RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900053 BOARD DATE: 20091022

SEPARATION DATE: 20070517

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO medically separated from the Army in 2007 after 16 years of service. The medical basis for the separation was bilateral shoulder and knee joint conditions and a back condition. He began developing the joint pains and back pain as early as 1997. In 2002 he began seeking medical care, was treated with anti-inflammatory medications and placed on temporary profiles. He eventually demonstrated radiographic and bone-scan evidence of degenerative changes in his joints and spine, and was diagnosed with diffuse osteoarthritis. He was deployed to OIF in 2005. He required numerous aid station visits, continued medications and temporary profiles, but successfully completed the deployment. After return he continued outpatient conservative management, but was eventually recommended a permanent profile by Physical Medicine and referred for a MEB. In addition to the above, the CI was followed by Behavioral Health upon his return from OIF. He displayed some PTSD symptoms, but was diagnosed with anxiety disorder. The MEB psychiatrist opined that he met retention standards IAW AR 40-501. The CI was also diagnosed with obstructive sleep apnea (OSA) during the MEB period. This was successfully treated with CPAP (a nocturnal assisted breathing device), although judged to be medically unacceptable by the MEB. His medical history included hypertension, hyperlipidemia, numerous other joint complaints and several other minor conditions. None of these manifested any acuity during the MEB, and were not forwarded on the DA 3947 for PEB adjudication. The PEB consolidated the joint osteoarthritis under 5003 as a single unfitting condition. His back condition was adjudicated as separately unfitting. The OSA and anxiety disorder were adjudicated as fit. The informal PEB assigned 10% ratings to each of the unfitting conditions. This was upheld by a formal PEB and the CI was separated at 20% combined disability.

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CI CONTENTION: The CI’s contends for a 30% PTSD rating equivalent to the VA, and states VA conferred ‘80% Service Connected’ 90 days after separation.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (Pre-Separation / 3 Mo. Post-Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| BI LATERAL CHRONIC PAIN AND STIFFNESS OF SHOULDERS AND KNEES… | 5003 | 10% | 20061204 | R SHOULDER DJD (MAJOR) | 5201-5010 | 10%\* | 20070220 | 20070518 |
| L SHOULDER DJD (MINOR) | 5201 | 0%\* | 20070220 | 20070518 |
| \* R/L shoulders changed to bilateral 5003 at 20%, based on service records and civilian exams 2-5 mos. post-separation. | 20070518 |
| R KNEE DEGEN. CHANGES | 5010-5260 | 0% | 20070220 | 20070518 |
| 10% | 20070807 | 20070518 |
| L KNEE DEGEN. CHANGES | 5010-5260 | 0% | 20070220 | 20070518 |
| 10% | 20070807 | 20070518 |
| CHRONIC THORACO-LUMBAR BACK PAIN… | 5242 | 10% | 20061204 | THORACOLUMBAR SPINE DEGEN. OA | 5242 | 10% | 20070220 | 20070518 |
| OSA | NOT UNFITTING | 20061204 | OSA | 6847 | 50% | 20070220 | 20070518 |
| ANXIETY DISORDER, NOS | NOT UNFITTING | 20061204 | PTSD | 9411 | 30% | 20070307 | 20070518 |
| NO ADDITIONAL DA 3947 ENTRIES. | NON-PEB X 4 / NSC X 6 | 20070307 | 20070518 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%**   |

ANALYSIS SUMMARY:

Osteoarthritis Conditions. The CI had imaging-confirmed diffuse degenerative arthritis of his major joints and spine. This justified the PEB choice of the 5003 code for consolidating the 4 individual joints identified as unfitting (bilateral shoulders and knees). Separate coding for individually compensable joints is mandated IAW VASRD §4.7 (higher of 2 evaluations) if the joint manifests decreased range-of-motion (ROM) or painful motion. The NARSUM exam described a full ROM of the joints grossly, although there are no Army goniometric examinations in evidence. The NARSUM examiner did not comment on painful motion or response to repetitive motion. Accepting that evaluation, with no evidence of ROM impairment or painful motion, the PEB adjudication of a 10% rating under 5003 incorporating all 4 joints is defensible. The pre-separation VA rating examination provided goniometric measurements of all joints, as well as directed comments regarding painful motion and repetitive motion. This adds significantly to its probative value (and that of the other proximal VA exams) relative to the NARSUM examination. The VA exam noted modest impairment of abduction and internal/external rotation of the right shoulder by goniometry and documented painful motion and fatigue with repetitive motion. The remaining joints displayed normal ROM by goniometry and were not noted with painful motion or further limitations with repetition. The VA rater, therefore, separated out a compensable right shoulder and 3 remaining non-compensable joints. These were rated 10% for the right shoulder plus 0% each for the non-compensable joints, of no overall rating advantage to the CI relative to the PEB adjudication. It is incidentally noted that the 5010 prefix (traumatic arthritis) applied by the VA is not a good clinical fit. It is significant that both knees manifested compensable ROM impairment and painful motion on a VA rheumatologist’s examination 3 months after separation, and once again on a repeat general rating examination 6 months after separation. The VA ratings were revised to reflect 10% for each knee in a rating decision within a year of separation and retroactively effective to the date of separation. Both shoulders were eventually consolidated under 5003, rated 20% and effective to separation, but this rating decision was well over a year after separation (albeit referencing the service record and proximate VA exams). Especially with a probative value argument in favor of the VA specialist examination within 3 months of separation (buttressed by a similar exam 3 months after that), a good case is made for separate knee coding (5003-5260) at 10% each as a fair recommendation at separation. This would align with the overall clinical picture as well, given the chronicity and expected severity of the CI’s osteoarthritis. The shoulders should then be combined at 10% under 5003 (or the compensable shoulder separately at 10% and the not-yet compensable shoulder at 0%, albeit at no rating advantage). An additional VASRD consideration in this case is §4.40 (functional loss). This states, ‘a part which becomes painful on use must be regarded as seriously disabled’. It is clear from the record and explicitly stated in the NARSUM and VA exams that the pain in all the joints was exacerbated by numerous activities. The NARSUM notes the CI’s complaint of ‘decrease in his ability to do physical activities without pain’. A reasonable interpretation of §4.40 would argue for a minimum 10% rating for each of the 4 unfitting joints. Finally, a justifiable approach to arriving at the fairest rating recommendation for the CI’s joint disability is to defer to the higher probative value of the pre-separation VA examination, granting a 10% rating for the right shoulder (coded 5010-5201). The remaining 3 joints, however, should be consolidated under 5003 for an additional 10% rating. It is, in fact, not clear why the initial VA rating decision did not employ this rating IAW §4.7 (higher of 2 evaluations).

In summary, the Board considered 4 rating recommendations for this case:

1) No recharacterization, accepting the NARSUM examination as the most applicable, and the PEB’s consolidated 5003 coding as concordant with VASRD rating.

2) Separate 10% ratings for each knee (5003-5260), as justified by the proximal VA rheumatology and repeat rating examinations, plus a 10% rating for the shoulders consolidated under 5003 (vs. separately as 10% + 0% as discussed above).

3) Separate 10% ratings for each knee (5003-5260) and for each shoulder (5003-5201) as supported by §4.40 (functional loss).

4) A separate 10% rating for the right shoulder, as justified by the higher probative value of the VA pre-separation exam, plus a 10% rating for the left shoulder and both knees consolidated as degenerative arthritis under 5003, IAW §4.7 (higher of 2 evaluations).

After due deliberation, the Board agreed upon option #2 (with the shoulders consolidated under 5003) as the fairest recommendation, consistent with the CI’s degree of joint disability and meeting the requirements of VASRD §4.3 (reasonable doubt).

Back Condition. The PEB appropriately separated the back as an additional unfitting condition, although it was forwarded on the MEB’s DA 3847 as part of the overall degenerative arthritis. PEB coding was appropriate and identical to the VA. The NARSUM, similarly to the shoulders and knees, described a grossly normal ROM, but did not provide goniometric measurements as required by VASRD §4.46. The pre-separation VA rating examination, however, did provide goniometric measurements (flexion 90⁰ and combined 215⁰). Both exams documented tenderness, and neither noted abnormal gait or contour. The 10% rating by the PEB, although compromised by an incomplete exam, was validated by the concurrent VA examination and equivalent rating. A recommendation of no recharacterization of the PEB’s adjudication for the back condition is therefore indicated.

Psychiatric Condition. The CI’s application emphasizes PTSD and questions the ‘anxiety’ diagnosis by the Army. He contends for a 30% rating, in line with the VA’s (pre-§4.129) decision. The Axis I diagnoses stated on the MEB’s psychiatric addendum is ‘Anxiety disorder not otherwise specified as manifest by common post deployment symptoms of irritability, intrusive memories of his OIF deployment, and occasional startle reaction.’ No elaboration of DSM-IV criteria for PTSD or explanation regarding choice of Anxiety, NOS vs. PTSD as a diagnosis was provided. The history and symptoms documented in the MEB psychiatric addendum varies little from the pre-separation VA psychiatric examination. The CI experienced multiple exposures to small arms fire and IED detonations in his role as a platoon sergeant and convoy commander. He managed the remains of a driver ‘blown in half’ by an IED, among other exposures to dead and wounded. Nightmares, sleep disturbance, hypervigilance, startle response, mood lability and other PTSD-type symptoms were noted. The VA exam rendered a comprehensive discussion for DSM-IV support of an Axis I diagnosis of PTSD, including individual elaboration for Criteria A, B, C and D. The VA psychiatric opinion, in that regard, carries more probative value than the MEB psychiatric opinion regarding the CI’s diagnosis. The Board believes that the condition should be adjudicated as PTSD. However, the diagnosis itself is moot if the condition is not unfitting. The MEB psychiatrist opined that it met retention standards IAW AR 40-501. The history stated, in fact, that the CI was ‘very busy with work’. Global functioning was scored in the mildly impaired range (GAF = 70 by the Army and 65 by the VA). Behavioral Health notes documented a favorable response to therapy. The Commander’s letter noted only physical limitations and performance evaluations remained good. The medical profile was S1. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the psychiatric condition. The Board agrees with the CI that the VA diagnosis of PTSD was more appropriate to his condition, but cannot make a recommendation for additional rating since the condition was not unfitting for continued military service.

OSA. The MEB, based on consultant opinion, forwarded OSA as medically unacceptable on the DA 3947. The consultant’s opinion, however, simply stated that the condition was not medically acceptable ‘since it requires CPAP’. It was further stated that the condition was well-controlled on CPAP. The PEB DA 199 noted that electrical power is usually available in ‘areas of assignment or deployment’. Given the CI’s MOS (motor transport) and the fact that OSA is not generally judged to be unfitting by PEB’s across the services, the PEB’s fitness adjudication was expected and reasonable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA condition.

Other Conditions. There were no other conditions forwarded on the DA 3947 for PEB adjudication. The CI did suffer from exertional shortness of breath that seemed to tie into his overall fitness. He underwent an adequate cardiovascular and pulmonary work-up, however, which included pulmonary function testing. No significant medical condition or objective physical limitations were identified. The Board, therefore, has no basis for any recommendations regarding this issue. The CI had a right elbow/forearm condition that was diagnosed as epicondylitis (tennis elbow) in the service record and characterized as mild and intermittent in the NARSUM. He received a 10% rating for it from the VA, but the Board has no foundation in evidence for recommending the condition as unfitting. The CI received a 10% rating from the VA for cervical degenerative arthritis in addition to the thoracolumbar component. Though this may have figured into the fitness picture, it was not in evidence as a distinct condition in the service records and therefore not appropriate to Board recommendation. The CI’s records reflect joint symptoms referable to the wrists, ankles and hips (all undoubtedly related to the underlying osteoarthritis). None of these were identified by the MEB or the VA as distinct separate conditions, and none can be distinctly linked to fitness. The CI had co-morbid medical conditions of hypertension and hyperlipidemia. Both were stable on medication, and not relevant for consideration as unfitting. The only other conditions coded by the VA were tinnitus and hearing loss, for which there is no link to fitness (profile was H1).

The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions 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. 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 CI’s multiple joint conditions, the Board unanimously recommends a rating of 10% under 5003 (degenerative arthritis) incorporating both shoulders; and, in addition, separate ratings of 10% each for the right and left knees under 5003-5260, IAW VASRD §4.71a. In the matter of the back condition, the Board unanimously recommends no recharacterization of the PEB coding or rating. In the matter of the psychiatric condition, the Board reiterates its opinion that the VA diagnosis of PTSD was more appropriate than the MEB diagnosis of Anxiety, NOS; however, the Board unanimously recommends no recharacterization of the PEB adjudication of the condition as not unfitting. In the matter of the OSA condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the elbow condition, neck condition and all of the CI’s other medical conditions; the Board unanimously agrees that it cannot recommend a finding 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** |
| DEGENERATIVE ARTHRITIS BILATERAL SHOULDERS | 5003-5201 | 10% |
| DEGENERATIVE ARTHRITIS LEFT KNEE WITH IMPAIRED AND PAINFUL MOTION | 5003-5260 | 10% |
| DEGENERATIVE ARTHRITIS RIGHT KNEE WITH IMPAIRED AND PAINFUL MOTION | 5003-5260 | 10% |
| CHRONIC THORACOLUMBAR BACK PAIN | 5242 | 10% |
|  | **COMBINED** (Incorporating BLF for 5003-5260) | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090126, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

