RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1200249 SEPARATION DATE: 20060729

BOARD DATE: 20120912

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sailor, AS2/E-5 (Aviation Support Technician 2nd Class), medically separated for bilateral first carpometacarpal (CMC) joint laxity (located where base of thumb meets the wrist). The condition began in 2002 and was not a consequence of injury. He did not respond adequately to operative and rehabilitative treatment and was unable to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB submitted pain in soft tissues of limb and unspecified derangement of hand joint as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The Physical Evaluation Board (PEB) adjudicated right and left first carpometacarpal joint laxity and pain as unfitting, rated 10% each, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). Status post open reduction and internal fixation (ORIF) was listed as a related Category 2 condition. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “I feel I have a service related disability, and the VA rating I received was unacceptable. The pain I have will never go away, it is permanent, I dealt with this issue the last 3 years of service, routine med visits and months of physical therapy have left my hands painful every day. I was never allowed to go to taps class, I feel the rating I received was unfair.”

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. 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 Board for Correction of Naval Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060420** | | | **VA (No Exam-Separation) – All Effective Date 20081027** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral First CMC Joint Laxity, Pain | 5299-5003 | 10% | Bilateral First CMC Joint Laxity, S/P ORIF Right CMC Joint | 8515 | 0% | STRs\* |
| 10% |
| S/P ORIF Right CMC Joint | Category 2 | |
| ↓No Additional MEB/PEB Entries↓ | | | 0% X 1 / Not Service-Connected x 0 | | | STRs\* |
| **Combined: 20%** | | | **Combined: 0%** | | | |

\*Service Treatment Records (STRs)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Department of Veteran Affairs (DVA). The 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 resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation.

Bilateral First Carpometacarpal Joint Laxity. After developing bilateral CMC joint pain in 2002, evaluation determined the cause to be CMC laxity and instability. Surgery of the right CMC joint was performed in January 2004, however the CI continued to experience bilateral pain with activities of daily living, especially gripping, twisting, pushing or pulling. Use of a mouse or prolonged writing caused pain in his right dominant thumb. Surgery was not performed on the left CMC joint, but occupational therapy provided minimal benefit. The narrative summary (NARSUM) examination on 22 March 2006 (4-months prior to separation) noted the left hand to be without deformity or atrophy. Range-of-motion (ROM) was full, and strength and sensation were normal. Pain and laxity of the first CMC joint was present. The right hand displayed mild atrophy of the thenar eminence (palm muscle overlying the base of the thumb) with a well-healed surgical scar, and tenderness of the first CMC joint. Active ROM of the thumb was diminished by 30% in all planes, and grip and pinch strength was decreased by approximately 25%. Sensation was intact. X-rays of the right hand showed only post-surgical changes. The MEB physical exam noted tenderness over the area of the palm proximal to the thumb.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated each CMC joint at 10% under an analogous 5003 code. The DVA rated the condition at 0% under 8515 (paralysis of median nerve) based on service treatment records. The PEB’s approach is consistent with VASRD §4.71a for rating painful joints, but the Board considered alternate pathways to a higher rating. Under 5215 (wrist, limitation of motion), 10% is the highest possible rating, while under 5228 (thumb, limitation of motion) the criteria for 20% were not met. Muscle injury codes 5307 (Group VII. *Function*: Flexion of wrist and fingers) and 5309 (Group IX. *Function*: Intrinsic muscles of hand: Thenar eminence) were also considered for the right hand because of the muscle atrophy present on exam, but Board members agreed that a higher rating was not justified via this pathway. 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 bilateral first CMC laxity and pain 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 bilateral CMC laxity and pain condition and IAW VASRD §4.71a, 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Bilateral First Carpometacarpal Joint Laxity and Pain | Right | 5299-5003 | 10% |
| Left | 5299-5003 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120308, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 15 Oct 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

- XXX XX former USMC

- XXX XX former USMC

- former USN, XXX-XX

- former USN, XXX-XX

Assistant General Counsel

(Manpower & Reserve Affairs)