

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200873
BOARD DATE: 20130122

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (77F/Petroleum Supply Specialist), medically separated for left shoulder impingement syndrome. CI suffered a fall to the right upper extremity in October of 2000, suffering from residual loss of motion in left elbow and impingement signs at the left shoulder. The left shoulder impingement syndrome condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Left elbow flexion contracture without pain condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the left shoulder impingement syndrome condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD) and cited application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "They should have been increased due to the severity."

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 unfitting condition of left shoulder impingement syndrome and the not unfitting condition of left elbow flexion contracture without pain as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are 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 20011206				VA (STRs) – All Effective Date 20020116			
Condition	Code	Rating	Condition	Code	Rating	Exam	
Left Shoulder Impingement Syndrome	5299-5003	10%	Impingement of the Left Shoulder	5299-5203	*10%	STR	
Left Elbow Flexion Contracture ...	Not Unfitting		Left Elbow Contracture with Traumatic Arthritis	5010-5213	0%	STR	
					*10%		
			Left Ulnar Nerve Impairment Associated with Left Elbow Contracture with Traumatic Arthritis	8516	10%	STR	
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 1			STR	

Combined: 10%

Combined: 20%

*Per VARD dated 20070612 ratings changed from 10% to 20% for code 5299-5203. Code 5010-5213 changed 0% to 10% effective 20020116 and then inc. to 20% and Left ulnar nerve impairment added@10%, effective 22 Dec 2005 for combined 40%. 20090610 VARD inc. 5010-5213 to 50% (unfavorable ankylosis -5205) and 8516 inc. to 20% eff.11/3/2006.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate 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 Veteran Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board utilizes 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 6044.40, 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.

Left Shoulder Impingement Syndrome Condition. At the MEB exam, the CI reported pain in the left shoulder. The MEB physical exam noted the CI was right hand dominant. There was tenderness to palpation of the anterior shoulder joint, but not the acromioclavicular joint. There were signs of impingement. There was no joint laxity or dislocation. The left shoulder goniometric range-of-motion (ROM) evaluation demonstrated flexion to 170 degrees (normal 180 degrees) and abduction to 170 degrees (normal 180 degrees) with symmetric internal rotation and decreased external rotation of 30 degrees (opposite side 50 degrees). Magnetic resonance imaging was consistent with impingement syndrome. Treatment notes indicated painful motion. At the first VA Compensation and Pension (C&P) exam, about 12 months after separation, the left shoulder condition was not addressed. The next VA exam that addressed the left shoulder was in 2006, over 4 years post-separation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the left shoulder condition 5299-5003 rated at 10% based on the USAPDA pain policy rated as slight/constant. The VA coded the left shoulder condition as 5299-5203 (as analogous to clavicle or scapula impairment) rated at 10% based on the service treatment records. Coding IAW VASRD rules only and applying VASRD §4.59 (Painful motion), also would result in a 10% rating for the shoulder condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB's 10% adjudication for the left shoulder impingement syndrome.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was left elbow flexion contracture without pain. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The MEB indicated the CI underwent left elbow surgery 7 months prior to separation. At the MEB exam, the examiner stated the CI had "... a flexion contracture at the left elbow, which is non painful and non functionally limiting." ROM was 30 degrees-130 degrees indicating inability to straighten out

the elbow (lacking 30 degrees of a straightened arm at 0 degrees). The examiner's recommendations stated "This patient is severely limited and is unable to perform basic soldierly duties and is medically unacceptable This applies to both the left elbow and left shoulder. Therefore, the case is referred to the Physical Evaluation Board for disposition." The left elbow condition was profiled along with the left shoulder which listed the profiled medical condition as "left shoulder impingement and pain, left elbow flexion contracture." The commander did not specify duty limitations to either specific condition (elbow or shoulder).

At the VA C&P exam conducted about 12 months after separation, the CI reported decreased ROM, constant pain, and weakness in his left elbow. The exam noted the elbow ROMs "flexion 130°, lacks 40° of full extension" pronation was 90° (normal 80°) and supination was 80° (normal 85°)". The examiner stated "Pain starts with any flexion or extension. No pain with pronation or supination." Normal sensation and muscle strength were noted. X-ray of the left elbow showed moderate arthritis of the left elbow. The diagnosis was post traumatic left elbow arthritis.

The Board directs attention to its recommendation based on the above evidence. The MEB adjudged the left elbow condition did not meet retention standards. The PEB adjudged the elbow condition was not unfitting. The VA post-separation exam (12 months after separation) indicated similar ROMs, but with pain. Service treatment notes about 4 to 6 months prior to separation indicate that the CI was unhappy with the outcome of his elbow surgery, was taking prescription pain medications and wearing a brace for the elbow, with pain and weakness in the preponderance of the notes. Although the exam portion of the narrative summary specified painless flexion contracture with no functional limitation, the recommendation section indication severe impact to duty performance was attributable to the shoulder and elbow together. There was no justifiable separation of profile limitation to either the shoulder or elbow alone as they overlapped. The CI demonstrated lack of flexion, lack of extension of the elbow.

After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the left elbow condition favors its recommendation as an additionally unfitting condition for disability rating. The Board majority agreed that given the limitation of flexion, extension, and multiple treatment notes indicating painful motion (IAW §4.59), the elbow is appropriately coded 5010-5207 (trauma with forearm, limitation of extension) and meets the VASRD §4.71a criteria for a 10% 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the left shoulder condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended left elbow condition, the Board unanimously agrees that it was unfitting; and by a vote of 2:1 recommends a disability rating of 10%, coded 5010-5207 IAW VASRD §4.71a. The dissenting voter (who recommended a 0% rating under code 5003) did not elect to submit a minority opinion. 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
Left Shoulder Impingement Syndrome	5299-5003	10%
Left Elbow Flexion Contracture	5010-5207	10%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120606, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXX, AR20130002545 (PD201200873)

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 rating to 20% without 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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)