RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900568 SEPARATION DATE: 20070815

BOARD DATE: 20101001

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SUMMARY OF CASE: This covered individual (CI) was a USMC Lance Corporal/E-3 (Field Radio Operator) medically separated in August 2007 after 5 years of service. The medical basis for separation was Right Shoulder Pain. The CI injured his right shoulder in January 2006. Eight months later (September 2006), he underwent an arthroscopic capsulorrhaphy procedure on the right shoulder. In spite of the surgery and other treatment modalities, the CI continued to experience pain in the right shoulder, and he was declared non-deployable. After two Limited Duty Boards, he underwent a Medical Evaluation Board (MEB). The MEB referred him to the Physical Evaluation Board (PEB). At the PEB, he was found unfit for continued military service due to the painful right shoulder condition. The CI accepted the PEB findings, and was separated at 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable USN/USMC and Department of Defense regulations.

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CI’s CONTENTION (20090916): The CI states “I have constant pain in my shoulder, back and neck area. Constant popping when I move my arm, and I can’t turn my neck all the way to the left side. I have two discs at the bottom of the right side of my neck that are rubbing together causing great pain. I had none of those injuries prior to the original shoulder injury.”

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RATING COMPARISON:

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| --- | --- |
| **Service PEB**  | **VA (2 Mo. after Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Shoulder Pain, s/p Shoulder Surgery | 5299-5003 | 10% | 20070517 | Right Shoulder Pain, s/p Shoulder Surgery | 5099-5019 | 10% | 20071023 | 20070816 |
|  |  |  |  | 2 Skin Scars, rated at 0%  | 7802 | 0% | 20071023 | 20070816 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*):** **10% from 20070816**  |

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ANALYSIS SUMMARY:

Right Shoulder Pain – The CI injured his right shoulder in January 2006. While doing pull-ups he felt a tearing sensation in his right shoulder. Over the next two months he was treated with limitation of duty and medications, but his symptoms worsened. He was seen by Sports Medicine, diagnosed as having Bicipital Tendonitis, and treated with limited duty and Physical Therapy (PT). Shoulder radiographs were normal. In May 2006 he received a corticosteroid injection. In spite of these treatments, the shoulder pain failed to significantly improve. Orthopedics was consulted and in September 2006, the CI underwent arthroscopic capsulorraphy surgery on the right shoulder. Post-operatively, in spite of aggressive treatment with PT and medications, the shoulder pain persisted. Magnetic Resonance Imaging (MRI) was consistent with a posterior labral tear. Additional surgery was declined by the CI (and was not recommended by Orthopedics). Since the CI was unable to perform in his MOS, he underwent the MEB/PEB process and was medically separated from the Marine Corps on 15 August 2007.

The Board considered all evidentiary information available. On 12 April 2007, examination of the right shoulder showed 120 degrees of forward flexion (normal is 180 degrees), and 150 degrees of abduction (normal is 180 degrees), with no joint instability. Six months later (23 Oct 2007), examination of the right shoulder revealed 176 degrees of forward flexion and 176 degrees of abduction. Once again, the shoulder examination was negative for joint instability. The range-of-motion (ROM) results from these two exams are summarized in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM RightShoulder: | Normal ROM | Military exam20070412(DD Form 2808) | VA C&P exam20071023(exam by Dr. H.) |
| Forward Flexion | 180 | 120  | 176 |
| Abduction | 180 | 150 | 176 |

ROM testing was also performed by a military physician (Dr. K.) on 5 April 2007. However, the Board determined that the 20070405 exam had less probative value than the other two ROM exams, which are listed in the table above. Because the right shoulder limitation of motion is non-compensable under the proper code for shoulder motion (5201), it is appropriate to apply a rating of 10% (IAW VASRD §4.71a) for limitation of motion/painful motion of a major joint. All evidence considered, there is not reasonable doubt in the CI’s favor supporting an increase in the PEB rating decision for the painful Right Shoulder condition.

Neck Pain – Review of treatment record reveals that the CI complained of neck pain on several occasions. However, at no time during his military service did he receive any evaluation or treatment of his painful neck condition. It appears that there was no limitation of military duty due to neck pain. During the VA C&P exam (on 23 Oct 2007) by Dr. H., the CI stated that during an episode of neck pain, he could function without medication. The CI further stated that the cervical spine condition did not cause incapacitation or limitation. Physical findings from that examination revealed full cervical range-of-motion (ROM), as well as no tenderness, radiating pain, or muscle spasm. There were no neurologic abnormalities, or evidence of intervertebral disc syndrome. The presence of functional impairment with a direct impact on fitness for duty is a crucial factor in the Board’s decision to recommend any condition for rating as additionally unfitting. In this case, Neck Pain does not reach that threshold. There is not reasonable doubt in the CI’s favor to support a Board recommendation to add Neck Pain as an additionally unfitting condition for separation rating.

History of Other Conditions – Back pain and Scarring of skin were also discussed and considered by the Board. There is no clearly documented evidence that these conditions caused any significant adverse effect on the performance of required military duties. These other conditions (Back pain and Scarring of skin) are judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. 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.

In the matter of the Right shoulder condition with residual pain and limited ROM, the Board unanimously recommends no change in the PEB adjudication, IAW VASRD §4.71a.

In the matter of the Neck pain, Back pain, Skin scars, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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RECOMMENDATION:

The Board recommends that there be no re-characterization of the CI’s prior disability and separation determination.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Shoulder Pain, status post Right Shoulder Surgery | 5299-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090916, 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 XXXXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 5 Oct 2010

I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR contained in reference (b) that Mr. XXXXX’ 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.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)