RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100091 SEPARATION DATE: 20061214

BOARD DATE: 20111205

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard member, SSG/E-6, (71L3O, Administrative Specialist), medically separated for chronic low back pain and left shoulder pain. In 2005 while deployed to Iraq, the CI started to feel pain in his left shoulder. He received no treatment while in theater. When he returned to CONUS he was started on physical therapy which did not help with pain. He was given a magnetic resonance image (MRI) which revealed some acromioclavicular (AC) arthritis. Part of his duty was to lift heavy mail packages. He had x-rays on his back which showed degenerative disc disease at L1-L2 with no herniation or foraminal narrowing and no canal stenosis. He did not respond adequately to conservative treatment and was unable to perform within his military occupational specialty (MOS). The CI was authorized to take the alternate physical fitness test. He was issued a permanent U3/L3/S2 profile and underwent a Medical Evaluation Board (MEB). Left shoulder pain secondary to AC arthritis and chronic low back pain secondary to degenerative disc disease at L1-L2 with anterior osteophytes were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) adjudicated the chronic low back pain and left shoulder pain conditions as unfitting, rated 10% and 0% respectively, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD), and presumed US Army Physical Disability Agency (USAPDA) pain policy, and respectively. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “(1) Whether the November 2006 Physical Evaluation Board (PEB) which found the Veteran unfit for duty due to chronic low back pain/degenerative disc disease rated 10 % disabling was in error because the Veteran's forward flexion of the lumbar spine satisfied the criteria for a 20% disability rating at the time of the PEB. (2) Whether the determination by the PEB that the Veteran's left shoulder pain secondary to acromioclavicular arthritis was unfitting, but rating the condition 0% disabling, was in error because (a) a 10% rating was warranted under the applicable diagnostic code regardless of the extent of limitation of motion, and (b) the VA assigned a 20% rating to the left shoulder disability effective December 15, 2006, concurrent with the Veteran’s separation from the service. (3) Whether the PDBR should change the Veteran’s military records that show that the Veteran was separated by a PEB with permanent medical disability retirement because the combined disability rating of the unfitting conditions actually was at least 30%, rather than the 10% rating assigned to the lower back injury. See Supplemental Submission in Support of Review by PDBR of Rating Accompanying Medical Separation from the Armed Forces of the United States of David A. Kenyon.” The preparer additionally states “Applicant does not believe the VA’s determination is relevant to the Applicant’s current request.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20061106** | **VA (3 Mo. After Separation) – All Effective Date 20061215** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain  | 5299-5237 | 10% | Degenerative Disc Disease | 5243 | 10% | 20070316 |
| Left Shoulder Pain  | 5003 | 0% | Lt Shoulder Rotator Cuff Tendonitis | 5010-5203 | 20%\* | 20070316 |
| Elevated Cholesterol | Not Unfitting | High Cholesterol | 7199-7100 | NSC | 20070316 |
| Major Depressive Disorder, Recurrent  | Not Unfitting | Depression | 9434 | NSC | 20070313 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service Connected x 7 (above 2 included) | 20070316 |
| **Combined: 10%** | **Combined: 20%** |

\*Initial rating for left shoulder condition was 10%, and later increased to 20% by VARD 20090612 effective the day after separation 20061215

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences which merit consideration for a higher separation rating.

Chronic Low Back Pain Condition. There were three 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.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB H&P ~ 6 Mo Pre-Sep | PT ~5 Mo. Pre-Sep | VA C&P ~3 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 70⁰ | 60⁰ | 85⁰ |
| Combined (240⁰ Normal) |  | 185⁰ | 235⁰ |
| Comments | Pain with flexion at 70⁰Normal gait |  | No decrease with repetitive motion. Muscle spasm present. Posture and gait normal. |
| §4.71a Rating | 10% | 20% | 10% |

While on emergency leave, the CI presented to a VA emergency room 8 July 2005 for complaint of low back pain. The CI reported the back pain started in March 2005 and that he thought the back pain occurred due to the bed he was sleeping on or from jumping off the back of trucks with his backpack on. He denied any known trauma, lifting injury, or falls. There was no radiation of pain or signs of radiculopathy. On examination, flexion was 80 degrees, extension was full, and lateral rotation was without difficulty. A 20 July 2005 comprehensive clinic examination documented CI report of onset of low back pain in March 2005 while preparing for the PT test. The detailed examination in July 2005 documented thoracolumbar flexion of 100 degrees with normal gait. There was no muscle spasm or radiculopathy. Radiographs on 21 July 2005 showed congenital sacralization of L5 and degenerative disc disease at L1/L2 with anterior osteophytosis, consistent with a degenerative process of several years duration. MRI on 26 October 2005 showed degenerative disc disease at L1 and L2 without herniation, foraminal narrowing or canal stenosis. The remainder of the MRI was normal. Physical therapy was unsuccessful, and orthopedics did not feel that the CI was a surgical candidate. A 7 March 2006 physical therapy encounter notes range of motion as normal but productive of pain. The CI was given a P3 profile and was referred for MEB. The MEB narrative summary (NARSUM) records report of onset in February 2005 while lifting packages in the mail facility in Tikrit, Iraq. He did not seek treatment until he was home on emergency leave. The MEB NARSUM cites the physical therapy range of motion results from a 29 June 2006. The PEB found the back condition unfitting at rated in at 10% under code 5299-5237 lumbosacral strain citing the 70 degree flexion documented in the MEB history and physical examination. At the VA compensation and pension (C&P) examination, three months after separation, posture and gait were normal. There were no incapacitating episodes and the VA rated the condition as 5243, intervertebral disc syndrome at 10% using the general rating formula for spine based on the recorded thoracolumbar range of motion (flexion 85 degrees; combined 245 degrees). The Board deliberated whether or not the CI’s low back condition warranted a higher rating. The CI contends that the pre-separation 60 degree range of forward flexion of the lumbar spine satisfies the criteria for a rating of 20%. The Board noted the physical therapy range of motion five months before separation was just at the threshold for meeting the 20% rating however all other examinations before and after were consistent with the 10% rating. The Board therefore carefully considered the whole record in order to develop a consistent picture of the CI’s back condition. After due deliberation and in consideration of the totality of evidence, the majority of the Board concluded the 10% rating most nearly approximated the consistent picture of the disability.

Left Shoulder Pain Condition. There were three 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.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM – L Shoulder | MEB H&P ~6 Mo. Pre-Sep | PT ~5 Mo. Pre-Sep | VA C&P ~3 Mo. After-Sep |
| Flexion (0-180) | - | 140⁰ | 90⁰ |
| Abduction (0-180) | 130⁰ | 130⁰ | 160⁰  |
| Comment | Pain with abduction at 130⁰ | No mention of pain in NARSUM but H&P mentions pain on abd. | ROM of left shoulder painful and restricted. Painful on raising the arm above the left shoulder and pain with external rotation at 30⁰ |
| §4.71a Rating | 10% | 10% | 10% |

While on emergency leave, the CI presented to a VA emergency room 8 July 2005 with complaint of left shoulder pain. He denied any known trauma, lifting injury, or falls. On examination, the arm elevated to 180 degrees with full abduction, adduction, and internal and external rotation. A 20 July 05 clinic evaluation recorded onset of some pain and discomfort of the left shoulder beginning in late April 2005 when doing pushups in Iraq. The pain was worse when trying to lift overhead. On examination, there was pain at 80 degrees of abduction but elevation was to 110 degrees. The MEB NARSUM recorded CI report that the left shoulder pain began in February 2005 from lifting mail packages in Iraq. Radiographs of the left shoulder were normal. An MRI obtained in August 2005 showed mild degenerative changes of the acromio-clavicular (AC) joint, changes which typically develop over years. The remainder of the shoulder was completely normal on MRI. A 30 January 2006 orthopedics encounter documented full and complete range of motion of both shoulders. The CI’s shoulder pain persisted despite non-surgical treatment, a P3 profile was assigned, and the CI was referred for MEB. The civilian orthopedic surgery clinic note of 27 March 2006 records full active range of motion with a positive cross arm test consistent with AC joint arthritis. There is no mention of pain in the NARSUM, but the MEB history and physical examination mentions pain on abduction to 130 degrees. The PEB rated the left shoulder condition 0%. At the VA C&P examination three months after separation, the range of motion of the shoulder in flexion was less and in abduction was more; motion was with pain. The VA rated the shoulder condition 10% as 5010-5203, (5010, traumatic arthritis; 5203, impairment of clavicle or scapula). The choice of the 5203 code is reasonable for the diagnosis of AC joint arthritis as this is the joint between the clavicle and the acromion of the scapula. Upon later review in 2009, the VA increased the rating to 20% citing rotator cuff disease and noting the CI underwent surgery in April 2007 (distal clavicle excision for AC joint arthritis). The operative report confirmed the previous orthopedic examinations and MRI showing no rotator cuff pathology. The 90 degree flexion in the C&P examination is not consistent with all other range of motion examinations nor with the documented pathology. The range of motion documented in examinations does not meet the minimum for rating under the diagnostic code for limitation of motion (5201). The Board determined that shoulder condition with arthritis of the AC joint meets the criteria for a 10% rating with application of §4.59 for painful motion under 5003. The AC joint condition does not meet the pure definition of malunion under code 5203 and clearly does not meet non-union with loose movement for the 20% rating. However, the 5203 code more nearly describes the clinical pathology and therefore, the Board recommends that the left shoulder condition be rated at 10% under code 5010-5203.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were elevated cholesterol and major depressive disorder. The CI had a history of major depression requiring hospitalization in 1992. While home on emergency leave in July 2005, he developed depressive symptoms and was hospitalized. He was placed on medical hold and received treatment while in the Community Based Health Care Organization program. At the time of the psychiatry MEB NARSUM, 14 July 2006, his symptoms were in remission on treatment. The MEB referred the condition as medically acceptable. Neither of these conditions were implicated in the commander’s statement or noted as failing retention standards. Both 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 low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the left shoulder pain condition, the Board unanimously recommends a rating of 10% coded 5010-5203 and IAW VASRD §4.71a. In the matter of recurrent major depressive disorder, 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, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic low back pain  | 5299-5237 | 10% |
| Left shoulder pain | 5010-5203 | 10% |
| **COMBINED** | **20%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20061214, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 XXXXXXXXXX

 President

 Physical Disability Board of Review

DEPARTMENT OF THE ARMY

ARMY REVIEW BOAROS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* 2900 Crystal Drive, Suite 300, Arlington, VA 22202

**23** DEC 2011

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110024172 (PD201100091)

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

CF:

( ) DoD PDBR

( ) DVA