RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: coast guard

CASE NUMBER: PD1100684 SEPARATION DATE: 20030522

BOARD DATE: 20120224

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty ET2/E-5 (Electronics Technician) medically separated for right shoulder instability. The condition did not respond adequately to two surgical interventions and conservative treatment. He was unable to perform within his specialty rating or meet physical fitness standards and underwent a Medical Evaluation Board (MEB). Multidirectional instability of right shoulder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions appeared on the MEB’s submission. The PEB adjudicated the multidirectional instability right shoulder condition as unfitting, rated 20% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “I was rated 20% by the Coast Guard for my shoulder after having two failed shoulder surgeries, I have limited range of motion and decreased strength. I also have a torn meniscus in my left knee. The VA rated me 10% for that.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20030404** | | | **VA (11 Mo. After Separation) – All Effective 20030523** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Instability | 5299-5202 | 20% | Right Shoulder Condition | 5201-5019 | 10% | 20040428 |
| ↓No Additional MEB Entries↓ | | | Left Knee Strain | 5260-5024 | 10% | 20040428 |
| 0% x 1 | | | 20040428 |
| **Combined: 20%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred shoulder condition continues to burden him. 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. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for service ratings for a left knee condition documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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. The DVA, however, is empowered to compensate service-connected conditions 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.

Right Shoulder Condition. In January 1999 the CI reported a two month history of frequent shoulder subluxations that were not a consequence of known injury. After sustaining a subluxation injury while playing football on 27 September 1999, he was diagnosed with multidirectional instability that was treated arthroscopically in December 1999. Failure of this procedure led to an open Bankart repair procedure on 31 January 2001, but recurrent subluxation episodes and pain persisted. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| ROM –R Shoulder | Ortho Clinic ~ 4 Mo. Pre-Sep | VA C&P ~ 11 Mo. After Sep. |
| Flexion (0-180) | 155⁰ | 170⁰ |
| Abduction (0-180) | 155⁰ | 180⁰ |
| Comment | Instability signs\* | Painful motion |
| §4.71a Rating\* | 10%\*\* | 10%\*\* |

\*Left hand dominant, Minor joint \*\*Conceding painful motion

The left hand dominant CI reported to the narrative summary (NARSUM) examiner that he experienced daily right shoulder subluxations with overhead, pushing or pulling activities. Night pain with associated subluxations awakening him from sleep also occurred. Physical exam noted apprehension and instability signs in inferior and anterior directions. The commander’s endorsement stated that the CI had been able to perform in only a very limited capacity due to the shoulder condition over the previous two years and that he could not perform the duties normally assigned to his grade. The VA Compensation and Pension (C&P) examiner (28 April 2004, 11 months after separation) also confirmed the CI was left hand dominant, and reported continued discomfort with shoulder motion. He denied muscle weakness. The occurrence or frequency of subluxations was not mentioned. Examination revealed no shoulder redness or swelling. A 9 by 1 centimeter (3.5 by 0.4 inch) non-tender surgical scar with Keloid formation was present. Shoulder flexion and rotation were associated with pain, but abduction was painless. X-rays showed post-surgical changes, but no acute abnormalities. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level,” i.e., 90⁰. The PEB coded the shoulder condition 5299-5202 (analogous to “humerus, other impairment of”) and appropriately assigned a 20% rating based on frequent episodes of recurrent dislocation of a minor (non-dominant) joint. The next higher 40% rating requires fibrous union of the joint, which was not present. Despite non-compensable limitation of motion, the VA used a 5201-5019 code (“arm, limitation of motion” and “bursitis”) and assigned a 10% rating with likely application of §4.59 (painful motion). Board members agreed that the 20% rating assigned by the PEB was well-supported by the evidence, and that there was no justification for a higher rating under the 5202 code. Other pathways to a higher rating were considered. Under the 5200 code (“scapulohumeral articulation, ankylosis of”), not even the minimum 20% rating was justified, and under the 5203 code (“clavicle or scapula, impairment of”) the highest rating possible is 20%. The 5304 code, injury to muscle group IV (shoulder girdle), likewise does not provide a path to a rating higher than 20% for the non-dominant upper extremity. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the right shoulder condition.

Other Contended Conditions. The CI’s application asserts that a compensable rating should be considered for a left knee condition. The CI presented in 2001 with a three day history of left knee pain that began while running. Magnetic resonance imaging in February 2002 was suspicious for a lateral meniscal tear. The CI failed to perform the rehabilitative exercises as instructed by physical therapy, but a clinical note in July 2002 reported that he was able to jog. The C&P examiner reported residual discomfort with some activities that occurred monthly and lasted one to two days. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the left knee condition was not subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board thus has no 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. 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 §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left knee condition, the Board unanimously agrees that it cannot recommend a finding 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Shoulder Instability | 5299-5202 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110822, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

