RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200238 SEPARATION DATE: 20021207

BOARD DATE: 20121003

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/O-2 (13A/Field Artillery), medically separated for recurrent left shoulder dislocation. An injury in 1998 while at West Point led to instability that required two surgeries. He did not respond adequately to operative and rehabilitative treatment 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 recurrent left shoulder dislocations and left ulnar nerve neuropathy to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the recurrent dislocation of left (minor) shoulder condition as unfitting, rated 20% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The left ulnar neuropathy was determined to be an associated condition, but was not further categorized. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “My military discharge did not rate a service connected disability which I identified when I submitted my MEB paperwork. An additional 10% disability rating was granted by the VA for my left ulnar nerve neuropathy but was not rated by the Army.”

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 ulnar neuropathy condition requested for consideration and the unfitting recurrent left shoulder dislocation condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. 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 20020918** | | | **VA (5 Mo. Before Separation) – All Effective Date 20021208** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Recurrent Lt. Shoulder Dislocation | 5202 | 20% | Recurrent Left Shoulder Dislocation | 5202 | 20% | 20020626 |
| Ulnar Neuropathy | Associated | | Ulnar Neuropathy, Left Hand | 8616 | 10% | 20020626 |
| ↓No Additional MEB/PEB Entries↓ | | | Not Service Connected x 1 | | | 20020626 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. 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 (DVA), 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.

Left Shoulder Condition. The first non-dominant left shoulder dislocation occurred while lifting weights. Recurrent dislocations required an open inferior capsular shift procedure, which was performed on 2 November 1999. Instability recurred a year later, necessitating a second surgery (arthroscopic electrothermal capsular shrinkage, posterior labrum debridement) performed on 29 March 2001. Shoulder dislocations began again 2 months post-operatively. The CI also experienced symptoms suggestive of left ulnar neuropathy, which was manifested by numbness of the left ring and little fingers. This was initially intermittent, but became more constant over time. 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.

|  |  |  |
| --- | --- | --- |
| Left Shoulder ROM | VA C&P ~5.5 Mo. Pre-Sep | NARSUM ~5 Mo. Pre-Sep |
| Flexion (0-180⁰) | 112⁰ | 150⁰ |
| Abduction (0-180⁰) | 99⁰ | 150⁰ |
| Comments | Frequent dislocation | Recurrent dislocation; tenderness |
| §4.71a Rating | 20% | 20% |

At the VA Compensation and Pension (C&P) exam performed 5 1/2 months prior to separation, the CI reported that the shoulder dislocated easily and frequently since May 2001. He experienced constant pain and difficulty reaching for things. He also reported numbness of the left fourth and fifth fingers. Examination revealed no tenderness of the shoulder and diminished sensation of the left fourth and fifth fingers. Shoulder X-ray showed a subtle Hill-Sachs lesion (damage to the head of the humerus, a consequence of dislocation). The narrative summary (NARSUM) examiner 5 months prior to separation reported that the CI experienced problems sleeping due to severe pain in his left shoulder. Numbness and tingling along the left ring and small fingers was also reported. Examination revealed positive apprehension/relocation and load shift tests of the shoulder (indicators of instability). Motor strength was intact, but decreased sensation of the ring and small fingers was noted. Magnetic resonance imaging (MRI) showed a patulous anterior capsule with an atrophic anterior labrum. The symptoms of ulnar neuropathy were formally evaluated five and one-half months prior to separation. The examiner noted that symptoms began after the second surgery. An examination revealed normal strength and deep tendon reflexes. Electrodiagnostic studies of the left upper extremity were negative for ulnar neuropathy or for radiculopathy.

The Board directs attention to its rating recommendation based on the above evidence. The unfitting shoulder condition was designated as existing prior to service (EPTS) by the PEB, but no deduction was applied. The VASRD §4.71a threshold for compensable ROM impairment is “shoulder level”, i.e., 90 degrees, and the examinations demonstrated motion above this level. The PEB and VA appropriately assigned a 20% rating under the VASRD 5202 code (humerus, other impairment of: recurrent dislocation of at scapulohumeral joint). The Board agreed that there was no avenue to a higher rating under the 5201, 5203 or 5304 codes. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left shoulder condition. The Board also considered if additional disability was justified for symptoms of left ulnar neuropathy, which the PEB characterized as an associated condition. The CI only complained of numbness of the fourth and fifth fingers. The Board considered that there was no complaint of weakness, no examination evidence of diminished strength and normal electrodiagnostic studies. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability rating was not justified on this basis. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of ulnar neuropathy as an unfitting condition for separation rating.

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 recurrent left shoulder dislocation condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended ulnar neuropathy condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Recurrent Left Shoulder Dislocation | 5202 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120228, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXXXX

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 XXXXXXXXXXXXXXXXXXX, AR20120019332 (PD201200238)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA