RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100262 SEPARATION DATE: 20041020

BOARD DATE: 20120127

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, Senior Airman/E-4 (2A753, Aircraft Structural Maintenance Journeyman), medically separated for a left shoulder rotator cuff tear. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a permanent U4 profile and underwent a Medical Evaluation Board (MEB). Left shoulder rotator cuff tear was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. 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 rotator cuff tear as unfitting, rated 20%, with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “Since discharge, I have had surgery on my L knee and I am still having problems and currently being treated by the Huntsville VA for [sic]. My surgery was with Dr. G----- and I was told that l would need a total knee replacement that Dr G---- was unwilling to do because I am too young. Since discharge, I have been having Low Back Pain, treated by Dr. K-----. I was diagnosed with a traumatic brain injury (service related) with Post Traumatic Stress Disorder (by the Birmingham VA) and I see E-- G--- for counseling. I was told that I am diabetic and that I have an unknown kidney problem (extremely high protein) which I have to take medicine for daily and cannot take the medicine I need for my PTSD because they do not know if my kidneys will shut down- by the VA. I am still having extreme L shoulder pain. I have frequent and long lasting migraines that cause me nausea and light sensitivity. I have nightmares, I can't sleep, I can't concentrate on what I am doing, I can't remember anything. Both of the bottoms of my feet throb constantly and hurt. I have ringing in my L ear. I have made the Huntsville and Birmingham VA aware of all of these problems.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040816** | **VA (~4 Mo. After Separation) – All Effective 20041021** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L Shoulder Rotator Cuff Tear | 5304 | 20% | Left Shoulder Acromioclavicular Joint Dislocation | 5203 | 10% | 20050209 |
| ↓No Additional MEB/PEB Entries↓ | Left Patellofemoral Syndrome of the Left Knee | 5260 | 10% | 20050209 |
| Not Service Connected x 3 | 20050209 |
| **Combined: 20%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred conditions continue to burden him. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the DES operates. 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), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for other conditions documented at the time of separation. 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. The DVA, however, is empowered to compensate all 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.

Unfitting Condition: Left Shoulder Rotator Cuff Tear. During the period between December 2001 and January 2002, the right dominant CI injured his left shoulder and was referred to orthopedics where he was seen initially in March 2002. Examination and MRI imaging concluded with diagnosis of impingement syndrome associated with acromioclavicular joint arthritis. He failed conservative management, including injections, and underwent distal clavicle resection on 3 October 2002 for a separated acromioclavicular joint (ACJ). His postoperative course was complicated by an infection, which was treated with antibiotics, and debridement for wound dehiscence. His shoulder healed, but pain and activity restriction remained. However, he was returned to full duty, at his request, multiple times between 2002 and 2004. A second MRI on 2 June 2004, four months prior to separation, showed a “complete tear of the peripheral rotator cuff superimposed on a cuff tendinopathy with acromion configuration predisposing to an anatomic outlet impingement.” Rotator cuff surgery was performed 6 August 2004, two weeks after the MEB exam was dictated. At the time of the MEB exam, range-of-motion (ROM) was limited and painful. Atrophy of the biceps and deltoid muscles was noted and the ACJ was tender to palpation. Left upper extremity strength was noted to be 2/5 compared to 5/5 on the right. The VA Compensation and Pension (C&P) exam was performed 9 February 2005, three months after separation and six months after the rotator cuff repair. It is therefore accorded higher probative value for the determination of the permanent disability present at separation. The VA examiner also noted that the CI had fractured both clavicles while playing high school football, but otherwise documents a history similar to that of the MEB examiner. The CI reported that he continued to have pain and decreased ROM and limited himself to light activities. A slightly tender scar was noted on examination, but no functional limitations noted. There was guarding noted during the examination. DeLuca findings were absent. Strength was noted to be 5/5 except the left deltoid. The examiner commented “he seems to give way more due to pain than weakness of the muscle.” No muscle atrophy was documented. There were three goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation. All of these exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM Left Shoulder | Ortho ~ 5 Mo. Pre-Sep | MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 4 Mo. After-Sep |
| Flexion (0-180) | 175⁰ | 130⁰ | 0-120⁰ (pain at 80⁰) |
| Abduction (0-180) | 160⁰ | 130⁰ | 0-100⁰ (pain at 80⁰) |
| Comment | Painful motion | Painful Motion | Painful Motion |
| §4.71a Rating\* | 10% | 10% (20% awarded) | 10% |

The IPEB coded the left shoulder condition as 5304, Group IV muscle dysfunction, and rated it at 20% for moderately severe or severe impairment. The VA coded the condition as 5203, impairment of the clavicle or scapula, and rated it at 10% for malunion of the clavicle. The Board first noted that the IPEB awarded the highest level of disability under code 5304 for a non-dominant arm. The VA awarded 10% under code 5203, but no rating higher than 20% would be available under this code even if determined to be justified, which it is not. Finally, the Board considered code 5201, limitation of motion of the arm, but noted that the limitation of motion would justify a 10% rating. The Board considered the IPEB rating and noted that, after surgery, the muscle dysfunction significantly improved, if not altogether resolving. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left shoulder condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for left knee pain, low back pain (LBP), traumatic brain injury (TBI), posttraumatic stress syndrome (PTSD), diabetes, kidney problems, migraines, insomnia, bilateral foot pain, left tinnitus, and memory and concentration problems. The left knee pain and LBP were part of the DES. Neither was documented as being an active problem the last two years of active duty. None of the following conditions were in the DES file. There was no evidence in the CI’s service treatment record for TBI, memory loss, poor concentration, insomnia or PTSD. In fact, his performance reports for all periods of evaluation were stellar including the last available report for the period March 2003 to March 2004. Regarding diabetes and kidney conditions, records show normal blood glucose and normal renal function on multiple occasions. There were no service treatment records for kidney disease, migraines, bilateral foot pain or tinnitus. All of these conditions 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 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 determined therefore that none of the stated conditions were subject to Service disability rating.

Remaining Conditions. The only other condition identified in the DES file was gastroesophegeal reflux disease (GERD). The CI was noted as taking over the counter anti-reflux medication as necessary. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were of clinical or occupational significance during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The VA determined the colitis to be a self-limited condition. 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 and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the GERD, left knee, LNBP, TBI, PTSD, Diabetes, kidney problem, migraines, insomnia, bilateral foot pain, tinnitus, and impaired memory and concentration 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Shoulder Rotator Cuff Tear | 5304 | 20% |
| **COMBINED** | **20%** |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110330, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 XXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00262

 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,

Director

 Air Force Review Boards Agency