RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100416 SEPARATION DATE: 20060421

BOARD DATE: 20120517

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B/Infantry) medically separated for a left shoulder condition. His shoulder was injured by blunt force in 2004 when his Bradley vehicle was struck by a rocket in Iraq. He was medically evacuated and suffered persistent left (non-dominant) shoulder pain, which was not responsive to conservative measures. He was diagnosed with an acromioclavicular injury, and in 2005 underwent surgical intervention. Despite the surgery, his shoulder could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The shoulder condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. An additional condition, “cervical and thoracic pain” (dating to the combat injury as well), was also identified by the MEB and forwarded as medically unacceptable. No further conditions were forwarded. The PEB adjudicated the left shoulder condition as unfitting, rated 10%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. The cervical/thoracic condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI makes no contentions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those conditions “identified but not determined to be unfitting by the PEB”. The uncontested PEB cervical/thoracic spine adjudication is therefore not within the Board’s purview, and this review will be confined to the rating of the left shoulder condition. The additional conditions rated by the VA at separation, or any other conditions or contention outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20060307** | **VA (~3 Mo. After Separation) – All Effective Date 20060422** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Shoulder Pain | 5099-5003 | 10% | Residuals, Left Shoulder | 5203-5201 | 20% | 20060710 |
| Suprascapular Nerve Impingement | 8510 | 20% | 20060710 |
| Cervical and Thoracic Pain | Not Unfitting | Chronic Thoracolumbar Strain | 5237 | 10% | 20060710 |
| Chronic Neck Strain | 5237 | 10% | 20060710 |
| No Additional MEB/PEB Entries | PTSD | 9411 | 30% | 20060718 |
| Left Knee Medial Plateau Fracture | 5257 | 10% | 20060710 |
| Tinnitus | 6260 | 10% | 20060710 |
| Shrapnel Wounds R Thigh/Fx R Knee | 5314 | 0% | 20060710 |
| Kidney Stones | 7508 | 0% | 20060710 |
| **Combined: 10%** | **Combined: 70%** |

ANALYSIS SUMMARY:

Left Shoulder Joint Condition. After the CI failed to progress with physical therapy and joint injections, a diagnosis of a grade III acromioclavicular joint injury was made. In April 2005 an arthroscopic subacromial decompression and distal clavicle resection was performed. The pain increased post-operatively, although VA records indicate this was compounded by a re-injury soon after the surgery. The CI underwent a protracted trial of rehabilitation under pain specialty supervision; and, failed multiple modalities which included repeated joint injections, physical therapy, TENS (implanted electrical counter-stimulation), and numerous non-narcotic and narcotic analgesic regimens. Magnetic resonance imaging (MRI) performed 2 weeks after separation revealed only a small fluid collection without significant joint pathology. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below:

|  |  |  |  |
| --- | --- | --- | --- |
| Left Shoulder ROM | MEB ~3 Mo. Pre-Sep | Pain Mgmt ~2 Mo. Post-Sep | VA C&P ~3 Mo. Post-Sep |
| Flexion (0-180⁰) | 100⁰ | 120⁰ | 100⁰ |
| Abduction (0-180⁰) | 80⁰ | 120⁰ | 100⁰ |
| Comments | Annotated “with severe pain”. | Trigger points noted. | Painful motionin all planes. |
| §4.71a Rating | 20% | 10% | 10%\* |

 \* VA 20% rating under 5201 not IAW VASRD §4.71a criteria; cited rating IAW §4.59 (painful motion).

In the narrative summary (NARSUM) of the MEB examination, the CI reported left shoulder pain radiating down the arm “that begins in the morning with 2/10 pain and increases to pain of 5-6/10 as the day goes on”. The NARSUM physical exam recorded shoulder tenderness, a prominent distal clavicle, and the ROMs charted above. Prior to his post-separation VA Compensation and Pension (C&P) evaluation, the CI was evaluated by a military referred pain specialist (albeit not seen until after separation), who recorded improved ROMs as charted above. At the post-separation VA C&P evaluation, the CI reported constant pain flaring to 10/10 with “any movement”. The VA physical examiner documented “guarding of any manipulation of the left shoulder”; crepitus with passive motion; “no instability”; and, the ROMs charted above. In addition to the measured ROMs charted above, there were numerous MEB outpatient observations proximate to separation. These documented abduction ranging from 70⁰ to 90⁰.

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating analogous to 5003 (degenerative arthritis) was supported by the USAPDA pain policy, but was not consistent with VASRD §4.71a criteria for the ROMs under consideration. The VA rated under the hyphenated codes 5203 (clavicle or scapula, impairment of) and 5201 (shoulder limitation of motion); and the stated rationale in the rating decision for a 20% rating was “based on VA examination findings that you do not experience instability, giving way, or locking, but you do have popping and crackling”. The latter criteria, however, are not cited in either of the VA assigned codes or elsewhere in §4.71a shoulder codes. The VA ROMs do not support a compensable rating under 5201, which requires limitation to “shoulder level” (90⁰) for the lowest compensable rating (20%). None of the §4.71a joint codes for the shoulder which could be considered in this case would support a rating greater than 10%; except for 5201, if the MEB ROM evidence is assigned the preponderant probative value. Since the MEB ROM’s were also corroborated by other examiners, especially considering the overall degree of disability in evidence, members agreed that it was reasonable to take this latter approach. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the left shoulder joint condition.

Left Shoulder Neuropathy Condition. In addition to the intrinsic joint pathology contributing the CI’s unfitting “left shoulder pain” condition, there was a contribution from a separately ratable peripheral nerve injury (as per the VA rating) which the Board must consider in this case. The CI was evaluated by a neurologist 4 months prior to separation. His examination documented “a small amount” of deltoid atrophy, “slightly weaker” left vs. right hand grip, “slight weakness of the lateral rotation of his left arm compared to the right”, and a sensory deficit of the C5/6 dermatome (consistent with brachial neuropathy); but, motor strength of remaining muscle groups and tendon reflexes were normal. An electromyelogram at that time diagnosed a suspected brachial plexus injury. The neurologist referred the CI for additional evaluation by Rehabilitation Medicine (as noted above in the shoulder joint discussion), although he was not seen until a month after separation. At that time it was concluded that neuropathic pain from suspected brachial plexus injury was associated with the shoulder condition. The examiner at that time documented, “Strength in his shoulder is at least 3/5, but difficult to fully evaluate secondary to pain with manual muscle testing. Manual muscle testing of his elbow, wrist and finger ranges reveals that he has normal strength in those areas.” A dermatomal sensory deficit to light touch, equivalent to that of the neurologist, was noted. The NARSUM examiner noted that the CI denied any upper extremity weakness, and documented 5/5 motor strength in all groups except for 4/5 strength of the internal and external rotators. The NARSUM also documented the same dermatomal sensory deficit identified above. The post-separation VA examiner documented a complaint of “weakness and stiffness”. The VA neurologic examination was not detailed, but noted 4/5 grip strength on the left vs. 5/5 on the right.

The Board directs attention to its recommendation regarding the associated shoulder neuropathy based on the above evidence. It was first deliberated whether this condition was indeed eligible for a recommendation from this Board, since the neuropathy was not directly addressed by the PEB and logically the PEB was not cognizant of the distinctly separate condition. It is established by the evidence that the condition was electrodiagnostically confirmed in service, and that it was initially addressed by a neurologist. It is also clear that the physical signs of the neuropathy, unexplained by the intrinsic joint pathology, were present in the NARSUM. It was deliberated at considerable length as to whether this condition fell within the purview of the board; and, if so, whether it could be considered unfitting. The action officer opined that, more likely than not, the brachial plexus neuralgia was present throughout the clinical course and quite likely contributed a lion’s share of the pain which compromised the ROMs all along. It was countered, then, that this was subsumed *de facto* in the shoulder rating already conferred; and, thus a second rating would be dubiously compliant with VASRD §4.14 (avoidance of pyramiding). Following this logic, it would also be concluded that the only residual pathology from the neuropathy would have been some mild motor deficits and an inconsequential sensory deficit of the non-dominant upper extremity; of questionably unfitting significance. All of these conclusions, however, are contestable; and, deliberations returned to the core question of whether the condition fell within the scope of this Board or that of the ABMCR. Given that the PEB nomenclature of “chronic left shoulder pain” was broad enough to encompass the neuropathy, it was agreed that the condition was within the scope defined by DoDI 6040.44 (as elaborated above). Member consensus, however, was that the condition was not sufficiently visible to the PEB at separation; although, the Army would have more appropriately followed through on the diagnosis and evaluation prior to separation. Board policy and precedence has limited its jurisdiction to conditions which are evidenced in the core Disability Evaluation System (DES) file. The core DES file consists of the MEB referral document (DA Form 3947), the PEB adjudication document (DA Form 199), 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. After a lengthy deliberation, the voter consensus was that the brachial neuropathy could not have been evident in the core DES file since the formal diagnosis was not confirmed until shortly after separation, albeit at the hand of contracted providers. The Board thus concludes that the appropriate jurisdiction for consideration of a rating for the brachial neuropathy resides with the ABCMR.

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 left shoulder condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left shoulder joint condition, the Board unanimously recommends a disability rating of 20%, coded 5201 IAW VASRD §4.71a. In the matter of the left shoulder brachial neuropathy condition, the Board by a vote of 2:1 concludes that the condition is not eligible for a Board recommendation; although, it remains eligible for consideration by the ABCMR. The single voter for dissent (who considered the condition to be within the Board’s scope of jurisdiction, but not unfitting or ratable) did not elect to submit a minority opinion. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Left Shoulder | 5201 | 20% |
| **COMBINED** | **20%** |

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.

 XXXXXXXXX

 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 XXXXXXXXXXX, AR20120009750 (PD201100416)

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 20% 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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA