RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100411 SEPARATION DATE: 20050830

BOARD DATE: 20120308

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Guard member, SGT/E-5 (88M, Motor Transport Operator), medically separated for a right (dominant) shoulder condition. He injured his shoulder in 2004 from a fall during pre-deployment training. He was diagnosed with a rotator cuff injury amendable to conservative management. He did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Chronic right shoulder impingement syndrome was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded by the MEB as medically acceptable. Other conditions evidenced in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the right shoulder condition as unfitting, rated 10%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The severity of my right shoulder and chronic arthritis that followed it. I had shoulder surgery on Jan 09 at VA hospital in Memphis Tn. I still suffer with daily chronic shoulder and arthritis pain with limited range of motion. I should have received a rating for the following conditions; Bilateral hearing loss, Bilateral pes planus (flat feet), Bilateral tinnitus and Erectile dysfunction prior to being medically discharged.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050803** | | | **VA (11 Mo. Post-Separation) – All Effective Date 20050831** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Pain | 5099-5003 | 10% | Impingement R Shoulder … | 5201 | 20% | 20060713 |
| Pes Planus | Not Unfitting | | Pes Planus | 5276 | Not Service Connected | |
| Hearing Loss | Not Unfitting | | Hearing Loss | 6100 | Not Service Connected | |
| No Additional MEB/PEB Entries | | | 0% x 2 / Not Service Connected x 1 | | | 20060713 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues 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 Disability Evaluation System (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 further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 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. The CI injured his shoulder falling off of a military cargo truck. A possible supraspinatus or labral tear was suspected, but was not present on a subsequent arthrogram. Minimal degenerative changes of the acromio-clavicular joint were identified by imaging. The orthopedic consultant made the diagnoses of adhesive capsulitis (resolving) and rotator cuff strain; not amendable to surgical intervention. The CI underwent a series of three intra-articular steroid injections, to minimal effect; and, likewise failed to respond satisfactorily to physical therapy and medications. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. These are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Right Shoulder ROM | MEB ~7 Mo. Pre-Sep | VA C&P ~11 Mo. Post-Sep |
| Flexion (0-180⁰) | 135⁰ | 90⁰ Passive / 130⁰ Active |
| Abduction (0-180⁰) | 120⁰ | 100⁰ Passive / 130⁰ Active |
| Comments | Painful motion. | Painful motion; Neg. DeLuca. |
| §4.71a Rating | 10%\* | 10%\*\* |

\* With application of §4.59 (painful motion) as below.

\*\* VA’s 20% rating was erroneously assigned (or exam erroneously labeled) as below.

The MEB examiner stated, “patient states that he continues to have right shoulder pain that is exacerbated with overhead activities, all attempts to do any pushing and pulling activities or wearing of body armor or use of a ruck sack.” The physical exam documented painful motion, mild tenderness, positive physical signs for impingement, slight weakness (4+/5) of rotator cuff musculature; but, no instability or other significant findings. The post-separation VA examiner documented positive impingement signs, but normal strength testing; and, likewise noted no instability or other ratable findings. The VA ROM documentation is listed above; but, it would be unusual to see this inverse passive to active motion, especially with no mechanical limitation to passive motion. This was possibly typographical error (although repeated for all planes of motion), or possibly misapplied terminology. The VA rating rationale referenced the passive measurements, which is not consistent with VASRD §4.71a guidance; although, if 90⁰ were meant for active flexion, the 20% rating would attach.

The Board directs attention to its rating recommendation based on the above evidence. Probative value is assigned to the MEB evaluation; since, the VA evidence is significantly remote from separation (approaching the DoDI 6040.44 prescribed interval of 12 months for applicability); and, the VA exam and rating rationales are unacceptably confusing as just explained. Although the PEB invoked the USAPDA pain policy, its 10% rating is compliant with §4.71a standards for code 5099-5003 (analogous to degenerative arthritis). 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 PEB adjudication for the right shoulder condition.

Other PEB Conditions (Contended). The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were pes planus (flat feet) and hearing loss. Neither of these conditions carried a profile; neither was implicated in the commander’s statement; and, both were judged to meet retention standards by the MEB. Both of these conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that either of them significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions. In addition to the pes planus and hearing loss conditions just addressed, the CI’s application asserts that compensable ratings should be considered for tinnitus and erectile dysfunction. Tinnitus is equivalent in fitness implications to the hearing loss condition. Erectile dysfunction has no practical fitness implications, and was rated 0% at separation by the VA. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of them 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. Other conditions identified in the DES file were a history of kidney stones and a history of exercise-induced asthma; and, the VA rating decision proximal to separation noted a left knee sprain (non-compensable). None of these conditions were clinically active during the MEB period; none carried a profile; 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 neither could be argued as unfitting and subject to separation rating. 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right shoulder condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the right shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the pes planus and hearing loss conditions, the

Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the contended tinnitus and erectile dysfunction conditions, the Board unanimously agrees that it cannot recommend any finding of unfit for additional rating 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** |
| Right Shoulder Pain with Impingement Syndrome | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110516, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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

Deputy Assistant Secretary

(Army Review Boards)