

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1201168
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030321

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (62B10/Heavy Equipment Operator), medically separated for chronic left shoulder pain. The CI dislocated his left shoulder in July 2002 during basic training. He had recurrent dislocations and underwent surgery in October 2002. He 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). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic left shoulder pain condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Rating should be changed due to major life changes and had gone through with my injury, loss of motion and strength in affected arm constant pain and mentally and emotionally drained with knowing I'll be living in these conditions for the rest of my life. Having to change from hard working labor jobs to a totally slow pace job, learning a new trade just because the jobs I know how to do were too much of a strain on my shoulder. Major life changes with this injury."

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 shoulder pain condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. Any condition 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 20030303			VA – All Effective Date 20030322			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic L Shoulder Pain	5099-5010	10%	L Shoulder Dislocation...	5299-5201*	10%**	NARSUM 20030205
No Additional MEB/PEB Entries						
Combined: 10%			Combined: 10%			

*VARD 20050423 continued 10%, but changed diagnostic code 5201-5010

**VARD 20071102 increased to 20%; however, effective 20070207 (~47 mos post-separation)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability

entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. 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 DVA, 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 his degree of impairment vary over time.

Chronic Left Shoulder Pain Condition. The CI dislocated his left shoulder from a fall during basic training in 2001. The shoulder was successfully relocated in the emergency department and X-rays revealed no fracture. Subsequent magnetic resonance imaging (MRI)/Arthrogram revealed tears of the rim of the shoulder joint, which provides functional stability to the arm and prevents motion without dislocation. The CI suffered multiple subsequent dislocations requiring operative repair for shoulder stability. Postoperatively the CI did well having no further episodes of dislocation, but developed chronic pain with shoulder motion. There were two 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 in Degrees	PT ~2 Mo. Pre-Sep (20030131)	MEB ~1 Mo. Pre-Sep (20030205)
Flexion (0-180)	150	165
Abduction (0-180)	152	160
Comments	AROM;Painful ROM; motor wnl	Pain with overhead use
§4.71a Rating	10%*	10%*

*§4.59 (painful motion)

At the MEB/narrative summary (NARSUM) evaluation performed on 5 February 2003, a month prior to separation, the CI reported pain with activity but no further episodes of dislocation. He was requiring no medication at this time. Findings on physical examination are noted above and were unchanged from a physical therapy (PT) evaluation a month prior. No VA Compensation and Pension (C&P) was performed as the CI was nonattendant for exams scheduled 8 August 2003 and 24 November 2004. The first C&P examination was performed 7 September 2005 approximately 47 months after separation. Findings on this examination were synonymous with those of the MEB/NARSUM evaluation. The Board directs attention to its rating recommendation based on the above evidence. The Board noted the CI to be right hand dominant. The PEB rated the left shoulder condition 10%, 5010, arthritis due to trauma. The VA, using the service treatment records (STR), rated the shoulder condition 10%, code 5201, arm, limitation of motion, citing decreased ROM of the shoulder. The Board agreed that the shoulder condition was not compensable under §4.71a, ROM; but, that §4.59 (painful motion) was applicable and supported a 10% rating. The Board found no pathway to a higher rating under any other applicable VASRD 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 chronic left shoulder pain 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 chronic left shoulder pain 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
Chronic Left Shoulder Pain	5099-5010	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXX, AR20130000639 (PD201201168)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA