RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900500 SEPARATION DATE: 20050115

BOARD DATE: 20110412

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty SSgt/E-6 (0121, Unit Clerk) medically separated from the Marine Corps in January 2005. The medical basis for separation was right shoulder pain. He tore a muscle (right pectoralis major) while weight lifting in April 2003, and underwent surgical repair. In February 2004, he was diagnosed with rotator cuff tear and underwent a second surgery of the right shoulder. Despite additional treatment, he did not respond adequately to perform within his military occupational specialty or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Right shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. Three additional conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB found the shoulder condition unfitting, and rated it 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The three other conditions were found to be Category III (not separately unfitting and not contributing to the unfitting condition). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states, “The PEB was conducted in July 2004. I had 2 surgeries after July. Rotator Cuff repair 8/12/2004 and A/C joint resection 12/8/2004 which resulted from Original Inquiry on April 15, 2003 and 2nd surgeries on April 16, 2003.” He elaborates no specific contentions regarding rating or coding, and mentions no additionally contended conditions.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040622** | | | **VA (24 mo. After Separation\*\*) – All Effective 20050116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Pain… | 5299-5003 | 10% | Right Shoulder… | 5302-5201 | 20% | STR\* |
| Ganglion Cyst | Not Unfitting | | Scar, Left Ankle | 7804 | 10% | STR |
| Right Knee Pain | Right Knee… | 5259 | 10% | STR |
| Low Back Pain | Back Strain | 5237 | NSC | STR |
| No Additional MEB Entries | | | 3 x 0% / 5 x Not Service Connected | | | STR |
| **Final Combined : 10%** | | | **TOTAL Combined : 40%** | | | |

\*\*VA C&P Exam 20071221 \*Service Treatment Record

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ANALYSIS SUMMARY:

Right Shoulder Condition. The CI’s initial injury was rupture of the pectoralis major tendon. At the time of the MEB there was also evidence of acromioclavicular (AC) joint arthrosis and some tendonitis of the supraspinatus tendon. The MEB examiner opined that the CI had continued “right shoulder pain status post repair of right pectoralis major muscle. I believe these are evidence of rotator cuff tendonitis as well as AC joint arthrosis.” The CI underwent two additional surgeries after the PEB adjudication to address these conditions. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These two exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Right Shoulder | Separation Date: 20050115 | |
| Goniometric ROM | MEB – 9 mos Pre Sep | VA C&P –24 mos Post Sep |
| Flexion (180⁰ is normal) | 170⁰ | 150⁰ |
| Abduction (180⁰ is normal) | 170⁰ | 145⁰ |
| §4.71a Rating | 20% | 20% |
| Comment | 20% is based upon painful motion | 20% is based upon  painful motion |

DoDI 6040.44 specifies a 12-month interval for special consideration of VA findings, rendering the probative value of the VA evidence in this case somewhat diminished. The preponderance of probative value for purposes of the Board’s permanent rating recommendation therefore must lie with the evidence from the MEB examination, although the 24- month compensation and pension (C&P) examination nullifies any speculation that the CI may have manifested less impairment after the additional surgical procedures. The PEB and VA chose different coding options for the right shoulder condition, which accounts for the difference in rating. The PEB chose code 5299-5003, analogous to degenerative arthritis of the shoulder joint. The VA coded the condition 5302-5201, injury to muscle group II (shoulder girdle), linked with limitation of arm motion. Of these two options, the Board unanimously agreed that linking muscle injury with limitation of joint motion is a more accurate fit with the CI’s injury and his shoulder disability. Applying VASRD §4.59 (painful motion) leads to a rating of 20%, since that is the minimum compensable rating for loss of arm/shoulder motion under code 5201. There was no evidence of ratable peripheral nerve impairment in this case. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt) and VASRD §4.7 (higher of two evaluations), the Board unanimously recommends a separation rating of 20% for the right shoulder condition. It is appropriately coded 5303-5201, and meets the criteria for a 20% rating.

Other PEB Conditions. Other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were ganglion cyst of left ankle, low back pain and right knee patello-femoral chondromalacia. None of these conditions were implicated in the commander’s statement or were noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory job performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Several additional conditions were documented in the Disability Evaluation System (DES) file. None of these conditions were clinically significant during the MEB/PEB period, carried duty limiting restrictions or were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. 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 right shoulder condition, the Board unanimously recommends a rating of 20% (coded 5303-5201) IAW VASRD §4.73 and §4.71a. In the matter of the ganglion cyst, low back pain and right knee pain, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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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 Condition | 5303-5201 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090814, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 15 Jun 11

I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the PDBR Mr. XXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Assistant General Counsel

(Manpower & Reserve Affairs)