RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000026 SEPARATION DATE: 20090629

BOARD DATE: 20110316

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (6052, helicopter mechanic) medically separated from the Marine Corps in 2009 after three years of service. The medical basis for the separation was chronic shoulder pain status post (S/P) superior labral tear from anterior to posterior (SLAP) repair right. The CI had an acute onset of right shoulder pain during unit physical training. After months of oral medications, multiple injections, physical therapy, and a sports medicine evaluation, there was no improvement. Imaging revealed a SLAP tear and rotator cuff tear. He underwent surgical repair and a maximum amount of physical therapy, still without improvement. Despite extensive treatment and three periods of limited duty, the CI was unable to perform within his military occupational specialty (MOS) or participate in a physical fitness test. The CI was referred to the Medical Evaluation Board (MEB); their diagnosis was chronic shoulder pain S/P SLAP repair right. The informal Physical Evaluation Board (IPEB) adjudicated this condition as unfitting, rated 20%, with possible application of SECNAVIST 1850.4e and/or DODI 1332.39. The CI made no appeals, and was medically separated with a 20% disability rating.

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CI CONTENTION: The CI states: “I am right handed and with my rt. shoulder injured, I cannot lift anything above my head, driving is painful, can’t participate in physical activities and I have numbness in my right hand.”

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – 20090409** | | | **VA (<3 Mo. After Separation) – All Effective 20090630** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Shoulder Pain S/P SLAP Repair Right | 5202 | 20% | Right Shoulder | 5099-5024 | 10% | 20090901 |
| Scar, Right Shoulder | 7802 | 0% | 20090901 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraine Headaches | 8100 | 30% | 20090901 |
| Anxiety w/Insomnia | 9413 | 30% | 20091123 |
| Left Thumb Sprain | 5099-5024 | 10% | 20090901 |
| Left Wrist Sprain | 5299-5024 | 10% | 20090901 |
| Lumbar Strain | 5237 | 10% | 20090901 |
| Cervical Strain | 5237 | 10% | 20090901 |
| Tinnitus | 6260 | 10% | 20090901 |
| Gastroesophageal Acid Reflux Disease (GERD) | 7346 | 10% | 20090901 |
| L Shoulder Degen. … | 5299-5201 | 0% | 20090901 |
| Left Knee; Right Knee; Left Ankle; Depression; Sinus Condition NSC | | | |
| **Final Combined: 20%** | | | **TOTAL Combined: 80%** | | | |

ANALYSIS SUMMARY:

Right Shoulder Condition (Including Sensory Loss). There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both exams are summarized in the chart below:

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| --- | --- | --- |
| **Right Shoulder** | **Separation Date: 20090629** | |
| **Goniometric ROM** | **MEB - 20060306** | **VA C&P -20090901** |
| Flexion (0-180⁰) | 0⁰-110⁰ AROM | 0⁰-130⁰ |
| Abduction (0-180⁰) | 0⁰-150⁰ PROM | 0⁰-110⁰ |
| External Rotation | 0⁰-45⁰ AROM | 0⁰-90⁰ |
| Internal Rotation | Missing ~10 degrees of internal rotation | 0⁰-90⁰ |
| Comments | Persistent pain over posterior and lateral aspects 7/10; with strenuous activity pain 10/10; decreased sensitivity to light touch over posterior aspect shoulder | Pain on abduction, flexion; tenderness; No signs of edema, instability, abnormal movement, effusion, weakness, redness, heat deformity, guarding of movement, misalignment or drainage |
| §4.71a Rating | 10% (PEB rated 20%) | 10% (VA rated 10%) |

The MEB exam three months prior to separation (nine months post-operatively) indicated the CI had decreased sensibility to light touch over the posterior aspect of the shoulder, and that shoulder pain limited the CI’s activities of daily living, including driving and dressing. There was no indication in the record that the CI’s sensory loss over the posterior aspect of the shoulder interfered with duty or was separately unfitting. At the VA Compensation and Pension examination (C&P) approximately three months post-separation, the examiner documented that there was tenderness and pain and limited ROM with flexion, abduction; however, there were no signs of edema, instability, abnormal movement, effusion, weakness, redness, heat, deformity, guarding of movement, misalignment, nor drainage. The examiner noted that there was no guarding of movement in the right shoulder. At the VA Primary Care Clinic, approximately three months post-separation, the examiner noted that the CI complained of sharp, achy pain 8/10 which radiates to the biceps, improved with pain medications and exacerbated with using his right arm. The examiner documented that the right shoulder had limited ROM without edema, erythema, crepitus or deformity with good bilateral hand grip. The PEB rated the right shoulder condition as 5202 (humerus, other impairment of) at 20% (with infrequent episodes, and guarding of movement only at shoulder). The VASRD code 5201 20% criteria for arm, limitation of motion is “at shoulder level” which equates to 90⁰. The PEB 20% rating was likely with application of VASRD §4.3 (reasonable doubt) with consideration of the CI’s level of pain and functional impairment rather than VASRD §4.59 (painful motion) or pain-limited motion coding, as shoulder motion was beyond 90⁰, and there was little post-surgical shoulder instability and no recurrent dislocation documented, despite notations of consideration for additional surgical treatment. The VA coded the right shoulder analogously to tenosynovitis (5099-5024) at 10%. The PEB and the VA chose different coding options, and this significantly impacted the rating as noted above. The right shoulder could not reasonably be rated higher than 20% using any exam proximate to separation or any alternate coding schema.

All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 20% rating decision for the right shoulder condition, and there is not reasonable doubt in the CI’s favor supporting addition of any sensory loss of the right upper extremity as an additional unfitting condition for separation rating.

Anxiety. The anxiety condition was rated by the VA at 30% within three months of separation. Anxiety was noted on the MEB exam in the Disability Evaluation System (DES) package as part of the past medical history. The narrative summary (NARSUM) focused only on the right shoulder condition. There was no indication that this condition contributed to the CI’s three periods of limited duty for his right shoulder condition. No link to fitness can be drawn for the anxiety condition. A VA C&P examination for anxiety was completed five months after separation (on 23 November 2009), in which the examiner documented that the CI was not receiving any treatment for anxiety, no psychotherapy or hospitalizations, nor did he have any emergency room visits for this condition. The examiner further opined that the CI had “no major changes in his daily activities since he developed his mental condition,” nor had there been “any major social function changes since he developed his mental condition.” The Global Assessment Functioning (GAF) was in the range of mild symptoms (GAF = 65). All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of anxiety as an unfitting condition for separation rating.

Migraine Headaches. The migraine headaches condition was rated by the VA at 30% within three months of separation. It was noted on the MEB exam in the DES package as part of the past medical history. The NARSUM focused only on the right shoulder condition. There was no VA C&P examination for the migraines. No link to fitness can be drawn for the migraine condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of migraine headaches as an unfitting condition for separation rating.

Other Conditions. Left shoulder degenerative changes, left thumb sprain, lumbar strain, cervical strain, and tinnitus conditions were rated 10% by the VA, and GERD was rated 0%. However, none of these conditions were mentioned 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. 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 chronic shoulder pain S/P SLAP repair right and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of right upper extremity sensory loss (numbness), anxiety and migraine headaches conditions 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Shoulder Pain S/P Slap Repair Right | 5202 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090806, 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

XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25 Mar 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. XXXX’s records not be corrected to reflect a change in either his characterization of separation or 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)