RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900024 COMPONENT: Guard

BOARD DATE: 20090609 SEPARATION DATE: 20060531

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SUMMARY OF CASE: This covered individual (CI) was an Army Guard SSG 92G medically separated from the Army Guard in 2006 after 11 years of active service. The medical basis for the separation was chronic bilateral knee pain from traumatic onset in Iraq in May 2003. The CI’s bilateral knee pain knee did not reolve following treatment and was not amenable to surgery. The Commander requested a fitness for duty evaluation and the MEB was for knee pain, asthma, and sleep apnea (OSA). The CI had a prior PEB (23 May 2005) for Asthma following early medical return from the AOR that found him fit for duty. CI was referred to the PEB, found unfit for bilateral knee pain only and was separated at 0% disability. The VA found each knee separately rated at 10% and rated OSA (50%), Post Traumatic Stress Disorder (PTSD) at 50%, back disease, both ankles, and asthma as ratable above 0% with a total combined VA rating of 90%. The CI contends that he was only rated for one condition, received a 0% for his knee and that all his problems should be looked at. That he was hurried along by his chain of command and that he had a prior Army rating for asthma but did a COAD (continuance on active duty) prior to that MED Board with an unknown percentage. The CI’s contention for ‘all his conditions’ to be looked at is interpreted to include his VA diagnoses of both knees, sleep apnea, PTSD with Depression, back condition, both ankles, and Asthma.

The CI was diagnosed with Asthma while deployed to Kuwait in Mar 2004. CI deployed to Iraq in Dec 2004 and was medically returned from theater after 1 month due to Asthma. CI was referred to a MEB and CI applied for COAD instead of separation on 25 Apr 2005. MEB and PEB in May 2005 were for Asthma only and the PEB found CI Fit for Duty. This contradicts CI’s petition of being ‘rated for asthma’ as the PEB clearly found CI ‘Fit for Duty’ and did not rate CI’s Asthma. This is likely a simple miscommunication. Following the first PEB, CI noted that his asthma had improved and was not a major limitation. The 23 Jan 2006 commander’s letter did mention return from the AOR and deployment limitations as part of the rationale of why the CI could not perform his MOS duties. However, the second PEB formally adjudicated CI’s controlled Asthma and found it to be not unfitting. Sleep apnea was also a listed PEB diagnosis that was not found to be unfitting.

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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 Army specifically addressed the CI’s asthma in two PEBs and both times found it not unfitting. The Board carefully reconsidered asthma as a potentially unfitting condition. However, there were not sufficient indicators in the medical records to indicate Asthma rose to a duty limiting or unfitting level at the time of the final PEB and the Board rejected adding asthma as an unfitting condition. The Army did not find OSA to be unfitting and the Board agreed. Back pain and headaches (mentioned by the CI in the MEB history) and Ankle pain and Pes Planus (not mentioned in the MEB) were not part of CI’s profile or commander’s letter and did not rise to an unfitting level. PTSD and/or Depression was not diagnosed until after discharge. Even retrospectively, none of the symptoms or signs of PTSD or Depression discoverable at the time of CI’s discharge would have been considered to be unfitting.

The unfitting chronic bilateral knee pain was well documented with comprehensive treatments and exams. The Board noted that the PEB’s rating both knees under a single rating code was IAW historical guidance. However, absent the Army Pain Rule and following the VASRD, the Board determined that each knee should be individually rated for painful motion IAW §4.59, Painful motion. There was not sufficient indication in the medical records to justify any knee instability rating. This rating schema aligns with the VA rating of each knee, despite slightly different coding.

The Board determined to rate each knee separately at 10% (with bilateral factor) using painful motion with the PEB codes, and to deny adding any other condition as unfitting.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Chronic painful motion, Right Knee | 5099-5003 | 10% |
| Chronic painful motion, Left Knee | 5099-5003 | 10% |
| Combined | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090115, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

