RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR NATIONAL GUARD

CASE NUMBER: PD1000530 SEPARATION DATE: 20050622

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 a technical sergeant (2A571, Aerospace Maintenance) medically separated from the Air National Guard in 2005 after nearly 18 years of combined service. The medical basis for the separation was bilateral shoulder pain. He developed bilateral shoulder pain after pushing pallets off an aircraft in theater. He was later diagnosed with bilateral superior labral anterior to posterior (SLAP) lesions, and was treated with conservative therapy and arthroscopic repair of the left shoulder. He was unable to perform within his Air Force Specialty or meet physical fitness standards. He was issued a permanent P4/U4 profile, and underwent a Medical Evaluation Board (MEB). Bilateral shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions appeared on the MEB’s submission, and no other conditions with fitness implications were identified in the Disability Evaluation System (DES) file. The informal PEB adjudicated the left shoulder condition and the right shoulder condition as unfitting, rated 10% each IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

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CI CONTENTION: The CI states: “I find it difficult to express the impact that this injury has had on my life. At the age of thirty five everything that I had worked for the previous nineteen years was ripped away. I suddenly found myself injured and in pain, unemployed and unable to provide for my family…” He further describes the clinical course while in service and his current injuries, limitations, and financial and domestic hardships as a consequence of his disability.

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RATING COMPARISON:

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| **Service IPEB – Dated 20050517** | **VA (12 Mo. After Separation) – All Effective 20050718** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Shoulder Pain | 5304-5399 | 20% | Left Shoulder | 5201 | 20% | 20060629 |
| Right Shoulder | 5201 | 0% | 20060629 |
| **Final Combined: 20%** | **TOTAL Combined: 20%** |

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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 current earning ability and quality of life. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration.

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

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| --- | --- |
| Shoulder | Separation Date: 20050622 |
| Goniometric ROM (Normal) | MEB - 5 Mos Pre Sep | VA C&P – 12 Mos Post Sep |
| Flexion (0-180⁰)  | (L) 0⁰-160⁰ | (R) 0⁰-180⁰ | (L) 0⁰-90⁰ | (R) 0⁰-120⁰ |
| Abduction (0-180⁰)  | NA | NA | (L) 0⁰-90⁰ | (R) 0⁰-120⁰ |
| Comments | Full ROM | Full ROM | Pain @ 90⁰ | Pain @ 120⁰ |
| §4.71a Rating | 0% | 0% | 20% | 0% |

The MEB exam did not provide goniometric ROM in the abduction plane. Five months prior to separation, the orthopedic consultant noted full ROM of both shoulders with pain on resisted abduction on the left side, strongly implying that ROM was assessed in the abduction plane as well as the flexion plane. He opined that the CI had “just about received maximum benefits of treatment. No further surgery indicated….He meets retention criteria based upon range of motion.” The PEB and VA chose different coding options, but arrived at the same rating. The PEB choice to code the CI’s rotator cuff injuries analogous to muscle group IV is consistent with standard practice, especially considering that the MEB ROMs do not appear to yield a compensable rating. The moderate rating is consistent with the CI’s history of cardinal signs of muscle disability, to include weakness and lowered threshold of fatigue. Although the rating for both shoulders is consolidated to a single code, the PEB’s AF Form 356 shows that each shoulder was rated independently and the combined rating includes the bilateral factor IAW the VASRD. The VA rating, based on a compensation and pension (C&P) exam conducted 53 weeks after separation, reflects a coding approach based on limitation of ROM. Left shoulder ROM yielded a 20% rating while right shoulder ROM did not yield a minimal compensable rating. The VA also elected not to apply VASRD §4.59 (painful motion) to achieve a minimal compensable rating for the right shoulder. In judging the probative value of this data, the Board notes that the MEB ROM data is insufficient for rating under the 5201 code, but that the PEB approach to rate the CI’s underlying pathology using an analogous muscle code is well-supported. The VA data collected at 53-weeks post-separation is just outside of the DoDI 6040.44 specified 12-month interval for special consideration to VA findings and this data indicates a worsening of the CI’s condition since separation. Although a 20% rating for the left shoulder and an additional compensable rating for the right shoulder of 10% (or even 20%) could be considered on the basis of the VA examination, the MEB examination would not support the 20% rating (dependent on ROM impairment) for either shoulder. The Board deliberated such a recommendation with heavy probative value weighting of the VA evidence, but could not justify this rationale with the temporal distance of the VA evidence from separation and credible MEB evidence to the contrary. All evidence considered, there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 20% rating assigned by the PEB for the bilateral shoulder condition.

Remaining Conditions. No other conditions were adjudicated by the PEB or contended by the CI. No other conditions were noted in the narrative summary or found elsewhere 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. Thus the Board has no 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 the bilateral shoulder pain condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Shoulder Pain Condition | 5399-5304 | 10% |
| Right Shoulder Pain Condition | 5399-5304 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100501, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00530.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings