

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200574
BOARD DATE: 20130307

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020915

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (2146/Main Battle Tank Mechanic), who was medically separated for a left shoulder labral tear condition. The CI injured his left shoulder while lifting a heavy object. After conservative treatment, the CI's left shoulder labral tear condition could not be adequately rehabilitated to meet the physical requirements of his MOS. He was consequently placed on limited duty for his left shoulder condition and referred for a Medical Evaluation Board (MEB). A left upper extremity radial nerve palsy (resolving) condition was identified by the MEB and also forwarded for consideration by the Physical Evaluation Board (PEB). The PEB adjudicated the left shoulder labral tear condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI's left upper extremity radial nerve palsy condition was determined to be Category III: conditions that are not separately unfitting and do not contribute to the unfitting condition. The CI made no appeals, and was medically separated with a combined 10% permanent disability.

CI CONTENTION: "The original discharge only dealt with the direct effects of the single shoulder injury that could not be treated. The discharge did not take into account my entire medical record. My medical record contains diagnosis for 5 separate [sic] issues that all occurred during my service. Left shoulder injury, left radial nerve palsy, left and right knee injuries and contracting mononucleosis. These all resulted in a VA disability rating of 60%."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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 conditions "identified but not determined to be unfitting by the PEB." The rating for the CI's unfitting left shoulder labral tear condition is addressed below. The requested left upper extremity radial nerve palsy condition which was determined to be not unfitting by the PEB, is likewise addressed below. The CI's remaining contended conditions of bilateral knee injuries and mononucleosis were not addressed by the PEB and therefore are not within the purview of the board. 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 Board for Correction of Naval Records.

RATING COMPARISON:

Service IPEB – Dated 20020711			VA (1 Mo. Pre-Separation) – Effective 20020916			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Shoulder Labral Tear	5299-5003	10%	Left Shoulder Sprain with Residuals, Status Post Labral Tear	5299-5201	20%	20020822
Left Upper Extremity Radial Nerve Palsy. Resolving	Not Unfitting		Left Wrist Radial Nerve Palsy	8599-8514	20%	20020822
↓No Additional MEB/PEB Entries↓			Right Knee Patellofemoral Pain Syndrome	5299-5260	10%	20020822
			Left Knee Patellofemoral Pain Syndrome	5299-5260	10%	20020822
			Mononucleosis	6399-6354	10%	20080822
			Right Shoulder Condition Not Service Connected x 1			20020822
Combined: 10%			Combined: 60%			

ANALYSIS SUMMARY:

Left Shoulder Labral Tear Condition. The CI is right hand dominate. The CI sustained a lifting injury in December 1999. The condition was suspected by a magnetic resonance imaging (MRI) exam on 27 February 2001. Orthopedic evaluation 4 Apr 2001 cited “Type I (Superior Labral Tear from Anterior to Posterior) SLAP, if patient not improving possible A-scope debridement.” By 16 January 2002, and MRI diagnosed the condition as “Anterior-inferior labral tear noted.” The CI’s treatment consisted of physical therapy, which made his symptoms worse. Orthopedic surgery consultants did not recommend injection or surgical treatment. On 15 April 2002, a medical board statement of patient findings cited limitations of “no running, push-ups, pull-ups, or lifting greater than 15 pounds with the left upper extremity.” The commander’s non-medical assessment (NMA) May 2002, noted “In my opinion (the CI) suffers from a shoulder injury prohibits him from performing all aspects of his MOS.” The range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Left Shoulder ROM (In degrees)	MEB ~5 Months Pre-Separation	VA C&P ~1 Month Pre-Separation
Flexion (0-180)	170	180
Abduction (0-180)	160	180
Comments	Stable; negative apprehension, relocation, Jobe test, slide and biceps provocation tests (see text)	Pain with motion; tenderness; trace crepitus, intermittent popping; mild laxity (see text)
§4.71a Rating	10%* (PEB 10%)	10%-20% (VA 20%)

* Conceding painful motion

The orthopedic surgeon who did the narrative summary (NARSUM) 5 months prior to separation noted “he has had recurrent anterior as well as posterior left shoulder pain” and “Currently, the patient is unable to run any significant distance without left shoulder pain and muscle spasm.” In addition to the above ROM, the orthopedist found “The shoulders are stable and a negative apprehension test is seen bilaterally, as well as a negative relocation test. In addition, the Jobe test, slide, and biceps provocation tests are negative. Both upper extremities are neurovascularly intact to motor and sensory testing.” The examiner stated “The patient is unable to run any significant distance without left shoulder pain and muscle spasm.” At the VA Compensation and Pension (C&P) exam a month prior to separation, the examiner noted the CI “states he is unable to rotate his shoulder because of popping and pain. He has difficulty lifting/carrying and moving his shoulder.” The VA exam is summarized above and the examiner stated “There is some intermittent popping sensation of the shoulder and some mild laxity of

the ligaments in the left shoulder. ROM of the left shoulder is limited by pain, fatigue and weakness.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded analogously to 5299-5003 for arthritis and rated it for painful motion at 10%. The Board noted the VA coded analogously for 5299-5201, arm, limitation of, and assigned a minor side (non-dominant side) rating of 20%. The Board noted the more proximate timing of the VA C&P exam and the disability rating importance of the examiner’s finding of “Range of motion of the left shoulder is limited by pain, fatigue and weakness.” However, the exam did not specify that arm motion was limited by any specific value, or functionally limited to the “at shoulder level” to support a 20% rating under code 5201 criteria. The Board considered analogous muscle coding IAW VASRD §4.73, to reflect the functional loss cited by the VA examiner, such as 5303 (Group III) or 5304 (Group IV) which involve the shoulder functions. The Board adjudged that the disability picture did not reasonably support rating at the “moderate” (20%) level. Given the consistently near-normal and normal ROM findings of both the C&P and MEB exams the Board majority adjudged that the PEB rating of 10% most accurately represented the CI’s disability under code 5299-5003 for a non-dominant shoulder. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.40 (functional loss), the Board majority concluded that there was insufficient cause to recommend a change in the PEB adjudication of the left shoulder labral tear condition.

Left Upper Extremity Radial Nerve Palsy, Resolving Condition. The Board’s main charge with respect to this condition is an assessment of the fairness of the PEB’s determination that it was not unfitting. 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 left upper extremity radial nerve palsy condition (hand and wrist symptoms) was part of the CI’s limited duty profile but was not specifically implicated in the commanding officer’s NMA. Although the condition was forwarded by the MEB, the service treatment record (STR) shows the member had normal nerve conduction and electromyogram studies, and the condition had been splinted and was improving. The SF 88 physical, 4 months prior to separation (a month after the MEB) noted left arm flexion of 4/5 (decreased strength) and rapid alternating movements (RAMs) as inefficient. The prior to separation VA exam indicated mild to moderate findings of decreased fine motor coordination in the left hand with 4/5 muscle weakness, decreased sensations along the lateral aspect of the left hand involving the first and second fingers. The left radial nerve palsy was reviewed by the action officer and considered by the Board. There may have been overlap between the disability picture of the shoulder labral tear and the symptoms of the radial nerve palsy (wrist and hand symptoms). However, the CI was right-handed and there was no clear performance based evidence from the record that the left upper extremity radial nerve palsy condition 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 left upper extremity radial nerve palsy condition thus no additional disability rating 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 labral tear condition and IAW VASRD §4.71a, and by a vote of 2:1, the Board recommends no change in the PEB adjudication. The single voter for dissent who recommended 20% under code 5299-5201 did not elect to submit a minority opinion. In the matter of the left upper extremity radial nerve palsy, resolving

condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Left Shoulder Labral Tear Condition	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120513, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

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Acting Director
Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW
BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) CORB Ltr dtd 22 Mar 13

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individual's records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy's Physical Evaluation Board:

- former USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC
- former USMC

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Assistant General Counsel
(Manpower & Reserve Affairs)