RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1000921 SEPARATION DATE: 20080715

BOARD DATE: 20111121

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (5974 / Tactical Data Systems Technician) medically separated for bilateral shoulder multidirectional instability. The CI’s symptoms of shoulder pain, popping, and subjective instability began in October 2005 during an Iraq deployment. After redeployment, an orthopedic evaluation suggested bilateral capsular instability. Treatment included medications, physical therapy, subacromial steroid injection, and three surgeries (bilateral arthroscopic surgeries and an open surgery on the right), with only transient improvement. The CI did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). The MEB forwarded two “other joint derangement, not elsewhere classified, shoulder region” conditions to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The PEB adjudicated the bilateral shoulder conditions as unfitting, rated 10% each, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal, and was medically separated with a 20% combined disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20080509** | | | **VA (2 Mos. After Separation) – All Effective 20080716** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Multidirectional Instability | 5201 | 10% | Post-Operative Residuals Right Shoulder | 5299-5201 | 20% | 20080922 |
| Left Shoulder Multidirectional Instability | 5201 | 10% | Post-Operative Residuals Left Shoulder | 5299-5201 | 0% | 20080922 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 2 / Not Service Connected x 0 | | | 20080922 |
| **Combined: 20%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY:

Bilateral Shoulder Multidirectional Instability. The record indicates the CI was left hand dominant and had three shoulder surgeries prior to separation. The first was an arthroscopic surgery (capsular plication) on the right shoulder in August 2006. His symptoms improved post-operatively, and due to recurrent subluxation of the left shoulder, he underwent a similar procedure on the left shoulder in January 2007 (magnetic resonance imaging [MRI]: tendinosis and lateral down-sloping acromion), again with significant reduction of symptoms post-operatively. A subsequent recurrence of pain and subjective instability on the right led to an open procedure (capsular plication) in October 2007. Despite post-operative physical therapy, he continued to have weakness, pain, subjective instability, and limited range of motion (ROM) in both shoulders. There were four post-operative shoulder examinations, including goniometric ROM evaluations, in evidence proximate to separation which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ROM Shoulders | 2x PT ~ 6 Mos. Pre-Sep | | MEB ~ 3-5 Mos. Pre-Sep | | NARSUM ~ 3 Mos. Pre-Sep | | VA ~ 2 Mos. After-Sep | |
| Left | Right | Left | Right | Left | Right | Left | Right |
| Flexion (180) | 160⁰-167⁰ | 130⁰-140⁰ |  | | “Full”  “significantly limited in his range of motion” | | 175⁰ | 115⁰ |
| Abduction (180) | 160⁰-168⁰ | 110⁰ | 90⁰ | 90⁰ | 145⁰ | 85⁰ |
| Ext Rot. (90) | 50-60⁰ | 40⁰-60⁰ | 90⁰ | 90⁰ | 90⁰ | 60⁰ |
| Int Rot. (90) | “Reach to L1” | “Reach to L5” |  | | 60⁰ | 45⁰ |
| Comment:  R surgery  ~9 Mo Pre-Sep  L surgery  ~18 Mo Pre-Sep | No weakness | Weakness (latter exam w/ Abd, FF, IR, ER at; horizontal abd 4-/5) | “Int rot to S1” | “int rot can’t get behind back” | No apprehension, translation, pain; neg sulcus (L); “weakness in both shoulders” | | Not painful on motion | Painful on motion |
| (2x Jan 08 exams combined) Mild atrophy, mild TTP, poor shoulder mechanics/scap dyskenesia with FF and abd | | “Bilat limited ROM, with pain” | | No additional ROM limitation with 5 repetitions; no assistive devices; neuro normal; no atrophy | |
| §4.71a Rating | 10% | 10% | 20% | 20% | 10% | 10% | 10% (VA 0%) | 20% |

Two physical therapy notes at six months pre-separation, three months after the second right shoulder surgery, noted noncompensible (absent painful motion) ROM limitations, right more significant than left, mild tenderness, mild atrophy (unspecified muscles or side), weakness of the right shoulder muscles, and “poor shoulder mechanics/scapular dyskenesia with forward flexion and abduction.” The narrative summary (NARSUM), three months pre-separation, reported full forward elevation, abduction, and external rotation of both shoulders, and full internal rotation of the left shoulder, with no comment on internal rotation on the right. Despite these exam findings, the examiner noted the CI had “bilateral shoulder pain and instability for over one year now,” and “continues to have weakness in both shoulders and is now significantly limited in his range of motion….” Negative findings included absence of apprehension and translation bilaterally, absence of pain on the left (no comment on pain on the right), and a negative sulcus sign for inferior instability on the left (with no comment on sulcus sign on right). The MEB physical exam (undated, likely either the same month as the NARSUM or two months earlier) documented significant bilateral ROM limitations, with extension and abduction to 90 degrees for each shoulder, and internal rotation “to S1” on left, “can’t get behind back” on right. Bilateral “limited ROM with pain” was the only additional exam detail provided.

The Department of Veterans’ Affairs (VA) exam two months post-separation, noted significant ROM decrements on the right (meeting the 20% criteria under 5201, limitation of arm motion [minor]), with painful motion on the right, slight ROM limitations on the left, with the absence of painful motion on the left. The examiner stated there was no additional ROM limitation with five repetitions, and no assistive devices were used. Surgical scars were noted, without evidence of symptoms, disfigurement, or other impairment. Plain radiographs were normal. The examiner noted the CI was left hand dominant, per history and observation.

As noted in the NARSUM, the CI’s shoulder impairment was not only a result of limited motion, but was also a product of pain, instability, and weakness. Nevertheless, the VA exam described no significant impact on the CI’s activities of daily living, including exercising twice per week and using the Total Gym machine. The CI was unemployed and seeking employment as a computer technician. The non-medical assessment, two months pre-separation, cited the CI’s “serious physical limitations” limiting his ability to perform any physical activity, and noted he could “only do the paperwork/deskwork required of his job.” The Board noted the CI’s limited duty period proximate to separation only listed the right shoulder condition.

The physical therapy exams were relatively proximate to surgery, distant from separation, and may have reflected incomplete healing/scaring and rehabilitation of the shoulders. The VA exam was most proximate to separation and included goniometric ROM measurements therefore had the highest probative value. The “significant” bilateral ROM limitations described in the undated MEB physical exam were not consistent with the MEB “full” description of ROM, or ROM limitations described/measured elsewhere in the record, both pre- and post-separation. The VA exam was most proximate to separation, had full goniometric ROMs, and was considered as the exam with the highest probative value.

The Board considered multiple coding options, including the use of analogous muscle codes reflecting the weakness and atrophy seen in the three-month post-operative physical therapy exams; however, there was no history of muscle injury and the CI’s weakness was most likely due to disuse secondary to pain/guarding, and was resolved by the time of the VA compensation and pension (C&P) exam. Analogous coding to 5203 (clavicle or scapula, impairment of) was not closest to the pathology and was not predominate.

The CI’s shoulder pathology was principally due to the capsule of the shoulder joint and was closest to either 5019 (bursitis) or 5024 (tenosynovitis). Given the CI’s capsular surgery and the left shoulder limited ROM below the compensable criteria for specific left shoulder codes, the 5019 coding was predominate for the left shoulder. The right shoulder had more limited ROM that met the 5201 code 20% criteria of “limitation of motion at shoulder level.” The Board also considered the alternative analogous coding to 5202 (humerus, other impairment of) for recurrent dislocation of the scapulohumeral joint (subluxation of glenohumeral joint in this case), “with infrequent episodes, and guarding of movement only at shoulder level” (20%) and was supported by the preponderance of the evidence.

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 majority recommends a separation rating of 20% for the right shoulder condition, coded 5099-5201; and modification of the PEB’s left shoulder coding from 5201 to 5099-5019 retaining the PEB rating of 10%.

Remaining Conditions. Other conditions identified in the DES file were bronchitis, lumbago, numbness of anterior right shoulder, insomnia attributed to shoulder problems, and headaches with photophobia (that resolve with aspirin). Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none were the basis for limited duty and none were implicated in the non-medical assessment. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. The Board therefore has no reasonable 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, the Board, by a vote of 2:1, recommends a rating of 20% coded 5099-5201 and in the matter of the left shoulder condition the Board, by a vote of 2:1, recommends modification of the PEB 10% adjudication to coding of 5099-5019 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization) submitted the addended minority opinion. In the matter of 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.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Shoulder Instability | | 5099-5201 | 20% |
| Left (Dominant) Shoulder Instability | | 5099-5019 | 10% |
| **COMBINED (Incorporating BLF)** | | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100819, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MINORITY OPINION:

The Board majority recommends increasing the right shoulder rating to 20% based on a VA compensation and pension (C&P) exam done two months post-separation which showed abduction of less than 90 degrees and was rated at 20%. In my opinion, there is no compelling reason to discount the documented ranges of motion (ROM) done on January 18, 2008 and January 24, 2008 by a Physical Therapist 2008 (six months pre-separation). On both occasions the right shoulder abduction was found to be above shoulder level at 110 degrees. Later, on April 23, 2008 the MEB narrative summary showed “full forward elevation and abduction” in the exam section. Although the exam seemed to contradict itself by saying (in the next paragraph) “he continues to have weakness in both shoulders and is now significantly limited in his range of motion despite continue strength training and physical therapy” the exam ROMs are consistent with his history, and I place less probative value on the statement. The history of shoulder ROMs are fairly consistent with respect to right shoulder abduction from January 2008 through the C&P exam done 2 months post-separation (September 22, 2008). The two notable exceptions are the MEB exam 90 degree measurement and the VA C&P exam 85 degree abduction recorded (post-separation) for the right shoulder. The MEB exam (Physical portion) was undated, but the 2807 (History portion) was dated January 18, 2008, and the reasonable person could assume that the History and Physical were done concurrently. This would have been about the same time that the Physical Therapist recorded 110 degrees of right shoulder abduction in her PT evaluation. The MEB exam also showed the same 90 degree measurement for the left shoulder when the PT measured the left abduction at 160 degrees. In my opinion the MEB exam measurements are inconsistent with the well documented history, and therefore have lower probative value. The VA C&P exam was done after separation from active duty and in this case, should not be used as a basis for increasing the CI’s Service disability rating.

The Navy PEB based their rating on a PT evaluation done on January 23, 2008 (six months pre-separation). The rating of 10% for each shoulder based on this evaluation, as well as the documented corroborating history of ROMs, is appropriate, accurate and fair (and consistent with the overall 20% awarded by the VA for the shoulders).

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

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Shoulder Multidirectional Instability | | 5201 | 10% |
| Left Shoulder Multidirectional Instability | | 5201 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS COMMANDER,

NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

(c) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

(d) PDBR ltr dtd 13 Dec 11 ICO xxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX-XX-1654: Separation from the Naval Service due to physical disability rated at 10 percent (increased from 0 percent) effective 1 April 2009.

b. XXX XX 3543: Transfer to the Permanent Disability Retired List at 30 percent effective 15 July 2008.

c. XXX XX 2866: Placement on the Temporary Disability Retired List at 50 percent for the period 30 April 2005 through 30 October 2005 with transfer to the Permanent Disability Retired List at 50 percent effective 31 October 2005.

3. Please ensure all necessary actions are taken to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)