RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900036 BOARD DATE: 20100818

SEPARATION DATE: 20060912

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SUMMARY OF CASE: This covered individual (CI) was an active duty E-4/SPC (13B/Cannoneer) medically separated from the Army in 2006 after 2.7 years of service. The medical basis for the separation was a right shoulder condition. The CI had a penetrating injury to his right upper arm due to an IED explosion 20051208. He underwent debridement of his wounds and was treated for an infection. Following extensive physical therapy, his right shoulder was painful and had mechanical limitation to motion (frozen shoulder). He was offered and declined additional shoulder treatment (injection and surgery) and this refusal was indicated as “justified and reasonable.” The CI was also being treated for a mental health condition that was initially diagnosed as an adjustment disorder with anxiety related to his IED exposure. The diagnosis was later changed to Anxiety Disorder, Not Otherwise Specified (NOS). He had attended several group therapy sessions and was “reporting resolution of his initial symptoms on …medications.” The CI was profiled as S-1. The CI did not respond adequately to medications and therapy for his shoulder to be able to perform the physical tasks of his MOS or participate in the APFT. He was placed on a permanent U-3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded two right shoulder conditions (Adhesive capsulitis of the right shoulder and right shoulder flexion contracture) to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The CI’s Anxiety disorder condition (as noted in the chart below) was determined to be medically acceptable and was the only other condition forwarded on the DA Form 3947. The informal PEB adjudicated the right shoulder conditions as a single unfitting diagnosis, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. Anxiety disorder was adjudicated as not unfitting. The CI did not appeal for a formal PEB and was thus medically separated with a 10% disability rating.

CI CONTENTION: The CI states: ‘’THE DISQUALIFYING DISABILITY HAS PREVENTED ME FROM RETURNING TO A NORMAL CIVILIAN LIFE. BECAUSE OF THE DISABILITY I WAS UNABLE TO RETURN TO CIVILIAN WORK WHICH I ENJOY (LAW ENFORCEMENT). ACTIVITIES RELATED TO MY CURRENT JOB AS A SOFTWARE ENGINEER ARE IMPACTED BY DISCOMFORT. DUE TO MY CONDITION, I HAVE BEEN UNABLE TO LEAD AN ACTIVE LIFESTYLE. I AM UNABLE TO PARTICIPATE IN ANY OF THE HOBBlES OR ACTIVITIES I ENJOY DUE TO PAIN AND LIMITED MOBILITY. SLEEP IS OFTEN INTERRUPTED BY SHOULDER PAIN. ACTIVITIES SUCH AS GROCERY SHOPPING ARE HINDERED BY A LIMITED RANGE OF MOTION. GETTING DRESSED AND SHOWERING CONTINUE TO PROVE FRUSTRATING AND LABORSOME.”

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RATING COMPARISON:

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| **Service PEB – Dated 20060823** | **VA (14 Mo. after Separation) – All Effective 20060913** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Shoulder Flexion Contracture and Adhesive Capsulitis | 5099-5003 | 10% | Adhesive Capsulitis and Degenerative Changes, Right Shoulder | 5201 | 40% | STR  |
| Anxiety Disorder, NOS | Not Unfitting | Posttraumatic Stress Disorder | 9411 | 10% | 20071108 |
| ↓No Additional DA 3947 Entries↓ | Lumbar Spine, DDD | 5010 | 10% | 20071108 |
| Right Hand, Neuropathy … | 8515 | 10% | 20071108 |
| Non-PEB X 1/ NSC X 3 |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%\***   |

\*VA rating changed: R. Shoulder 30% 20090114; PTSD 30% 20081204/50% 20090910

ANALYSIS SUMMARY:

Right Shoulder Condition. The PEB combined the Adhesive Capsulitis of the Right Shoulder and Right Shoulder Flexion Contracture as a single unfitting condition, coded analogously to 5003 and rated 10% and invoked the US Army Physical Disability Agency (USAPDA) pain policy for rating. The record indicated that the CI’s shrapnel wound to the right arm caused disability beyond right shoulder “abduction limited by pain”, and those additional disabilities will be discussed below in additional right upper extremity muscle coding. This section will focus on rating the right shoulder pain-limited motion. The service treatment record (STR) did not clearly delineate which arm was dominant. The VA record had multiple references to the CI being left-hand dominant, using his left hand to sign, and doing only a few other things with his right arm/hand. Notation of left-hand dominant was also noted on non-musculoskeletal evaluations. The Board considered that the VA exams all followed the CI’s injury and right shoulder disability which might remotely have changed his dominant hand, or that the CI was ambidextrous. The preponderance of the evidence led the Board to consider the CI left hand dominant. Therefore, disability rating should be for the CI’s “Minor”, or “non-dominant” arm. There were three range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. All of these exams are summarized in the chart below.

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| Right Shoulder ROM | PT - 20060511 | MEB - 20060622 | VA - 20090114 |
| Flexion | 60° | 30° | 40° w/pain |
| Abduction | 40° | 47° | 30**°** w/pain |
| External Rotation | 25° | 33° | 50° w/pain |
| Internal Rotation | 25° | 45° | 90° w/pain |
| §4.71a Rating | 20% | 20% | 30%\* (changed from 40%) |

The VA initial rating of 40% coded 5201 relied exclusively on the MEB range of motion and exam (20060622) as the CI did not show for his VA evaluation. Independently rating this exam would be 20%; The VA 40% rating coded 5201 was the maximum 5201 rating for “Arm, limitation of motion to 25° from side” for “Major” or dominate arm. The VA rating apparently equated the flexion limitation to abduction limitation. The first VA evaluation for the right shoulder, over 2 years later, demonstrated essentially similar ROMs with more extensive right upper extremity muscle and neurologic involvement/disability and the changed VA rating to 30% appeared due to recognition that the CI was left-hand dominant. The Board adjudged that the CI’s ROM proximate to separation indicated the right shoulder ROM was greater than “25° from side” and closest to “Midway between side and shoulder level.” After due deliberation, the Board agreed that a permanent right shoulder rating of 20% coded 5201 IAW §4.71a is the most representative of impairment and a fair recommendation in this case.

Other DA Form 3947 Condition (Anxiety Disorder). There was a psychiatric addendum indicating the CI was initially diagnosed with adjustment disorder with anxiety due to his IED exposure. The diagnosis was changed to Anxiety Disorder and the CI underwent several group sessions and medical management was ongoing. The examiner stated “He is reporting resolution of his initial symptoms on the current medications,” and indicated that the CI met AR 40-501 standards and had an S-1 profile. There was no mention in the Commander’s statement related to any mental health condition. VA examination 20071108 indicated a diagnosis of Post-Traumatic Stress Disorder (PTSD). The CI was fully employed for the last 15 months and had minor symptoms on medication. There was a disparity between the bulk of the exam narrative and the summary indicating global functioning in the very serious range (GAF=40) and a statement of “This pt. is having almost constant severe symptoms and is in need of intensive treatment.” The VA rated this exam at 10%. There is no indication that any mental health symptoms rose to the level of being unfitting at the time of separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the Anxiety Disorder condition.

Other Conditions (Lower Back, Right Upper Arm Muscle Injury [Right Elbow and Right Arm Nerves]). The lower back condition was not noted in the Commanders statement or profile as interfering with duty performance. There was a NARSUM MEB Addendum specific to the lower back condition demonstrating pain limited flexion to 85°/combined 185°. Spasm and tenderness were noted with normal gait. Motor and neurologic exams were normal. Imaging demonstrated non-specific degenerative changes and disc bulges without frank disc herniation. The VA exam demonstrated minimal decreased ROM of the back. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of the lower back as unfitting condition for separation rating.

Right Upper Arm Muscle Condition (Shrapnel Wound, Right Elbow and Right Arm Nerves): The CI’s initial right upper extremity injury was a penetrating shrapnel wound to the upper arm with separate entry and exit wounds due to an IED. The CI underwent debridement of his wounds and was treated for a short-term infection of the wound areas. Imaging demonstrated slight degenerative changes in the shoulder and retained small shrapnel in the upper arm. The treatment of this muscle wound, including immobilization, was adjudged to have led to the CI’s primary unfitting conditions of “Right Shoulder Flexion Contracture and Adhesive Capsulitis.” The treatment record and NARSUM detail there was generalized disability to the right upper extremity beyond the shoulder joint and “right shoulder flexion contracture.” The Commander’s statement specifically mentions the right elbow: “physically incapable of reasonably performing his duties as a 13B, Field Artillery Cannoneer, due to his immobile shoulder and elbow.” The U-3 profile mentioned only the shoulder, and could have provided shelter for limitations from the right upper arm muscle condition. Evaluation on 20060511 noted “sensory exam abnormalities noted in only the ulnar distribution of the right upper extremity”; and that the CI was unable to tolerate formal strength testing “due to apprehension, guarding, and complaint of pain with most right upper extremity activity”; right elbow ROM was lacking 35° of extension. The NARSUM also detailed lack of right elbow full extension: “Physical examination shows that the patient holds his right elbow in a somewhat flexed position. He does not allow it to relax and fully extend.” Limited right elbow ROM (lacking 15° of extension) and “neurovascular exam is intact in the right hand.” Formal electrodiagnostic testing was noted as non-specific. Imaging of the elbow joint showed no pathology. Exam did not demonstrate muscle loss, but there were no formal measurements and formal strength testing could not be accomplished due to pain. IAW §4.56 Evaluation of muscle disabilities, the CI was noted to have had a through and through wound with a short track from shrapnel, debridement, short-term infection, loss of power due to pain, with entrance and exit scars in the Group V and VI muscles. The VA radiographs of 20071004 showed “small ballistic fragments in the soft tissues of the right arm. Osseous structures are normal.” Exam of 20071108 demonstrated right ulnar sensory abnormality, severely limited ROM of the elbow (in addition to the shoulder) and pain on almost all motion of the right arm, elbow and hand. The VA described moderate muscle injury of the right upper extremity on their rating in 2009, but included that disability in the maximal shoulder rating of 30%, and a separate neuropathy rating of 8515 at 10%. The Board determined that the CI’s right upper extremity disability did not meet the level of complete loss of function. The Board determined that including all of the right upper extremity disability solely under 5201 (Arm limitation) at a higher than 20% rating determined by ROM limitations was not IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). Given the Commander’s statement regarding the elbow and shoulder, the initial shrapnel wound, minor ulnar sensory abnormality, and limitation to elbow extension, the Board determined that the shoulder ROM coding did not fully describe the level of disability of the CI’s right upper extremity that was the principle determinant of unfitness. The Board deliberated if right upper extremity muscle disability/coding was considered part of the original PEB rating for “Right Shoulder Flexion Contracture,” but determined that regardless, the additional disability of the right upper arm due to muscle injury should be added as an unfitting condition. IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI for recommending right upper arm muscle injury as an additionally unfitting condition by the Board. It is appropriately coded 5305 and meets the criteria for the 10% (moderate) rating. Right hand neuropathy was the only other service connected condition with a compensable rating by the VA within twelve months of separation, and that condition is included in the above right arm muscle condition. There are therefore no additional conditions in this case appropriate for Board recommendation as additionally unfitting for separation rating.

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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. As discussed above, PEB reliance on the USAPDA pain policy for rating the right shoulder condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the right shoulder condition, the Board unanimously recommends a rating of 20% coded 5201 IAW VASRD §4.71a. In the matter of the right arm muscle condition (residuals from shrapnel wound), the Board unanimously recommends it be added as additionally unfitting condition with a rating of 10% coded 5305 IAW VASRD §4.55 and §4.56. In the matter of the Anxiety Disorder condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the Lower Back conditions or any other medical conditions eligible for Board consideration, not specified above; the Board unanimously agrees that it cannot recommend any other findings of unfit for additional rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Shoulder Flexion Contracture and Adhesive Capsulitis | 5201 | 20% |
| Muscle Injury, Group VI, Moderate | 5305 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090120, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

