RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900721 SEPARATION DATE: 20070831

BOARD DATE: 20110518

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl (6541, Aviation Ordnance Systems Tech) medically separated from the Marine Corps in 2007. The medical basis for the separation was a right shoulder condition (capsular adhesion of the right glenohumeral joint status post 2006 March open Bankart repair). The CI did not respond adequately to perform within his military occupational specialty or participate in a physical fitness test and underwent a Medical Evaluation Board (MEB). The capsular adhesion of the right glenohumeral joint was addressed in the MEB narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the NAVMED 6100/1. The PEB adjudicated the capsular adhesion of the right glenohumeral Joint as unfitting, rated 10%; with application of the SECNAVINST 1850.4E and DoDI 1332.39. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: ‘’I was not rated on all my injuries as I was getting out,” and lists right shoulder, right and left foot stress fracture, right and left foot plantar fasciitis, and left eye condition.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070713** | | | **VA (7 Days. Post Separation) – All Effective 20070901** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Capsular Adhesion of (R) Glenohumeral Joint | 5099-5003 | 10% | Bankart Repair (R) Shoulder | 5201-5024 | 10% | 20070907 |
| ↓No Additional MEB/PEB Entries↓ | | | (R) Shoulder Scar, S/P Bankart Repair | 7804 | 10% | 20070907 |
| 0% X 1 | | | |
| **Combined: 10%** | | | **Combined (*Includes Non-PEB Conditions*): 20%** | | | |

ANALYSIS SUMMARY: The military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VASRD standards, as well as the fairness of PEB fitness adjudications at the time of separation. Furthermore, a “crystal ball” requirement is not imposed on the service PEBs by the Board, and the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation.

Capsular Adhesion of the Right Glenohumeral Joint Status Post Open Bankart Repair. The CI injured his right shoulder (right dominant) during basic training and subsequently experienced instability with recurrent subluxation and dislocation which he self-reduced. Evaluation by orthopedic surgery diagnosed multidirectional instability, and magnetic resonance imaging (MRI) findings demonstrated evidence of prior dislocation and damage. The CI underwent surgical repair in March 2006, with resolution of recurrent dislocation and instability. He experienced persisting pain, limiting his ability to perform his military duties and perform throwing or other overhead activities. A February 2007 physical therapy record documents elevation of the arm to 165° in flexion and abduction with pain at end range. An 8 May 2007 orthopedics examination (four months before separation), documented ability to fully elevate the arm to 180° but with pain at 110°. The MEB NARSUM, approximately three months before separation, documented ability to elevate the arm to 170° with pain starting at 140°. Motion was limited in external rotation (to 20°). Movements in internal and external rotation were accompanied by pain and a feeling of tightness. Strength was intact. During a VA compensation and pension (C&P) examination one week after separation, the CI was able to elevate the arm in flexion to 160° and in abduction to 100° with pain recorded at end range. External rotation was dramatically improved at 80°. Upper extremity strength was normal. Based on this examination, the VA granted a service connected rating of 10% for painful motion (5201-5024; limitation of motion – tenosynovitis). The PEB also rated the condition 10% but used the code for degenerative arthritis (5003) and likely painful motion. There were no other codes for rating that would provide benefit to the member. There was no further dislocation, subluxation, or instability following surgical repair, no malunion, anklyosis, or flail shoulder for consideration using diagnostic codes 5202 (impairment of humerus) or 5201 (ankylosis). The CI’s range of motion did not attain the threshold for a minimum rating under diagnostic code 5201 (limitation of arm motion). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.59 (painful motion), the Board concurred with the ratings adjudicated by the PEB as well as the VA and recommends no change in the separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for stress fracture in right heel, right foot planter fasciitis, left heel stress fracture in heel, left foot planter fasciitis, and left eye redness/twitches. Service treatment records document bilateral heel pain beginning in basic training in November 2004. By February 2005 he was running three miles without pain. He was treated from September 2005 through August 2006 for recurrent right plantar fasciitis. The left foot was reported to have resolved without recurrence. At the time of the MEB NARSUM in June 2007, the foot problems were documented as resolved. At the MEB history and physical (H&P) examination on May 4, 2007, the CI denied foot trouble (DD Form 2807-1). At the time of the VA C&P examination, examination of the right foot was recorded as normal (there was no claim for the left foot). The CI was treated for conjunctivitis in February 2007. At the time of the MEB H&P examination, the CI denied eye trouble and the eye examination was normal. The C&P examination of the eyes was normal. None of these conditions were clinically active during the MEB period, none were the basis for limited duty and none were implicated in the commander’s assessment. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of these conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability 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. In the matter of right glenohumeral joint, status post Bankart repair, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation. In the matter of right heel stress fracture, right foot planter fasciitis, left heel stress fracture, left foot planter fasciitis, and left eye redness/twitches, 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.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Capsular Adhesion Right Glenohumeral Joint s/p Bankart Repair | 5099-5003 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091209, 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 XXXXXXX, 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 Mr. XXXXX’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)