RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101052 SEPARATION DATE: 20020102

BOARD DATE: 20121012

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (19D, Armored Cavalry) medically separated for a right (dominant) shoulder condition. He dislocated the shoulder in 2001; suffered recurrent subluxations afterwards; and, stability could not be adequately restored to meet the physical requirements of his Military Occupational Specialty (MOS). He was consequently issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The right shoulder condition, characterized as “multi-directional instability”, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the condition as unfitting, rated 20%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “My shoulder should have been rated higher due to the effects and limitations of my shoulder. Also, other medical issues were not taken into consideration at the time of the rating. I have attached medical documentation for my ankles, shoulder, eyes and other issues from my time in service.” He does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting right shoulder condition is addressed below. The request for consideration of rating for various other conditions is noted; but, since no other conditions were identified by the PEB, no other conditions are within the DoDI 6040.44 defined purview of the Board. Those, and any other conditions or contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20011030** | **VA (2 Weeks Pre-Separation) – Effective 20020103** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Instability | 5202 | 20% | Right Shoulder Instability | 5202 | 30% | 20011218 |
| No Additional MEB/PEB Entries | Lumbar Myofascial Strain | 5295-5292 | 20% | 20011218 |
| Achilles Tendinitis, Left Ankle | 5271 | 10% | 20011218 |
| Achilles Tendinitis, Right Ankle | 5271 | 10% | 20011218 |
| RPS, Left Knee  | 5099-5014 | 10% | 20011218 |
| RPS, Right Knee | 5099-5014 | 10% | 20011218 |
| Left Wrist Sprain | 5215 | 10% | 20011218 |
| Not Service Connected x 1 | 20011218 |
| **Combined: 20%** | **Combined: 70%** |

ANALYSIS SUMMARY: Noting the additional conditions which the CI considers as eligible for disability rating, although not within the scope of this Board, the following clarification is relevant. While the Disability Evaluation System (DES) considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short the member’s career; based on the limitations imposed by them at the time of separation. The Department of Veterans Affairs, 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. Although there are records documenting a complaint of right shoulder pain since basic training, the CI’s shoulder injury occurred during a 2001 deployment to Bosnia when he attempted to stabilize a heavy gun which slipped from the turret. By history there was dislocation and a prompt self-reduction of the joint at that time. There are “multiple dislocations” documented in the narrative summary (NARSUM) following the initial injury, although outpatient notes do not clarify if these were true dislocations or partial subluxations with spontaneous reduction. An outpatient note from 6 months prior to separation documents the statement that it “pops in and out of place all the time.” An outpatient note a month earlier documents a “history of dislocations X 5” over the past year. There is no medical opinion of record which goes to the issue of true dislocations vs. partial subluxations. Magnetic resonance imaging (MRI) documented fully intact ligaments, tendons and labrum; thus, the action officer opines that recurrent dislocations were unlikely. That impression is strengthened by the orthopedic opinion in this case recommending against surgery. This notwithstanding, the NARSUM and the VA Compensation and Pension (C&P) exam (just prior to separation) both document joint laxity to stress testing in most planes. The NARSUM was not specific regarding activity limitations or functional restrictions. The commander’s statement noted that the CI “always has pain in his right shoulder” which “severely limits the use of right arm and shoulder.” Specific limitations from the commander are excerpted below.

[CI] is unable to stand at parade rest or at-ease for any period of time, swing his arm while marching or walking, climb on or off of military vehicles, carry a rucksack, running, pushups, sit-ups, numerous other physical training exercises, extending his arm for any period of time, and any repetitive motion of his right shoulder.

The VA examiner stated, “Any movements, like brushing teeth or combing the hair [shoulder level activities] or any kind of pull or push suddenly the shoulder pops and there seems to be instability in that area.” The VA physical examination noted “subluxation easily 0.75 inch” to downward traction and “shoulder instability and capsular laxity” with “forward and backward pushing.” The C&P examination provided the only goniometric range-of-motion (ROM) evaluation in evidence; recording abduction to 145 degree (normal 180 degree; minimal compensable 90 degree) and forward flexion to 155 degree (parameters same). The examiner recorded pain only at the limit of excursions.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA applied the same code for rating, 5202, which is the only VASRD §4.71a provision for rating shoulder instability. Since instability was the dominant disability and there was no compensable ROM limitation; application of 5202 by the Board is clearly indicated. The distinction between the PEB’s 20% and VA’s 30% ratings rests with the judgment as to which rating description is the better fit with the disability in evidence. Code 5202 provides ratings for “recurrent dislocation of the scapulohumeral joint”: a 30% (major) rating for “frequent episodes and guarding of all arm movements”; and, 20% for “infrequent episodes, and guarding of movement only at shoulder level.” Since the ratings are for ‘recurrent dislocation’, there is importance attached to defining episodes of true dislocation (or its functional equivalent) rather than transient migration of the humeral head within the joint space subjectively characterized as a ‘dislocation’. The latter would appear to be a frequent occurrence in this case, but speculation is required to conclude that dislocations occurred with any significant frequency (if at all). Thus, the members must decide whether ‘frequent’ or ‘infrequent’ is the most applicable descriptor in this case. It also requires a judgment call as to whether ‘guarding of movement’ was functionally operant throughout joint excursion or at or above shoulder level. The commander’s statement, specifically the inability to swing the arm while marching or tolerate the parade rest position, would imply that the joint movement was guarded well below shoulder level; while, the activity limitations and thresholds of pain with ROM measurements documented by the VA examiner would suggest that motion below shoulder level was not guarded. After considerable deliberation and assessment of the probative value of the various sources of evidence and with due deference to VASRD §4.3 (reasonable doubt), members agreed that the preponderance of the evidence was best aligned with the 20% description quoted above; and, the Board accordingly can recommend no change in the PEB adjudication of the right shoulder condition.

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. 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** |
| Right Shoulder Instability | 5202 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111109, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXXXXXXXXXXXX

 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120019262 (PD201101052)

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 XXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA