RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900076 BOARD DATE: 20100810

SEPARATION DATE: 20050731

SUMMARY OF CASE: This covered individual (CI) was an Active Guard Reserve (ARNGUS), CW3 (Computer Information Specialist) medically separated from the USA/NG in 2005 after 17 years of active and 18 years combined service. The medical basis for the separation was Obstructive Sleep Apnea (OSA), Chronic Right Knee Pain and Chronic Right Ankle Pain. The CI had a long history of excessive daytime somnolence with headaches that began in 2001 and led to frequent missed duty. He was diagnosed with OSA in 2004 and was provided a dental appliance (orthotic) for night time use to assist his breathing during sleep. Although the device initially helped, he became intolerant of the orthotic and was successfully started on a night time positive pressure breathing device (CPAP). He underwent a disability evaluation in 2004 and was found ‘Fit for Duty’ by the Physical Evaluation Board (PEB) of 20041021. The CI became intolerant of his CPAP, and multiple masks, pressures and specialist evaluations were unable to remedy his poor sleep. The CI had excessive daytime somnolence with headaches on awakening in the morning. He did not respond adequately to treatments, was placed on a permanent P-4 profile and referred for a Medical Evaluation Board (MEB). The CI also had a history of a right ankle sprain in Sep 2003, and right knee sprain. He was unable to complete the Army Physical Fitness Test (APFT), or fulfill the physical requirements of his military occupation specialty (MOS), was placed on a permanent L-3 profile and referred for a MEB for these right leg conditions as well. The MEB forwarded the OSA, and eight diagnoses that related to his Right knee and Right ankle conditions to the PEB as medically unacceptable IAW AR 40-501. Bilateral pes planus (flat feet) was the only other condition forwarded on the DA Form 3947. The informal PEB (IPEB) adjudicated the OSA, Right Knee and Right Ankle conditions (which incorporated 9 of the 10 MEB diagnoses) as unfitting; rated 0% each; with application of Army and Department of Defense regulations including DoDI 1332.39 para E2A1.2.21. The bilateral flat feet condition was found not unfitting. The CI appealed the IPEB findings to a Formal PEB (FPEB). The FPEB reiterated the findings of the IPEB and the CI was therefore separated at 0% combined disability.

CI CONTENTION: The CI states: ‘CW3 C--- should have been rated with a combined rating total of 70% disability for Obstructive Sleep Apnea at 50%, 10% for Osgood Schlatter disease, 10% for residual, right ankle sprain, and 10% for residual, left ankle sprain in accordance with the VASRD.’ Extensive letters from the CI and his legal counsel are also summarized in the above statement.

RATING COMPARISON:

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| **Service PEB – Dated 20050404** | **VA (5 Mo. after Separation) – All Effective 20050801** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| OSA | 6847 | 0% | OSA w/ Headaches | 8100-6847 | 50% | 20051230 |
| Right Knee … (several Dx) | 5099-5003 | 0% | Right Knee … | 5257-5014 | 10% | 20051230 |
| Right Ankle … (several Dx) | 5099-5003 | 0% | Right Ankle … | 5271 | 10% | 20051230 |
| Bilateral Pes Planus … | Not Unfitting | Bilateral Pes Planus | NSC | 20051230 |
| ↓No Additional DA 3947 Entries↓ | Left Ankle … | 5271 | 10% | 20051230 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions & BLF*): 70%**   |

ANALYSIS SUMMARY: Although OSA appeared to be the primary unfitting condition, the PEB determinations of unfitting for the OSA, right knee and right ankle conditions were considered administratively final by the Board.

OSA Condition. The PEB rating, as noted above and in the IPEB and FPEB Disability Descriptions were derived from DoDI 1332.39 para E2A1.2.21. The CI had excessive daytime sleepiness and was diagnosed with OSA requiring CPAP as noted above. Follow-up multiple Sleep Latency Test in Feb 2005 indicated profound sleepiness, and he was noted to ‘falls asleep frequently at work and home.’ The CI was profiled for no driving due to sleepiness. The profile and Commander’s statement clearly documented this condition as interfering with duty. The VA evaluations post separation indicated that the CI had nasal surgery in Nov 2005 without relief of symptoms. The VA rating was reconfirmed in 2008. The Board is obligated to a rating recommendation compliant with concurrent Veterans Administration Schedule for Rating Disabilities (VASRD) standards. As OSA was unfitting and the requirement for CPAP was established, the Board recommends an OSA rating of 50% IAW VASRD §4.100.

Right Knee Condition. The MEB Narrative Summary (NARSUM) Addendum from orthopedics extensively detailed the right knee and right ankle history, with exceptionally detailed exams and ROMs. Although the right knee flexion was noted to be 131° (less than the ‘normal’ of 140°) there was sufficient detail and comparison to the opposite knee to indicate that was likely normal for this individual. There was Grade I laxity of the anterior cruciate ligament, and no painful motion noted during exam. The examiner did note: ‘Examination of both thighs shows minimal atrophy of the right quadriceps and slight atrophy of the right hamstrings.’ Also noted was an ‘obviously prominent tibial tubercle. Tenderness is elicited only at the patellar tendon, mildly generalized and moderately localized at the prominent palpable spur deep in the insertion of the patellar tendon.’ The examiner stated ’It appears his right knee symptoms would respond well to operative care of his sequela of Osgood-Schlatter's disease with spur formation and patellar tendinitis’ and surgery was recommended; Operative care, in terms of the patellar tendon insertion area, will also help his symptoms but is not likely to eliminate the requirement for the permanent profile. The 5 months after separation VA exam, demonstrated ‘tender patella tendon, tender patella rub, prominent tibial tubercle; no instability.’ History on both exams noted increased pain with activity, walking and standing, but did not indicate painful motion, or pain-limited motion of the knee. The Board determined that all evidence considered that there is not reasonable doubt in the CI’s favor, to justify changing the PEB’s coding or 0% rating for the right knee condition.

Right Ankle Condition. Although this condition appeared to be very mild, the PEB determinations of unfitting for the right ankle condition was considered administratively final and the Board evaluated the right ankle only for rating under the VASRD alone. The CI’s exam was accomplished during the timeframe when the USPDA Pain policy was in effect, and military examiners did not always address painful motion as only mechanically limited motion was considered for rating. The MEB NARSUM Addendum from orthopedics extensively detailed the right ankle history and exam. There was no definitive painful motion or pain-limited ROMs noted; however, painful motion was not specifically denied and there was no indication if measured ROMs were active or passive. There was indication of Achilles tendon contracture and tendonitis on imaging. The ‘minimal atrophy of the right quadriceps and slight atrophy of the right hamstrings’ places doubt on the complete functioning of the right lower extremity (knee and ankle combined). The VA exam 5 months after separation demonstrated ‘pain with attempted dorsiflexion of both ankles. Hyperflexibility both feet with marked inversion and rolling under of feet on passive manipulation.’ Given that there was evidence of painful motion of the unfitting right ankle by the VA exam, and the military examiner did not exclude painful motion, the Board opined that the VA exam had a higher probative value in documenting painful motion. All evidence considered, and IAW §4.59 painful motion, the Board recommends a 10% rating coded as 5299-5271 for the right ankle condition.

Other DA 3947 Condition – Flat Feet and Left Ankle Conditions. The only MEB diagnosis that was not consolidated into an unfitting PEB diagnosis was ‘Congenital Pes Plano Valgus, bilateral foot deformity, asymptomatic,’ (flat feet). The condition was judged to be within AR 40-501 standards, was not profiled and was not identified as an impairment in the Commander’s statement. The VA evaluated this condition as ‘Not Service Connected, Not Aggravated by Service.’ All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the bilateral flat feet condition. The left ankle condition was mentioned in the DES package. The orthopedic addendum to the NARSUM also evaluated the left ankle and it was less symptomatic than the right ankle. The VA exam indicated painful motion of the left ankle. However, there was no clear tie-in to performance of duty or permanent profile restriction to the left ankle condition. The Board determined that the left ankle should not be found unfitting. The Board, therefore, had no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 DoDI 1332.39 for rating OSA was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the Obstructive Sleep Apnea requiring CPAP condition, the Board unanimously recommends a rating of 50% coded 6847 IAW VASRD §4.97. In the matter of the right knee condition, the Board, rating by a 2:1 vote, recommends no change of the PEB’s 5099-5003 coding at 0%. The single voter for dissent (who recommended adopting the VA rating 5257-5014 at 10%) did not elect to submit a minority opinion. In the matter of the right ankle condition, the Board unanimously recommends a rating of 10% coded 5299-5271 IAW VASRD §4.71a. In the matter of the flat feet condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the left ankle condition, and any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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** |
| Obstructive Sleep Apnea requiring CPAP | 6847 | 50% |
| Right Knee, Chronic Pain Residual of Osgood Schlatter’s Disease  | 5099-5003 | 0% |
| Right Ankle, Chronic Pain  | 5299-5271 | 10% |
| **COMBINED** | **60%** |

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.

