RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200039 SEPARATION DATE: 20041107

BOARD DATE: 20120510

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (63B20/Light Wheeled Vehicle Mechanic), medically separated for residual chest wall and right shoulder pain status post sternotomy for resection of Hodgkin’s lymphoma. He did not respond adequately to conservative treatment for his residual pain and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3/U3 profile and underwent a Medical Evaluation Board (MEB). Residual chest wall and shoulder pain and history of Hodgkin’s lymphoma were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the chest and right shoulder condition as unfitting, rated 10%; additionally adjudicated the remaining conditions including the history of Hodgkin’s lymphoma to be not unfitting and therefore not ratable with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I was discharge so quickly after surgery and chemo that the doctors believed that my injury and pain would not be long lasting or so life altering. I was also never processed and discharge as wounded warriors are today and was never reviewed for PTSD/service connected depression.”

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 service ratings for unfitting conditions will be reviewed in all cases. The “PTSD/service-connected depression” requested for consideration is not within the Board’s 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20040901** | **VA (3 Mo. Post Separation) – All Effective Date 20041108** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chest Wall/Rt Shoulder Pain Post Sternotomy | 5099-5003 | 10% | Limited Motion of the Rt Shoulder from Chest Pain S/P Sternotomy | 5299-5201 | 20%\* | 20050210 |
| s/p sternotomy with residual scar, s/p excision of lung mass | 7802 | 10%\*\* | 20050210 |
| Hx of Hodgkin’s Lymphoma | Not unfitting | Hx of Hodgkin’s Lymphoma | 7709 | 0% | 20050210 |
| Reading Disorder | Not unfitting | Reading Disorder & Histrionic Personality Features | 9399-9327 | NSC | 20050210 |
| Histrionic Personality Features | Not unfitting |
| Residual Tenderness Hernia Repair | Not unfitting | S/P Inguinal Hernia | 7802 | 0% | 20050210 |
| Residual Index Finger Scar Sensitivity | Not Unfitting | S/P Excision Index Finger | 7802 | 0% | 20050210 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1/Not Service-Connected x 2 | 20050210 |
| **Combined: 10%** | **Combined: 20%** |

\*changed code to 8513-5121 and dx to right shoulder costobrachial intercostals CRPS typeII, severe 90% effective20080718

\*\*in a rating decision (RD) 20080214 increased status post sternotomy scar with neuromas, s/p excision of lung mass from 0%

VA RD added 94343 major depressive disorder 0% effective 20061011 increased to 50% 20080801

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 service disability entitlements as those under which the Disability Evaluation System (DES) operates. The 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. That role and authority is granted by Congress to the Department of Veterans’ 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. The Board further acknowledges the CI’s contention for service ratings for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). 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.

Anterior Chest Wall and Right Shoulder Condition. The CI was being evaluated for right shoulder pain when a mediastinal mass was noted on his shoulder x-ray. Surgery further evaluated this mass with a chest x-ray and computer tomography (CT) scans and opined the differential included thyroid versus thymoma versus germ cell tumor or possibly a lymphoma. In September 2003, the CI underwent median sternotomy with thymectomy for diagnostic and possible curative care and the pathology revealed classical Hodgkin’s lymphoma, nodular sclerosis type. He was referred to oncology and received chemotherapy from October 2003 to March 2004 with remission of the lymphoma. After 11 months of recovery the CI continued to have persistent residual pain of the anterior chest wall and the right shoulder. He was placed on a permanent profile P3 and U3 with limitations to include no rucksack or load bearing equipment (LBE), no push-ups, mandatory strenuous physical exertion, lifting over 20 pounds and duty remote from definitive medical care. 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.

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| ROM –Rt Shoulder | MEB ~ 3 Mo. Pre-Sep(20040824) | VA C&P ~ 3 Mo. After-Sep(20050210) |
| Flexion (0-180) | 100⁰ | 75⁰ |
| Abduction (0-180) | 90⁰ | 75⁰ |
| Comment | Painful ROM | Sternal pain with ROM |
| §4.71a Rating | 20% | 20%  |

The narrative summary (NARSUM) completed for the MEB documented the CI was right-handed with symptoms of chest wall and right shoulder pain, 5 of 10 (10 being the worse), worse with sleeping, heavy lifting, pushing, and pulling, and fatigue with a decreased energy level of 40%. He was taking Vioxx, a non-steriodal, for pain relief. The physical exam demonstrated tenderness to pressure over the anterior chest and sternum, pain with resisted right arm extension, a healed 23 cm (>9 inch) sternotomy scar, and no instability of the chest wall appreciated. The last CT scan completed 5 April 2004 in the service revealed minimal scarring within the right upper and middle lung lobes, no evidence of mediastinal mass or lymphadenopathy and status post (s/p) median sternotomy. The VA Compensation and Pension (C&P) exam documented a similar exam to the NARSUM; in addition, the examiner noted a palpable sternal depression and a non-tender and non-adhering sternal scar. The chest x-ray revealed s/p median sternotomy and the laboratory CBC was normal. The examiner diagnosed right shoulder pain with no evidence of primary disorder, but limitations of motion as a residual of chest pain that was incurred from his sternotomy, residual scar, and Hodgkin’s lymphoma, stage 3-B s/p excision followed by chemotherapy.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the condition which had significant implications on the rating for the Board to consider. The PEB’s DA Form 199 reflected likely application of the USAPDA pain policy for rating and its 10% determination with use of the analogous 5003 code (arthritis, degenerative) and was inconsistent with §4.71a standards. The VA ruled analogous to the 5201 code (arm, limitation of motion) and rated 20% for functional limitation of the right shoulder which was consistent with §4.71a. The Board agreed the evidence did not show an underlying primary disorder for the right shoulder in addition agreed pain was the predominant disabling feature.

The Board also agreed the evidence did not distinguish whether this pain was musculoskeletal or neurologic in etiology and the clinical scenario would allow for either. While the DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings information after the 12-month interval was not disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation. VA records after separation documented worsening of symptoms after separation and subsequent diagnosis of right shoulder costobrachial intercostals complex regionalp syndrome (CRPS) type II, as a residual of the median sternotomy. The VA readjudicated the condition analogously to all radicular groups coded 8513 (based on severity at that time). The Board therefore looked for a higher rating IAW §4.123a—schedule of ratings–neurological conditions and convulsive disorders since pain of anterior chest wall and right shoulder is the overriding pathology leading to the functional limitations of the right arm. The Board deliberated on ratings defined within VASRD §4.123 which stipulates the maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate.

The Board agreed the disability picture at the time of separation is best represented as moderate neuritis impairment. The Board determined that the upper radicular peripheral nerve code closely reflected not only the functions affected but the anatomical localization and symptomatology of the CI’s condition at the time of evaluation in the DES. The Board considered VASRD §4.7 (higher of two evaluations) during its deliberation which directs the evaluator to assign the higher of two valid ratings if the disability picture more nearly approximates the criteria. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 40% for the chest wall and 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. As discussed above, PEB reliance on the USAPDA pain policy for rating chest wall and right shoulder condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chest wall and right shoulder condition, the Board unanimously recommends a disability rating of 40%, coded 8699-8610 IAW VASRD §4.123a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chest Wall/Rt Shoulder Pain S/P Sternotomy | 8699-8610 | 40% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120105, 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 XXXXXXXXXXXXXXX, AR20120009404 (PD201200039)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 40% effective the date of the individual’s original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 40% effective the date of the original medical separation for disability with severance pay.

 d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA