RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1100239 SEPARATION DATE: 20070612

BOARD DATE: 20110929

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Senior Airman (2A352, F16 Avionic System Apprentice) medically separated for a left shoulder condition. The CI suffered a sports-related injury to the left (non-dominant) shoulder in 2005. Despite receiving maximal medical benefit from both conservative and surgical treatments for the left shoulder condition, the CI did not respond adequately to perform within his Air Force specialty (AFS) or meet physical fitness standards. He was issued a U3 profile and underwent a Medical Evaluation Board (MEB). Left shoulder pain was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AFI 48-123. The Informal PEB (IPEB) adjudicated the left shoulder condition as unfitting, rated 10% with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI appealed for a Formal PEB (FPEB) which increased the rating to 20%. The CI was therefore medically separated with a 20% disability rating.

CI CONTENTION: “Since I was discharged I had to undergo another surgery on March 2010 at [name of facility] for the same issue. My shoulder requires a shoulder replacement due to the initial surgery and it has altered my life completely. My VA rating also including back problems, foot problems, knee problems that the board did not want to award me for an additional rating.”

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070430** | | | **VA (7 Mo. After Separation) – All Effective 20070613** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Shoulder Pain | 5399-5304 | 20% | Left Shoulder Rotator Cuff Tear | 5202 | 20% | 20080109 |
| ↓No Additional MEB Entries↓ | | | Right Shoulder Tendonitis | 5201-5024 | 10% | 20080109 |
| Lumbar Scoliosis | 5242 | 10% | 20080109 |
| Right Knee with Slight Subluxation | 5257 | 10% | 20080109 |
| Right Knee Patellofemoral Pain | 5260 | 10% | 20080109 |
| Right Heel Contusion | 5284 | 10% | 20080109 |
| 0% x 2 / Not Service Connected x 7 | | | 20080109 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertion that the current severity of his shoulder condition, now requiring a joint replacement, is attributable to the initial surgery. It is noted for the record 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 medical treatment or in the processing of his case. 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. The Board also acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current earning ability and quality of life. It is a fact, however, that the Disability Evaluation System (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. The Board’s jurisdiction for recommending unadjudicated conditions as unfitting and therefore subject to additional separation rating is limited to those conditions which are evidenced in the DES file. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Air Force Board for Correction of Military Records.

Left Shoulder Pain. Imaging studies showed mild acromioclavicular joint hypertrophic changes, mild posterior subluxation at the glenoid, and post-surgical changes. The CI underwent two arthroscopic surgical interventions. In the first, a posterior labral tear was identified and repaired. After some initial post-operative relief, persistent joint pain recurred and the CI underwent a second arthroscopy. Significant degenerative joint disease (DJD) and chondromalacia (cartilage damage) was noted at that time. The more severe findings at repeat arthroscopy are not attributable to prior surgical technique; no operative complications were documented for either procedure; and, both procedures were supported by valid indications. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| Left Shoulder ROM | MEB (8 Mo. Pre-Sep) | VA C&P (7 Mo. Post-Sep) |
| Flexion (180⁰ Normal) | 180⁰ | 180⁰ |
| Abduction (180⁰ Normal) | 180⁰ | 180⁰ |
| Comments | Crepitance; pain on forward flexion past 90⁰. | Guarding and moderate subluxation. |
| §4.71a Rating | 10%\* | 10%\* |

\*Conceding §4.59 (painful motion) under any of the standard joint codes.

The MEB examiner documented a full, but painful ROM of the left shoulder with crepitance. There was weakness to external rotation and overhead lifting. At the VA compensation and pension examination, the examiner recorded similar physical exam findings with additional notation of positive DeLuca criteria. The PEB and VA chose different coding options for the left shoulder condition, although both achieved the same rating. The PEB utilized code 5304 to rate the shoulder injury as a “moderately severe” (20%) muscle disability. This rating is consistent with the CI’s history of cardinal signs of muscle disability including weakness, pain, and a lowered fatigue threshold. Twenty percent is the maximum rating achievable under 5304 for the non-dominant shoulder even for the “severe” designation. The VA coding choice (5202) is an analogous rating for malunion of the humerus with “moderate” deformity. That is the also the maximal rating under that code for a non-dominant shoulder. There was no clinical and/or radiologic evidence that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, nonunion or dislocation of the scapula, or recurrent dislocations of the humerus that would have justified any alternate shoulder code with higher rating potential. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the service rating for the left shoulder condition; nor is there latitude under VASRD 4.71a for recommending a higher rating. It was noted by the Board that the PEB’s decision to rate under a muscle code is not a standard approach to joint rating, and requires full reliance on the §4.56 cardinal signs to justify any rating at all. Likewise, the VA’s coding choice is incompatible with the pathology since there is no malunion or deformity to rate. A “by the book” code and rating for this case; however, would have resulted in a maximum rating of 10%. Not only is the Board prohibited from recommending a lower rating than that conferred by the service (per DoDI 6040.44), but all members agreed that the clinical severity and overall disability manifested in this case was not fairly rated at 10%. That was presumably the rationale for the PEB and VA decisions to take license with their respective coding choices. Therefore, the choice of code is irrelevant to the Board’s rating recommendation and no change from the PEB’s designation is indicated.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for low back, right shoulder, right heel, and right knee conditions. All of these conditions surfaced, or re-surfaced, after MEB proceedings were underway for the shoulder condition. All were evaluated during or subsequent to the MEB period. The back condition was forwarded in writing to the FPEB by the CI’s primary care provider. None of these conditions were formally forwarded by the MEB or formally contended in service. There were no orthopedic or other provider entries which suggested that any condition other than the left shoulder imposed limitations restricting duty performance or failed retention standards. None of these conditions carried attached profiles, and none were implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. No other conditions were noted in the narrative summary, identified by the CI on the MEB physical, or found elsewhere 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. 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 shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right shoulder, back, right knee, and right heel conditions, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend a finding of unfit at separation for additional rating.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Shoulder Pain with Chondromalacia and Surgical Residuals | 5399-5304 | 20% |
| **COMBINED** | **20%** |

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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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00239.

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,

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Director

Air Force Review Boards Agency