

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1201580
BOARD DATE: 20130212

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20031130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (2831, AN/TRC-170 Radio Terminal Repairer) medically separated for persistent left shoulder pain. In January 2001, the CI injured his left shoulder while playing football. He was treated, but was unable to fully perform his military duties or meet physical fitness standards. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB found his painful left shoulder condition medically unacceptable, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on the NAVMED 6100/1. The PEB found the left shoulder condition unfitting, and rated it 10% IAW the Veterans' Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "The condition which rendered me unfit for service has had far reaching effects on my life, both prior to my discharge and thereafter. I have always had greater dexterity with my right side, however I have always been strongest and use my left side for any manual labor. My condition, which limits my use of my left arm has also caused undue stress on my right arm and shoulder. This compensation has been the cause of damage to my right shoulder that likely would not have occurred if proper use of my left arm were still possible. Following two operations to repair a posterior labral tear, my ability to do almost any manual labor is significantly reduced, creating greater long-term ramifications than originally were presented to me in the lead up to and during my PEB board."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 unfitting shoulder condition ("Persistent left shoulder pain, status post arthroscopic subacromial decompression and open distal clavicle excision") meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Board for Correction of Naval Records.

RATING COMPARISON:

Navy PEB – dated 20030925			VA (~5 mos. Post-Separation) – All Effective 20031201			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Shoulder Pain	5299-5003	10%	Left Shoulder Pain	5010-5203	10%	20040421
			Left Shoulder Scars	7802	0%	20040421
			Bilateral Tinnitus	6260	10%	20040428
			Not Service Connected x 8			20040421
↓No Additional MEB/PEB Entries↓						
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his shoulder condition continues to burden him, and the significant impact it has had on his quality of life. It is noted for the record that the Board is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate the CI for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. Compensation can only be granted for the degree of severity present at separation. The DVA, however, is empowered to re-evaluate a CI's conditions for the purpose of adjusting the disability rating should the degree of impairment change over time.

Persistent Left Shoulder Pain. In January 2001, this Marine fell and injured his left shoulder while playing football. Several different treatment options were tried, including surgery. However, in spite of treatment, his left shoulder pain persisted and an MEB was initiated. His MEB clinical evaluation was in June 2003. At that time he reported global left shoulder pain, worse with heavy lifting or prolonged exertion. Physical examination of the left shoulder revealed a well healed surgical incision, and mild elevation of the distal clavicle. There was no tenderness to palpation (TTP) at the resected acromio-clavicular (AC) joint. Motor strength of the left shoulder girdle was mildly decreased (4 out of 5). Distally, motor strength in the left arm and hand was normal (5 out of 5). Range-of-motion (ROM) of the left shoulder was assessed by physical therapy (PT) as normal. As noted above, the CI was medically separated from the Marine Corps on 30 November 2003, due to persistent left shoulder pain status post (s/p) arthroscopic subacromial decompression and open distal clavicle excision.

Five months after separation from service, he had a VA Compensation and Pension (C&P) exam. The CI reported pain in the left shoulder, but no loss of use. There was marked AC crepitus of the left shoulder, and slight AC crepitus on the right. Both shoulders had normal ROM. The neurovascular exam of the left upper extremity was normal. There was no limitation of motion due to pain, weakness, incoordination, or fatigue. The two ROM evaluations which the Board weighed in arriving at its rating recommendation, are summarized in the chart below.

Left Shoulder ROM	PT ~ 5 mos. Pre-Sep (20030624)	VA C&P ~ 5 mos. Post-Sep (20040421)
Flexion (180° is normal)	normal	180°
Abduction (180° is normal)	normal	180°
§4.71a Rating	10%*	10%*

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. Using clinical data in the treatment record, the CI's left shoulder was essentially non-compensable based on the VASRD §4.71a codes for loss of shoulder/arm motion (5200 and 5201). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board tried to find a path to a higher rating for the left shoulder, but there was not sufficient evidence to justify a rating higher than 10%. 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 persistent left shoulder pain.

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 persistent left shoulder pain and IAW VASRD §4.40, §4.45, §4.59, and §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
Persistent left shoulder pain, status post surgery	5299-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120826, 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 8 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 USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC

Assistant General Counsel
(Manpower & Reserve Affairs)