RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1101057 SEPARATION DATE: 20071031

BOARD DATE: 20120808

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PVT/E-2 (8011/Basic Marine), medically separated for a right shoulder dislocation. The condition was a consequence of injury during basic training in 2007, and required subsequent surgical intervention. He responded well to surgery but was unable to complete training, and underwent a Medical Evaluation Board (MEB). The MEB forwarded closed dislocation of shoulder and articular cartilage disorder to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the traumatic right shoulder dislocation as unfitting, rated 20% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). Surgical treatment of above and Bankhart tear were included as related Category II diagnoses. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “1)Bilateral Shoulder Issues, 2)Neck Issues, 3)Right Arm Issues, 4)Upper Back Issues, 5)Sleeping Difficulties, 6)Interfering with Sex Life. The right shoulder is the main issue causing problems, however, due to massive overload, the left shoulder is starting to cause problems also. The right shoulder dislocates often and I have limited range of motion of my right arm. I have begun to have intermittent back spasms which cause me excruciating sharps pains in my shoulder and upper back, these are unrelieved by over the counter pain medications. I also have a constant achiness, in those areas, that is bothersome and interfering with my activities of daily living. I have recently been experiencing what I believe is a nerve issue with my right shoulder/upper back/arm, to where I have limited sensation and cannot feel light touch or if the area were to be pinched. I experienced a burning sensation. My left shoulder causes me constant severe stiffness and achiness, which I feel is due to overload, caused by my inability to utilize my right shoulder. My neck is very stiff and tight most likely related to the issues with both of my shoulders, and I fear that in the future, the strain on my neck will cause further cervical issues. I have trouble sleeping at night because if I roll-over or reposition myself in bed while I am in a sleep state and not very alert, my shoulder dislocates or shifts unexpectedly. This in turn wakes me up because of the horrid pain associated with this occurrence, and my sleep ceases for that night. Lastly, I am experiencing issues with performance in my sex life. I am unable to utilize my right arm to prop myself up during said acts, therefore I am limited to the sexual positions I am able to use. Sometimes, during sexual acts, my shoulder will shift or dislocate, and because of the pain, I must stop. I am unsatisfied with my sexual performance and I feel that my girlfriend is also. I cannot please her like I wish to and I believe our joint lack of sexual satisfaction is taking a toll on our relationship, and that is unacceptable to me.”

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. 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20070920** | **VA (17 Mos. Post-Separation) – All Effective Date 20071101** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Dislocation | 5299-5202 | 20% | Right Recurrent Shoulder Dislocation | 5203 | 10% | 20090313 |
| Surgical Treatment | Category 2 | No VA Entries |  |
| Bankhart Tear | Category 2 |
| ↓No Additional MEB/PEB Entries↓ | 0% X 0 / Not Service-Connected x 0 | 20090313 |
| **Combined: 20%** | **Combined: 10%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Right Shoulder Condition. The narrative summary (NARSUM) notes that the left hand dominant CI dislocated his right shoulder on training day #58. Although the shoulder was promptly reduced, ongoing instability and additional episodes of dislocations led to the discovery of bone and cartilage lesions (Hill-Sachs lesion and Bankart tear). Arthroscopic repair was performed on 3 August 2007. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation, as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Shoulder ROM | NARSUM ~2 Mo. Pre-Sep | Ortho ~1 Mo. Pre-Sep | VA C&P ~17 Mo. Post-Sep |
| Flexion (0-180⁰) | 160⁰ | 170⁰ | 160⁰ (170⁰)\* |
| Abduction (0-180⁰) | 170⁰ | 170⁰ | 160⁰ (170⁰)\* |
| Comments | No instability | No pain | Painful motion |
| §4.71a Rating | 0% | 0% | 10% |

\*170⁰ reduced to 160⁰ due to pain after three repetitions

The NARSUM examination noted well-healed surgical incisions and no atrophy of the shoulder muscle. Muscle strength was normal in all shoulder planes. Specific tests for shoulder instability were negative. An orthopedic evaluation performed on 21 September 2007, a month prior to separation, reported that the CI had “no problems at all with his shoulder. It feels stable. He has no pain. He has full ROM.” Examination revealed no signs of instability. At the VA Compensation and Pension (C&P) exam on 13 March 2009, performed 17 months after separation, the CI reported intermittent symptoms with remissions. Episodes of dislocation or subluxation were present at least daily. Pain was also reported. On examination, the anterior shoulder was tender and pain with active motion was evident. Signs of instability were not mentioned. X-rays were normal.

The Board directs attention to its rating recommendation based on the above evidence. Although the VA exam falls well outside the 12-month window specified in DoDI 6040.44 regarding VA evaluations for Board consideration, its ROM findings were virtually the same as the pre-service evaluations. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level,” and all examinations demonstrated motion well above this level. The PEB’s 20% rating assumed “infrequent episodes of (dislocation), and guarding of movement only at shoulder level” under the 5202 code (humerus, other impairment of). Because it appeared that surgery resulted in no further episodes of dislocation or evidence of instability, that there was no pain and that limitation of motion was non-compensable, the PEB clearly took a rating approach favorable to the CI. The Board considered alternate pathways to a higher rating, but no such route could be found under the 5203 (impairment of clavicle or scapula) and 5304 (Group IV muscle function) codes. 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 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 dislocation 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 Dislocation | 5299-5202 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111118, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) CORB ltr dtd 24 Aug 12

 In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

 - former USMC

 - former USN

 - former USN

 - former USN

 - former USMC

 - former USMC

 Assistant General Counsel

 (Manpower & Reserve Affairs)