RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1200063 SEPARATION DATE: 20040223

BOARD DATE: 20120522

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/02 (11A/Infantry Officer), medically separated for a left shoulder condition*.* He did not respond adequately to conservative and operative treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3 L2 profile for chronic left shoulder pain following surgery and left foot pain, respectively and underwent a Medical Evaluation Board (MEB). Chronic left shoulder pain, with instability, status post arthroscopy of the shoulder, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB recognized there was sufficient evidence to support a finding that the current left shoulder impairment existed prior to service (EPTS), was subsequently permanently aggravated and adjudicated the chronic left shoulder pain, with instability, status post arthroscopy as unfitting, rated 10% with no deductions. The remaining diagnoses were adjudicated as not unfitting and not rated. The PEB applied the US Army Physical Disability Agency (USAPDA) pain policy for its decision. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The Physical Evaluation Board (PEB) considered only the immediate limitations caused by my shoulder injury in determining my permanent disability rating. Specifically, I feel the PEB at the time (as opposed to current boards) did not consider the full severity of the injury, subsequent long-term disabilities/conditions, or the impacts to my permanent physical condition. I strongly believe there was an underestimation of the severity of my permanent limitations; or more specifically their impact to body mechanics and exacerbation of other injuries. The repair of my injury resulted in a reconstruction of the shoulder with screws, aggressive physical therapy, and permanent limitations to my range of movements/activities. However, the extent of this injury also lead to mechanical compensation with neck and back muscles due to the now permanent reduction in shoulder functionality. These compensatory body mechanics have created a chronic somatic dysfunction within my cervical and thoracic spine. Subsequently, I have amplified occurrences of headaches (receiving a VA rating of 30% for this condition), persistent moderate to severe neck/back pain, increased need for treatments by my PCP (samples from medical records attached), have been placed on a daily home therapy program, and have constant disruptions to my work and personal activities caused by both the functional limitations and compensatory spine/head conditions. My current physician has stated his belief that the frequency of head-aches, back/neck pain, and treatments is attributed to the compensation for my should injury. I believe that when the severity *of my* injury, long term limitations, other subsequent conditions are measured by today's standards/processes, I would be rated in excess of 30%. As such, and in accordance with Department of Defense Instruction Number 6040.44 (including change 1, dated 2 June 2009), I respectively ask for reconsideration of my DOD disability rating under the new criteria this instruction provides and that my rating be adjusted to the proper level of 30% or more.”

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 conditions chronic left foot pain, chronic low back pain as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the Service ratings for the unfitting conditions. The chronic somatic dysfunction of the cervical and thoracic spine, headaches and the remaining conditions listed on the DA Form 294 application are 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20031229** | | | **VA (7 Mo. After Separation) – All Effective Date 20040224** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Shoulder Pain, with Instability, Status Post Arthroscopy of the Shoulder | 5099-5003 | 10% | Chronic Left Shoulder Instability Status Post Capsular Shift and Arthroscopy | 5299-5203 | 10% | 20040907 |
| Chronic Left Foot Pain | Not Unfitting | | Hallux Rigidus, Left Foot, with Healed Fractures Left Third and Fourth Metatarsals | 5281-5284 | 10%\* | 20040907 |
| Ehrlichiosis | Not Unfitting | | Not Addressed |  |  |  |
| Chronic Low Back Pain | Not Unfitting | | Degenerative Disc Disease L4-5, with Degenerative Joint Disease L4-5 and L5-S1 | 5242 | 10%\* | 20040922 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraine Headaches | 8100 | 30%\* | 20040922 |
| 0% x 5 | | | 20040907 |
| **Combined: 10%** | | | **Combined: 50%\*** | | | |

\* Changes per VARD dated 20041124 all effective 20040224.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected conditions continue 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 VA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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 VA evidence proximate 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 rating determinations for the disability existing at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability at the time of separation.

Left Shoulder Condition. In 1999 the CI had a history of a left shoulder dislocation while in ROTC with subsequent arthroscopic surgery and Bankart lesion repair for instability. He had a good recovery and a year later was cleared by orthopedics to no contraindication to commission and further documented residuals of 10 degree loss in external rotation and post operative X-ray changes. In March 2003, he dislocated the left shoulder while deployed and had five recurrent dislocations prior to being aeromedically evacuated. Two months upon his return he underwent a diagnostic arthroscopy and inferior capsular shift stabilization repair of the left shoulder at which time the orthopedic surgeon documented “no evidence of labrum remaining.” The CI underwent extensive post operative rehabilitation with physical therapy and continued having posterior shoulder pain and a sensation of instability which was incompatible with the physical demand of his MOS. Limitations included no push-ups and no lifting more than 20 pounds. 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.

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| Goniometric ROM – Left Shoulder | MEB/ortho ~ 2 Mo. Pre-Sep | VA C&P ~ 7 Mo. After-Sep |
| Flexion (0-180) | 160⁰ | 160⁰ |
| Abduction (0-180) | 150⁰ | 160⁰ |
| Comment | ER 30, IR100, +Hawkins, positive apprehension | ER 50 IR 50, minimal positive apprehension sign |
| §4.71a Rating | 10% | 10% |

The MEB exam demonstrated normal strength of the shoulder throughout all planes of motion and a normal neurovascular exam. Specific orthopedic shoulder tests demonstrated residual labral disease (apprehension test), likely residual impingement disease (Hawkins test) but no objective evidence of instability. X-rays of the left shoulder revealed the expected postoperativechanges and otherwise unremarkable. Service treatment record (STR) consistently reflected a pain scale of 3 of 10 with 10 being the worse.At the VA Compensation & Pension (C&P) exam the CI reported the shoulder was more stable but he had restricted motion and some mild intermittent pain. He denied fatigability or weakness but was apprehensive about using the shoulder and protected it quite a bit due to concern about the stability of his shoulder. The C&P exam demonstrated a well healed scar interiorly consistent with his prior surgery, no upper arm atrophy, normal strength in flexion, extension and abduction of the shoulder and only minimally positive apprehension sign, no gross anterior, posterior or inferior laxity was seen, no increased pain with restricted motion, and any fatigability or weakness was noted. Neither the MEB nor the VA exam documented painful motion.

The Board directs its attention to its rating recommendations based on the evidence just presented. The Board notes that both the MEB and VA exams were complete, well documented, and similar in terms of ratable data; and, therefore assigns them equal probative value. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB chose to code the left shoulder condition analogous to 5003 (arthritis, degenerative), recognized the non-compensable loss of ROM and rated 10% with the USPDA pain policy and was still consistent IAW 4.71a. The VA chose to code analogous to 5201 (arm, limitation of motion of) and rated 10%. The justification for this decision was not available for review. There was no evidence of incapacitating episodes to support a 20% rating under the 5003 code. There was no further clinical or radiologic evidence of the joint that suggested nonunion of, or malunion of the clavicle or scapula. The recurrent dislocation of the humerus was resolved with the surgery with residual clinical apprehension sign for labral disease likely due to the absence of a labrum, but no other sign to suggest laxity or recurrent dislocation. Hence, no alternative shoulder code is supported in justification of a rating higher than 10% for this joint. There was no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. After due deliberation, considering all of the evidence and mindful of Veteran’s Administration Schedule for Rating Disabilities (VASRD) §4.3 (reasonable doubt), the Board unanimously recommends no change from the PEB’s adjudication of the left shoulder condition.

Contended PEB Conditions. The conditions adjudicated as not unfitting by the PEB were chronic left foot pain and chronic low back pain. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The chronic left foot pain s/p 3rd and 4th metatarsal stress fracture, resolved with conservative treatment and a documented normal bone scan at the time of separation. STR was not evident (over a year) for treatment of his foot pain until the time of his MEB when the CI reported his foot pain was manageable with activity modification and use of nonsteroidal anti-inflammatory medications. The MEB exam demonstrated tenderness to palpation over the first metatarsal, and the second through fifth metatarsals were unremarkable. He had full range of motion to the toes and ankle, the hind foot was stable, and there was no pes planus noted. The examiner recommended an L2 profile allowing the two mile run for Army fitness physical testing, aerobic exercise at his own pace and with limitations with the road march. While the profile did not clearly delineate the reason for limiting the road march, the Board agreed it was more likely to prevent him from wearing his gear and hence protecting his shoulder than for the foot. This condition was not implicated in the commander’s statement and not judged to fail retention standards. The chronic low back pain was not profiled; implicated in the commander’s statement or judged to fail retention standards. Both were reviewed by the Action Officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the chronic left foot and chronic low back pain, and therefore, no additional disability ratings can be recommended.

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 left shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended chronic left foot and chronic low back conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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** |
| Chronic Left Shoulder Pain, with Instability, Status Post Arthroscopy of the Shoulder | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20120110, 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, AR20120009745 (PD201200063)

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 XXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA