RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR force

CASE NUMBER: PD1000975 TDRL exit date: 20070308

BOARD DATE: 20110914 tdrl entry date: 20050503

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve MSGT/E-7 (X4N071/Aircrew Aerospace Medical Service Craftsman) medically separated for bilateral shoulder impingement. The condition began in 2003, likely as a consequence of frequent heavy lifting, and was not associated with a surgical indication. She did not respond adequately to treatment and was unable to perform within her Air Force career field or meet physical fitness standards. She was issued a U4 profile and underwent a Medical Evaluation Board (MEB). Chronic left shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s AF IMT 618 submission, and no other conditions with fitness implications were identified in the Disability Evaluation System (DES) file. The Informal PEB (IPEB) adjudicated the left shoulder pain with labral tear condition as unfitting, rated 20%. The CI appealed to the Formal PEB (FPEB) which determined the right shoulder condition was also unfitting, and adjudicated each shoulder separately. The CI was placed on the Temporary Disability Retired List (TDRL) on 4 May 2005 for bilateral shoulder injuries, with ratings of 20% each. Upon re-evaluation in 2006 the IPEB determined that the medical condition had sufficiently stabilized and adjudicated left and right shoulder impingement as separately unfitting, rated 10% each IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). These findings were upheld by the FPEB and the Secretary of the Air Force Personnel Council. The CI was medically separated with a 20% combined disability rating.

CI CONTENTION: “I continue to have pain in both shoulders and neck. I also have periodic numbness in both my hands and fingers due to my shoulder injury. I am unable to reach for or lift anything shoulder height or above.” She continues her statement with an elaboration of her current limitations and the hardships she experiences as a consequence of her disability. She further states: “According to regulation to U.S.C .Sec. II Title 10- ARMED FORCES; Subtitle A - General Military Law; PART II PERSONNEL CHAPTER 58 - BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED; allows Reserve Airmen who have 18 but less that 20 years of satisfactory service, and are under the age of 60, to be eligible for reserve sanctuary and remain in active Status. I believe that I should have been medically discharged or Retired with 20 years”. She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service FPEB – Dated 20070111** | | | | **VA\* – All Effective Date 20050503** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20050504** |  | **TDRL** | **Sep.** |
| L. Shoulder Impingement | 5304 | 20% | 10% | Left Shoulder Labral Tear | 5299-5203 | 10% | 20050729 |
| R. Shoulder Impingement | 5304 | 20% | 10% | Right Shoulder Labral Tear | 5299-5203 | 10% | 20050729 |
| ↓No Additional MEB/PEB Entries↓ | | | | PTSD | 9411 | 30% | 20050729 |
| Cervical Spine Disc Disease | 5242 | 10% | 20050729 |
| Lumbar Spine Disc Disease | 5242 | 10% | 20050729 |
| Tinnitus | 6260 | 10% | 20050729 |
| Not Service Connected x 1 | | | 20050729 |
| **Combined: 20%** | | | | **Combined: 60%** | | | |

\* VA rating based on exam most proximate to date of permanent separation. Rating Decision 29 May 2009 reflects no change in ratings listed above.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-incurred conditions have had on her 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 at the time of separation. The ratings assigned to unfitting conditions is based on the severity of the condition at the time of separation, and then at the time of removal from TDRL, 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, including conditions developing after separation or permanent disability disposition, that are direct complications of a service connected condition. 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, based on severity at the time of permanent disability disposition and removal from the TDRL. The Board’s relevant recommendations are assigned in assessment of the service’s permanent rating determination at the time of removal from the TDRL. The rating assignment at the time of initial placement on to the TDRL is not considered a benchmark. It is recognized that PEB’s across the services sometimes apply an overly generous initial rating in order to meet the DoD requirement of 30% disability for placement on TDRL. This is in the member’s best interest at the time and does not mean that a final lower rating is unfair, even if perceived as incongruent with subjective severity from one rating to the next. The Board must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation and placement on the TDRL. The CI asserts that she should have been allowed to remain on active duty status for 20 years because she was entitled to “reserve sanctuary;” however, the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of her case. This is an issue that may be eligible for submission to the Air Force Board for Corrections of Military Records (AFBCMR).

Bilateral Shoulder Condition. At the time the CI was placed on the TDRL, the PEB rated the CI’s shoulders at 20% each under VASRD code 5304, injury to muscle group IV (shoulder girdle). A bilateral factor was appropriately incorporated into the rating. The narrative summary (NARSUM) examination upon which the PEB, in part, based its decision reported “essentially complete” left shoulder motion with some mild soreness. A physical therapy note just prior to the MEB noted full range of motion (ROM) of both shoulders. The concurrent VA decision assigned a 10% rating under an analogous 5203 code for “impairment of clavicle or scapula.” This decision referenced a compensation and pension (C&P) examination 29 July 2005, three months after entry on to the TDRL, that showed abduction of 160⁰ bilaterally (normal to 180⁰), but with pain occurring at 140⁰ of abduction. There is no evidence in the record or from the above data that would support a rating higher than that assigned by the PEB for the bilateral shoulder condition at the time of initial placement on TDRL. Next, the Board turned its attention to a permanent rating at the time of removal from TDRL. The CI underwent TDRL reevaluation five months prior to removal from TDRL. The TDRL reevaluation NARSUM examiner noted flexion of both shoulders to 160⁰, and mild discomfort with most maneuvers involving the shoulders, but there was no tenderness or evidence of instability. The TDRL physical therapy examination recorded active ROM of 115⁰ abduction (varied from 90⁰ to 115⁰) and 160⁰ flexion of the left shoulder, and 100⁰ abduction and 160⁰ flexion of the right shoulder. The physical therapist reported mild to moderate weakness of the rotator cuff muscles. A previous magnetic resonance imaging (MRI) showed tendinosis and partial tears of the rotator cuff tendons bilaterally, tear of the right posterior labrum and possible small tear of the left labrum. Orthopedic examinations approximately 18 months after the date of removal from the TDRL record continued pain with overhead use. On examination, the orthopedic surgeon recorded “fairly good” and “full” ROM with normal strength and sensation, but noted positive impingement signs bilaterally consistent with bilateral rotator cuff tendonopathy. A primary care clinic record entry from that time also indicates that a repeat MRI did not show any rotator cuff tears. Although the coding choices between the final PEB and the VA were different, and unchanged from above, this did not bear on rating. The PEB’s permanent 10% rating for each shoulder under the 5304 code reflected evidence that the severity of loss of use was “moderate.” Although the VA also rated each shoulder at 10%, the 5203 code for impairment of clavicle or scapula is a poor fit with the CI’s underlying pathology that predominantly involves the rotator cuff. The Board considered other coding options. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level,” and examinations demonstrate motion above this level. The Board discussed the lowest recorded left shoulder abduction of 90⁰ by TDRL physical therapy examination, but noted all other TDRL physical therapy examination results showed elevation above shoulder level. Also, the ROM was near normal entering TDRL, and ROM was reported by an orthopedic surgeon following removal from TDRL as full. Thus, under code 5201 (limitation of arm motion), neither shoulder reaches the minimum compensable level (20%). After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB adjudication for the right and left shoulder conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for neck pain and low back pain. Cervical degenerative disc disease was diagnosed while in the service, and caused some neck pain that was treated by physical therapy. The CI experienced intermittent episodes of low back pain treated with pain medication. Neither neck nor back pain was referred by the MEB as interfering with performance of duties. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles and none were implicated in the commander’s statement. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. Additionally posttraumatic stress disorder and tinnitus were noted in the VA rating decision following separation, but were not documented 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.

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 left and right shoulder conditions, the Board unanimously recommends no change in the rating at the time of initial placement on the TDRL and a permanent rating after removal from the TDRL of 10% each, coded 5304 IAW VASRD §4.71a. In the matter of the neck pain and low back pain 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.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and determinations at separation and permanently.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Left Shoulder Impingement Syndrome | | 5304 | 20% | 10% |
| Right Shoulder Impingement Syndrome | | 5304 | 20% | 10% |
| **COMBINED (Incorporating BLF)** | | **40%** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100813, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President,

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00975.

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