RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100037 SEPARATION DATE: 20020415

BOARD DATE: 20110921

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, LCpl/E-3 (2651 / AFSC, JOB), medically separated for chronic right midclavicular pain. The CI traumatically injured his right shoulder in 1998 with a clavicle and proximal humerus fracture. He had multiple re-injuries to his clavicle with his fourth fracture in April 1999. The clavicle healed with a malunion and the CI was not a candidate for surgery. Despite activity modification, nonsteroidal anti-inflammatory drugs (NSAIDS), narcotic medication, and physical therapy (PT), the CI did not respond adequately to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was placed on an eight month limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB forwarded “Chronic Right Midclavicular Pain Secondary to a Malunion of a Healed” (right clavicle fracture [Fx]) to the Physical Evaluation Board (PEB) as medically unacceptable on NAVMED Form 6100/1. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB adjudicated the “Chronic Right Midclavicular Pain secondary to a Malunion of a Healed Right Clavicle Fx” condition as unfitting, rated 10%, with the disability code of 5203 with probable application of the SECNAVINST 1850.4E and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The condition rendering me unfit for service has not changed since the condition occurred. The VA, pursuant of their auto-deny policy for claims for compensation, rendered an initial evaluation of 0% in 2005. In 2010, my appeal changed the VA's disability rating for me to 30% after a less than five minute examination by a non-VA orthopedic specialist.” He mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20020211** | | | **VA (No exam\*) – All Effective 20050415** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Rt Midclavicular Pain Secondary to Malunion of Healed Rt Clavicle Fx | 5203 | 10% | Residuals of Rt Clavicle Fx | 5201 | 0%\* | STRs |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1 / Not Service Connected x 2 | | | STR |
| **Combined: 10%** | | | **Combined: 0%\*** | | | |

\*Right shoulder changed to 5201-5202 and increased to 30% effective 20100125 (combined 30%), based on exam of 20100513 and VA treatment records from 2008 and 2010. Original VA rating was based on evidence available to the VA at that time without benefit of a C&P exam.

\*CI did not apply for VA benefits until 36 months post-separation. He was a no-show for his C&P exams scheduled for 20051101 and 20100503.

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his service connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA).

Right Clavicle Condition. The CI was right handed. The MEB and VA exams are summarized in the chart below.

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| --- | --- | --- |
| Goniometric ROM –R Shoulder | MEB ~ 6 Mo. Pre-Sep  (20011031) | VA C&P ~ 8 Yrs. After-Sep  (2010513) |
| Flexion (0-180) | No goniometrics | 165⁰ with pain |
| Abduction (0-180) | No goniometrics | 155⁰ with pain |
| Comment | “Distally, the patient has full use of his shoulder; no neuro sx; bony deformity of midshaft of clavicle; nontender; malunion of healed clavicle fx | Clavicle x-ray with marked deformity; tenderness / malunion of right clavicle from fx; calcific tendonitis R rotator cuff strain |
| §4.71a Rating | 10% | 20% (VA 30%) |

The MEB exam six months prior to separation noted that the CI experienced “a significant amount of pain (in the midshaft right clavicle area) … inability at all to wear a backpack due to the strap hitting the malunion of the right clavicle, doing any number of pull-ups, and on longer runs.” The MEB examiner documented that an x-ray of the right clavicle demonstrated a hypertrophic healed midshaft clavicle fracture with a prominent bony circular bump. The clavicle deformity was “…nontender to palpation, however, is quite prominent. Distally, the patient has full use of his shoulder, elbow, wrist, and fingers without any neurological symptoms.” The CI was not a surgical candidate. The record indicated prior proximate humerous fracture with scapula winging in 1998. There was good healing of the humerus and resolution of initial right shoulder limited ROM in April 1999. There was no right arm weakness or sensory deficit, and there was no indication of scapular winging proximate to separation.

The first VA Compensation & Pension (C&P) examination eight years after separation indicated that the there was tenderness and malunion of the right clavicle from fracture. The exam stated that “the diagnosis was changed to malunion of the right clavicle with residual deformity, tenderness and right rotator cuff strain”. X-rays demonstrated a healed fx deformity at the junction of the mid and distal thirds of the right clavicle with the distal clavicle posteriorly and inferiorly offset by one clavicular width relative to but osseously united to the mid clavicle. There was no evidence of glenohumeral abnormality. The examiner documented that the CI complained of a constant sharp right shoulder pain rated 10 with 10 being the worst, exacerbated by physical activity and stress. During times of pain, the CI had sporadic functional ability with decreased lifting ability. X-ray of June 2005 noted a normal humerus. In April 2009 the glenohumeral joint space was intact with normal articular margins and a “tiny calcify density indicative of calcific tendonitis.” The examiner stated “…tenderness, and right rotator cuff strain. This is a result of a progression of the previous diagnosis.”

The PEB coded the chronic right midclavicular pain secondary to malunion of healed right clavicle fx as 5203 (Clavicle or scapula, impairment of, malunion of) at 10%. The VA rating proximate to separation, coded the condition as 5201 (arm, limitation of motion of) and rated 0%. The VA rated the 8 years post separation exam as 5201-5202; criteria for 5202, humerus, other impairment of at 30%. This coding equates to “marked deformity” of the humerus which is the 30% criteria for the “major” (dominate) arm. The 5201 code for 30% is midway between side and shoulder level.

The 5203 criteria and the MEB examiner documentation of the malunion of the healed clavicle would meet the criteria of “clavicle - malunion of“. The probative value of the MEB exam is strengthened on the principle that it was closer to the time of separation and more accurately reflects the CI’s clavicle condition at the time of separation. The record indicated no evidence of proximal humeral deformity and imaging demonstrated a normal joint. The evidence of calcific tendonitis or possible rotator cuff tear was remote from separation and adjudged to be post-separation worsening. All evidence considered there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the chronic right midclavicular pain secondary to malunion of healed right clavicle fx condition.

Remaining Conditions: Frequent trouble sleeping and sinusitis were mentioned by the CI on the MEB history and physical exam form. Neither condition neither carried an attached profile nor was neither implicated in the narrative summary (NARSUM) or the commander’s statement. Additionally bilateral hearing loss and tinnitus were noted in the VA rating decision proximal to 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. In the matter of the chronic right midclavicular pain secondary to malunion of healed right clavicle fx condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the frequent trouble sleeping, sinusitis, bilateral hearing loss and tinnitus 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 separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Midclavicular Pain Secondary to Malunion of Healed Right Clavicle Fx | 5203 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110119, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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President

Physical Disability Board of Review

