RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000336 SEPARATION DATE: 20060706

BOARD DATE: 20110216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL/E-3 (1171, Hygiene Equipment Operator) medically separated from the Marine Corps in July 2006 after 2 years, 10 months of active duty. The medical basis for the separation was Chronic Pain and Weakness of the Right Shoulder Status Post Right Distal Clavicle Excision. The CI injured his right shoulder in a fall while playing softball in 2004 sustaining an acromioclavicular joint separation. He subsequently underwent two surgeries to address his symptoms of pain and sensation of abnormal clavicle motion preventing vigorous use of the arm (e.g. push-ups, pull-ups, heavy overhead lifting). He did not respond adequately to perform within his military occupational specialty and underwent a Limited Duty Medical Board which referred him to a Medical Evaluation Board (MEB). Chronic Pain and Weakness of the Right Shoulder Status Post Right Distal Clavicle was addressed in the narrative summary (NARSUM) and forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW SECNAVINST 1850.4E. Although NAVMED 6100/1 Automated Medical Evaluation Board Report Cover Sheet , April 19, 2006 listed only the shoulder condition, Bilateral Painful Cutaneous Neuropathies of Medial Thighs status post severe Cellulitis and Necrotizing Fasciitis was added later as a potentially unfitting condition, addressed in a NARSUM addendum, and forwarded to the IPEB. No other conditions appeared on the MEB’s submission, in the NARSUMs, or DES packet. The IPEB adjudicated the shoulder condition as unfitting, rated 10%. The IPEB determined that the bilateral painful cutaneous neuropathy condition was not unfitting. The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI CONTENTION: The CI contends his shoulder condition was improperly rated by the PEB: ‘’USMC rated under code 5399-5003. However 5399 addresses muscle injury not bone problem. Code 5003 addresses arthritis”. The VA rated this condition higher using a different code. He additionally submits his initial post separation VA Rating Decision (July 30, 2007) listing all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied. .

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060510** | | | **VA (11 mos after Seperation) – All Effective 20060801** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Rt Shoulder s/p Distal Clavicle Excision | 5399-5003 | 10% | Rt Shoulder Dislocation, Post-op | 5202 | 20% | 20070628 |
| Surgical Scar of Right Shoulder | 7805 | 0% | 20070628 |
| Bilateral Painful Cutaneous Neuropathies of Medial Thighs S/P Severe Cellulitis and Necrotizing Fasciitis | CAT III  Not Unfitting | | Right Thigh Scar of … | 7801 | 10% | 20070628 |
| Left Thigh Scar of … | 7801 | 10% | 20070628 |
| Mononeuropathy of Left Thigh | 8626 | 10% | 20070628 |
| Mononeuropathy of Right Thigh | 8626 | 10% | 20070628 |
| ↓No Additional MEB Entries↓ | | | Other X 3 |  |  |  |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his quality of life. However, 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. Furthermore, a ‘crystal ball’ requirement is not imposed on the service PEB’s 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.

Shoulder Condition. The CI was right hand dominate and contends the IPEB improperly rated his shoulder condition under the wrong code resulting in a disability rating of 10%. He cites his VA rating for the same condition using a different code resulting in a disability rating of 20% which has remained unchanged in VA Rating Decisions through April 2010. The MEB NARSUM was 5 months prior to separation and has higher probative value with regard to rating the severity of the CI’s conditions based on proximity in time to separation, however the VA C&P 11 months after separation was reviewed and taken into consideration during Board deliberations as was the VA rating code selection. Following CI’s initial acromioclavicular (AC) joint separation injury in 2004, he underwent two surgeries, January 2005 and September 2005, to address symptoms of pain and sensation of excessive movement of the end of the clavicle. He had difficulty performing pull-ups, push-ups, and lifting heavy weights, especially overhead. The surgeries entailed surgical removal of the end of the clavicle. During both surgeries, the surgeons determined the clavicle was adequately stable and did not require an additional stabilization procedure. The CI had persisting symptoms following recovery from the second surgery. According to the February 2006 orthopedic MEB NARSUM (5 months before separation), the CI “was still having pain when attempting to lift weights as well as when doing push-ups and pull-ups; however, during daily activities he had no pain”. On examination there was no loss of range of motion, and cross arm testing was negative (forced movement that stresses the AC joint). The AC joint was non-tender to palpation and the end of the clavicle was “slightly” mobile. The orthopedic surgeon observed mild atrophy of the deltoid muscle attributed to decreased use, but strength was recorded as normal. The first VA Compensation and Pension (C&P) examination was performed 11 months after separation. During the C&P examination, the CI complained of constant pain worsened by direct blows, and heavy exertion. CI was quoted by the examiner as stating “It does not bother me much”, but avoided aggravating activities particularly overhead lifting. On examination, there was mild tenderness of the AC joint, the end of the clavicle stuck out without clear comment regarding any instability of the end of the clavicle. Musculature was normal, and examination of the glenohumeral joint was normal (no subluxation or instability). Strength was recorded as normal. Range of motion of the shoulder demonstrated report of pain during external rotation from 45° to 90° and forward flexion from 90° to 180°. Overall, repetitive movement against resistance did not reduce range of motion or decrease function. The VA rated this exam at 20%. Regarding selection of which code to use for rating, the Board noted that a variety of different codes for rating shoulder conditions may be considered and was mindful of §4.7 (higher of two ratings applied when the disability picture more nearly approximates the criteria required for that rating, otherwise the lower rating will be assigned). The IPEB, noting the orthopedic surgeons observation of mild deltoid muscle atrophy and functional limitations, opted to rate according to a more global consideration of limitation of function by combining shoulder girdle muscle function (5399) with the cause of the impairment, residuals of the AC injury and joint surgery, coded as degenerative arthritis (5003, in this case post traumatic / post surgical). The VA rated CI shoulder condition under 5202 other impairments of the humerus, awarding a 20% evaluation for “infrequent episodes of dislocation of the scapulohumeral joint with guarding of arm movements only at the shoulder level.” With regard to VASRD Code 5202 (other impairments of the humerus), the CI did not have impairment of the humerus, the glenohumeral joint, or muscles as was clearly documented in the NARSUM and C&P examinations. He had post surgical residuals of acromioclavicular joint separation causing pain limiting activity which may more accurately be rated under code 5203, impairment of clavicle or scapula. The highest rating under this code is 20%. The minimum finding to support a 20% level is “Non-union with loose movement.” “Dislocation” also rates 20%. The CI’s condition can be accurately described as non-union but not dislocation. If there is loose movement the rating is 20%, if there is not loose movement the rating is 10%. “Loose movement” is a subjective criteria and the orthopedic NARSUM stated “He does have a slightly mobile distal clavicle to palpation.” The Board also noted recurring complaints of symptomatic movement of the end of the clavicle in service treatment records (the C&P examination did not remark regarding any abnormal movement and CI complaint of excessive movement was not reported). At the time of the NARSUM, the orthopedic surgeon stated “he has pain and weakness with increased activities, which include lifting weights, doing pull-ups and push-ups.” Based on the NARSUM examination, application of §4.59 (painful motion) would rate 0%-10% under code 5201 which would clearly not result to the advantage of the CI. The painful motion documented in the C&P examination was documented at the level where the minimum 20% rating under code 5201 would be applied. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (Higher of two evaluations), the Board recommends a separation rating of 20% for the shoulder condition using coded 5399-5203, non-union with loose movement limiting function, concluding the total disability picture more nearly approximated the 5203 criteria required for that rating.

Bilateral Painful Cutaneous Neuropathies of Medial Thighs and Scars. A contention that CI’s painful neuropathies were unfitting and warranted a disability rating is implied. In December 2003 while in basic training, the CI developed bilateral medial thigh skin infection that rapidly progressed to serious deep soft tissue infection consistent with necrotizing fasciitis requiring extensive surgical debridement, intravenous antibiotics and skin grafting. As a residual of this condition, CI developed bilateral painful cutaneous neuropathies. Evidence of the record indicates this condition did not prevent performance of duties and was not the reason for referral into the disability system. Neurology consultation, January 9, 2006, recorded an approximately 2 year history of severe shooting pains emanating from the surgical scars of both medial thighs associated with exertional activities and direct tapping. In his treatment recommendation, the neurologist commented that the patient’s symptoms were episodic and the CI had a normally active lifestyle. At a follow-up neurology appointment, the neurologist wrote that the pain was activity limiting, and that "I would be happy to provide an addendum should he undergo an MEB for his shoulder." This remark suggests that at that time, the neurologist considered that the condition alone was not sufficient to warrant referral to MEB for disability evaluation. The neurology MEB NARSUM addendum (March 17, 2006) recorded complaint of severe shocking and burning sensations whenever he performed strenuous activity such as running without other functional limitations. The neurologist concluded “Though the above symptoms do not appear to significantly limit this patient's everyday military duties as a marine, they do interfere with the rigorous physical activities required for continued military service. I agree with referral to a Physical Evaluation Board.” Documentation reflects CI participation in sports (softball and basketball) following his thigh surgery. The Commander’s (NMA) letter, April 4, 2006, reported the CI last took the physical fitness test in July 2005 scoring second in his class despite being unable to complete the pull-ups portion. The commander noted that the CI was unable to perform the frequent heavy lifting required by his job. The commander provided no indication that the CI’s leg condition interfered with performance of duties. During the MEB physical examination (DD 2807-1, DD 2808) April 10, 2006, the thigh injury was attributed to shrapnel, a detail not evident in any other documentation. The IPEB concluded the painful neuropathy had not interfered with performance of duties as a Marine. During the C&P examination 11 months after separation, CI reported similar symptoms, and he avoided running. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations; but, remains adherent to the DoDI 6040.44 “fair and equitable” standard. After due deliberation, and in consideration of the totality of the evidence, the Board cannot find adequate justification for recommending the bilateral painful neuropathies of the medial thighs or the associated scars as additionally unfitting for separation rating.

Remaining Conditions. Additionally, other non-acute conditions were noted in the VA rating decision after separation, but were not documented in the DES file including, scars of shoulder and right gluteus, and low back strain. With regard to the low back, CI did experience an episode of acute low back strain in October 2005 that was not mentioned in subsequent DES documentation as an active concern. 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 thus has no 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. In the matter of the right shoulder condition and IAW VASRD §4.71a and §4.7 the Board recommends, by a vote of 2:1, a rating of 20% coded 5399-5203. The single voter for dissent (who recommended no modification of the PEB adjudication) did not elect to submit a minority opinion. In the matter of the bilateral painful medial thigh neuropathies and scars, 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 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 Pain and Weakness of the Right Shoulder Status Post Right Distal Clavicle Excision | 5399-5203 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090528, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC, XXX XX XXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 22 Feb 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective July 6, 2006.

3. Please ensure all necessary actions are taken to implement this decision and the subject member is notified once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)