RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000266 SEPARATION DATE: 20051115

BOARD DATE: 20110819

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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/E-4 (3051, Warehouse Clerk) medically separated for left shoulder labral tear and right shoulder impingement syndrome. The CI was playing basketball and ran into a wall injuring both shoulders. Magnetic resonance imaging (MRI) showed left shoulder anterior inferior labral tear. The CI underwent a left Bankert repair arthroscopy in February 2005, without relief. The CI was unable to return to full duty, and was referred to a Medical Evaluation Board (MEB). The MEB forwarded unspecified disorders of bursae and tendons in the shoulder region to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The PEB adjudicated left shoulder labral tear and right shoulder impingement syndrome conditions as unfitting, rated 10% and 0%, respectively, with likely application of the SECNAVINST 1850.4E. The CI made no appeals and was medically separated with a combined disability rating of 10%.

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CI CONTENTION: ‘’Full range of motion is not attained causing lots of pain & discomfort. My shoulder throbs & shoots sharp pains to the bone during certain weather (rain, winter, change of seasons).”

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RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20050822** | **VA (3 Mo. After Separation) – All Effective Date 20051116** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L Shoulder Labral Tear \* | 5299-5003 | 10% | L Shoulder Bankert Repair\* | 5201-5024 | 10% | 20060223 |
| Impinge Synd R Shoulder\* | 5299-5003 | 0% | R Shoulder Impinge Synd\* | 5201-5024 | 10% | 20060223 |
| ↓No Additional MEB/PEB Entries↓ | Tinea Versicolor | 7813-7806 | 10%\*\* | 20071017 |
| 0% x 0/Not Service Connected x 0 |
| **Combined: 10%** | **Combined: 20% - \*\*Effective 20070531 combined 30%**  |

\*Bilateral factor applied

ANALYSIS SUMMARY:

Left Shoulder Labral Tear. The CI had 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.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM Left Shoulder | MEB ~ 4 Mo. Pre-Sep(20050727) | VA C&P ~ 4 Mo. Post Sep(20060223) |
| Flexion (0-180) | 110⁰ | 165⁰ w/pain at 165⁰ |
| Abduction (0-180) | 110⁰ | 90⁰w/pain at 90⁰ |
| Internal Rotation (0⁰-90⁰) | 50⁰ | 90⁰  |
| External Rotation (0⁰-90⁰) | 30⁰ | 90⁰  |
| Comment | 4/5 strength; pain w/ resistance impingement test + (Neers); Obrien’s +, tight joint capsule | No stiffness, swelling weakness |
| §4.71a Rating | 10% painful motion | 20% lim motion shoulder level |

The MEB exam (27 July 2005) four months pre-separation documented that the CI had undergone a left shoulder Bankert repair arthroscopy on 14 February 2005. The examiner further documented findings of a positive impingement test, pain with resisted movement, positive Neers test (impingement syndrome), a positive Obrien’s test (indicative of a superior labrum from anterior to posterior tear) and a tight joint capsule. A left shoulder MRI found an anterior inferior labral tear, glenoid cartilage injury, a 5-6 mm loose body in the posterior inferior joint space and a small Hill-Sachs lesion (cortical depression in the humerus bone). The examiner opined that the CI “cannot perform annual physical training or heavy work as required by his MOS” and he was not “medically qualified for service in the USMC.” The examiner recommended no lifting greater than ten pounds, no pushups or pull-ups, no marching or formations, no other physical exercise except as directed by physical training, no field duty nor deployments.

The VA Compensation and Pension (C&P) examination (23 February 2006), four months post-separation documented that the CI had chronic left shoulder pain in the region of the AC joint, usually at level 6/10 and aggravated with movements of left shoulder lifting, carrying, pulling, pushing or throwing with left upper extremity, and with repetitive use.

The VA and the MEB chose different coding options for the CI’s left shoulder condition which did not materially impact the disability rating since limitation of motion is used to rate both. The PEB rated the left shoulder as code 5299-5003 [arthritis, degenerative (hypertrophic or osteoarthritis)] at 10% (with pain with resisted movement). The PEB 10% rating was likely with application of §4.59 (painful motion). The VA coded the condition as 5201 (arm, limitation of motion of) and 5024 (tenosynovitis). The 5201 criteria of the left shoulder limited to flexion 165 degrees with pain and abduction of 90 degrees with pain was met by the preponderance of the examination and rated this as 10%; however, under the 5201 coding a 20% rating is appropriate, because of limitation of motion at shoulder level. The Board must decide which examination has higher probative value. The July 2004 and September 2004 examinations are more consistent with the MEB examination and thus the preponderance of the evidence suggests that this examination is more representative of the shoulder condition at the time of separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left shoulder labral tear.

Impingement Syndrome Right Shoulder. The CI had two goniometric 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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| --- | --- | --- |
| Goniometric ROMRight Shoulder | MEB ~ 4 Mo. Pre-Sep(20050727) | VA C&P ~ 4 Mo. Post Sep(20060223) |
| Flexion (0-⁰180⁰) | 165⁰ | 180⁰ w pain |
| Abduction (0-⁰-180) | 165⁰ | 135⁰w pain |
| Internal Rotation(0⁰-90⁰) | 70⁰ | 90⁰  |
| External Rotation(0⁰-90⁰) | 80⁰ | 90⁰  |
| Comment | Pain with resistance; pos impingement test (Neers); Obrien’s neg |  |
| §4.71a Rating | 0% | 10% painful motion |

The MEB exam four months pre-separation indicated that the CI had decreased ROM in the right shoulder. The examiner documented that the CI had right shoulder impingement syndrome. MRI done on 19 April 2006 documented that there was no evidence of rotator cuff tear or impingement possibly due to decreased swelling later in the course of healing. The examiner further documented findings of a positive Neers test (impingement syndrome), and pain with resisted movement, but not with motion.

At the VA C&P examination four months post-separation the examiner documented that the CI had chronic right shoulder pain in the region of the acromioclavicular joint aggravated with movement of right shoulder, lifting, carrying, pulling, pushing or throwing with right upper extremity and with repetitive use.

The VA and the MEB chose different coding options for the CI’s right shoulder condition which would not impact the level of disability rating because both are rated based upon limitation of motion. The PEB rated the left shoulder as code 5299-5003 [arthritis, degenerative (hypertrophic or osteoarthritis)] at 0% with pain with resisted movement, but not with range of motion measurement. The VA coded the condition as 5201 (arm, limitation of motion of) and 5024 (tenosynovitis) and rated the condition as 10% for painful motion. Again, the Board must decide which examination has higher probative value. The MEB exam is most consistent with the X-ray findings. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision.

Other Conditions. The tinea versicolor condition was rated 10% by the VA. This condition was not mentioned in the Disability Evaluation System (DES). The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not covered 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. In the matter of the left shoulder condition, the Board unanimously recommends a rating of 10%, coded 5299-5003 IAW VASRD §4.71a. In the matter of the right shoulder condition, the Board unanimously recommends a rating of 0%, coded 5299-5003 IAW VASRD §4.71a. 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.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Shoulder Labral Tear | 5299-5003 | 10% |
| Impingement Syndrome Right Shoulder | 5299-5003 | 0% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100211, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 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 6 Sep 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. XXXX’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)