RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100485 SEPARATION DATE: 20070822

BOARD DATE: 20120321

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-5 (88M, Heavy Wheel Operator), medically separated for bilateral shoulder pain. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 profile and underwent a Medical Evaluation Board (MEB). Bilateral shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 bilateral shoulder pain condition as unfitting, rated 10%; with application of 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: “I believe the Board misapplied VASRD in providing a rating of 10% for Bilateral Shoulder pain under VA Diagnostic Code 5099-5003. My shoulder pain was a result of two distinct conditions both of which led to two separate operations. My shoulder pain limited my arm movement, therefore I should have been rated under the appropriate VASRD code 5201 and per instructions of that paragraph: ‘Degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved (DC 5200 etc.).’ VASRD 5003 provides for rating ‘In the absence of limitation of motion’ and further ‘When limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic code.’ My arm motion was limited by range of motion, therefore the board errored in assigning a diagnostic code of 5003. Additionally, the board combined the two separate issues into one, when it is clear from the VA Determination which was won on successful appeal that the two conditions are separately ratable under an appropriate diagnostic code 5201, Arm limitation of motion.” He mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070525** | | | **VA (2 Days After Separation) – All Effective Date 20070823** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Shoulder Pain | 5099-5003 | 10% | Right Shoulder Degen. Changes S/P Decompression w/ Distal Clavicle Excis. | 5201 | 0%\* | 20070824 |
| Left Shoulder Degen. Changes S/P Debridement w/ Glenonoid Chondroplasty | 5201 | 0% | 20070824 |
| ↓No Additional MEB/PEB Entries↓ | | | Degenerative Changes Of Both Knees | 5003 | 10% | 20070824 |
| 0% x 4 | | | 20070824 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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, and not based on possible future worsening. However, the Department of Veterans' Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions without regard to fitness for military duties 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 PEB may have relied on AR 635.40 (B.24 f.) and/or the USAPDA pain policy for not applying separately compensable VA Schedule for Rating Disabilities (VASRD) codes. The Board’s initial charge in this case was therefore directed at determining if the PEB’s approach of combining conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases; however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Not uncommonly, this approach by the PEB reflected its judgment that the constellation of conditions was unfitting, and there was no need for separate fitness adjudications or implied adjudication that each condition was separately unfitting. Thus, the Board must maintain the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB.

Bilateral Shoulder Condition. The CI experienced shoulder pain during basic training which worsened during strenuous duties while deployed in 2005. On 28 July 2006, the CI underwent arthroscopic surgery of the left shoulder for debridement of a type I superior labral tear, and abrasion chondroplasty of an area of grade IV chondromalacia (full thickness cartilage damage) of the posterior aspect of the glenoid surface (scapular portion of the shoulder joint). There was extensive fraying of the superior and posterior labrum. The left shoulder joint was noted to be completely stable during examination under anesthesia. Post-operatively, he received rehabilitation therapy by physical therapy. On 15 December 2006, the CI underwent arthroscopic surgery of the right shoulder with subacromial decompression and resection of the distal clavicle for subacromial impingement and acromioclavicular arthritis that was causing tendonsosis of the right supraspinatus tendon without tear. Magnetic resonance imaging (MRI) and arthroscopic examination were otherwise normal. The right shoulder joint was noted to be completely stable during examination under anesthesia. Post-operatively, he received rehabilitation therapy by physical therapy. Continued bilateral shoulder pain prevented return to unrestricted duties and MEB was initiated. The commander’s statement cited both shoulder conditions preventing performance of unrestricted military duties and the physical profile listed both shoulders with duty limiting restrictions. At the time of the MEB orthopedic narrative summary (NARSUM) on 23 May 2007, the CI reported continued shoulder pain, mostly with heavy lifting and overhead activities; and occasionally with sleep positions. The NARSUM physical exam revealed well healed surgical scars of both shoulders. There was mild tenderness to palpation and discomfort with tests for impingement of both shoulders. There was a positive cross arm test of the right shoulder for acromioclavicular region discomfort. Strength of the shoulder muscles was normal (5/5) in both shoulders. The tests for shoulder instability were negative. Shoulder range of motion (ROM) examination was performed by physical therapy on 22 February 2007. Active ROM of the right shoulder was flexion 155 degrees (150, 155, 155), abduction 150 degrees (145, 150, 150), internal rotation 50 degrees (50, 50, 55), and external rotation 90 degrees (90, 90, 90). Active ROM of the left shoulder was flexion 155 degrees (155, 155, 155), abduction 150 degrees (150, 150, 150), internal rotation 40 degrees (40, 40, 45), and external rotation 95 degrees (95, 95, 95). The ROM was limited by pain. The normal shoulder ROM cited by the VASRD is flexion 180 degrees, abduction 180 degrees, internal rotation 90 degrees and external rotation 90 degrees. The VA Compensation and Pension (C&P) examination on 24 August 2007, two days after separation, revealed tenderness bilaterally at the AC joints. Bilateral shoulder ROM was stated to be “normal.” After exercise of the upper extremities, there was no change in ROM; “The CI noted an increase in pain level, especially of the right shoulder with weighted exercise.” The PEB assigned a single 10% rating for the unfitting shoulder conditions with application of the USAPDA pain policy and coded 5099-5003 for degenerative arthritis. The VA assigned a rating of 0% for each shoulder under diagnostic code 5201 (limitation of motion) based on the C&P examination showing normal ROM, “with no evidence of pain, weakness, lack of endurance, fatigue or incoordination impacting further on the ROM.” The Board concluded that the evidence supported a conclusion that both shoulders were independently unfitting for continued military service. The ROM documented in the MEB and C&P examinations is noncompensable for rating under 5200 or 5201 (limitation of motion). There is no instability for rating under 5202. While there was tendonsis of the right supraspinatus tendon shown on MRI, strength testing of muscles of both shoulders was normal. The CI’s right distal clavicle was resected and the Board considered rating the right shoulder under the VASRD diagnostic code 5203, impairment of clavicle of scapula; however, there was not a malunion documented to support the minimum rating. The VA rating decision did not find enough evidence in the C&P examination to warrant a 10% rating based on painful motion (§4.59) or functional loss (§4.40). The CI cites the VA increased his rating on appeal; however, this rating was based on an examination eight months after separation, with an effective date the date of the examination. The Board noted the examination eight months after separation was not consistent with the examinations while in service or the initial C&P examination at the time of separation. The Board considered the evidence of the service treatment record and MEB examination, as well as the C&P examination at the time of separation. The Board concluded that the evidence of the treatment records documenting limitations in lifting and working overhead supported separate 10% ratings for the right and left shoulders based on application of §4.59 and §4.40. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the right shoulder condition and 10% for the left shoulder condition, both coded 5201.

Remaining Conditions. Other conditions identified in the DES file included migraine headaches, history of seizure, back spasms, knee pain, and problems with soles of feet. Several additional non-acute conditions or medical complaints were also documented. At the time of the NARSUM, there had been no recent headaches, and the medication profile indicated the CI had not refilled his medication used for migraine headaches for several months. The service treatment record does not show significant problems with headaches. The CI had a single seizure in September 2005. Evaluation with imaging and electroencephalogram was normal and there had been no recurrence since the time the CI was taken off medications in November 2005. None of these conditions were clinically or occupationally significant 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 12 months of separation or contended by the CI. 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 and right shoulder conditions and IAW VASRD §4.71a, the Board unanimously recommends a change in rating to 10% for the left shoulder condition and 10% for the right shoulder condition coded 5201-5003. In the matter of migraine headaches, history of seizure, back spasms, knee pain, problems with soles of feet, 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. 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 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** |
| Left Shoulder Degenerative Changes s/p Surgery | | 5201 | 10% |
| Right Shoulder Degenerative Changes s/p Surgery | | 5201 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110705, 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

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

Deputy Assistant Secretary

(Army Review Boards)