RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine Corps

CASE NUMBER: PD1100198 SEPARATION DATE: 20060430

BOARD DATE: 20120313

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCPL/E-3 (0341, Mortarman), medically separated for left shoulder type 2 AC joint separation*.* The CI was blown from his vehicle by an improvised explosive device (IED) blast while deployed to Iraq in July 2005. There was immediate deformity in the left shoulder. He was returned to his home station shortly afterwards for definitive treatment. Conservative management was unsuccessful and he underwent reconstructive surgery in October 2005. He did not respond adequately to post-operative rehabilitation including physical therapy and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Closed dislocation of shoulder, unspecified site and unspecified orthopedic aftercare were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the left shoulder type 2 AC (acromioclavicular) joint separation, status post left shoulder AC joint reconstruction condition as unfitting, rated 10%, with probable application of SECNAVINST 1850.4E, DoDI 1332.39, and the Veterans Administration Schedule for Rating Disabilities (VASRD). Status post left shoulder AC joint reconstruction condition was adjudicated as category II, related to the unfitting condition but not separately unfitting. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “TBI, PTSD and other conditions were overlooked and when I was discharged the rating was only 10%. I feel I was not fairly treated.”

RATING COMPARISON:

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| **Service PEB – Dated 20060308** | | | **VA (2 Mo. After Separation) – All Effective 20060501** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Shoulder Type 2 AC Joint Separation | 5299-5203 | 10% | Status Post Type 3 AC Separation of Left Shoulder | 5201 | 0%\* | 20060622 |
| Status Post Left Shoulder AC Joint Reconstruction | Cat II | |
| ↓No Additional MEB/PEB Entries↓ | | | PTSD | 9411 | 50%\*\* | 20060619 |
| Tinea Versicolor | 7813-7806 | 30% | 20060622 |
| Tinnitus | 6260 | 10% | 20060626 |
| 0% x 4/Not Service Connected x 1 | | | 20060622 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\* Increased to 20% 20070702, combined 80%

\*\*Decreased to 30% 20100401, combined 70%

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The 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 the degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations and DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Shoulder Type 2 AC Joint Separation Status Post Left Shoulder AC Joint Reconstruction. As noted above, the CI was a passenger in a HUMVEE when it ran over an IED (this is variously described as underneath the vehicle, in front of it, and near it) on 17 July 2005. The CI was thrown from the vehicle some distance (described as 10-50 meters in different histories) and injured his left shoulder. He was treated in theater with narcotic analgesics and a sling. He continued to have pain and was next seen five days later, 22 July 2005, when a third degree acromioclavicular separation was noted on imaging, leading to his redeployment. He was next seen on 1 August 2005 in orthopedics at Camp Lejeune, two weeks after the initial injury. Conservative management was unsuccessful and a modified Weaver-Dunn procedure was accomplished on 17 August 2005. Despite post-operative rehabilitation, the CI had persistent pain and limitation of range of motion (ROM) impairing his ability to meet the requirements of his MOS. There were two ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM – L Shoulder | MEB ~ 2.5 Mo. Pre-Sep  Ortho 20060210 | VA C&P ~ 2 Mo. After-Sep  20060622 |
| Flexion (0-180) | 150⁰ | 150⁰ |
| Abduction (0-180) | 135⁰ | 135⁰ |
| Comment | Tenderness over AC Joint | Flexion limited to 135⁰ on repetition |
| §4.71a Rating | 10% (§4.59 or 10% under 5003) | 10% (§4.59) 0% Awarded |

The MEB exam was on 10 February 2005 and noted that he was neither able to perform any lifting nor was he able to wear a pack due to pain at the incision site. The incision was well healed and the neurovascular exam was normal, with normal motor strength, sensation, pulses and capillary refill; ROM is above. The examiner also noted a reduction in internal and external rotation of the left arm, compared to the right at both zero and 90 degrees abduction. Imaging showed minimal increased cortical clavicle distance, consistent with healing of the reconstructed coracoclavicular ligaments. As it was thought that he would not be fit for full duty “within a reasonable period of time,” this condition was medically unacceptable and unfitting. The VA Compensation and Pension (C&P) exam was on 22 June 2006, two months after separation. It also noted persistent pain related to movement and cold weather that the pain interfered with sleep. ROM is above. No comment was made on the vascular or neurological examinations.

The PEB coded the shoulder condition as 5299-5203, analogous to impairment of the scapula, and rated it at 10%. The VA coded the shoulder condition as 5201, limitation of motion of the arm, and rated it 0%, although this was increased to 20% one year after separation, effective 2 July 2007 for further deterioration noted on a subsequent VA C&P examination. Coding was unchanged. The Board considered both above ratings and also alternate coding. Under codes 5003, degenerative arthritis, or 5010, arthritis due to trauma, a 10% rating would be supported for non-compensable limitation in ROM, with radiographic evidence of arthritis IAW VASRD §4.71a. VASRD §4.59, painful motion, would also support no more than a 10% rating. The VA award of 20% was based on further deterioration in evidence over one year after separation. The Board determined that there was no route to a rating higher than the 10% awarded by the PEB. 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 fitness adjudication for the left shoulder condition.

Other Contended Conditions. The Board makes note that the CI’s contended conditions of traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD) are derived from VA evaluations performed after separation, diagnosing conditions which were not addressed by the PEB and were not diagnosed while the CI was on active duty. By policy and precedent, the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document, the PEB adjudication document, the narrative summary (including any addendums or referenced examinations), the MEB physical exam, the non-medical assessment, the LIMDU profiles, and any written appeals or internal DES correspondence. While symptoms consistent with both TBI and PTSD are documented in the record, neither condition was diagnosed while the CI was on active duty and nor is either condition mentioned in the DES file. These symptoms include concussion, loss of consciousness, trouble sleeping and nightmares. The record contains no evidence that while the CI was on active duty, he sought evaluation for these symptoms or was that further evaluation was recommended by any of his caregivers. Finally, the Board notes that these symptoms are not unique to either PTSD or TBI and that the MEB did not find them medically unacceptable and the PEB did not determine them to be unfitting. 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Board for Corrections of Naval Records.

Remaining Conditions. Other conditions identified in the DES file were perforated eardrums; concussion and loss of consciousness when hit with the IED; and frequent trouble sleeping and nightmares. The Board notes that an audiogram from December 2005 documented hearing loss in the left ear with a significant threshold shift. However, an audiogram performed on 6 January 2006, after deployment, was actually improved from the baseline audiogram accomplished on 21 July 2004, two days after entry onto active duty. The acoustic trauma from the IED blast, as documented on the December 2005 audiogram, had resolved by January 2006 and there is no evidence of ongoing hearing loss. The remaining conditions have already been discussed above. The Board also notes that the VA awarded a non-compensable rating for the hearing loss and tympanic membrane scarring. 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. Additionally, tinea versicolor, tinnitus, backache, and several other non-acute conditions were noted in the VA exam proximal to separation and 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. 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 left shoulder condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the perforated eardrums; concussion and loss of consciousness; and frequent trouble sleeping and nightmares, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. The contended conditions of TBI and PTSD are not eligible for consideration by the Board.

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** |
| Left Shoulder Type 2 AC Joint Separation | 5299-5203 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110328, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 2 Apr 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

Assistant General Counsel

(Manpower & Reserve Affairs)