

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1101003
BOARD DATE: 20130130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-4 (11B/Infantryman), medically separated for chronic right shoulder pain. He injured his right shoulder during a field training exercise. Despite surgical repair and 14 months of physical therapy he did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty or meet physical fitness standards. He was issued a permanent U3/H2/E2 profile and underwent a Medical Evaluation Board (MEB). Chronic right shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Total hearing loss, right ear status post (s/p) resection of acoustic neuroma, right facial paresis, s/p resection of acoustic neuroma, neuropathic keratitis right eye, post-surgical headaches, mild intermittent positional vertigo, and mild nerve root dysfunction right upper extremity as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the chronic right shoulder pain condition as unfitting, rated 10% with application of the Veterans Affairs 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 10% combined disability rating.

CI CONTENTION: "All medical conditions have exacerbated. I also feel that the rating I was given is incorrect. I gave the military 110% and they gave me 10%. Everyone from the beginning told me to appeal but it could take 1-3 years."

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 total hearing loss; right ear s/p resection of acoustic neuroma; right facial paresis, s/p resection of acoustic neuroma; neuropathic keratitis right eye; post-surgical headaches; mild intermittent positional vertigo; and mild nerve root dysfunction right upper extremity conditions requested for consideration and the unfitting right shoulder pain condition 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 Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20030827			VA (3 Mo. Pre Separation) – All Effective Date 20031217			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Shoulder Pain	5099-5003	10%	Right Shoulder Acromioclavicular Separation Status Post Repair	5203	20%	20030923
Mild Intermittent Positional Vertigo	Not Unfitting		7 th Cranial (facial) Nerve Palsy with Persistent Headache, Vertigo and Diminished Sense of Smell on the Right Side of the Nose Associated with Right Side Acoustic Neuroma, Status Post Craniotomy	8207	30%*	20030923
Right Facial Paresis	Not Unfitting					
Post Surgical Headaches	Not Unfitting		Sensory Dysfunction Right Upper Extremity Associated with Right Shoulder Surgical Repair	8510	20%	20030923
Mild Nerve Root Sensory Dysfunction Right Upper Extremity	Not Unfitting		Neuropathic Keratitis Right Eye Associated with Right Side Acoustic Neuroma	6001	10%	20030923
Neutrophic Keratitis, Right Eye,	Not Unfitting		Total Hearing Loss Right Ear Assoc. w/ Right Side Acoustic Neuroma, Status Post Craniotomy	6209-6100	10%	20030923
Hearing Loss	Not Unfitting		0% x 1/Not Service Connected x 0			20030923
↓No Additional MEB/PEB Entries↓						
Combined: 10%			Combined: 80%*			

*Separate 30% rating for headache added per VARD 20050107 effective 20031217.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a 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 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. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statements in the application regarding suspected DES improprieties in the processing of his case.

Chronic Right Shoulder Pain Condition. The CI injured his right shoulder during training in July 2001 incurring an acromioclavicular (AC) joint separation and compression fracture of the clavicle. The CI experienced persisting right shoulder pain due to AC joint degenerative arthritis with impingement syndrome due to an AC joint osteophyte. The CI subsequently underwent right shoulder surgery in March 2003 with resection of the distal end of the clavicle at the AC joint. Following recovery from surgery, pain recurred with wearing his rucksack and when he

was detailed to picking up trash. He was unable to tolerate load bearing equipment, fire a rifle due to impact on the shoulder, or perform push-ups due to his shoulder pain condition. The MEB examination performed on 13 May 2003 was remarkable for tenderness of the right shoulder over the mid to distal two-thirds of the right clavicle without deformity, redness or warmth. Range-of-motion (ROM) was flexion to 160 degrees, abduction 160 degrees, internal rotation 75 degrees and external rotation 75 degrees. Motor strength was normal. Deep tendon reflexes were normal and symmetrical. There was decreased sensation in the right upper extremity over ulnar hand, forearm and biceps considered a residual from surgery. On the general VA Compensation and Pension (C&P) examination on 23 September 2003, 3 months before separation, the musculoskeletal system examination was noted as unremarkable without detail referring to the MEB examination; "see medical evaluation board and claimant's medical record for details of this problem and associated functional limitations." As a residual of the surgery it was noted that there was a mildly diminished sensation to simple touch and sharp over the right upper extremity from the biceps area to the proximal forearm. Muscle strength of both upper extremities was normal.

The Board directs attention to its rating recommendation based on the above evidence. There was no ankylosis, limitation of movement, or instability to warrant a minimum compensable rating under respective VASRD diagnostic codes (5200, 5201 5202). The condition correlated with the 10% rating under 5202, impairment of clavicle or scapular malunion or non-union without loose movement. Alternatively a 10% rating was supported for painful motion or functional impairment with application of §4.59 or §4.40. The VA granted a 20% rating citing loose movement and sensory loss; however the Board noted that the MEB examination did not document loose movement, that strength was reported as normal, and sensory changes did not interfere with duties. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right shoulder pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were total hearing loss, right ear s/p resection of acoustic neuroma, right facial paresis, s/p resection of acoustic neuroma, neurotrophic keratitis right eye, post-surgical headaches, mild intermittent positional vertigo, and mild nerve root dysfunction right upper extremity. 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 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. During the MEB examination in November 2002, a marked right sided hearing loss was detected leading to diagnosis of a right sided acoustic neuroma. MEB proceedings were suspended pending evaluation and treatment. The CI underwent surgical removal of the right sided acoustic neuroma on 5 February 2003 resulting in complete hearing loss in the right ear, right cranial nerves VII and VIII injury with right facial paralysis, decreased sense of taste and smell. The total hearing loss of the right ear resulted in an H2 profile which is non-disqualifying for continued military service. The residual right facial paresis (paralysis and loss of sensation), decreased sense of smell and taste also did not interfere with duty. The CI developed chronic dry right eye with inflammation of the cornea secondary to incomplete closure of the right eye lid (neurotrophic keratitis) and underwent eye lid surgery in June 2003 to enable full closure. At the time of the MEB, his vision met retention standards and examination showed good eye closure. At the VA Compensation and Pension (C&P) examination, visual acuity was unchanged, and examination of the cornea, lens, and retina was normal. The CI experienced worsening of headaches following surgery. The MEB narrative summary (NARSUM) 31 July 2003 noted intermittent headaches three times per day lasting up to an hour aggravated by wear of the

helmet or bending over. The headaches required restriction from Kevlar and head gear, however the examiner noted the headaches were improving and expected to meet retention standards. The C&P examination, September 2003, recorded a similar history for the headaches without report of incapacitation. The commander's letter reported excellent performance of duties in an office setting. The majority of the Board concluded the evidence was not sufficient to overcome the PEB not-unfit determination for the headache condition. The NARSUM noted post-operative episodes of vertigo characterized as "mild intermittent positional vertigo improving." The condition did not require medications. The physician notes from the 13 May 2003 MEB history and physical examination notes headache without any mention of vertigo. The otolaryngology NARSUM, dictated 21 May 2003 also makes no mention of vertigo. On examination, there was no eye nystagmus to suggest a vestibular problem. At the time of the C&P examination in September 2003, tests for balance and coordination were all normal. Board members concluded the evidence was not sufficient to overcome the PEB not-unfit determination for the vertigo condition. Following right shoulder surgery the CI experienced decreased sensation of the right upper extremity ulnar hand/forearm and biceps without weakness. Examinations documented intact strength reflexes. The decreased sensation did not interfere with performance of duties. Board members concluded the evidence was not sufficient to overcome the PEB not-unfit determination for the mild nerve root dysfunction right upper extremity condition. 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 determinations for the any of the contended 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. In the matter of the right shoulder pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended total hearing loss, right ear s/p resection of acoustic neuroma, right facial palsy, s/p resection of acoustic neuroma, neurotrophic keratitis right eye, mild intermittent positional vertigo, mild nerve root dysfunction right upper extremity conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. In the matter of the contended post-surgical headaches, the Board by a vote of 2:1 recommends no change from the PEB determination as not unfitting. The single voter for dissent (who recommended unfit with a 0% rating did not elect to submit a minority opinion. 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
Chronic Right Shoulder Pain	5099-5003	10%
	RATING	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111024, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXXXXXX, AR20130003090 (PD201101003)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)