RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200207 SEPARATION DATE: 20070724

BOARD DATE: 20121030

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63B10/Wheeled Vehicle Mechanic), medically separated for chronic bilateral shoulder pain with subluxation and chronic back pain, due to lumbar degenerative disc disease (DDD), without neurologic abnormality. The CI injured his right shoulder in 2001 lifting a heavy box. He developed frequent right shoulder subluxations and underwent two right shoulder surgeries (arthroscopic debridement and then an open reconstruction in 2005). The CI had non-traumatic onset of left shoulder pain while rehabilitating his right shoulder. Both shoulders had pain and symptoms of instability. The lower back pain was of insidious onset in 2002 and worsened over time despite physical therapy. Narcotic pain medication and TNS unit provided moderate relief. The bilateral shoulder pain with subluxation and the chronic back pain, due to lumbar DDD conditions 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/L3 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 shoulder pain with subluxation and the chronic back pain, due to lumbar DDD conditions as unfitting, rated 10% and 0%, with specified application of the US Army Physical Disability Agency (USAPDA) pain policy for the shoulders and likely application of AR 635-40, B-29 for rating the back condition. The CI made no appeals, and was medically separated with a combined 10% disability rating.

CI CONTENTION: “I was medically discharged with 10% disability for right shoulder upon being checked by VA it was increased to 30% and 30% for left knee strain and 40% for Degenerative Disc Disease L4-L5 and 30% for left shoulder strain and 10% for surgical scars and being treated for PTSD and TBI and about to have my 8th shoulder surgery. (sic)”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 right and left shoulder strains and the lumbar DDD conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below. The other requested conditions which were rated by the VA shortly after separation and which are listed on the DD 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 Correction of Military Records.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070524** | | | **VA (4 Mos. Post-Separation\*) – All Effective Date 20070725\*** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Shoulder Pain with Subluxation | 5099-5003 | 10% | Rt Shoulder Internal Derangement | 5201 | 30%\* | 20071101\* |
| Lt Shoulder Strain | 5201 | 20%\* | 20071101\* |
| Rt Shoulder Scar | 7805 | 0%\* | 20071101\* |
| Lumbar DDD w/o Neurologic Abnormality | 5299-5242 | 0% | DDD L4-L5 | 5003-5237 | 20%\* | 20071101\* |
| ↓No Additional MEB/PEB Entries↓ | | | Lt Knee Strain | 5299-5262 | 10%\* | 20071101\* |
| Tinnitus | 6260 | 10%\* | 20071101\* |
| Not Service-Connected x 4 | | |  |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\*CI was a No Show for his original C&P General scheduled for 20070823. Therefore the VA used the STR to originally rate the DDD L4 – L5 at 10% and the right shoulder pain at 0% for a total of 10% (VARD 20070915). The CI subsequently attended a C&P General exam on 20071101; on VARD 20071214 he was rated per the chart above retroactive to 20070725.

ANALYSIS SUMMARY:

Bilateral Shoulder Pain with Subluxation. The CI was right handed. The PEB combined right and left shoulder pain with subluxation as a single unfitting and rated condition, coded analogously to 5003 citing use of the USAPDA pain policy. Although this approach complies with the pain policy in effect at the time; the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition are achieved IAW VASRD §4.71a. 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. The right shoulder was clearly worse than the left shoulder and had undergone two surgeries. However, both shoulders were included in the profile restrictions and commander’s statement. The left shoulder was noted to be painful with some instability and duty limitations by specialty evaluation. The Board majority adjudged that there was sufficient evidence to indicate that both shoulders were unfitting.

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.

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| --- | --- | --- | --- | --- |
| Shoulder ROM | MEB ~3 Mo. Pre-Sep | | VA C&P ~4 Mo. Post-Sep | |
| Left | Right | Left | Right |
| Flexion (0-180⁰) | 180/180/175⁰ | 180/140\*/180⁰ | 45⁰ | 45⁰ |
| Abduction (0-180⁰) | 175/180/175⁰ | 180/175/180 | 90⁰ | 90⁰ |
| Comments: Post-sep surgery; R shoulder 20071106; L shoulder 200801 | 2+ apprehension; TTP mainly anterior | \*subluxation and pain; crepitance, sl impingement sign; TTP general | “ROM done to point of pain then stopped. Decreased ROM due to pain and lack of endurance”; laxity | |
| §4.71a Rating | 10% | 10% | 20% | 30% |

The narrative summary (NARSUM) indicated pain and instability of both shoulders with the CI no longer undergoing physical therapy (PT) due to getting no relief of symptoms. Exam is summarized above. Radiographs of the bilateral shoulders demonstrated post-surgical clips on the right. At the VA Compensation and Pension (C&P) exam 4 months after separation, the history was similar to the service history. The CI was scheduled for a third right shoulder surgery within one week, and the CI had recently had a civilian orthopedic evaluation of the left shoulder that “saw damage, but no tears in left.” The shoulder exams are summarized above including the examiner’s statement that “ROM done to point of pain then stopped.” The examiner indicated ROMs were repeated three times and that “Pain back to (CI’s) base line at end of exam. Pain on Active and Passive ROM.” The right shoulder scar was non-tender. The civilian orthopedic evaluation 3 months after separation as noted by the VA examiner was in the record and indicated a magnetic resonance imaging (MRI) and exam consistent with prior left shoulder dislocation. VA records indicate right shoulder surgery performed in November 2007, within days of the first C&P exam, and left shoulder surgery in January 2008, which are both within a year following separation. ROMs for each shoulder were decreased following surgeries and the VA increased the left shoulder rating to 30% effective April 2008 while the right shoulder rating remained at 30% other than during 100% convalescent ratings proximate to each surgery.

The Board directs attention to its rating recommendation based on the above evidence. By precedent, the Board does not recommend disability rating for scars unless their presence imposes a direct limitation on fitness. Any shoulder limitation attributable to the right shoulder surgical scars was considered in rating for the right shoulder. The Board majority considered each shoulder showed painful or pain-limited motion (§4.59) with instability and aspects of functional loss (§4.40). The PEB coding analogous to 5003 (arthritis, degenerative) was applicable to each shoulder and alternative analogous coding using 5010 (arthritis, due to trauma), 5019 (bursitis), 5020 (synovitis) or 5024 (tenosynovitis) all would use the same 5003 criteria and did not offer any benefit to the CI. The VA coding of 5201 (arm, limitation of motion) has limitation at shoulder level (90⁰ of normal 180⁰) as the lowest rating level. The post-separation VA exams (rated using 5201 criteria) documented much more severely-limited ROMs of each shoulder and due to being more distant from the date of separation and comments regarding shoulder ROM testing, were adjudged to have a lower probative value for rating at separation. Worsening following surgery within 12-months after separation was considered post-separation worsening. The Board considered the NARSUM examination had the highest probative value for rating at separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the right shoulder, and the Board majority recommended 10% for the left shoulder condition. The Board adjudged that the right shoulder scar was not unfitting.

Lumbar Spine Condition. There were three 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.

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| --- | --- | --- | --- | --- |
| Thoracolumbar ROM | PT ~2 Mo. Pre-Sep\* | MEB ~3 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep | VA C&P ~12 Mo. Post-Sep |
| Flexion (90⁰ Normal) | 85⁰ (85, 85, 90) | 90⁰ (90+) | 45⁰ | 45⁰ |
| Ext (0-30) | 5⁰ (5, 10, 5) | 30⁰ (35, 40, 40) | 10⁰ | 20⁰ |
| R Lat Flex (0-30) | 10⁰ (10, 10, 8) | 20⁰(25, 20, 20) | 20⁰ | 20⁰ |
| L Lat Flex 0-30) | 10⁰ (8, 8, 10) | 25⁰ (35, 25, 25) | 20⁰ | 20⁰ |
| R Rotation (0-30) | 20⁰ (20, 22, 25) | (not given) | 20⁰ | 20⁰ |
| L Rotation (0-30) | 30⁰ (25, 30, 35) | (not given) | 20⁰ | 20⁰ |
| Combined (240⁰) | 160⁰ | *Min 165⁰, Max 225⁰* | 135⁰ | 135⁰ |
| Comment: DeLuca and Note (2) limits applied | Due to pain; | Gait normal; no spasm; sig. pain on arising fr flexion >80⁰ | Gait normal; pain on motion; no spasm; | Gait antalgic; T-spine spasm with lumbar flattening; tenderness; motor, sensory, reflex exam normal |
| §4.71a Rating | 10% | 10% | 20% | 20% (VA 40%) |

\*PT Flexion & Extension ROMs were done with an Inclinometer (vice Goniometer).

At the MEB exam, the CI reported chronic back pain with occasional tingling/numbness sensation primarily on the right. PT was not effective and TNS and daily narcotic pain medication did not resolve the pain. The MEB physical exam accomplished by an orthopedist is summarized above. There was no motor or sensory fixed deficit. MRI indicated mild disc disease at L4-L5 with a transitional L5 vertebral body. There were no episodes of physician prescribed bed rest (incapacitation) in the treatment notes.

At the C&P exam the CI reported history including non-traumatic back pain onset with worsening carrying “packs, IED damage, running, and chronic wear and tear,” and that he wore a back brace and had chiropractic care. Reflexes, motor and sensory exams were normal and the exam is summarized above. At the VA exam performed on 29 July 2008, the CI complained of decreased motion, stiffness, weakness, spasm and pain as well as flares. The CI used a cane periodically and the examiner noted abnormal wear on the outer heel edge of the CI’s shoes. Onset of pain was noted at one degree of extension.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the back condition analogously to 5242 (Degenerative arthritis of the spine) at 0%, however, the PEB disability description and NARSUM exam indicated ROM “limited by pain.” The VA coded the back condition 5003-5237 analogous to arthritis and lumbosacral strain at 20%. The Board considered the NARSUM MEB examination had the highest probative value for rating at separation. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the lower back 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 the bilateral shoulder conditions and likely application of AR 635-40 for rating the back condition was operant in this case and the conditions were adjudicated independently of that policy and instruction by the Board. In the matter of the bilateral shoulder pain with subluxation condition, the Board by a vote of 2:1 recommends that it be rated for two separate unfitting conditions as follows: Right shoulder coded 5099-5003 and rated 10% and left shoulder coded 5099-5003 and rated 10%; both IAW VASRD §4.71a., with the right shoulder scars as not unfitting or separately ratable. The single voter for dissent (who recommended the left shoulder be found not unfitting) did not elect to submit a minority opinion. In the matter of the lumbar DDD condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5242 IAW VASRD §4.71a. 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Right Shoulder Pain with Subluxation | | 5099-5003 | 10% |
| Left Shoulder Pain with Instability | | 5099-5003 | 10% |
| Lumbar Degenerative Disc Disease | | 5299-5242 | 10% |
| **COMBINED (w/ BLF)** | | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120227, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXX, AR20120020006 (PD201200207)

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 30% 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 30% 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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA