RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900353 BOARD DATE: 20100512

SEPARATION DATE: 20011026

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SUMMARY OF CASE: This covered individual (CI) was E-5, Surgical Technologist medically separated from the Navy in 2001 after more than ten years of service. The medical basis for the separation was Right Shoulder Multidirectional Instability, Status Post TACS (thermal-assisted capsular shift) Procedure. The CI first injured his right shoulder in approximately 1997 while opening a sliding glass door. In August 1998 he had right shoulder arthroscopy with subacromial decompression, distal clavicle resection (Mumford), and electrothermal capsular shrinkage. An Informal Physical Evaluation Board (PEB) in July 2000 evaluated the conditions of bilateral epicondylitis, chronic lower back pain, and right shoulder impingement and determined he was fit for continued naval service. However, he continued to have right shoulder pain and was subsequently diagnosed with a rotator cuff tear and a patulous anterior capsule. He underwent surgical repair with lysis of adhesions in February 2001. He had some initial improvement in his shoulder range of motion (ROM) and pain but then his condition worsened and he was not able to return to full duty. The CI was again referred to the PEB. The PEB evaluated his right shoulder and right elbow, determined he was unfit for continued naval service secondary to his right shoulder condition, and he was separated with a 10% disability rating using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI states: “Lumbar strain was evaluated by VA as 40% disabling and right shoulder condition was initially evaluated as 20% disabling.”

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (14 Months Prior to Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Shoulder Multidirectional Instability Status Post TACS Procedure | 5299-5003 | 10% | 20010723 | Right Shoulder Impingement and Tendinitis | 5299-5201 | 20% | 20000825 | 20011027 |
| Right Shoulder Status Post Arthroscopic Distal Clavicle Resection | CAT II |  | 20010723 |  |  |  |  |  |
| S/P Surgical Release of Adhesive Bands Right | CAT II |  | 20010723 |  |  |  |  |  |
| Right Shoulder Status Post Subacromial Decompression  | CAT II |  | 20010723 |  |  |  |  |  |
| Right Elbow Lateral Epicondylitis | CAT III |  | 20010723 | Right Epicondylitis | 5024 | 10% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326Right Shoulder Scar | Right Shoulder Arthroscopy Scar, Right Flank Scar, and Right Forearm Scar | 7805 | 0% | 20000825 | 20011027 |
|  |  | JDETS 20000606Bilateral | Left Epicondylitis | 5206-2024 | 10% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326 | Left Patellofemoral Pain Syndrome | 5014 | 0% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326 | Right Patellofemoral Pain Syndrome | 5014 | 0% | 20000825 | 20011027 |
|  |  | JDETS 20000606MEB H&P 20010326 | Lumbar Strain | 5295-5292 | 40% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326 | Dyshidrotic Eczematous Dermatitis, Tinea Pedis, and Seborrheic Dermatitis | 7899-7806 | 10% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326Erosive Esophagitis, Hiatal Hernia | Gastroesophageal Reflux Disease, Hiatal Hernia, and Erosive Esophagitis | 7304-7346 | 10% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326 | Left 5th Toe Fracture | 5299-5283 | 0% | 20000825 | 20011027 |
|  |  | MEB H&P 20010326Recurrent Sinusitis | Maxillary Sinusitis and Left Mastoiditis | 6513 | 0% | 20000825 | 20011027 |
|  |  | MEB H&P 20000515 | Hemorrhoids | 7336 | 0% | 20000825 | 20011027 |
|  |  |  |  | 4 NSC |  |  |  |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **70% from 20011027****Bilateral factor of 3.5% for diagnostic codes 5201,5024,5024**   |

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ANALYSIS SUMMARY:

Right Shoulder

After the CI’s second right shoulder surgery on 20010220 a narrative summary (NARSUM) was completed on 20010305. It reported the CI was doing well postoperatively and had decreased pain about the right shoulder and improving internal rotation. However, his condition had not completely resolved and the surgeon recommended the CI remain on active duty for approximately two months to allow him further rehabilitation before proceeding with the PEB. The case was terminated and another NARSUM was completed two months later on 20010517. At that time he was considered to have improved shoulder motion but he continued to have crepitation about the shoulder as well as pain and was not able to return to full duty. The informal PEB then determined he was unfit for continued naval service secondary to his right shoulder condition and he was separated with a 10% disability.

The VA examination was completed fourteen months prior to separation and findings are consistent with the other examinations.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Shoulder ROM | Normal | 20000228 | 20000821 | VA C&P20000828 | 20010305 | 20010517 |
| Flexion | 180 |  | Diffuse tenderness on range of motion | 170 | 180 | 145 |
| Abduction | 180 |  | 160 | 175 | 160 |
| Internal Rotation | 90 |  | 70 | Decreased: sacrum on right, T7 on left | Level of T7 |
| External rotation | 90 |  | 90 |  | 45 degrees while seated |
| Strength | 5/5 |  | 5/5 bilaterally |  |  |  |
| Neurologic |  |  | Intact |  |  |  |
| Neer |  | Negative | Positive |  | Positive |  |
| Hawkins impingement |  | Negative | Positive |  | Positive |  |
| Impingement 1 |  |  |  |  |  | Positive |
| Impingement 2 |  |  |  |  |  | Positive |
| Cross chest |  | Positive |  |  | Mildly Positive |  |
| Apprehension |  | Negative | Positive |  |  |  |
| Anterior Drawer |  |  |  |  | 1+ | 1+ |
| Posterior Drawer |  |  |  |  | 1+ | 0 |
| Sulcus |  | Negative |  |  | 1+ |  |
| O’Brian |  |  | Negative |  | Negative |  |
| Speed’s |  |  |  |  | Positive |  |
| Yergason’s |  |  |  |  | Negative |  |

Analysis:

The CI is right handed. Although the CI did have improved internal rotation of the right shoulder when comparing the May 2001 examination to that of March 2001, he also had decreased flexion and abduction. There was no evidence of any neurologic abnormality or significant shoulder instability. The right shoulder range of motion is limited by pain but does not reach the minimum compensable level of 90 degrees of flexion or abduction

Chronic Low Back Pain

The informal PEB of 20000712 determined the CI’s chronic low back pain was not unfitting nor were his bilateral epicondylitis or right shoulder impingement. The NARSUM completed 20000228 did not include any information related to back pain. None of the NARSUMs, Medical Board Reports, or Limited Duty (LIMDU) Board Reports addressed back pain. The history and physical completed in March 2001 for the Medical Evaluation Board (MEB) documents a history of chronic back pain without current problems.

The Limited Duty forms are not available for review but the Non-Medical Assessments of May 2000 and April 2001 describe the CI’s current limitations. Both documents state the CI was not able to perform prolonged standing and this, along with his other physical limitations, caused him to be unable to perform all the duties required of a Surgical Technologist.

The service treatment record (STR) shows multiple visits since January 1998 for back pain and treatment. No ROM measurements are documented in the STR. The VA evaluation completed in August 2000 showed painful motion in all directions including forward flexion limited to 70 degrees and a normal motor and neurologic examination. There was no evidence of a herniated disc, no abnormal gait or posture, and no muscle spasm. The VA determined the CI did have some degree of functional impairment related to activities involving prolonged standing, repetitive bending and heavy lifting. The impairment was found on the basis of pain and fatigability without evidence of instability, incoordination, or significant weakness.

Analysis:

Prolonged standing is a physical requirement of a surgical technologist. Both Non-Medical Assessments stated the inability to perform prolonged standing was part of the reason why the CI was not able to perform the required duties of his specialty. The inability to stand for prolonged periods cannot be attributed to a shoulder condition but can be attributed to chronic low back pain.

Other Conditions

None of the other conditions appear to have been unfitting at the time of separation from service. No duty restrictions are specifically attributable to these conditions.

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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. After careful consideration of all available information the Board unanimously determined that the CI’s shoulder condition is most appropriately rated at 20% for 5299-5201 Right Shoulder Multidirectional Instability Status Post TACS Procedure.

VASRD §4.59 Painful motion states the intent of the rating schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. Although the CI’s right shoulder range of motion was not limited to flexion or abduction of 90 degrees (the minimal compensable level), it was limited by pain. Therefore a minimum rating of 20% under VASRD code 5201 is warranted for painful motion.

The Board also considered the condition of Lumbar Strain and determined by simple majority that this condition was not unfitting at the time of separation and therefore no disability rating is applied. The 20010723 informal PEB did not specifically evaluate this condition and the previous 20000712 informal PEB had determined that CI’s Bilateral Epicondylitis, Chronic Lower Back Pain, and Right Shoulder Impingement were not unfitting. The Non-Medical Assessments of May 2000 and April 2001 both stated the CI was unable to perform all the required duties of his specialty secondary to his physical limitations. Both listed no pushups, pull-ups, heavy lifting, prolonged standing, bending, and PRT (Physical Readiness Test) as current limitations but neither mentioned any particular conditions.

The single voter for dissent (who opined the condition of chronic low back pain was unfitting at the time of separation and appropriately rated at 10% for 5295-5292 Lumbar Strain) submitted a minority opinion.

The Board also considered all of the other conditions rated by the VA and unanimously determined that these conditions were not unfitting at the time of separation from service and therefore no disability rating is applied. No duty restrictions are attributable to any of these conditions and they did not significantly interfere with satisfactory performance of required duties.

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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** |
| Right Shoulder Multidirectional Instability Status Post TACS Procedure | 5299-5201 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090324, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

MINORITY OPINION

PHYSICAL DISABILITY BOARD OF REVIEW

Chronic Low Back Pain

The Limited Duty forms are not available for review but the Non-Medical Assessments of May 2000 and April 2001 describe the CI’s current limitations and state he had been on limited duty since 19990816. Both documents state the CI was not able to perform prolonged standing and this, along with his other physical limitations, caused him to be unable to perform all the duties required of a Surgical Technologist.

The service treatment record (STR) shows multiple visits since January 1998 for back pain and treatment. No ROM measurements are documented in the STR. The VA evaluation completed in August 2000 showed painful motion in all directions including forward flexion limited to 70 degrees and a normal motor and neurologic examination. There was no evidence of a herniated disc, no abnormal gait or posture, and no muscle spasm. The VA determined the CI did have some degree of functional impairment related to activities involving prolonged standing, repetitive bending and heavy lifting. The impairment was found on the basis of pain and fatigability without evidence of instability, incoordination, or significant weakness.

The informal PEB of 20000712 determined the CI’s chronic low back pain was not unfitting, nor were his bilateral epicondylitis or right shoulder impingement. The NARSUM completed 20000228 did not include any information related to back pain. None of the NARSUMs, Medical Board Reports, or LIMDU Board Reports addressed back pain.

The 20010723 informal PEB did not specifically evaluate back pain. The Non-Medical Assessments of May 2000 and April 2001 both stated the CI was unable to perform all the required duties of his specialty secondary to his physical limitations. Both listed no pushups, pull-ups, heavy lifting, prolonged standing, bending, or PRT as current limitations but neither mentioned any particular conditions. Neither a shoulder condition nor back pain was mentioned.

The history and physical completed in March 2001 for the MEB documented a history of chronic back pain without current problems. Current problems would not be expected if the CI had been on limited duty and had not been performing the activities that would exacerbate his back pain.

Analysis:

The Non-Medical Assessments of May 2000 and April 2001 both state the CI had been on limited duty since 19990816. If the CI had not been required to perform prolonged standing for almost two years prior to March 2001, he would not be expected to have significant back pain at that time. However, if he was unable to perform prolonged standing, he was unable to perform all the requirements of his specialty as a Surgical Technologist.

Prolonged standing is a physical requirement of a surgical technologist. Both Non-Medical Assessments stated the inability to perform prolonged standing was part of the reason why the CI was not able to perform the required duties of his specialty. The inability to stand for prolonged periods cannot be attributed to a shoulder condition but can be attributed to chronic low back pain.

Both conditions appear to contribute equally to the CI’s inability to perform the required duties of his specialty and both should be considered unfitting. In accordance with the 2001 VASRD a 10% rating for 5295-5292 Lumbar Strain is warranted based on painful motion and slight limitation of motion of the lumbar spine.

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RECOMMENDATION: This Board Member 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** |
| Right Shoulder Multidirectional Instability Status Post TACS Procedure | 5299-5201 | 20% |
| Lumbar Strain | 5295-5292 | 10% |
| **COMBINED** | **30%** |

MEMORANDUM FOR DEPUTY COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 20 May 10

1. I have reviewed subject case pursuant to reference (a) and accept the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 20 percent (increase from 10 percent) effective 26 October 2001.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and the subject member is notified once these actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)