RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900609 SEPARATION DATE: 20071031

BOARD DATE: 20100510

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt (2311, Ammunition Technician) medically separated from the Marine Corps. The medical basis for the separation was chronic right shoulder pain. He did not respond adequately to rehabilitation and treatment and was unable to perform within his military occupational specialty (MOS) or to meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Chronic right shoulder pain status post (s/p) Bankart reconstruction was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the chronic right shoulder pain condition as unfitting, rated 10%, with application of the SECNAVINST 1850.4E and the Veterans Affairs Schedule for Ratings Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI states: “Items listed are more severe than the original documentation shows. Also has rendered me unable to obtain a job. Individual Unemployment has been granted by the VA.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB 20070808** | | | | **VA (1 Mo. Pre- Separation) Effective 20071101** | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Shoulder Pain S/P Bankart | 5201 | 10% | 20070808 | S/P Right Shoulder Arthroscopic Repairs w/Residual Scars | 5299-5203 | 10% | 20070914 |
| ↓No Additional MEB/PEB Entries↓ | | | | PTSD | 9411 | 50% | 20070913 |
| Lumbar Strain | 5237 | 20% | 20070914 |
| NSC x1 | | | 20070914 |
| **Combined: 10%** | | | | **Combined: 60%** | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions, for the gravity of his condition, and for the predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to assign ratings for conditions that were not separately unfitting at separation and periodically re-evaluates veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time.

Chronic Right Shoulder Pain S/P Right Shoulder Bankart Reconstruction. The CI first dislocated his right shoulder at age 14. In the Marine Corps he had 8 to 10 dislocations, without new injury. Arthroscopic capsular plication was performed, followed by arthroscopic Bankart repair and rotator interval closure of the right shoulder. Surgeries were followed by six-month LIMDU periods and then a third LIMDU board. The LIMDU Medical Board Report of 6 July 2007 documented limitation of active range of motion (ROM) in the right shoulder, as noted in the chart below, and mild generalized ligamentous laxity. It was the opinion of the MEB that the condition would preclude his timely return to unrestricted duty in the Marine Corps as an ammunition technician. It was therefore recommended that the CI's case be forwarded to the PEB for adjudication. The MEB narrative summary on 9 July 2007 documented decreased ROM of the right shoulder, secondary to pain and apprehension. The PEB on 8 August 2007 found the right shoulder pain s/p Bankart reconstruction condition, code 5201, (arm, limitation of motion of) unfitting with a 10% rating. The PEB notes indicate that the condition existed prior to service, but recommended no deduction.

The VA compensation and pension (C&P) examination on 15 September 2007, one month pre-separation, documented non-tender residual scars and decreased ROM due to pain. The VA rating decision assigned a 10% rating, coded 5299-5203 (clavicle or scapula, impairment of) for s/p right shoulder arthroscopic repairs with residual scars.

|  |  |  |  |
| --- | --- | --- | --- |
| **RIGHT SHOULDER** | **Separation Date: 20071031** | | |
| **Goniometric ROM** | **Mil 20070706**  **4 Mo. Pre-Sep** | **MEB 20070709**  **4 Mo. Pre-Sep** | **VA 20070914**  **1 Mo. Pre-Sep** |
| Forward Flexion (0-180 Normal) | 170 |  | 130 (pain at 130) |
| Abduction (0-180 Normal) | 170 |  | 120 (pain at 120) |
| External Rotation (0-90 Normal) | 90 |  | 80 (pain at 80) |
| Internal Rotation (0-90 Normal) | 40 |  | 70 (pain at 70) |
| Comments | Has ligamentous laxity | ROM decreased due to pain |  |
| VASRD §4.71 Rating | 10% |  | 10% |

The PEB utilized code 5201 (arm, limitation of motion of) for rating this condition. A 20% rating would require limited abduction or flexion of the shoulder at 90 degrees or less. The VA utilized code 5299-5203 (clavicle or scapula, impairment of), also granting 10%. The Board considered the goniometric ROM evaluations by the military and the VA, both within four months of separation. Neither would support a 20% rating utilizing code 5201. The Board discussed other coding options and, after careful consideration of all information provided, the Board recommends, by simple majority, that the CI’s prior determination be modified, utilizing code 5299-5203, with a 10% rating effective as of the date of his prior medical separation.

Remaining Conditions. Other conditions identified in the DES file were posttraumatic stress disorder (PTSD), low back pain (lumbar strain), and left knee pain. PTSD was clinically active during the MEB/PEB period but records revealed that the CI responded well to treatment. PTSD was not the basis for limited duty and was not implicated in the non medical assessment (NMA). None of the other conditions were clinically active during the MEB/PEB period, were the bases for limited duty, or were implicated in the NMA. 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 chronic right shoulder pain s/p right shoulder Bankart reconstruction condition and IAW VASRD §4.71, the Board, by simple majority, recommends modification of the PEB coding to code 5299-5203 with a 10% rating. The single voter for dissent (who recommended adopting the VA rating 5201 at 20%) did not elect to submit a minority opinion. In the matter of the PTSD, lumbar strain and left knee conditions, the Board unanimously recommends no finding of unfit for additional rating at separation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Shoulder Pain S/P Right Shoulder Bankart Reconstruction | 5299-5203 | 10% |
| **COMBINED** | **10%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090924, 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 XXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 May 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 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)