RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: pd1100780 SEPARATION DATE: 20050528

BOARD DATE: 20120619

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (14S1O, Avenger Crewmember), medically separated for multi-directional instability of the left (minor) shoulder. 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). Multi-directional instability of the left shoulder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501, paragraph 3-12c. Chronic left ankle pain, chronic left epididymitis and multilevel degenerative disk disease (DDD) of the thoracolumbar spine identified in the rating chart below were forwarded by the MEB submission as meeting retention standards. The PEB adjudicated the multi-directional instability of left (minor) shoulder as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining three conditions, as identified on the chart below were considered by the PEB and found to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “There were 2 major injuries I incurred while in the Army that prevented me from doing my job. I was evaluated for both, but only received a decision on one of the items (left shoulder). I also had chronic pain in my left ankle that prevented me from doing my job but was not rated for that.”

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 chronic left ankle pain and the unfitting multi-directional instability of the left (minor) shoulder conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. 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 (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050203** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20050529** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Multi-directional Instability of Left (Minor) Shoulder | 5299-5202 | 20% | Left Shoulder Arthritis w/ L Bicep Tendonitis (Minor) | 5201 | 20% | 20050419 |
| Chronic Left Ankle Pain | Not Unfitting | | Left Ankle Arthritis | 5271 | 10% | 20050419 |
| Chronic Left Epididymitis | Not Unfitting | | Left Testicle Epididymitis | 7599-7525 | 0% | 20050419 |
| Multi-Level DDD of Thoracolumbar Spine | Not Unfitting | | Thoracolumbar Arthritis | 5242 | 20% | 20050419 |
| ↓No Additional MEB/PEB Entries↓ | | | Right Knee Retropatellar Pain Syndrome | 5260 | 10% | 20050419 |
| Left Knee Retropatellar Pain Syndrome | 5260 | 10% | 20050419 |
| Gastroesophageal Reflux Disease | 7346 | 10% | 20050419 |
| Headaches | 8199-8100 | 10% | 20050419 |
| Degenerative Changes, Right Shoulder | 5201-5003 | 10% | 20060217 |
| Tinnitus | 6260 | 10% | 20060217 |
| Not Service-Connected x 1 | | | 20050419 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

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.

Multi-directional Instability of the Left Shoulder. The right hand dominant CI experienced a left shoulder pain with a “pop” in February 2003 while lifting a stinger missile. Although medical records later record there was a dislocation, medical records at the time of injury do not record a dislocation and a 19 September 2003 physical therapy appointment recorded that there was no history of dislocation. He experienced symptoms of persisting pain and instability without recurrent dislocation that did not improve with physical therapy. Magnetic resonance imaging (MRI) in August 2003 was consistent with either a partial rotator cuff tear or tendonosis without tear, and acromioclavicular joint degenerative joint disease. Repeat MRI in August 2004 concluded there was not a tear, but there was mild supraspinatus tendonosis without other intra-articular process.” Orthopedic evaluation concluded surgery was not recommended. Orthopedic examinations documented a positive sulcus sign indicative of laxity with normal anterior-posterior translation. The MEB narrative summary NARSUM dated 23 December 2004 documented active range-of-motion (ROM) limited by pain to flexion of 90 degrees, abduction of 65 degrees, external rotation 30 degrees, and internal rotation 50 degrees. There was no decreased range of motion with repetition. Passive ROM included flexion to 180 degrees and abduction of 175 degrees. A prior physical therapy examination on 30 August 2004 demonstrated similar active ROM (flexion 80 degrees, abduction 70 degrees, external rotation 70 degrees). The VA Compensation and Pension examination performed on 19 April 2005, a month before separation, recorded active ROM of flexion 90 degrees, abduction 90 degrees, internal and external rotation of 45 degrees. The PEB rated the left (minor) shoulder condition 20% under the VASRD diagnostic code 5202, recurrent dislocation of scapulohumeral joint (glenohumeral joint) with frequent episodes and guarding of all arm movements. The VA rated it 20% based on limitation of motion under code 5201. The Board noted there was instability but not recurrent dislocation, and concluded there was no route to a higher rating under either VASRD diagnostic code. 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 (minor) shoulder condition.

Contended PEB Conditions. The other contended condition adjudicated as not unfitting by the PEB was chronic left ankle pain. It was forwarded by the MEB submission as meeting retention standards. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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 CI reported left ankle pain since a sprain in 2002. A podiatry evaluation on 17 November 2004 recorded CI complaint of recurring ankle pain and sprains with running. There was tenderness with normal ROM without pain or swelling. Weight bearing X-rays were normal. The MEB NARSUM examination of the left ankle demonstrated tenderness with normal ROM. At the time of the VA C&P examination the CI was wearing an ankle brace, and demonstrated “fairly marked pain” with ROM testing. X-rays on 19 April 2004 were reported to show “mild osteoarthritis.” There was no history of intervening injury or trauma. The commander’s statement dated 27 October 2004 reflects duty limitations due to left shoulder pain but not due to other conditions. The ankle condition was not profiled or implicated in the commander’s statement, and was not judged to fail retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that the ankle condition 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 contended condition 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. In the matter of the multi-directional instability of the left (minor) shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended chronic left ankle pain, the Board unanimously recommends no change from the PEB determination 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Multi-directional Instability of Left (Minor) Shoulder | 5299-5202 | 20% |
| Chronic Left Ankle Pain | Not Unfitting | -- |
| Chronic Left Epididymitis | Not Unfitting | -- |
| Degenerative Disc Disease Thoracolumbar Spine | Not Unfitting | -- |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110909, 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 XXXXXXXXXXX, AR20120011836 (PD201100780)

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 XXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA