RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900594 SEPARATION DATE: 20060315

BOARD DATE: 20110309

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Cpl (Admin. Clerk) medically separated from the Marine Corps in March 2006. The medical basis for separation was a chronic, painful left shoulder condition. The CI was referred to the Physical Evaluation Board (PEB), and was found unfit for continued military service. Hypertension was determined to be Category III (not separately unfitting and not contributing to the unfitting shoulder condition). Attention deficit hyperactivity disorder (ADHD) and hyperlipidemia were both found to be Category IV (not a physical disability). The CI accepted the PEB findings, and was separated at 20% disability using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CI’s CONTENTION: Block 3 of DD Form 294 contains no specific contention regarding rating or coding, and mentions no additionally contended conditions.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB (dated 20060118)** | | | | **VA (7 mo. after Separation) Effective 20060316** | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Shoulder Condition | 5202 | 20% | 20060118 | Left Shoulder Condition (Non-dominant) | 5299-5203 | 10% | 20061006 |
| No PEB entry | | | | Right Shoulder Condition (Dominant) | 5299-5203 | 10% | 20061006 |
| Bipolar Disorder | 9434 | 30% | 20061006 |
| Hypertension | Not Unfitting | | | Hypertension | 7101 | 10% | 20061006 |
| Hyperlipidemia | Not Unfitting | | | Hypercholesterolemia | 7199-7114 | NSC | |
| ADHD | Not Unfitting | | | No VA entry | | | |
|  | | | | 1 x 0% | | | |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20060316** | | | |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

ANALYSIS SUMMARY:

Left Shoulder Condition. The CI injured his left shoulder in April 2003 while teaching martial arts. The injury was a hyperextension injury, causing shoulder dislocation with tears of the inferior and posterior labrum. He underwent arthroscopy on 30 July 2003 followed by physical therapy (PT). The shoulder improved for about six months and afterwards developed popping and instability of the left shoulder. On 3 May 2005, the CI underwent a second left shoulder arthroscopic procedure. Post-operatively, he continued to receive PT. His shoulder pain was rated 6/10 (on a scale of 1 to 10). He also complained of shoulder weakness, stiffness, lack of endurance, swelling, instability, giving way, locking, and fatigability. The CI stated that the pain would flare up about three to four times per week. When the flare-ups occurred, the pain was 9/10. He was unable to lift overhead, do pull-ups or push-ups, do martial arts, hold a weapon, or perform parade rest. Physical examination on 7 July 2005 revealed atrophy of the left upper arm, as evidenced by measurement of deltoid circumference.Range of motion (ROM) was limited to 150⁰ of abduction and flexion (normal is 180⁰). Shoulder ROM was also measured at his VA examination 15 mos. later. The two goniometric ROM evaluations are summarized in this table:

|  |  |  |
| --- | --- | --- |
| Left Shoulder | Separation Date 20060315 | |
| Goniometric ROM | MEB  20050726 | VA Exam  20061006 |
| Forward Flexion  (180⁰ normal) | 150° | 160° (with pain at 140°) |
| Abduction  (180⁰ normal) | 150⁰ | 150⁰ (with pain at 120⁰) |
| §4.71a Rating | No ROM rating | No ROM rating |
| Comment | Painful motion | Painful motion |

As mentioned above, the PEB found his left shoulder condition unfitting (coded 5202) and assigned a disability rating of 20%. The VA rated the left shoulder at 10%, based on painful motion of a major joint. The Board carefully examined all evidentiary information available. After considerable discussion and due deliberation, the Board unanimously recommends a rating of 20% for the left shoulder IAW VASRD §4.71a.

Other PEB Conditions. Hypertension, hyperlipidemia, and ADHD were all considered by the Board. There is no clearly documented evidence that any of these conditions significantly interfered with the performance of required military duties. The Board unanimously recommends no reversal of the PEB adjudication for these three conditions.

Remaining Conditions. Gastrointestinal (GI) malfunction and right shoulder pain were noted in the Disability Evaluation System (DES) file. Several additional conditions were also documented. None of these conditions was clinically significant during the PEB period. These conditions were all 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. Additionally, bipolar depression and other conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

**\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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 left shoulder condition, the Board unanimously recommends a permanent disability rating of 20%, IAW VASRD §4.71a. In the matter of the hypertension, hyperlipidemia, ADHD, GI malfunction, right shoulder pain, or any other conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Shoulder Condition | 5202 | 20% |
| **COMBINED** | **20%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090930, 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, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 15 Apr 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 Physical Disability Board of Review 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)