RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100530 SEPARATION DATE: 20060110

BOARD DATE: 20120724

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(19K, Tanker), medically separated for chronic right shoulder pain following a labral tear and surgical repair. The CI suffered a right shoulder dislocation in 2003 due to a fall. The acute shoulder dislocation was reduced and treated conservatively with physical therapy (PT), steroid injection, and profile restrictions without resolution of right shoulder pain. In 2004 the CI underwent surgical repair of right shoulder labral tear in a German hospital. Further treatment and rehabilitation failed to relieve his shoulder pain The CI did not improve adequately with further treatment and rehabilitation to meet the physical requirements of his Military Occupational Specialty (MOS). In October 2005, the CI was issued a permanent U3 profile and Medical Evaluation Board (MEB) proceedings were initiated. The MEB forwarded chronic right shoulder pain to the Physical Evaluation Board (PEB) as not meeting retention standards IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic right shoulder pain following a labral tear, S/P repair 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: The CI elaborated no specific contention in his application.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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 unfitting right shoulder condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The VA-rated tinnitus condition is not within the Board’s purview. 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20051215** | **VA (13 Mos. Post-Separation) – All Effective Date 20060111** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic R Shoulder Pain … S/P Repair | 5099-5003 | 10% | Sprain, R Shoulder, S/P Surgery for Dislocation | 5024 | 10% | 20070209 |
| ↓No Additional MEB/PEB Entries↓ | 0% X 0 / Not Service-Connected x 1 | 20070209 |
| **Combined: 10%** | **Combined: 10%\*** |

\*Same VARD (20070629) also rated Tinnitus, 6260, at 10%, effective 20070108 (combined 20%); 5024 changed to 5010-5201 and rating increased to 20% effective 20100820 based on exam of 20101007 (combined 30%)

ANALYSIS SUMMARY: The Board acknowledges the CI’s remote Department of Veterans’ Affairs (DVA) increased shoulder rating and worsening severity with which his service-incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the DVA. 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.

Right Shoulder Condition: The CI was right handed. There were two range-of-motion (ROM) evaluations in evidence along with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Right Shoulder ROM | MEB ~3 Mo. Pre-Sep | VA C&P ~13 Mo. Post-Sep |
| Flexion (0-180⁰) | 130⁰ | 180⁰ -100\* |
| Abduction (0-180⁰) | No Abduction ROM noted  | 180⁰ -100\* |
| Comments | Pain with overhead use; Left shoulder same ROM (see text) | Painful motion; pain and discomfort with subjective weakness over shoulder level (90⁰); see text |
| §4.71a Rating | 10% | 10% |

\* see text

At the MEB exam, the CI reported constant pain and symptoms of instability despite physical therapy. His pain is increased with activities such as shining boots and overhead work. The MEB physical exam noted “forward elevation is equal, bilaterally, at 1300. He has a negative lift-off test, bilaterally. He has pain with passive range of motion, negative apprehension test, and negative relocation test. He has a 1+ anterior and 1+ posterior load shift, bilaterally. Pain was elicited by external rotation against resistance at 900 of abduction. Pain was elicited against resistance in internal rotation. He had a painful Neer impingement sign. He also had a negative Hawkins Kennedy impingement test. Crank test was negative.” Imaging documented post-surgical changes.

At the VA Compensation and Pension (C&P) exam, the CI reported “anything above shoulder level causes a complaint and a problem and it brings on weakness of his arms if it is above 90 degrees. Below 90 degrees he has full strength of his arms above 90 degrees. His strength is about a 3/5 on his right shoulder as compared to his left. He is able to manage quite well as far as lifting and using his arms are concerned, but lifting it above 90 degrees creates a lot of weakness in his arms.” [*sic*] ROMs were painful to the normal limits on exam with “he has a tremendous amount of pain with horizontal flexion, adduction, and with internal rotation.” The examiner provided a detailed ROM and shoulder exam and stated: “as per DeLuca issue, I feel we should allocate him a 10 degree loss in range of motion in those particular movements. The repetitive movements against resistance of the arm, does not in any way alter the ROM measurements, and repetitive movements against resistance was done with a 10 pound weight on three different occasions.” The VA exam performed on 7 October 2010, indicated worsening of the CI’s shoulder condition, but was remote from separation.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA coded the shoulder condition at 10% proximate to separation. The PEB coded analogous to 5003 (arthritis) with use of the USAPDA pain policy, and the VA coded as analogous 5024 (tenosynovitis) which uses the same rating criteria as 5003. There was no objective evidence of right shoulder motor weakness at or below 90⁰ of abduction or forward flexion in either exam. There was no evidence of recurrent dislocations post-surgery and prior to separation. Both exams and the record supported a 10% rating for painful motion IAW §4.59 (painful motion), or with application of the DeLuca criteria and limited motion. Although code 5024 may be preferred coding, PEB coding as 5099-5003 is acceptable IAW VASRD-only criteria.

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 chronic right shoulder pain following a labral tear s/p repair.

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 the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Chronic right shoulder pain following a labral tear s/p repair | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110709, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

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 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 XXXXXXXXXXXXXXXXXXXX, AR20120013621 (PD201100530)

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 XXXXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA