RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100265 SEPARATION DATE: 20060621

BOARD DATE: 20120418

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92Y, Unit Supply) medically separated for right shoulder arthritis. He injured his shoulder while playing basketball. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Right shoulder pain and obstructive sleep apnea (OSA) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were listed on the MEB submission as medically acceptable. The PEB found the right shoulder condition unfitting, and rated it 0%. OSA and the other MEB conditions were all adjudicated as not unfitting, and therefore not ratable. The CI made no appeals, and was thus medically separated with a 0% disability rating.

CI’s CONTENTION: “I have service connected disabilities that have been determined by physicians to be incurable. Hypertension has been proven and medications for control have been changed many times. Bell’s palsy has also been a result of the hypertension and stress not being controlled. I had undiagnosed PTSD that was discovered while being evaluated for chronic knee injuries. The PTSD is due to the 9/11 incident located at the Pentagon in Washington DC. Knee injuries are the result of the military service. I have had multiple therapy appointments and been on numerous medications. The medications and therapy were unsuccessful and resulted in surgery.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20060530** | | | **VA (3 mo. Post-Separation) – All Effective 20060622** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right shoulder arthritis | 5003 | 0% | Right shoulder strain | 5201-5010 | 10% | 20060905 |
| Obstructive Sleep Apnea | Not Unfitting | | Obstructive Sleep Apnea | 6847 | 50% | 20060905 |
| Mild Bronchospasm | Asthma | 6602 | 10% | 20060905 |
| Hypertension | Hypertension | 7101 | 0% | 20060905 |
| Migraine Headaches | Migraines | 8100 | 0% | 20060905 |
| Seasonal allergic rhinitis | Allergic Rhinitis | 6522 | 30% | 20060905 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Knee pain | 5014 | 10% | 20060905 |
| Right Knee pain | 5014 | 10% | 20060905 |
| Lumbar Strain | 5237-5243 | 10% | 20060905 |
| Right ankle sprain | 5271 | 10% | 20060905 |
| Bilateral Hearing Loss | 6100 | 10% | 20060905 |
| 0% x 1 | | | 20060905 |
| **Combined: 0%** | | | **Combined: \*80%** | | | |

\* VA Combined Rating of 80% based on the VA Rating Decision (VARD) most proximate to date of separation from service.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that service disability ratings should be considered for other conditions. The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final separation. However the Department of Veterans’ Affairs 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.

Right shoulder condition. In 1999, the CI injured his right shoulder while playing basketball. He was treated with nonsteroidal anti-inflammatory drugs (NSAIDs) and physical therapy (PT). He then had a thermal capsular shrinking (TCS), and an arthroscopic Bankart procedure. After surgery, he continued to have right shoulder problems. Magnetic resonance imaging (MRI) showed labral separation, rotator cuff tendinosis, and degenerative joint disease (DJD). Repeat arthroscopy showed a normal biceps root, no instability, but grade three to four chondromalacia of the humeral head. Due to persistent problems with his right shoulder, an MEB was initiated. At his April 2006 MEB evaluation, he reported right shoulder pain that he described as “sharp.” He said that he avoided raising his right arm above his head in order to prevent subluxation. As noted above, the Army PEB found the right shoulder condition unfitting, and the CI was separated with a disability rating of 0%. Eleven weeks later, he underwent a VA Compensation and Pension (C&P) exam. At that exam, the CI reported shoulder pain and stiffness. Flare-ups would occur about twice a month. Right shoulder range-of-motion (ROM) is summarized below.

|  |  |  |
| --- | --- | --- |
| Right Shoulder | MEB – 8 wks. Pre-Sep  (20060426) | VA C&P – 11 wks. Post-Sep  (20060905) |
| Fwd. Flexion (180⁰ is normal) | 170⁰ | 180⁰ |
| Abduction (180⁰ is normal) | 175⁰ | 180⁰ |
| Int. rotation (90⁰ is normal) | 30⁰ | 90⁰ |
| Ext. rotation (90⁰ is normal) | 80⁰ | 90⁰ |
| Comment | Flexion and abduction slightly limited by pain | Pain with motion |

The Board carefully reviewed all evidentiary information available. The PEB and the VA chose different coding and rating options for the right shoulder condition. IAW the VA Schedule for Rating Disabilities (VASRD), the limitation of shoulder motion was essentially non-compensable based on VASRD §4.71a diagnostic codes for the shoulder and arm (5200 through 5203). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board could not find sufficient objective evidence in the record that would justify a disability rating greater than 10%. After due deliberation, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a rating of 10% for the shoulder condition.

Other PEB Conditions. OSA, exercise-induced bronchospasm, hypertension, low back pain (LBP), migraine headaches, and seasonal allergic rhinitis (SAR) were adjudicated by the PEB as “not unfitting.” The OSA was controlled with continuous positive airway pressure (CPAP), and the CI did well during his deployment with the use of CPAP treatment. None of these other conditions were implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions interfered significantly with satisfactory performance of required military duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Bell’s palsy, PTSD, knee pain, asthma, plantar fasciitis, ankle pain, and several other conditions were also noted in the DES file. None of them were clinically significant during the MEB/PEB period, none carried 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 of these conditions interfered with duty performance to a degree that could be argued as unfitting. Additionally, hearing loss and other conditions 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 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 right shoulder condition, the Board unanimously recommends a rating of 10% IAW VASRD §4.40, §4.45, and §4.59. In the matter of the OSA, bronchospasm, hypertension, LBP, migraines, SAR, Bell’s palsy, PTSD, knee pain, asthma, plantar fasciitis, ankle pain, or any other conditions eligible for 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 Right Shoulder Pain | 5201-5010 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

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

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXX, AR20120008205 (PD201100265)

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 10% 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 XXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA