEB specifically utilized VASRD code 7802 (superficial scars, that do not cause limited motion) and assigned a disability rating of 0% for “scarring post IED blast injury with residual scarring 36 square inches right upper extremity and 54 square inches left upper extremity. ROM is not limited. Requires pressure garments on hands.”

The VA coded the scarring as 7801 (scars, that are deep or that cause limited motion) at 20% for the left, and 20% for the right, and additionally coded the CI’s bilateral hand symptoms analogous to Raynaud’s syndrome (7117) at 40%.

The Board directs attention to its rating recommendations based on the above evidence. The key factors for rating deliberations were the classification of the left and right upper extremity scars as either ratable under VASRD code 7802 (superficial) or under code 7801 (deep), the area of the scars, and consideration of any factor outside of §4.118 (schedule of ratings-skin). The definition of “superficial” delineated in code 7802 note (2) is “one not associated with underlying soft tissue damage.” The MEB examination only noted the size of the scars with few descriptive details, although the diagnosis included skin grafting of both hands and a 3% full thickness burn to the left hand. The “wrists, hands AROM within normal limits” was not specified in degrees and strength was noted as diminished with ongoing therapy for AROM and strength. The VA utilized code 7801 because of the presence of soft tissue damage or limited motion noted in the C&P exam for each upper extremity.

With regard to the left upper extremity: The left upper extremity had adherent left forearm scar of 162 sq. cm., and 209 sq. cm. scar of the hand (with a history of a 3% full thickness burn of the hand), and the VA exam indicated decreased ROM. The Board determined that the left upper extremity scarring was IAW coding for 7801 and met the 20% criteria for area at least 77 sq. cm. but less than 465 sq. cm. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the left upper extremity scarring, s/p IED blast injury condition, coded 7801.

With regard to the right upper extremity: There was no evidence of underlying soft tissue damage, but the VA exam documented “there is mild limitation of motion of bilateral hands due to graft scarring and inflexibility of hands.” The right upper extremity scar was noted at 36 square inches. The commander’s statement from the CI’s Reserve unit commander indicated “(The CI) can continue to work in his MOS.” The Board majority considered the totality of the record and adjudged that there was insufficient evidence of deep scarring or limited motion for rating under code 7801 and that appropriate coding of the right upper extremity was under code 7802. The total area of the scar was less than the 144 square inches (929 sq. cm.) required for a 10% rating under code 7802 by all exams. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends a disability rating of 0% for the right upper extremity scarring, s/p IED blast injury condition, coded 7802.

With regard to the CI’s non-scar complaints: Of dysesthesias, including excessive sweating and color changes of both hands especially when exposed to cold or during vigorous exercise on a daily basis, the only unfitting parameter noted on the MEB or PEB was “requires pressure garments on hands.” Functional limitations of the hands were a key part of the CI’s unfitness. The CI’s symptoms were closer akin to a regional sympathetic dystrophy (RSD-neurological conditions) rather than Raynaud’s syndrome (cardiovascular) symptoms, and no comparable diagnosis was noted in the MEB or PEB. The CI’s MOS was considered as were the two commander’s statement submitted. The UT-CBHCO commander indicated that the CI could not perform a number of tasks required of his 21F MOS. However, the CI’s Reserve unit commander’s statement of the same date indicated “(The CI) can continue to work in his MOS.” 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 consider the CI’s non-scar hand symptoms as additionally unfitting and separately ratable.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were hearing loss and tinnitus, PTSD, and (non-upper extremity) shrapnel wounds. 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. None of these conditions were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed and considered by the Board. There was no indication from the record that any 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 the any 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 scarring post IED blast with residual scarring right and left upper extremity condition, the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: By a unanimous vote for scarring post IED blast with residual scarring left upper extremity coded 7801 and rated 20% IAW VASRD §4.118; and by a 2:1 vote for scarring post-IED blast with residual scarring right upper extremity coded 7802 and rated 0% IAW VASRD §4.118. The single voter for dissent (who recommended adopting the VA rating 7801 at 20% for the right upper extremity) submitted the appended minority opinion. In the matter of the contended conditions hearing loss & tinnitus, PTSD, and shrapnel wounds, 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, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Scarring, S/P IED Blast Injury, Left Upper Extremity | 7801 | 20% |
| Scarring, S/P IED Blast Injury, Right Upper Extremity | 7802 | 0% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 201203, 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

MINORITY OPINION: The action officer recommends rating the right upper extremity at 20% under VASRD code 7801 (versus 0% coded 7802), in addition to the left upper extremity 20% rating.

Code 7801 is for “scars, other than head, face, or neck, that are deep or that cause limited motion.” The right upper extremity did not have indicators of deep scarring following skin grafting, but there was clear evidence of limited motion of the hand. The VA exam specified limitation of motion with the examiner stating “the hands are mildly disfigured with mild limitation of motion due to scarring and skin inflexibility.”

The VA exam was closer to the date of separation (2 months after separation, versus 4 months prior to separation), provided a more detailed description of the scars and upper extremity ratable criteria, and was given a higher probative value by the physician.

In addition, the MEB exam stated “patient with slightly diminished grip and pinch strength bilaterally due to partial and full thickness burn injury” (absent any indication of any nerve or muscle disability), and the complete statement on ROMs was “Assessment: Wrist, Hands: Minimal hypertrophic scarring to bilateral dorsal hands. ROM within normal limits.” There was no indication of specific joints, degrees, or repetitive testing. Anatomically, scars on the dorsum of the hands with any shortening or inflexibility would most impact the fingers curling into a grip or the pinch motion. Lay testimony of ‘normal use of his hands’ would certainly have been part of the fitness determination; however, it provides negligible evidence for assessing the normal ROMs of the small joints of the hands and fingers for rating purposes.

The PEB-stated scar area of the right upper extremity was 36 square inches (232 cm²) which met the 20% rating criteria under 7801 (area or areas exceeding 12 square inches) and was less than the 30% criteria (>72 square inches). With consideration of §4.3 (resolution of reasonable doubt), §4.7 (Higher of two evaluations) and §4.40 (Functional loss), the record fully justifies use of the 7801 code and a 20% rating for the right upper extremity condition.

The action officer strongly recommends that the CI’s prior determination be modified to reflect permanent disability retirement at 40% as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Scarring, S/P IED Blast Injury, Left Upper Extremity | 7801 | 20% |
| Scarring, S/P IED Blast Injury, Right Upper Extremity | 7801 | 20% |
| **COMBINED (w/ BLF)** | **40%** |

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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120015823 (PD201200246)

1. 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 to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

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.

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA