RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200212 SEPARATION DATE: 20060330

BOARD DATE: 20120816

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard (Active Guard and Reserve) SSG/E-6 (92Y, Unit Supply Specialist), medically separated for a left shoulder condition and a low back condition. He did not respond adequately to surgical treatment for his shoulder or conservative for his low back condition and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent U3/L2/H2 profile and referred for a Medical Evaluation Board (MEB). Chronic left shoulder pain status post reconstructive surgery, chronic low back pain (LBP) Secondary to degenerative disc disease (DDD) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Chronic low back pain with subjective complaint of left lower extremity radiculopathy and two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the left shoulder condition and the low back condition as unfitting, rated 20% and 0% respectively, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “I received a zero percent disability for my lower back injury. This injury was clearly chronic and ongoing from time of injury to discharge. My medical records will show repeated visits to medical facilities to try to get treatment for it. In the interest of my career I finally had to just learn to live with constant pain. This injury played an integral role in my ability to wear a full combat load (body armor, ammo, assault pack, etc). It is my opinion that an injury as chronic as mine has been should have been considered a major factor in my ability to perform my duties as a soldier. I was declared unfit to continue service because of my inability to carry a fighting load in combat. Medical documentation and common knowledge of how a lower back: injury affects a human’s ability to carry extra weight should have warranted a higher disability rating than zero. Had the PES board rated this injury more appropriately to reflect my physical limitations, I would have received medical retirement versus a medical separation.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” 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 (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060131** | **VA – All Effective Date 20060331** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Shoulder Pain S/P Reconstructive Surgery | 5099-5003 | 20% | Residuals of Left Shoulder Injuries, S/P Reconstructive Surgery | 5299-5203 | 10% | STR |
| Chronic Low Back Pain | 5099-5003 | 0% | Low Back Disc Disease | 5243 | 0%\* | STR |
| PPD Converter | Not Unfitting | No VA Entry |
| High Frequency Hearing Loss | Not Unfitting | Hearing Loss Bilateral | 6100 | 0% | STR |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | STR |
| 0% X 1 | STR |
| **Combined: 20%** | **Combined: 20%** |

\*VARD 20080721 increased to 10% effective 20071113

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. It is a fact, however, that the Military 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 Board utilizes DVA evidence proximal to separation in arriving at its recommendations. 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. It is noted for the record that the Board recognizes in remaining in compliance with the DoDI, the provisions DoD or military department regulations or guidelines relied upon by the PEB will not be considered by the Board and the 'combined' rating may not be a reduction of the disability rating previously assigned, as it considered the evidence for each condition in this case.

Left Shoulder Condition. The CI suffered a non-dominant left acromioclavicular (AC) shoulder separation in September 2003 after landing on it playing football. He exhausted conservative treatment and elected to have definitive operative care eight months later. This was successful and he mobilized to deploy to Southwest Asia in April 2005. In August 2005, while deployed to Afghanistan, he suffered another left shoulder injury while unloading equipment off the back of a truck which jerked his shoulder and caused immediate pain. He was medically evacuated back to the CONUS a month later for further evaluation and treatment. The orthopedic surgeon deemed him a non-surgical candidate and documented relatively good range-of-motion (ROM) with pain and crepitus. He underwent a steroid injection of the joint. The surgeon opined he should no longer engage in heavy lifting and should not do some of the basic soldiering activities and recommended an MEB. His limitations included; unable to do basic soldiering activities, wear a flack vest, move with a fighting load two miles and be deployed to a combat zone. He could do all the aerobic conditioning exercises at his own pace and distance.

There was one goniometric 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.

|  |  |
| --- | --- |
| Left Shoulder ROM | MEB ~4 Mo. Pre-Sep |
| Flexion (0-180⁰) | 130⁰ |
| Abduction (0-180⁰) | 135⁰ |
| Comments | Non-dominant shoulder; cannot reach overhead or lift with Left Arm, painful motion |
| §4.71a Rating | 10%\* |

\*Conceding §4.59 (painful motion)

At the MEB exam, the CI reported taking Tylenol III as needed for pain. The MEB physical exam demonstrated normal posture with normal bulk and tone of the left shoulder, tenderness to palpation at the AC joint, marked crepitus when taking the shoulder through range of motion exercises and an 8 cm left shoulder surgical scar. X-rays of the joint revealed normal appearing right AC joint, postoperative changes in the left with widening of the joint space and the distal end of the left clavicle had been surgically resected. The CI failed to report for the VA Compensation and Pension (C&P) exam on 15 May 2006, 2 months after separation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition and rated IAW §4.71a— Schedule of ratings–musculoskeletal system disorders which had significant implications on the rating for the Board to consider. The PEB coded analogous to 5003 (arthritis, degenerative) and assigned a 20% for but inconsistent with VASRD §4.71a. The VA coded analogous to 5203 (Clavicle or scapula, impairment of) specific to the underlying clinical pathology and assigned a 10% based on malunion or nonunion of the clavicle. The Board considered the 20% criteria of this code, (dislocation of the clavicle or scapula, or nonunion of the clavicle or scapula with loose movement) and the 20% for 5201 code (arm, limitation motion of) when the motion is limited to the shoulder level or 90 degrees. The Board agreed the evidence did not show dislocation or nonunion with loose movement and the arm did not have limited motion of 90 degrees or less. There was no clinical and/or radiologic evidence in the examinations completed proximate to separation that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, nonunion or dislocation of the scapula, or recurrent dislocations of the humerus that would have justified any code with higher rating potential. 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 left shoulder condition.

Low Back Condition. The CI began having low back pain since 1999 while doing some sit-ups during physical training and had recurrent pain ever since. He had not been pain-free over the past 6 years. He described good and bad days reporting multiple emergency room visits. Occasionally the pain was accompanied with whole leg numbness which required occasional use of crutches to ambulate.

There was one inclinometric 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.

|  |  |
| --- | --- |
| Thoracolumbar ROM | VA PT for MEB 3 Mo. Pre-Sep |
| Flexion (90⁰ Normal) | >90⁰ |
| Ext (0-30) | 20⁰ |
| R Lat Flex (0-30) | >30⁰ |
| L Lat Flex 0-30) | >30⁰ |
| R Rotation (0-30) | >30⁰ |
| L Rotation (0-30) | >30⁰ |
| Combined (240⁰) | >240⁰ |
| Comment | Painful motion |
| §4.71a Rating | 10%\* |

\*Conceding §4.59 painful motion

The MEB physical exam demonstrated no significant focal tenderness, negative seated straight

leg raise bilaterally, normal gait and station, normal upper and lower extremity muscle tone, no evidence of atrophy or vesiculation, and a normal neurological findings. A magnetic resonance imaging study (MRI) in 2001 showed disc degeneration at L4-5 and L5-S1. The lower extremity electromyogram (EMG), (November 2005) revealed a radiculopathy in the S1 nerve root which later was reported as normal after having improvement of his leg symptoms. The CI failed to report for the VA C&P exam of 15 May 2006, but there was evidence 26 months later which was after the 12 month specified interval under the DoDI 6040.44 under which the Board operates. This does not mean that the VA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition and rated IAW §4.71a under general rating formula for diseases and injuries of the spine and this did not bear on rating. The PEB coded analogous to 5003 (arthritis, degenerative) and assigned a 0% rating based on chronic low back pain without neurologic abnormality with a combined thoracolumbar ROM greater than 240 degrees which was inconsistent with the VASRD §4.71a. The VA coded 5243 (Intervertebral disc syndrome) and assigned a 0% rating for based on the PEB’s decision. Neither the PEB nor the VA considered application of VASRD §4.59 despite the painful ROM exam which allows for a minimum of 10%. The VA exam 26 months later demonstrated normal painful ROM which still meets a 10% minimum. Neither the PEB nor the VA had evidence which suggested functional loss due to pain or flare-ups which would provide for additional or higher rating. There was no evidence of documentation of incapacitating episodes which would provide for additional or higher rating under either the 5003 or 5243 codes. There was no evidence of ratable peripheral nerve impairment at the time of separation which would provide for additional or higher rating. 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 low 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. As discussed above, PEB reliance on the USAPDA pain policy for rating left shoulder condition and the low back condition was operant in this case and these conditions were adjudicated independently of that policy by the Board. In the matter of the left shoulder condition, the Board unanimously recommends a disability rating of 10%, coded 5203 IAW VASRD §4.71a. In the matter of the low back condition, the Board unanimously recommends a disability rating of 10%, coded 5243 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, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Shoulder Pain S/P Reconstructive Surgery | 5299-5203 | 10% |
| Chronic Low Back Pain | 5243 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120229, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015488 (PD201200212)

1. 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 to modify the individual’s disability description without modification of the combined rating or 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 XXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA