RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100666 SEPARATION DATE: 20080427

BOARD DATE: 20120213

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (35L, Counter Intelligence Agent), medically separated for a left shoulder condition. He developed bilateral shoulder pain in 2005, and had the right (dominant) shoulder surgically repaired; but, persisted with left shoulder pain and subluxation. Despite aggressive therapy he did not respond adequately to fully 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). “Chronic left shoulder pain secondary to anterior glenoid labrum lesion” was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Chronic right shoulder pain status post recent surgical repair” was forwarded as meeting retention standards. Three other conditions, listed on the rating chart below, were additionally forwarded as medically acceptable conditions. The PEB adjudicated the left shoulder condition as unfitting, rated 10% referencing the US Army Physical Disability Agency (USAPDA) pain policy. The right shoulder and remaining conditions were adjudicated as not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The reasons that my rating should be changed is that I was given a 10% rating on my left shoulder however, my right shoulder which was damaged even greater and received a status that it meet retention standards (sic). My range of motion in both of my shoulders was also limited. Range of motion test used in the determination were also conducted by forcing my range of motion by the doctor (sic). Range of motion has limited my activities. The other issues that should be considered is (sic) my high blood pressure and the migraines caused by the issue.”

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20080311** | **VA (2 Mo. Pre Separation ) – All Effective 20080428** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Shoulder Pain | 5099-5003 | 10% | DJD Left Shoulder | 5201-5003 | 10% | 20080306 |
| Right Shoulder Pain | Not Unfitting | DJD Right Shoulder | 5201-5003 | 10% | 20080306 |
| Migraines | Not Unfitting | Migraines | 8100 | 0% | 20080306 |
| Hypertension | Not Unfitting | Hypertension | 7101 | 0% | 20080306 |
| Bilateral Knee Pain | Not Unfitting | Left Knee Strain | 5024 | 0% | 20080306 |
| Right Knee Pain | 5260 | NSC | 20080306 |
| No Additional MEB/PEB Entries | No Additional VA Entries | 20080306 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that range of motion exams were not properly conducted by the service. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in its medical evaluation of a case. 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 Veterans’ Affairs Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However 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.

Left Shoulder Condition. The CI developed bilateral shoulder pain without specific trauma in 2005. Attention was initially directed to right shoulder pain and instability. Following two reconstructive surgeries the MEB was initiated for the right shoulder condition; but, concurrently, attention shifted to the left shoulder. Symptoms included constant pain and the left shoulder “feeling loose.” Subluxations were noted in the record, but no frank dislocations. Imaging studies identified a posterior labro-ligamentous sleeve avulsion and a non-displaced labral tear. Surgery was offered, but the CI deferred this until after separation; and, was placed on a permanent U3 profile for bilateral shoulder pain. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| --- | --- | --- |
| Left Shoulder ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~2 Mo. Pre-Sep |
| Flexion (180⁰ Normal) | 150⁰ | 180⁰ |
| Abduction (180⁰) | 180⁰ | 150⁰ |
| §4.71a Rating\* | 10% | 10% |

 \* Under 5003 criteria and conceding §4.59 (painful motion) as below.

The MEB examiner noted a history of occasional subluxation of the left shoulder and ongoing physical therapy. On exam the left shoulder was not tender to palpation, and showed a full active ROM; but, slight pain with apprehension was noted with ROM testing. The neurovascular exam of the left upper extremity was normal. Formal goniometric ROM of the left shoulder, annotated in the table above, was performed several weeks after the MEB exam and later inserted into the narrative summary (NARSUM) dictation. The VA Compensation & Pension (C&P) examiner recorded no additional history or symptoms. ROM was mildly impaired and painful against resistance. There were no additional symptoms or decrement of ROM with repetitive motion. VA radiographs showed mild degenerative changes in the acromio-clavicular joint. Although neither the NARSUM nor C&P exams documented physical stress testing of the shoulder for stability, preceding clinical notes in the service treatment record (STR) documented initial instability that was resolving over time. The PEB and VA chose similar coding options for the condition, and arrived at the same rating. The PEB’s DA Form 199 reflected application of the USAPDA pain policy for rating, but its 10% determination was consistent with §4.71a standards. ROM exams by both the service and VA show non-compensable limitation of motion, but ample evidence of degenerative change and painful motion to justify a minimal compensable rating under code 5003. The Board deliberated an analogous rating under 5299-5202 (humerus, other impairment of), which permits a 20% rating for recurrent dislocations. It was agreed however that, although there was some presumed residual joint instability and a history of subluxations (temporary slippage within the joint capsule without dislocating), this could not be fairly characterized as the same disability as that associated with recurrent dislocations to which the code is directed. There was no clinical and/or radiologic evidence in the examinations done proximate to separation that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, or dislocation of the scapula that would justify application of any other available joint code for the shoulder with a higher rating potential. 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 condition.

Right Shoulder Condition. The CI’s application asserts that a compensable rating should be considered for the right shoulder condition. The Board’s main charge in respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering DES 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’s initial right shoulder surgery failed to stabilize the joint, but a subsequent surgical revision in August 2007 restored stability. A favorable post-operative course is documented in the STR, and there were no further dislocations reported; but, the CI continued to experience pain, limitation of motion, and activity limitations (although the latter was shared with the emergence of the left shoulder condition). In October 2007 an orthopedic surgeon noted that “both shoulders are interfering in his ability to perform his job in his MOS,” issued a permanent U3 profile for both shoulders, and initiated MEB proceedings; thus implying that both shoulder conditions were considered medically unacceptable. All subsequent clinical notes refer to the right shoulder condition as the reason that the CI was undergoing a MEB. The commander’s statement (written in November 2007) specifically implicates only the right shoulder condition as the reason that the CI “cannot perform in a field or tactical environment.” The NARSUM examiner; conversely, opined that the right shoulder condition met retention standards; and, a month later he (the same physician) dropped it from the U3 profile. The NARSUM however documented slightly worse physical findings referable to the right shoulder and equivalent symptomatology for both shoulders; and, provided no rationale for the opposing conclusions relative to AR 40-501 retention standards. There were no STR entries after the NARSUM shedding further light on this distinction; and, the PEB’s DA Form 199 referenced only the fact that fact that the right shoulder and remaining conditions “were determined to meet retention standards” in support of its fitness adjudication. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the right shoulder favors its recommendation as an additionally unfitting condition for separation rating.

With respect to its rating recommendation for the right shoulder condition, there were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board considered.

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| Right Shoulder ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~2 Mo. Pre-Sep |
| Flexion (180⁰ Normal) | 125⁰ | 135⁰ |
| Abduction (180⁰) | 105⁰ | 100⁰ |
| §4.71a Rating\* | 10% | 10% |

 \* Under 5003 criteria and conceding §4.59 (painful motion) as below.

The MEB examiner recorded no exam findings other than the ROM annotated in the table above. The VA C&P exam showed moderately impaired and painful ROM that was not additionally impaired with repetitive motion. Radiographs showed evidence of surgical repair and mild degenerative changes in the acromio-clavicular joint. The VA coded and rated the right shoulder condition in identical fashion to the left shoulder condition. The Board noted that the ratable parameters of the right shoulder condition were similar to those of the left shoulder condition. Again, there was no clinical and/or radiologic evidence in the examinations done proximate to separation that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, nonunion or dislocation of the scapula, or recurrent dislocations of the humerus that would have justified any code with higher rating potential. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends the same 10% rating and coding for the right shoulder condition as that discussed and arrived at for the left shoulder.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were hypertension, migraines and bilateral knee pain. The CI’s application asserts that compensable ratings should be considered for hypertension and migraines. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. One other condition, dizziness/fainting spells, was identified in the DES file. After a normal evaluation, this was attributed to either anti-hypertensive medication or as a component of the migraine condition just addressed. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the left shoulder was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right shoulder condition, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating; coded 5099-5003 and rated 10% IAW VASRD §4.71a. In the matter of the hypertension, migraines and bilateral knee pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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 Pain | 5099-5003 | 10% |
| Pain and Surgical Residuals, Right Shoulder  | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110815, 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)