

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200189
BOARD DATE: 20121120

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20050826

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (15T10/UH-60 Helicopter Repairer), medically separated for bilateral multidirectional shoulder instability/pain status post (s/p) bilateral capsular shift. The CI developed right shoulder multidirectional instability after a motor vehicle accident in September 2002 and he later also developed multidirectional instability in his left shoulder. Instability in both shoulders persisted after surgical treatment and extensive physical therapy. The CI also experienced multiple right shoulder dislocations after surgery. The CI did not improve adequately and was unable 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 bilateral multidirectional shoulder instability condition as unfitting, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "I was provided an overall rating of 0% by the Army review board upon my discharge for conditions that I sustained during combat in operation Iraqi freedom (OIF). I was awarded with the US Department of Veterans Affairs an overall rating of 30% for these same conditions in which I was separated from the armed forces. These conditions have all worsened since my discharge in August 2005. I have attached VA Form 3288; copies of my Physical Evaluation Board (PEB) proceedings, orders 230-0705 from the Department of the Army Headquarters (*sic*) located in Fort Campbell KY; my initial (*sic*) VA award letter dated October 12, 2005; medical records fro (*sic*) southern bone and joint; and my DD 214. You may secure my medical records from VAMC Wiregrass outpatient (Fort Rucker AL); VAMC Gateway Hospital/ Premier Medical Group in Clarksville TN regarding these 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 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 rating for the unfitting condition of bilateral multidirectional shoulder instability/pain will be reviewed. The remaining condition rated by the VA at separation 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 Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20050810			VA (3 Mos. Pre-Separation) – All Effective Date 20050827			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bilateral Multidirectional Shoulder Instability status post Bilateral Capsular Shift	5099	0%	Right Shoulder Instability status post Right Capsular Shift Bankart Repair	5202	20%	20050511*
	5003		Residuals of status post Left Shoulder Open Capsular Shift	5203	10%	
↓No Additional MEB/PEB Entries↓			0% x 1/Not Service-Connected x 1			20050609*
Combined: 0%			Combined: 30% (Bilateral Factor 2.8)			

*VA ratings based on MEB NARSUM (20050511) and MEB History and Physical (20050609) exams. No VA C&P examinations were done.

ANALYSIS SUMMARY: The Board 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 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. However the Department of Veteran Affairs, 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 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 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.

The PEB rated both shoulders together under the single analogous 5003 degenerative arthritis code. This coding approach is countenanced by AR 635-40 (B.24 f.), but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. The Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Since §4.71a criteria are met for separate joint ratings in this case, the Board is pursuing separate rating and fitness evaluations as follows.

Bilateral Multidirectional Shoulder Instability Condition. The Board first considered if separate right and left shoulder conditions, having been de-coupled from the combined PEB adjudication, each remained independently unfitting. The CI’s permanent profile for bilateral shoulder instability documented multiple significant limitations that can be attributed only to the shoulders. The right shoulder multidirectional instability with recurrent dislocations, as an isolated injury with a hypothetically normal left shoulder, was significant enough to result in the permanent U3 profile as written. All Board members agreed that the right shoulder multidirectional instability, as an isolated condition, would have rendered the CI incapable of continued service within his MOS, and accordingly merits a separate disability rating. The Board majority concluded that the left shoulder multidirectional instability was not separately unfitting and therefore, no additional disability rating can be recommended.

There was one range-of-motion (ROM) evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation, as summarized in the chart below.

Shoulder ROM	MEB ~3 Months Pre-Separation
	Right and Left
Flexion (0-180°)	180°
Abduction (0-180°)	180°
External Rotation	90°
Internal Rotation	To T3
Comments	No mention of use of a goniometer or whether movements were active or passive. Examiner did not separate left and right shoulders. Well-healed scars on both shoulders; Sulcus test 2+ bilaterally; anterior load and shift is 1 to 2+ bilaterally; apprehension testing does not produce a sensation of instability but does cause shoulder pain that is not relieved with relocation testing. Light touch sensation intact and motor 5/5 in bilateral upper extremities.
§4.71a Rating	0%

The MEB narrative summary (NARSUM) completed approximately 3-1/2 months prior to separation. No VA Compensation and Pension (C&P) examination was performed; the VA used the NARSUM examination to rate the CI's shoulders. The CI injured his right shoulder in a motor vehicle accident in September 2002. Prior to arthroscopic surgery with open capsular shift in November 2003, he had a total of five dislocations and many more subluxation episodes. In November 2004, the CI again had two right shoulder dislocations with abduction and external rotation and was treated with a shoulder immobilizer. In February 2005, the orthopedic surgeon noted the CI had had four right shoulder dislocations since surgery; another documented dislocation occurred in August 2005. A second surgery was discussed but the outcome of repeat capsular shift was noted to be unpredictable and the CI reasonably opted to forgo the surgery.

An early November 2004 examination of both shoulders documented instability and the right shoulder was actually subluxed. At the time of the NARSUM, the CI continued to have bilateral mild to moderate glenohumeral instability as recorded in the chart above. Although ROM measurements are recorded, it is unknown whether a goniometer was used or if the motions were active or passive. Additionally, there is no mention of the presence of pain with motion. Both the permanent profile and the commander's letter noted the CI was unable to work overhead. At the MEB exam in June 2005, the CI reported chronic dislocation of both shoulders that remained unresolved after attempted surgical correction. He also reported his right hand went numb occasionally depending on the movement of his right shoulder and that he was unable to move his upper extremities normally when his shoulders were subluxed. The MEB physical exam noted increased laxity in both shoulders and a normal neurologic examination.

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined both shoulders and assigned an overall 0% rating IAW the USAPDA pain policy. The VA rated the right shoulder instability at 20% using code 5202 based on recurrent but infrequent episodes of dislocation. With full ROM and normal motor strength as noted above, only pain would preclude the CI from working overhead and the Board therefore infers that, more likely than not, the CI had painful motion of the right shoulder in addition to the recurrent dislocations. However, the record is silent concerning the presence or absence of guarding of arm movements. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of right shoulder multidirectional instability with recurrent dislocations condition favors its recommendation as a separately unfitting condition for disability rating. Considering all of the evidence and mindful

of VASRD §4.3 (reasonable doubt), and VASRD §4.7 (higher of two evaluations), the Board recommends a disability rating of 20% for the right shoulder multidirectional instability with recurrent dislocations 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 was operant in this case and the Board adjudicated the right and left shoulder conditions independently of that policy. In the matter of the right shoulder multidirectional instability with recurrent dislocations condition, the Board unanimously agrees that this condition was separately unfitting; and, unanimously recommends a disability rating of 20%, coded 5202 IAW VASRD §4.71a. In the matter of the left shoulder multidirectional instability condition, the Board unanimously agrees that it was not separately unfitting and no additional disability rating is recommended. 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Right Shoulder Multi-Directional Instability status post Capsular Shift with History of Multiple Dislocations	5202	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120224, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20120022703 (PD201200189)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PD BR) 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.
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.
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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PD BR
() DVA