RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100380 SEPARATION DATE: 20080630

BOARD DATE: 20120120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (68W, Combat Medic), medically separated for bilateral shoulder pain*.* The CI first experienced shoulder pain during field exercises in 2003. He suffered recurrent dislocations of both shoulders, with surgical repairs for each joint. Despite rehabilitation he did not respond adequately to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Bilateral shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Sleep disorder with insomnia was also evaluated by the MEB, and forwarded as a medically acceptable condition. Three additional Axis I conditions (as per the chart below) were forwarded on the MEB’s DA Form 3947; but are not ratable conditions IAW DoD and VA regulations and will not be discussed further. The PEB adjudicated separate right and left shoulder conditions as unfitting, rated 10% each, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “The Army’s PEB determined that I was unfit due to chronic pain and instability for my right and left shoulders; rated at 20% disability; to be separated with disability severance pay. I was not diagnosed for PTSD while on active duty, but rather diagnosed for a different condition. I have PTSD [post-traumatic stress disorder], I am diagnosed with PTSD by the Veterans Affairs Medical Center, Memphis, TN and am receiving Veterans Affairs service connection compensation for this condition rated at 30% and overall receiving service connection compensation 60%. I am currently in the PTSD residential program at the VA Memphis Medical Center…. Request my SEVPAY 20% be upgraded to Temporary Disability Retirement List [TDRL] at a minimum of 50% rating due to PTSD to be effective the date of discharge of 30 June 2010, and then be transferred to the Permanent Disability Retirement List effective 6 months from that date, with a percentage appropriate to my injury/illness.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20080305** | | | **VA (1 Mo. Pre-Separation) – All Effective 20080701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Shoulder Pain | 5099-5003 | 10% | Right Shoulder | 5201-5024 | 10% | 20080519 |
| Chronic Left Shoulder Pain | 5099-5003 | 10% | Left Shoulder | 5201-5024 | 10% | 20080519 |
| Sleep Disorder, Insomnia | Not Unfitting | | Mixed Anxiety/Depressive Disorder\* | \*9400 | 10% | 20080516 |
| Adjustment Disorder | Not Unfitting | |
| Sedative Abuse | Not Unfitting | | No VA Entry | | | 20080519 |
| Alcohol Dependence | Not Unfitting | | No VA Entry | | | 20080519 |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbar Strain | 5237 | 10% | 20080519 |
| Tinnitus | 6260 | 10% | 20080624 |
| No Additional VA Entries | | | 20080519 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

\* Changed to PTSD (9411), rated 10%, effective 20080701; and, increased to 30% effective 20091117 (16 mo. post-separation).

ANALYSIS SUMMARY: The Board acknowledges the presence of PTSD as a currently rated condition by the VA, but notes that the scope of its recommendation does not extend to conditions which were not diagnosed or in evidence at the time of medical separation. This includes conditions which may have had early manifestations during active service, since such sub-clinical conditions cannot be correlated with a fitness determination requisite for a service rating. The Board is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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 Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes DVA 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.

Shoulder Conditions. The pathology and clinical features of the separate shoulder joint conditions were equivalent, and they followed parallel clinical courses; thus, they will be discussed together. The CI first dislocated his right shoulder in October of 2003 and his left shoulder in March 2004. Both were managed conservatively, but were unstable; and, the CI suffered multiple recurrent dislocations of each joint. Each joint ultimately required surgical repair and capsular stabilization; the right in December 2006, and the left in August 2007. Stability was restored for both shoulders; but chronic pain, incompatible with the physical demand of the MOS, persisted. There were two goniometric range of motion (ROM) evaluations in evidence for both shoulders, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Shoulder ROM | MEB ~5 Mo. Pre-Sep | | VA C&P ~1 Mo. Pre-Sep | |
| Right | Left | Right | Left |
| Flexion (180⁰ Normal) | 160⁰ | 170⁰ | 180⁰ | 180⁰ |
| Abduction (180⁰ Normal) | 150⁰ | 160⁰ | 120⁰ | 120⁰ |
| Comment | Pain with motion. | | Pain/resistance on abduction. | |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

\* Conceding §4.59 (painful motion) as below.

At the MEB examination, the CI reported occasional pain in the shoulders. This was exacerbated by such activities as raising his arm overhead, throwing, lifting more than twenty pounds, and climbing ladders. On physical examination, the MEB physician noted the modest ROM limitations documented above, mild tenderness on the left, and pain with motion of both shoulders. There was no tenderness, but painful motion was documented. Although the CI noted “feelings of instability,” there was no objective instability to stress testing of either joint. At the pre-separation VA Compensation and Pension (C&P) examination four months later, the CI reported constant severe pain (7-8 on the 10 scale). It was exacerbated by “physical activity” and treated with narcotic analgesics, although the examiner stated that the CI “can function without medication.” Physical findings were tenderness, apprehension with abduction on the right, and the limitations in abduction recorded above. Repetition elicited “pain and weakness,” but no decrement in ROM. Both shoulders were stable to stress testing by the VA examiner, akin to the MEB evaluation.

The Board directs its attention to its rating recommendations based on the evidence just presented. The Board notes that both the MEB and VA exams were complete, well documented, and similar in terms of ratable data; and, therefore assigns them equal probative value. The PEB and VA chose similar coding options for the condition, i.e., analogous to 5003 (degenerative arthritis). Both the PEB and VA recognized non-compensable loss of ROM for the each shoulder, but acknowledged painful motion. The PEB specifically cited VASRD §4.59 (painful motion) in support of the minimal compensable rating for each joint; and, the VA cited 5003 rating language directly as justification of its minimal compensable ratings “for painful or limited motion of a major joint or group of minor joints.” There is no evidence of incapacitating episodes to support a 20% rating under the 5003 code. There was no clinical or radiologic evidence for either joint supporting ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, or deformity of the humerus. There was further no clinical or radiologic evidence for either joint that suggested dislocation of, nonunion of, or malunion of the clavicle or scapula. The recurrent dislocations of the humerus were resolved with the surgery. Hence, no alternative shoulder code is supported in justification of a rating higher than 10% for each joint. There was no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends no change from the PEB’s adjudication of the right and left shoulder conditions.

Other PEB Conditions. The other conditions forwarded by the MEB adjudicated as not unfitting by the PEB were sleep disorder/insomnia and the non-ratable conditions previously noted. The Board’s main charge in respect to the sleep disturbance condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. This condition was not profiled, implicated in the commander’s statement and was judged by the MEB to meet retention standards. The condition was 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 duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB fitness adjudication for the sleep disorder.

Contended PTSD Condition. Especially given the presumptive post-separation evolution of the sleep disorder just discussed (and possibly some or all of the non-ratable conditions as well) into the diagnosis of PTSD, the Board specifically addressed the question as to whether there was unfitting psychiatric impairment at the time of discharge. The CI first presented to Behavioral Health in early 2007. He was diagnosed with adjustment disorder, started on medication, and followed as an outpatient. A mental health note in July 2007 stated “SM [Service member] has stopped all medication and remains symptom free.” A note in December 2007 stated “patient has not been seen in the clinic for 90 days. Case closed.” The subsequent referral for alcohol and substance abuse stated that the CI had been “self-medicating” for his shoulder pain. The psychiatric addendum to the narrative summary (NARSUM), which yielded the Axis I diagnoses submitted by the MEB, documented a “bitter attitude,” but a normal mental status examination (MSE) and cognitive functioning. A VA psychodiagnostic interview performed 12 days prior to separation likewise documented a normal MSE and cognitive functioning. The MEB psychiatrist opined that all of the Axis I diagnoses were medically acceptable. The commander’s statement described the CI as “motivated” and “successful in his role” as line medic; stating that his “physical condition prevents him from performing his duties.” There was no psychiatric profile at any point in the CI’s military career. The Board, therefore, has no support for recommending any unfitting psychiatric condition for Service rating.

That said; a specific diagnosis of PTSD cannot be established in Service. Repeated entries in the Service mental health notes, the MEB psychiatrist addendum, and the VA psychodiagnostic interview conducted on the eve of separation all specifically stated that diagnostic criteria for PTSD were not met. No Criterion A stressors were documented and the psychiatric symptoms manifested in Service were correlated exclusively to relationship issues and the stress of the MEB process. The diagnosis of PTSD was made greater than one-year after separation by the VA; and, of note, a VA mental health entry even 12 months after separation stated, “it does not appear [the CI] meets criteria for PTSD.” PTSD, as a specific condition, therefore remained unadjudicated by the PEB. 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 (DA Form 3947 for Army cases), the PEB adjudication document (DA Form 199 for Army cases), the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. PTSD, with the commiserate TDRL and permanent separation ratings as contended, is thus ineligible for consideration by the Board. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Correction of Military Records (ABCMR).

Remaining Conditions. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active 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. Additionally lumbar strain and tinnitus 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 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 right and left shoulder conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudications. In the matter of the sleep disorder, adjustment disorder, sedative abuse, and alcohol dependence conditions; the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the contended PTSD condition, the Board unanimously agrees that it is not eligible for Board consideration; although, the Board does unanimously agree that there was no unfitting psychiatric impairment at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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** |
| Chronic Pain, Right Shoulder | | 5099-5003 | 10% |
| Chronic Pain, Left Shoulder | | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110511, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for (PD201100380)

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 and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA