RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxx BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1100704 DATE PLACEMENT ON TDRL: 20030717

BOARD DATE: 20120622 DATE OF PERMANENT SEPARATION: 20040928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5 (13B, Cannon Crewmember), medically separated for chronic pain, left shoulder, with mild acromioclavicular arthritis with rotator cuff tendonitis. The CI did not improve adequately with treatment 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). Chronic regional pain syndrome due to nerve stretch injury of the cervical spine was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic left arm and neck pain as unfitting, rated 40%, with application of the Veterans Administration Schedule for Rating Disability (VASRD) and placed the CI on the Temporary Disability Retired List (TDRL). TDRL evaluation a year later resulted in change of diagnosis to chronic pain, left shoulder, with mild acromioclavicular arthritis with rotator cuff tendonitis. The PEB adjudicated the chronic pain, left shoulder, with mild acromioclavicular arthritis with rotator cuff tendonitis as unfitting, rated 20% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI appealed to the USAPDA which affirmed the PEB findings; and was then medically separated with a 20% disability rating.

CI CONTENTION: “I have continued to lose function of my left arm and have lost grip strength in the left hand, along with tremors in the left arm, and I’m still unable to move left shoulder and still have chronic neck pain. I have included V.A. Determination letters, to include 30% for Asthma, 10% for Tinnitus and 10% for Degenerative joint disease of the left knee. The V.A. has denied by my application for service connection for the original claim on my neck, shoulder left arm and hand. I feel that I was treated unfairly and I haven’t been able to appeal, being that I don’t have any additional evidence except for what I have in my VA medical records.”

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 remaining conditions listed on the DA Form 294 are 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:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB – Dated 20040622** | | | | **VA (5 Mo. Pre Separation) – No Effective Date, NSC** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20030717** |  | **TDRL** | **Sep.** |
| Chronic Left Arm and Neck Pain | 8799-8713 | 40% | -- | Left Arm Condition, Associated with Neck Injury | 5201 | NSC | 20040421 |
| Left Hand Condition, Associated with Neck Injury | 5299-5220 | NSC | 20040421 |
| Neck Injury | 5299-5237 | NSC | 20040421 |
| Chronic Pain, Left Shoulder, with Mild Acromioclavicular Arthritis with Rotator Cuff Tendonitis | 5099-5003 | -- | 20% | Left Shoulder Condition, Associated with Neck Injury | 5299-5203 | NSC | VARD\*  20040520 |
| ↓No Additional MEB/PEB Entries↓ | | | | Not Service-Connected x 5 | | | 20040421 |
| Combined: 20% | | | | Combined: NSC | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 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 Veterans’ 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 the 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.

Chronic Left Arm and Neck Pain Condition. The left hand dominant CI developed chronic neck and left arm pain following a fall off of a military truck during training in May 2000. Initial magnetic resonance imaging (MRI) imaging indicated a bulging cervical disc, but a subsequent MRI in August 2000 and CT in October 2000 were unremarkable without evidence of disc bulging, protrusion, herniation or neural foraminal compromise. An electromyogram in November 2000 was “mildly abnormal” in the left C6-7 myotome indicating a possible mild left radiculopathy that the neurologist attributed to nerve root stretch at the time of the fall. The neurologist concluded the CI had complex regional pain syndrome (CRPS) of the left upper extremity based on diffuse pain complaints and cooler skin temperature on the left compared to the right (consistent with stage 2 CRPS). A bone scan performed in March 2001 was negative for changes associated with complex regional pain syndrome (considered useful for stage 1 and 2 CRPS). The neurologist noted evidence of improvement in April and August 2001 after which time the CI moved to a new state. The CI continued to report pain that prevented return to duty and was subsequently referred for MEB. The MEB narrative summary (NARSUM) noted a history of severe left arm, shoulder, and chronic neck and head pain and summarized evaluations over the 2 1/2 years since injury leading up to the time of the MEB. The PEB determined the chronic left arm and neck pain following injury on 6 May 2000, consistent with regional pain syndrome (reflex sympathetic dystrophy) due to cervical nerve stretch, was unfitting for continued military service. The PEB noted negative imaging and EMG, but “marked pain limits left upper extremity function.” The PEB rated the condition analogously to neuralgia, all radicular groups moderate (major), 40% (8799-8713), the maximum allowable rating, and placed the CI on TDRL. Board members agreed there was no route to a higher rating and insufficient evidence to support a higher rating than that adjudicated by the PEB at the time of placement on TDRL.

The Board next considered the permanent rating determination made by the PEB at the time of removal from the TDRL. A 13 August 2003 neurosurgery evaluation recounted the complaint of left upper extremity pain. On examination, diffuse give-way weakness of the left arm was present. Reflexes were normal and examination testing for cervical nerve root impingement was negative. Decreased pin-prick sensation was noted in left C7 and C8 region. Findings of complex regional pain syndrome were not documented on this examination. The neurosurgeon noted the etiology of the CI symptoms were “not clear.” A 27 August 2003 cervical spine myelogram was normal. The CI underwent TDRL reevaluation by orthopedic surgery on 19 March 2004. The TDRL evaluation orthopedic NARSUM summarizes the clinical history that included a diagnosis of regional pain syndrome of the left upper extremity. The orthopedic surgeon noted that there was no clinical evidence of regional pain syndrome present on orthopedic clinic examinations since June 2003. Evaluation by orthopedic surgery, including X-rays and MRI, concluded with diagnosis of left shoulder acromioclavicular arthritis. The orthopedic NARSUM reported full active range-of-motion (ROM) of the left shoulder (to 180 degrees), with intact sensation. There was mildly positive testing for acromioclavicular disease, with negative tests for impingement. No instability was reported. Temperature over both shoulders was judged as equal. There was “suboptimal effort” on manual muscle testing with slight decrease bilaterally. The PEB, on 22 June 2004, concluded that chronic pain, left shoulder, with mild acromioclavicular arthritis with rotator cuff tendonitis was unfitting and adjudicated a 20% rating IAW USPDA pain policy for moderate, constant pain (coded 5099-5003). The PEB noted that the CI was originally placed on TDRL for reflex sympathetic dystrophy (CRPS) left arm and neck but that the TDRL evaluation did not support that diagnosis.

The CI also underwent a VA Compensation and Pension (C&P) examination on 21 April 2004. The examiner summarized the history of neck and left arm pain. The examiner noted the neck was held in normal posture, with motion limited by pain. Although there was “global weakness” of the left upper extremity, there was no atrophy of left arm musculature compared with the right, consistent with symmetric use. No sensory loss was noted and reflexes were intact and normal. The examiner noted a recent normal CT myelogram. The examiner stated he could find no objective evidence of neurologic deficit. The VA rating decision on 20 May 2004 did not grant a service-connected rating for claimed neck and left upper extremity condition based on the C&P examination which did not show any permanent residual or chronic disability. The Board noted the PEB rated the unfitting left shoulder pain condition IAW with the USPDA pain policy, and the Board considered the rating for the unfitting condition based on VASRD rating guidelines. The Board noted that the ROM was non-compensable but agreed a 10% rating was supported in accordance with §4.59 for painful motion. The Board considered other shoulder diagnostic codes but there was no route to a higher rating than 10%. The Board may not recommend a combined rating lower than that adjudicated by the PEB. 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’s permanent rating for the left upper extremity pain condition at the time of removal from TDRL.

Contended PEB Conditions. The Board also considered whether the residual complaints of neck pain and CRPS remained unfitting at the time of permanent disability disposition warranting a separate rating at the time of removal from the TDRL. 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 neck condition was not determined to be a separately unfitting condition by the PEB, but neck pain was listed as part of the unfitting condition. The Board noted the unremarkable results of extensive imaging, and the predominant clinical focus on the left extremity symptoms. The condition was reviewed by the action officer and considered by the Board. There was no indication that neck pain itself was of sufficient severity to interfere with satisfactory duty performance at the time of permanent disability disposition. The TDRL NARSUM and the contemporaneous VA C&P examination did not document clinical symptoms or examination findings of CRPS. Accepted medical principles reflect that improvement is expected in the majority of cases while some may have chronic symptoms or recurrences after recovery. The TDRL NARSUM examiner, an orthopedic surgeon, was specific in his conclusion that manifestations of this condition were not present during orthopedic examinations for the year prior to the time of the TDRL NARSUM. 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 neck pain or CRPS conditions; 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. As discussed above, the PEB’s reliance on the USAPDA pain policy for rating chronic pain, left shoulder, with mild acromioclavicular arthritis with rotator cuff tendonitis was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic left arm and neck pain, reflex sympathetic dystrophy condition, the Board unanimously recommends no change in the PEB adjudication at the time of placement on the TDRL. In the matter of the left shoulder pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at the time of permanent disability disposition and removal from the TDRL. In the matter of the contended neck and arm (CPRS) conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting at the time of permanent disability disposition and removal from the TDRL. 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** | |
| **TDRL** | **PERMANENT** |
| Chronic Left Arm and Neck Pain; Reflex Sympathetic Dystrophy | 8799-8713 | 40% | -- |
| Chronic Pain, Left Shoulder, with Mild Acromioclavicular Arthritis, Rotator Cuff Tendonitis | 5099-5003 | -- | 20% |
| **COMBINED** | **40%** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110801, 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, AR20120011969 (PD201100704)

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 XXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA