RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101064 SEPARATION DATE: 20060321

BOARD DATE: 20120824

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (21S40, Topographic Surveyor), medically separated for pain and weakness in the left non-dominant shoulder. The CI initially injured his left shoulder in a motor vehicle accident in October 2003. Left shoulder pain, numbness and tingling of the left arm, and swelling of the left hand worsened over time and he would also have chest pain at times. Symptoms occurred while doing physical training, any work involving overhead work, and wearing individual battle equipment. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P4 profile and underwent a Medical Evaluation Board (MEB). Left shoulder/arm pain with pain/numbness/tingling left arm, weakness was forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The IPEB adjudicated the pain and weakness in the left non-dominant shoulder condition as unfitting, rated 20%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed and on 9 December 2005 the Formal PEB (FPEB) also adjudicated a 20% disability rating. He concurred with this finding and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I was treated @ the VA Hospital in Fayetteville, NC, where it was determined that there was no evidence of TOS (Thoractic [*sic*] Outlet Syndrome). I was told by me at an MEB hearing that I was being put out because of this condition, and that I could no longer serve with it. I requested if they were going to put me out then they should give me a retirement, I was serving as a career soldier, with an indifinite [*sic*] status for reenlistment. I was told by the board and my lawyer that it benefited the Army, and was more economical for me to just take the severance pay of $70,768.80 and run. I didn't not [*sic*] wish to do this, but was forced to sign because of MEB board recommendations. While in the Army the results of TOS finding and diagnosis was inconclusive. I feel the doctor did not assess me correctly and I was forced out because of the needs of the Army, and not my well being. I served a period of 13 years active and 1 year delayed entry in the reserves. I was medically evacuated from Iraq in Mar 2005. I stayed in medical hold for one year then was promptly pushed out; I was given minimal treatment and was told by several of the other medical hold personnel who had been there for several years, before even being evaluated by an MEB board, that this was the first time; they had ever seen someone be pushed out as fast as I was. I later realized that several, discrepancies were made in effort to push process soldiers out and get new soldiers to the battle field. If I had stayed I would have received a retirement for two reasons. I was in a low density MOS and was on the E-7 roster. Secondly, I was approaching 15 years of military service. I feel findings were inconclusive and inaccurate. I furthermore feel that I should be granted a regular retirement as so many of my peers have received. Even those who have given there [*sic*] life on the altar of freedom.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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 IPEB 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 IPEB.” The service ratings for unfitting conditions will be reviewed in all cases. Although the Board will review the ratings for the unfitting condition, the CI’s contentions regarding the processing of his disability separation are not within the criteria prescribed by DoDI 6040.44 for Board 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 Correction of Military Records.

RATING COMPARISON:

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| --- | --- |
| **Service FPEB – Dated 20051209** | **VA (2 Months Pre-Separation) – All Effective Date 20060322** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Pain and Weakness Left (Non-Dominant) Shoulder | 8599-8513 | 20% | Chronic Left Shoulder Pain and Weakness | 8599-8513 | 20% | 20060119 |
| No Additional MEB/PEB Entries | Bilateral Tinnitus | 6260 | 10% | 20060119 |
| Recurrent Urticaria | 7825 | 10% | 20060119 |
| Generalized Anxiety Disorder with Somatization Disorder and Chronic Pain | 9400 | 10% | 20060117 |
| 0% x 7/Not Service Connected x 6 | 20060119 |
| **Combined: 20%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions of service procedural or medical practice improprieties. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a case. 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. It must also judge the fairness of IPEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes VA 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 6040.44, 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.

Pain and Weakness in the Left (Non-Dominant) Shoulder Condition. The CI initially injured his left shoulder in a motor vehicle accident in October 2003. Left shoulder pain, numbness and tingling of the left arm, and swelling of the left hand worsened over time and he would also have chest pain at times. Symptoms increased while doing physical training, any work involving overhead work, and wearing individual battle equipment. No evidence of a neuropathy was noted on electromyogram (EMG) testing 13 December 2004. Magnetic resonance imaging (MRI) of cervical spine 24 September 2004 documented tiny disc osteophyte complexes without loss of height of intravertebral disc spaces at all levels, but no evidence of herniated nucleosus pulposis, cervical stenosis, or definite foraminal stenosis was seen. MRI of the left brachial plexus on 14 June 2005 noted no abnormalities and an arthrogram noted a left shoulder inferior labral tear on 10 May 2005. No orthopedic surgical intervention was recommended.

There were two 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.

|  |  |  |
| --- | --- | --- |
| Left Shoulder ROM | MEB ~6 Months Pre-Separation | VA C&P ~2 Months Pre-Separation |
| Flexion (0-180⁰) | 160° (160/160/160) | 180° |
| Abduction (0-180⁰) | 160° (160/160/160) | 180° |
| Comments | Decreased ROM due to pain, pain at all extremes of motion. Narrative summary (NARSUM) 20050928: Strength 3-4/5 throughout left upper extremity, grip strength 4/5, intrinsic intact; no muscle atrophy, reflexes equal bilaterally. NEURO 20050920: motor 5/5 strength and normal tone throughout, except 4+/5 in left shoulder which were limited due to pain; increased fatigue with handgrip and wrist extension; sensory exam intact to pinprick, light touch, and temperature. | No restriction or pain; no muscle atrophy, heat, redness, swelling, or effusion; sensory perception and power 5/5 in upper extremities is normal; normal reflex exam; no pathology identified. |
| §4.71a Rating | 10% | 0% |
| 8599-8513 | 20% | 20% |

The MEB NARSUM completed 28 September 2005 included left shoulder ROM measured by physical therapy on 2 August 2005 in addition to the findings of a neurology consult completed 20 September 2005. The NARSUM noted full ROM of the left shoulder but there is no evidence a goniometer was used and the ROM measurements from physical therapy on 2 August 2006 are included in the chart above. The neurology consult did not address ROM. The NARSUM documented pain rated at 8-9/10 that had worsened over time. The CI was re-deployed from Iraq early due to pain, paresthesias, and swelling that had significantly increased during the deployment. Both the NARSUM and the neurology consult noted some decreased strength in the left upper extremity but normal sensory and reflex examinations. The neurology examiner attributed the weakness to pain but also noted increased fatigue with handgrip and wrist extension. This examiner also noted the CI’s symptoms prevented him from engaging in any meaningful work and that even day-to-day activities at a desk would incite the painful paresthesias. Both the NARSUM and neurology consult noted neurogenic thoracic outlet syndrome as the diagnosis. The CI’s profile was P4 and had significant restrictions including no mandatory physical activity. A VA Compensation and Pension (C&P) examination was completed 19 January 2006, approximately two months prior to separation. It documented full ROM of the left shoulder without pain as well as normal sensory, motor, and reflex examinations throughout the left upper extremity.

The Board directs attention to its rating recommendation based on the above evidence. The IPEB, FPEB, and VA all applied a 20% for mild incomplete paralysis of all radicular groups of the non-dominant upper extremity. While the CI had significant pain and paresthesias, the weakness noted on the service examinations was felt to be secondary to pain. The VA examination, completed after the service examinations but prior to separation, noted no weakness at all. Sensation and reflexes were normal on both service and VA examinations and EMG studies were normal. The service examinations would also warrant a 10% rating for pain-limited motion of the left shoulder but the VA examination noted no decreased or painful motion. 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 pain and weakness left (non-dominant) shoulder condition.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the IPEB 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 IPEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the pain and weakness left (non-dominant) shoulder condition and IAW VASRD §4.124a, the Board unanimously recommends no change to the IPEB 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Pain and Weakness Left (Non-Dominant) Shoulder | 8599-8513 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111102, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120016300 (PD201101064)

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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA