RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1001154 SEPARATION DATE: 20090127

BOARD DATE: 20111011

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10/Infantryman) medically separated for left rotator cuff tendonitis. In December 2006, the CI injured his left shoulder while lifting weights. The CI was treated with rest and non-steroidal anti-inflammatory drugs. After redeployment, the CI continued with left shoulder pain. A magnetic resonance imaging (MRI) demonstrated tendonosis. He failed therapy and the lesion rendered him unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. The CI was issued a permanent U3 profile and referred to a Medical Evaluation Board (MEB). The MEB forwarded left rotator cuff tendonitis to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Nine other conditions were forwarded as medically acceptable conditions. The PEB adjudicated the left (non-dominant) rotator cuff tendonitis as unfitting, rated 10% with application of the VA Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “My MEB/PEB decision of November 2008 did not include my conditions of obstructed sleep apnea (OSA) and posttraumatic stress disorder (PTSD). My MEB/PEB included only my Left (non-dominant) rotator cuff tendonitis and my right knee pain. Request my discharge be changed to Temporary Disability Retirement followed by Permanent Disability Retirement List.” He additionally lists some 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 20081105** | **VA (3 Mos. After Separation) – All Effective 20090128** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L Rotator Cuff Tendonitis | 5024 | 10% | Left Shoulder Tendonitis | 5201 | 20% | 20090404 |
| OSA | Not Unfitting | Sleep Apnea | 6847 | 30%\* | 20090330 |
| Major Depression | Not Unfitting | Major Depressive Disorder | 9434 | 10%\* | 20090401 |
| Right Knee Pain | Not Unfitting | Right Knee Patellofemoral Chondromalacia | 5014-5216 | 10% | 20090404 |
| COPD | Not Unfitting | COPD w/Chest Pain | 6604 | 10% | 20090330 |
| Hemorrhoids | Not Unfitting | Hemorrhoids | 7346 | 0% | 20090330 |
| Insomnia | Not Unfitting | No VA Entry |
| Gastroesophageal reflux disease (GERD) | Not Unfitting | GERD | 7399-7346 | 0% | 20090330 |
| Rhinitis | Not Unfitting | Vasomotor Rhinitis | 6522 | 0% | 20090330 |
| Chronic Constipation | Not Unfitting | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | 0% x 3 / Not Service Connected x 5 (incl PTSD)\* | 20090404 |
| **Combined: 10%** | **Combined: 60%\*** |

\*Increased 6847 (OSA) to 50% effective 20090518 (combined 70%); Increased 9434 (depression) to 50% and changed to 9411 (PTSD) effective 20100525 (combined 80%)

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the MEB/PEB decision of November 2008 did not include his conditions of OSA and PTSD. It is noted that 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 his case. However, the MEB addressed OSA and PTSD, and the PEB specifically adjudicated the contended conditions as not unfitting. 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 separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Left Rotator Cuff Tendonitis Condition. All evidence indicates the CI was right hand dominate. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| --- | --- | --- | --- |
| Goniometric ROM – Left Shoulder | PT ~ 6 Mos. Pre-Sep | MEB ~ 3 Mos. Pre-Sep | VA C&P ~ 3 Mo. After-Sep  |
| Flexion (0-180⁰) | 160⁰ | See PT results. | 0⁰-150⁰ (Pain between 100⁰ and 150⁰) |
| Abduction (0-180⁰) | 175⁰ | 0⁰-120⁰ (pain between 90⁰ and 120⁰) |
| Internal Rotation (0 to 90⁰) | 80⁰ | 0⁰-90⁰ |
| External Rotation (0 to 90⁰ | 62⁰ | 0⁰-90⁰ |
| Comment | No objective comments from Therapist | No change after repetitions; Tender to palpation at and posterior to AC joint; Consistent w/goniometer measurements w/pain at limits of all movements; no instability noted; arm strength normal | Pain w/all above activities; maintained good strength to resisted abduction and external rotation, but reported pain; good strength and no pain w/resisted internal rotation; negative cross arm adduction; positive impingement; unable to perform a lift off; negative drop arm; mildly positive Speed; negative apprehension and instability; Deluca positive |
| §4.71a Rating | 0%  | 10%-20% | 20% |

The left shoulder MRI performed in June 2008 demonstrated an area suspicious for degeneration or tearing. The CI was seen by physical therapy six months prior to separation in July 2008. The goniometric measurements are noted above. At the MEB exam three months prior to separation, the CI had functional limitations of pain. The examiner stated the CI “must be careful when trying to lift any heavy load requiring both arms, and any activity requiring him to raise his left arm over his head. Even holding his hand on top of the steering wheel for long causes an exacerbation. In my opinion, pain could significantly limit functional ability during a flareup. However, quantifying this additional limitation would be sheer speculation.”

The VA Compensation and Pension examination three months after separation noted that the CI had chronic daily pain with daily significant flare-ups with overuse, overhead activities and changes in the weather. The CI rated the pain at 7/10 with 10 being the worst. The CI could not perform lift off and had a positive Speeds test (impingement and tendonitis testing). There were positive DeLuca criteria with “possible … worsened by certain or repetitive activities,” but any further limitation could not be determined (not specified).

The PEB rated the left shoulder condition as 5024 (tenosynovitis) at 10%. The PEB 10% rating was likely with application of VASRD §4.59 (painful motion) pain-limited motion coding as the left shoulder was beyond 90 degrees rather than §4.3 (reasonable doubt). The VA coded the right shoulder 5201 (arm, limitation of motion of- at shoulder level) at 20%: Although pain began at 90 degrees, the limit of motion was at 120 degrees. However, both the VA examiner and MEB examiner opined increased limitation of motion with flare-ups (no specified degree), and VA exam indicated positive impingement. Both examinations are equally detailed and both are equidistant from the date of separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the left shoulder condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for OSA and PTSD. The OSA condition was rated 30% by the VA. The MEB addendum of October 2008 documented that the sleep study results confirmed that the OSA meet retention standards. The claimed PTSD condition was originally identified as major depressive disorder by the VA, and rated 10%. The MEB addendum of June 2008 indicated that the CI did not have a psychiatric condition that would warrant processing through medical channels, and specifically noted that the CI had been treated for major depression and had responded well to pharmacotherapy and therefore met retention standards. There was no diagnosis of PTSD prior to separation or in the Disability Evaluation System (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. Neither the OSA nor major depressive disorder or any mental health disorder conditions or symptoms were profiled or implicated in the commander’s statement. Both the OSA and major depressive disorder conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were right knee pain, chronic obstructive airways disease (COPD), hemorrhoids, insomnia, GERD, rhinitis and chronic constipation. None of these conditions were profiled, implicated in the commander’s statement noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

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 rotator cuff tendonitis condition, the Board unanimously recommends a rating of 20%, coded 5201 IAW VASRD §4.71a. In the matter of the OSA, major depressive disorder, right knee pain, COPD, hemorrhoids, insomnia, GERD, rhinitis and chronic constipation 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 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** |
| Left Rotator Cuff Tendonitis | 5201 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100930, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)