RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900007 BOARD DATE: 20090826

SEPARATION DATE: 20040826

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SUMMARY OF CASE: This covered individual (CI) was an Army Reserve NCO who was medically separated in 2004 after 11 years of combined service. The medical basis for the separation was PTSD and a right knee condition. Both conditions dated to a reserve OIF deployment in 2003. The CI’s right knee was injured in a fall during staging activities in Kuwait. It remained symptomatic through the rest of the deployment, and was subsequently diagnosed as a meniscal injury. After arthroscopic repair, he remained profiled and was referred to the MEB. The CI was diagnosed with PTSD during OIF, and was medevac’d for the condition after 7 months in country. He underwent outpatient treatment after return, but continued to manifest typical PTSD symptoms and was deemed unacceptable for retention by psychiatry. Subsequently the CI was evaluated for low back and left knee pain related to the fall in Kuwait; as well as tinnitus and headache from a concussive injury sustained in Iraq. These conditions were not addressed by the MEB and were unsuccessfully appealed to the USAPDA after the PEB. The CI was referred to the PEB, found unfit for PTSD and his right knee condition, and separated at 20% combined disability.

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CI CONTENTION: The CI contends for a 50% PTSD rating equivalent to the VA. Prior contentions for rating of back and left knee conditions are not specifically re-stated in PDBR application.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (11 Mo. after Separation)** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| POSTTRAUMATIC STRESS DISORDER WITH ASSOCIATED DEPRESSION | 9411 | 10% | 20040719 | POSTTRAUMATIC STRESS DISORDER | 9411 | 50% | 20050718 | 20040827 |
| CHRONIC RIGHT KNEE PAIN, STATUS POST … MENISCECTOMY. | 5099- 5003 | 10% | 20040719 | STATUS POST RIGHT KNEE PARTIAL MEDIAL MENISCECTOMY | 5262 | 10% | 20050718 | 20040827 |
| NO DA 3947 ENTRY. |  |  |  | LUMBAR DISC BULGE | 5003-5237 | 20% | 20050718 | 20040827 |
| NO DA 3947 ENTRY. |  |  |  | STATUS POST LEFT KNEE MEDIAL MENISCAL TEAR | 5262 | 10% | 20050718 | 20040827 |
| NO DA 3947 ENTRY. |  |  |  | NON-PEB X 2 |  |  |  |  |
| **TOTAL Combined: 20 %** | | | | **TOTAL Combined (*incl. non-PEB Dxs*): 70%** | | | | |

ANALYSIS SUMMARY:

PTSD Rating. It is not clear if the 10% PEB rating was underpinned by VASRD §4.130 or by DoDI 1332.39 (E2.A1.5). Under the DoDI, the case is an appropriate fit with the 30% criteria; and under the VASRD, a case can be made for 50%. This is moot, since PDBR adjudication at 50% TDRL for 6 months is current DoDI 6040.44 and DOD guidance. A precise 6 month adjudication of permanent disability is not possible, since the earliest follow-on record available is the initial VA rating examination performed 11 months after separation. The CI’s symptoms at 11 months were typical of PTSD and fairly acute. He was compliant with outpatient psychotherapy, although persisted in moderate daily alcohol consumption. He was being treated with 3 psychotherapeutic medications. He was still living with his family, although with marital strife. He was still in pursuit of regaining employment, but unsuccessfully so. The VA rating based on the 11 month exam was 50%. The 50% rating requires ‘occupational and social impairment with reduced reliability and productivity’; 30% states ‘occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks’. Occupational and social impairment was beyond ‘occasional’ and ‘intermittent’. The CI’s exam noted most of the §4.130 ‘due to’ descriptors for 30%, 4 for 50% and 3 for 70%. Allowing that his undocumented condition at 6 months may have warranted a lower rating, his VA rating of 50% at 11 months is well supported by the facts and consistent with VASRD rating schedule. IAW VASRD §4.3 (reasonable doubt), 50% is a fair permanent rating in this case.

Right Knee Rating. The PEB coded the knee analogous to 5003. The most precise code for this condition is 5259, which also yields a 10% rating. The code chosen by the VA was imprecise since there was no fracture or malunion. The orthopedic addendum to the PEB and the VA rating exam described essentially identical findings. There was normal 140⁰ flexion (albeit with pain), no instability, no effusion, no physical signs of cartilage impingement and only some mild local tenderness. The 10% rating, as per the PEB and the VA, is fair. Since there is no §4.7 (higher of two evaluations) imperative to change the code, the PEB coding is appropriate for PDBR adjudication.

Left Knee Condition. The CI complained of left knee pain, diagnosed as a meniscal injury by MRI, late in the MEB process. This was not noted on the MEB physical, covered in the NARSUM or DA 3947 and not, therefore, adjudicated by the PEB. After the PEB, prior to separation, the CI received a profile for the knee. The condition was unsuccessfully appealed to the USAPDA after the CI accepted the initial PEB adjudication. Although there was initial discussion with orthopedic staff regarding retention on active duty for surgical repair, this was pre-empted by a USAPDA determination that surgery would not return the CI to duty and was not immediately required. A determination that the knee met retention standards IAW AR 40-501 was cited. An examination in that regard is referenced in correspondence from the PEBLO, stating that the addendum could not be located. It is not in evidence, but there is no reason to suspect that the left knee condition was not adequately addressed. Since there is no evidence contradicting the USAPDA opinion, there is inadequate support for a Board finding that the condition was unfitting at separation.

Back Condition. The CI’s complaint of back pain did not appear to be of any notable active clinical significance prior to separation. It was not entered as a complaint or abnormal finding on his MEB physical. It was not noted in his medical profiles or mentioned in the Commander’s statement. It was not addressed in the NARSUM or entered on the DA 3947. The CI subsequently produced a letter from his Med Hold provider that it had been an active complaint prior to separation and that documentation was missing because of record system issues. This does not carry enough probative value, however, to overcome the above evidence that the condition was quiescent at the time of PEB adjudication. It was diagnosed as disc disease by VA evaluation after separation, and was unsuccessfully appealed to the ABMCR. There is not adequate support for Board adjudication of the back condition as ratable at separation.

Other Conditions. The CI contended for a left ear condition related to the OIF concussion injury in his USAPDA appeal. Although not covered in the NARSUM or DA 3947, he had undergone hearing and ENT evaluation. There is no potential link to fitness or even evidence of a compensable condition at separation. The CI noted ‘severe’ headaches on his MEB physical, later attributed to the concussion by the VA. These were not addressed by the MEB. They have no link to fitness via profiles or Commander’s statement, and were initially rated 0% by the VA. Board addition of headache to conditions at separation would be of no benefit to the CI, even if a tenuous link to fitness were overcome.

Of note, the CI had a history and symptomology of traumatic brain injury (TBI) that was only evolving and mild at separation. It was subsequently diagnosed by the VA and associated with significant neurocognitive deficits. It probably makes a significant contribution to the CI’s current disability. He is judged mentally incompetent and 100% unemployable by the VA, and lives dependently with an uncle. This is in marked contrast to his status as a high-functioning deputy sheriff at the time of mobilization and deployment. This linkage, of course, is speculative; and it does not bear on Board adjudication of ratable disability at separation. It is forwarded solely as commentary deemed informative by the Action Officer.

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BOARD FINDINGS: IAW §4.129, applied retroactively as per DoDI 6040.44 and DOD direction, the CI is assigned 50% temporary disability for PTSD at separation. His permanent rating under 9411 is recommended at 50% IAW VASRD §4.130. In the matter of the right knee condition, the Board recommends a separation and permanent rating of 10% under 5099-5003, IAW VASRD §4.71a. In the matters of the left knee, back, left ear and headache conditions, the Board threshold for recommendation as additionally unfitting was not met as discussed above. There was unanimous agreement by the Board that no additional conditions for rating at separation could be recommended.

The Board acknowledges the probable existence of combat-related TBI as an unratable condition at separation, with significant later consequences for this veteran.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; TDRL at 60% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 60% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| PTSD | 9411 | 50% | 50% |
| CHRONIC RIGHT KNEE PAIN, STATUS POST PARTIAL MEDIAL MENISCECTOMY. | 5099-5003 | 10% | 10% |
| **COMBINED** | **60%** | **60%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090116, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

MICHAEL F. LoGRANDE

President

Physical Disability Board of Review

