

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200666
BOARD DATE: 20130131

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070104

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Guard Reserve (AGR) of the National Guard SGT/E-5 (88M/Truck Driver), medically separated for a cervical spine and right shoulder conditions (chronic neck pain status post C5-7 fusion and chronic right shoulder pain status post AC separation). The CI did not improve adequately with conservative treatment for right shoulder condition or surgical treatment and post-rehabilitative treatment for the cervical spine condition and was unable to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent U3, H2, S3 profile and referred for a Medical Evaluation Board (MEB). Posttraumatic stress disorder (PTSD) and hearing loss with tinnitus conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the cervical spine and right shoulder conditions as unfitting, rated 10% and 10%, respectively with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining MEB conditions were determined to be not separately unfitting and not rated. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 ratings for unfitting conditions will be reviewed in all cases. The remaining conditions; PTSD, tinnitus and bilateral hearing loss and any combat relation to his injuries 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:

Service PEB – Dated 20061101			VA (2 Mos. Post-Separation) – All Effective Date 20070105			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain	5241	10%	Cervical Fusion C5-6-7 w/Hardware	5241	10%*	20070306
Chronic R/Shoulder Pain S/P AC Separation	5099-5003	10%	DJD R/Acromioclavicular Joint w/Fractured Clavicle	5201	20%	20070306
PTSD	Not Unfitting		PTSD	9411	50%	20070306
Hearing Loss/Tinnitus	Not Unfitting		Tinnitus	6260	10%	20070306
			Bilateral Hearing Loss	6100	0%	20070306
↓ No Additional MEB/PEB Entries ↓			0% X # / Not Service-Connected x #			
Combined: 20%			Combined: 70%			

*increased to 20% based on 20071019 exam effective 20070815

ANALYSIS SUMMARY: The Board utilizes Department of Veterans Affairs (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 Disability Evaluation System (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 Department of Veteran Affairs 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.

Cervical Spine Condition. The CI sustained a fall from a 5 ton truck in Iraq in June 2004 and injured his neck and right shoulder. He was medevac'd 6 months later due to worsening neck pain with radicular symptoms in his right arm to include his index and middle fingers which prevented him from performing his duties in theater. He was initially was treated with epidural steroid injections for a magnetic resonance imaging (MRI) confirmed multilevel cervical herniated disc disease (HNP) with a normal electromyogram (EMG). His symptoms persisted and he opted for surgery with a cervical discectomy and fusion in January 2006. He reported improvement of his radicular symptoms but still had persistent pain which prevented him from running or wearing Kevlar. The permanent profile limitations included; no lifting greater than 30 pounds, unable to move with a fighting load, construct an individual fighting position, or do 3-5 second rushes, allowed to walk for an alternate fitness test and walk at own pace and distance. The commander statement corroborated his limitations and documented he was not able to perform his duties as an 88M or his secondary MOS 63B (Light Wheel Mechanic). There were three 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.

Cervical ROM	MEB ~4 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep	VA C&P ~7 Mo. Post-Sep
Flex (45° Normal)	40°	45°	25°
Ext (0-45°)	45°	35°	35°
R Lat Flex (0-45°)	25°	25°	30°
L Lat Flex (0-45°)	25°	25°	35°
R Rotation (0-80°)	50°	65°	50°
L Rotation (0-80°)	50°	70°	60°
COMBINED (340°)	235°	265°	225°
Comment		+ Tenderness; painful motion	
§4.71a Rating	10%	10%	20%

The MEB physical exam demonstrated cervical tenderness with normal upper extremity deep tendon reflexes (DTR), motor and sensory exams. A cervical MRI revealed anterior fusion of C5-C7 and moderate left foraminal stenosis at C5-C6 and C6-C7. At the VA Compensation and Pension (C&P) exam after separation, the CI reported decreased mobility, problems with lifting and carrying, and lack of stamina, weakness or fatigue. The C&P exam demonstrated normal posture, cervical spine fusion limited extension, normal neuromuscular findings and no Deluca observations. X-rays revealed fusion with spacers C5-6-7.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB exam and VA exam, 2 months after separation, were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA applied the same VASRD code and assigned a 10% rating for limitation of motion as both combined ROM exams meet this rating criteria which is consistent with §4.71a. While the VA exam performed 7 months after separation is within the DoDI 6040.44 12-month interval the Board acknowledges it is less probative due to its remoteness from separation however,

further notes the combine ROM also meets the 10% rating criteria which is very similar to the MEB combined ROM. The Board considered whether additional rating could be recommended under a peripheral nerve code for the residual radicular pain. Firm Board precedent requires a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating to disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. Any sensory component has no functional implications; and there is no motor weakness in evidence. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. 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 cervical spine condition.

Right Shoulder Condition. The CI suffered a right acromioclavicular separation during the same fall which was treated conservatively. At the time of the MEB he was evaluated by orthopedics and reported pain with overhead, pushing or pulling activity and no pain at rest and that he had a Grade II shoulder separation. He also reported not taking medication but did need narcotic medication when his pain flared up and further reported most of his limitations were due to his neck pain. He had no limitations with activities of daily living due to his shoulder but was unable to lift over 30 pounds or perform his MOS duties. Orthopedics opined that possible distal clavicle resection may help his pain but deferred the procedure as the CI was already in the MEB process.

Right Shoulder ROM	MEB ~6 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (0-180°)	160°	130°
Abduction (0-180°)	160°	120°
Comments	Pain on extremes of motion	Painful motion, Loss of 5-10 degrees With Deluca observations
§4.71a Rating	10%*	20%**

*Conceding §4.59 (painful motion)

**with Deluca

The MEB physical exam demonstrated a tender acromioclavicular joint with palpable lump. X-rays revealed degenerative acromioclavicular joint with no residual separation noted. At the C&P exam after separation, the CI reported decreased manual dexterity, problems with lifting and carrying, difficulty reaching, decreased strength of the upper extremity and no flare-ups. The C&P exam demonstrated additional 5-10 degrees loss of all ROM planes after 5 repetitions of movement for Deluca observations. The evidence reflected active extension to 130 degrees and the action officer opined this likely was mislabeled and should be flexion, as a normal ROM for extension of the shoulder is 40-60 degrees. X-rays revealed degenerative joint disease (DJD) of AC joint with bone callus suggestive of old fracture distal clavicle.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement) however there is clear disparity with the active ROM (AROM) data with very significant implications regarding the Board's rating recommendation. The Board thus carefully deliberated its probative value assignment to these conflicting evaluations. The ROM values reported by the VA examiner, 2 months after separation, are significantly worse than those reported by the MEB dated 6 months before separation. There is not a reasonable accounting for progressively impaired AROM in the fairly short interval between the MEB and VA examinations. There were no other AROM exams 12 months prior to separation however there were passive ROM (PROM) values in the VA exam

which were similar to the MEB exam, flexion of 145 degrees and abduction of 160 degrees. These PROM are more consistent with the additional evidence in the case. Therefore, based on all evidence and associated conclusions just elaborated, the Board is assigning more probative value to the MEB evaluation. The PEB and VA chose different coding options for the condition which had also significant implications on the rating for the Board to consider. The PEB's DA Form 199 reflected application of the USAPDA pain policy for rating, and its 10% determination coded analogous to the 5003 code (arthritis, degenerative) is consistent with §4.71a standards. The Board agreed there is no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. The VA assigned a rating of 20% coded 5201 (Arm, limitation of motion of) for arm being limited at the shoulder level with Deluca criteria. The Board considered VASRD code 5203 (Clavicle or scapula, impairment of) for its clinical specificity however agreed the evidence does not support the 20% higher ratings for either dislocation or nonunion with loose movement. 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 right shoulder 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 cervical spine and right shoulder condition was operant in this case and the conditions were adjudicated independently of that policy by the Board. In the matter of the cervical spine and right shoulder conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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
Chronic Neck Pain	5241	10%
Chronic R/Shoulder Pain S/P AC Separation	5099-5003	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120607, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXXX, DAF
 Acting Director
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130003122 (PD201200666)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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

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Deputy Assistant Secretary
(Army Review Boards)