RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100518 SEPARATION DATE: 20090417

BOARD DATE: 20121002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve PFC/E-3 (92A10/Automated Logistic Specialist), medically separated for left shoulder tendonitis. The CI developed bilateral leg and left shoulder pain during basic training. These conditions could not be adequately rehabilitated with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent U3, L3 profile and referred for a Medical Evaluation Board (MEB). Multiple stress fractures lower extremity (LE) condition, identified in the rating chart below, was forwarded by the MEB as medically unacceptable. The left shoulder condition was forwarded as medically acceptable. The Informal Physical Evaluation Board (IPEB) adjudicated the CI as fit for duty. The CI appealed to a Formal PEB (FPEB) but was unable to travel to appear. A reconsideration PEB, using documents prepared for the FPEB, readjudicated the left shoulder condition, as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) and the bilateral leg stress fractures condition as not unfitting. The CI concurred, withdrew the appeal for FPEB, and was then medically separated with a 10% disability rating.

CI CONTENTION: “Had more conditions that were not considered.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (DoDI) 6040.44 (Enclosure 3, paragraph 5.e. (2) 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 condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The multiple stress fractures lower extremity condition, as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service Recon PEB – Dated 20090219** | **VA ( Separation) – Effective Date 20050812**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Shoulder Tendonitis | 5024 | 10% | Subacromial Bursitis, Lt Shoulder | 5019-5201 | 10%  | 20051109 |
| Multiple Stress Fractures Lower Extremity | Not Unfitting  | Lt Ankle Stress Fracture  | 5271-5284 | 10% | 20051109 |
|  |  | Lt Knee Stress Fracture / Bursitis | 5257 | 10% | 20051109 |
| Rt Knee Stress Fracture /Bursitis | 5257 | 10% | 20051109 |
|  |  | Rt Ankle Stress Fracture  | 5271 | 10% |  |
| ↓No Additional MEB/PEB Entries↓ | 2 x 0%/Not Service Connected x 4 | 20051109  |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. 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 nor for conditions determined to be service-connected by the Department of Veteran Affairs (DVA) but not determined to be unfitting by the PEB. However the 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 his degree of impairment vary over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Left Shoulder Tendonitis Condition. There were four 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) Degrees | NARSUM ~24 Mo. Pre-Sep(20070410) | C&P ~14 Mo. Pre-Sep(20080215) | PM&R Clinic ~12 Mo. Pre-Sep (20080415) | C&P ~2 Mo. Pre-Sep (20090202) |
| Flexion (Normal 180) | 140 | 90 (90\* )  | 120 | 140 (135\*) |
| Abduction (180) | 175 | 90 (80\*) | 100 | 135(130\*) |
| Comments | No impingement. | Slt↓ in abduction with repetition from fatigue.Tenderness.No ankylosis. | Painful ROM.No atrophy. Strength wnl. Tenderness at biceps tendon only.Apprehension test +. | Painful motion.Slt ↓ with repetition;no ankylosis or instability. |
| §4.71a Rating |  | 20%  | 10%\*\*  | 10%\*\*  |

\* After three repetitions; \*\*Conceding §4.59 (painful motion)

The CI developed left shoulder pain during basic training in 2005. She was released from active duty 11 August 2005 for inability to continue training due to stress fractures (discussed below), and placed in the reserves with anticipated return to training when healed. However complaints of joint pain prevented return to training and MEB process was initiated in fall of 2006. An magnetic resonance imagery (MRI) of the left shoulder performed in September 2006, one year after release from active duty, was normal revealing no shoulder pathology. A diagnosis of tendinitis was made and the CI, treated medically. The MEB examination of the left shoulder, performed in November 2006, a little over one year after release from active duty, revealed flexion of 140 degrees, abduction 175 degrees and internal/external rotation of 85/80 degrees. The MEB/narrative summary (NARSUM) evaluation performed in, April 2007, reported similar ROM. The VACompensation and Pension (C&P) evaluation performed on 15 February 2008, two and one half years after release from active duty and approximately 14 months before separation from the reserves, the CI complained of constant shoulder pain with flares of severe pain occurring every 2 to 3 weeks and locking episodes 1 to 3 times a month. These were precipitated by cleaning the house and carrying her small child. Symptoms responded to rest and nonnarcotic medication. The CI noted she was not working because she is a housewife and taking care of her 9 month old son. Findings on physical examination are recorded above. The shoulder joint was painful only in the area of the biceps tendon and ROM reduced by fatigue cited as the main reason for limitation after repetitive use. No ankylosis or instability was recorded. On physical medicine and rehabilitation (PM&R) evaluation, 15 April 2008, approximately 12-months prior to separation from the Reserves, the CI reported constant shoulder pain, 6-7/10, with subjective feelings of instability. Findings on physical examination are noted in the chart above. ROM was slightly reduced and tenderness noted only in the area of the biceps tendon. Evaluation of the rotator cuff mechanism revealed slightly reduced strength in one muscle (supraspinatus 4/5) but normal (5/5) in the remainder of the rotator cuff muscles. Apprehension test was positive, suggesting instability, but none was documented on examination, and no pathology was noted on the prior MRI that would result in instability. On VA C&P evaluation, performed on 2 February, 2009, 2 months prior to separation from the reserves, the CI reported continued pain precipitated by overhead movement, but no episodes of locking, giving way, instability or dislocation, weakness or incoordination. The CI noted she was currently unemployed as she was unable to find a job. Findings on physical examination are noted in the chart above. Instability was not noted and ROM was slightly reduced.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes the CI to be right hand dominant. The IPEB rated the shoulder condition 10% VASRD code 5024, tendinitis, citing a reduced, but not compensable, ROM with pain on the examination performed on 15 April 2008. The VA rated the shoulder condition 10% VASRD code 5019-5201, bursitis of shoulder, effective 12 August 2005, the day after separation from active duty. The VA rating was subsequently increased to 30% effective 18 December 2007, by rating decision 17 March 2008 based on the limitation of motion present on the C&P examination performed on 15 February 2008 noted in the chart above. The Board noted that the February 2008 C&P examination was not consistent with the other examinations or the normal MRI. The Board agreed that the MEB examinations performed approximately one year after release from active duty, the physical medicine examination in April 2008, and the February 2009 C&P examination, 2 months prior to separation from the reserves were generally consistent with each other and the expected severity of the known pathology based on MRI and clinical examinations. The Board unanimously agreed that the shoulder ROM was not compensable under §4.71a (code 5201, 5024) based on the 2 most proximate examinations prior to separation from the reserves and the examinations proximate to released from active duty. However, the Board agreed that a rating of 10% was supported by the preponderance of evidence with application of §4.59 (painful motion). Given the absence of ankylosis and deformity and normal stability with no recurrent dislocations, the Board found no pathway to a higher rating under any appropriate VASRD code. 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 left shoulder tendinitis condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was multiple stress fractures lower extremity. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering 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. The CI developed bilateral knee pain during basic training in April 2005. Bone scan performed on 16 May 2005 revealed abnormal uptake consistent with stress fractures at the right medial tibial plateau, left lateral tibial plateau, left medial malleolus, and both navicular bones of the feet. Increased uptake at the right patella was said to be consistent with trauma but not stress fracture. The CI was treated with reduced activity and medication. A follow up bone scan performed on 27 July 2005, prior to release from active duty, demonstrated significant improvement in the previously noted sites. A third bone scan, 24 August 2006, one year after release from active duty, was normal, consistent with successful healing of the stress fractures. At an exam performed on 15 February 2008, the CI reported pain and swelling only in the left ankle reducing her walking to a few yards. On examination, gait was antalgic. No pain on motion, swelling, or instability was noted in the left ankle. Dorsiflexion and plantar flexion were slightly reduced. The right ankle and bilateral knees and feet were not addressed. On exam performed on 2 February 2009, approximately 2 months prior to separation from the Reserves, examination of the both knees revealed no instability, or weakness. ROM was normal without pain. Examination of both feet revealed no pain on motion. Gait was recorded as normal. This condition was reviewed by the action officer and considered by the Board. The Board unanimously agreed that the stress fractures condition had healed with no indication from the record of clinical activity at the time of separation from the reserves. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the multiple stress fracture lower extremity condition and, therefore, no additional disability ratings can be recommended.

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 left shoulder tendinitis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended multiple stress fracture condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Left Shoulder Tendonitis | 5024 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110721, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120019336 (PD201100518)

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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA