RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100550 SEPARATION DATE: 20051031

BOARD DATE: 20120511

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (91W, Health Care Specialist) medically separated for a right scapular and shoulder condition. The CI first experienced atraumatic right shoulder pain in 2002 which continued to worsen; and, which progressed to a neuromuscular deformity which could not be precisely diagnosed or surgically corrected. The condition could not be adequately rehabilitated 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). The right shoulder condition, characterized as “right scapular displacement and right shoulder deformity with probable shoulder dystonia,” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the right shoulder condition as unfitting, rated 20%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION:“The rating I received from the United States Army is inconsistent with the rating I received from the Veteran Affairs Office. I only received a rating from the military of 20 percent on my shoulder for my diagnosis of Dystonia, centralized in my shoulder. The VA granted me numerous ratings that was averaged out to 50 percent. The ratings included: My neck, mid and lower back, anxiety and loss of sensation on my upper lip. The MEB process was not explained in detail during my time of separation from the United States Army and I was under the assumption that this was my only choice. Upon conducting recent research, I found that I am a prime candidate for reconsideration. … [Elaborates post separation clinical course and medical details, and describes geographic barriers to VA medical care with an inability to obtain compensation for local care.] … Also, I have very limited movement in my neck in which I cannot rotate it all the way to the right and downward towards my chest. This greatly hinders my ability to perform my current occupation of a police officer.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) 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.” In addition to a review of the service ratings for the unfitting right shoulder condition, three conditions (those determined to be not unfitting as charted below, excluding plantar fasciitis which was not requested) meet the criteria prescribed in DoDI 6040.44 for Board purview; and, and are addressed below. Plantar fasciitis, the lip neuropathy (not service adjudicated), and any other conditions or contention not requested in this application remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050927** | | | **VA (10 Mo. Post-Separation) – All Effective Date 20051101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| R Scapular Displacement and R Shoulder Deformity | 5399-5303 | 20% | Right Shoulder with Scapular Displacement and Dystonia | 5201 | 20% | 20060302 |
| Chronic Low Back Pain | Not Unfitting | | Thoracolumbosacral Strain | 5243-5242 | 10% | 20060302 |
| Chronic Neck Pain | Not Unfitting | | Cervical Strain | 5243-5237 | 10% | 20060302 |
| Plantar Fasciitis | Not Unfitting | | Bilateral Plantar Fasciitis | 5299-5276 | 0% | 20060302 |
| Anxiety Disorder | Not Unfitting | | Anxiety Disorder | 9400 | 10% | 20060302 |
| No Additional MEB/PEB Entries | | | Neuropathy Upper Lip | 8205 | 10% | 20060717 |
| Tinnitus | 6260 | 10% | 20060302 |
| 0% X 2 Additional | | | 20060302 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected conditions continue 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. The Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; but, 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. The Board further acknowledges the CI’s assertion that he was poorly informed by the service regarding MEB procedures; but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of rating and fitness determinations at separation, as elaborated above.

Right Shoulder Condition. While deployed to Korea in 2002, the CI began to experience gradual onset of pain in his dominant right shoulder. It was initially thought to be caused by nerve impingement, and he was treated with a series of local steroid injections. The injections did not provide lasting relief, however; and, he gradually developed an abnormal contour of the shoulder with superior and lateral displacement of the scapula. This was associated with persistent pain, constant spasm and limitation of shoulder motion. The CI underwent extensive orthopedic, neurosurgical and neurological evaluations which included numerous ancillary investigations. Magnetic resonance imaging (MRI) revealed no shoulder joint pathology, but some mild multilevel spinal disc pathology (not felt to be etiologic). Multiple electrodiagnostic studies revealed no nerve impairment. An arthrogram revealed only mild degenerative changes of the acromioclavicular joint which was likewise considered incidental to the etiology. The consultants settled on a working diagnosis of dystonia (poor control of muscle tone and associated spasm) of shoulder girdle musculature, but this was unconfirmed. Subsequent VA examiners concurred with this impression. A trial of botox injections (to block spasm) and a protracted course of physical therapy modalities were unsuccessful, and no surgical intervention was indicated. 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 follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Right Shoulder ROM | Ortho ~2 Mo. Pre-Sep | MEB ~2 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep |
| Flexion (0-180⁰) | 90⁰\* | 110⁰ | 110⁰ |
| Abduction (0-180⁰) | 90⁰\* | 86⁰ | 80⁰ |
| Comments | \*Exam states “shoulder height”. | “Loss of normal contours”. | “Elevation and protraction of the scapula”. |
| §4.71a Rating | 20% | 20% | 20% |

At the MEB evaluation, the CI reported daily pain with decreased strength and functionally significant ROM limitation. The exam noted prominent scapular displacement with loss of normal anatomic features, spasm, and pain with all motion. ROM measurements were recorded as charted above, which were slightly improved over those of a recent orthopedic examiner. Various outpatient entries over the 12-month period preceding separation commented on right shoulder ROM, with none noting abduction or flexion < 80⁰. At the VA Compensation & Pension (C&P) exam after separation, the CI continued to report daily pain which was aggravated by heavy lifting, moving the arm above the shoulder, and sitting too long. He was employed as a police dispatcher. The VA examiner noted similar anatomic abnormalities to those previously documented, an absence of spasm, and pain in all planes of motion. The ROM values charted above reflect deductions for loss of ROM with repetitive motion (DeLuca criteria). All service and VA examinations in evidence documented normal neurologic testing of the right upper extremity.

The Board directs attention to its rating recommendation based on the above evidence. The Board first considered available coding options. The PEB chose the applicable analogous code for rating as muscle disability, and the VA applied the joint code for rating limitation of motion. The unequivocal VASRD §4.71a rating under the latter approach is 20%, based on all probative ROM evidence. The PEB’s analogous coding under the applicable 5303 (group III, intrinsic muscles of shoulder girdle) yields a 20% (major) rating for “moderate” muscle disability, 30% for “moderately severe,” and 40% for “severe.” VASRD §4.56 defines the cardinal signs and symptoms of muscle disability as “loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement.” A 30% ‘moderately severe’ rating describes a clinical course requiring “hospitalization for a prolonged period for treatment” and a “record of consistent complaint of cardinal signs and symptoms.” The 20% “moderate” rating simply requires “evidence of in-service treatment” and “consistent complaint of one or more of the cardinal signs and symptoms.” The CI manifested 3 of the 6 cardinal signs (loss of power, lowered threshold of fatigue, and fatigue-pain); and, his clinical course, although protracted, did not require hospitalizations or surgery. After due deliberation, members agreed that the evidence was more consistent with the §4.56 criteria for “moderate” than with those for “moderately severe” disability. Neither a rating based on limitation of motion nor any other defensible coding option would yield a rating higher than 20% for the disability in evidence. 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.

Contended PEB Conditions. The PEB adjudicated and contended conditions were chronic low back pain, chronic neck pain, and anxiety disorder. 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 service 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. All of these conditions were evaluated during the MEB period and all were judged to meet retention standards. Both of the spine conditions were evaluated by MRI, and associated disc disease was discovered at C5/6, L4/5, and L5/S1. None of these were associated with neural compromise or surgical indications. Neither the lumbar nor cervical spine conditions were profiled, although there was significant interplay between the cervical condition and the profiled right shoulder condition. The service and VA ROM evaluations for the cervical spine were normal. The pain associated with the cervical condition was coexistent with that of the shoulder condition and therefore subsumed in that rating. Thus a compensable rating would be difficult to justify even if it could be conceded that that the cervical condition was separately unfitting. The anxiety disorder was addressed by a psychiatric addendum to the narrative summary. This documented treatment for anxiety “related to his getting out of the Army” since July 2005, with improvement on medication. The psychiatrist stated that the CI did not “miss duty or require duty limitations as a result of his difficulties” and that “no psychiatric profile is warranted.” None of the above conditions were implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of them significantly interfered with satisfactory duty performance. 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 contended conditions; and, therefore, no additional service 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 right shoulder condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended lumbar spine, cervical spine, and anxiety conditions; the Board unanimously recommends no change from the PEB adjudications 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** |
| Right Scapular Displacement and Right Shoulder Deformity | 5399-5303 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110525, 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 XXXXXXXXXXXX, AR20120009212 (PD201100550)

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 XXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA