RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900106 BOARD DATE: 20100804

SEPARATION DATE: 20070107

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SUMMARY OF CASE: This covered individual (CI) was a SSG (MOS 11B, Infantry) medically separated from the Army Reserve in 2007 after 3.5 years active and more than 11 years of combined service. The medical basis for the separation was Post Traumatic Stress Disorder (PTSD), chronic right shoulder and knee pain, and chronic low back pain (LBP). The CI fell during combat patrol in Iraq and injured his right shoulder, back, neck and right knee in April 2005 with subsequent chronic pain in those areas. He had two right shoulder surgeries for a rotator cuff tear, and a noted congenital shoulder defect. Despite therapies, the shoulder pain continued to be duty limiting and was noted to interact with his mental health diagnoses. The knee and back pain were duty limiting despite therapy and rehabilitation was complicated by the CI’s shoulder limitations and pain. The CI sought mental health treatment in Jan 2006 with diagnoses leading to PTSD from Criteria A stressors from his deployment to Iraq in Feb 05-Jan 06. He was psychiatrically hospitalized twice [as noted by the Physical Evaluation Board (PEB)]. The second hospitalization was for ‘thoughts of self harm.’ He had additional mental health diagnoses of Major Depressive Disorder (MDD) and Psychological Factors Affecting a General Medical Condition. Despite psychotherapy, medication, and reduction in alcohol use, the CI was unable to fulfill the physical and psychiatric requirements of his military occupation specialty (MOS), was placed on a permanent U-3, L-3, S-3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the PTSD, MDD, Psychological Factors Affecting a General Medical Condition, Right shoulder pain, LBP, neck pain, and right knee pain conditions to the PEB as medically unacceptable IAW AR 40-501. Hearing loss, Positive PPD (skin test for reactivity to tuberculosis), elevated liver function tests, and trace Hematuria (blood in the urine), all determined to be medically acceptable, were the only other condition forwarded on the DA Form 3947. The informal PEB adjudicated the PTSD, ‘Chronic Right Shoulder & Knee Pain’ and Chronic LBP as unfitting, rated 10%, 10% and 0% each; with application of DoDI 1332.39 (E2.A1.5) for PTSD, and the US Army Physical Disability Agency (USAPDA) pain policy for the other diagnoses. The CI did not appeal for a formal PEB and was thus medically separated with a 20% combined disability rating.

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CI CONTENTION: The CI states: ‘I disagree with findings by PEB (see attachment)’ and attaches portions of the DES file, military and VA documents. Following initial PDBR application, the CI opted into the *Sabo et al v. United States* class action suit. All service conditions are reviewed by the Board as a matter of policy.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20061127** | | | **VA (4 & 2 Mo. after Separation) – All Effective 20070108** | | | | | |
| **Condition** | **Code** | **Rating** | **Condition** | | **Code** | | **Rating** | **Exam** |
| PTSD with MDD | 9411 | 10% | PTSD | | 9411 | | 50% | 20070509 |
| Psychological factors … | Not Unfitting | |
| Right Shoulder & (Right) Knee Pain … | 5099-5003 | 10% | Right Shoulder … | 5010-5201 | | | 20% | 20070315 |
| Right Knee … | 5010-5260 | | | 10% | 20070315 |
| Low Back Pain … | 5299-5237 | 0% | Lumbar Spine … | 5010-5237 | | | 20% | 20070315 |
| Neck Pain | Not Unfitting | | Cervical Spine … | 5010-5237 | | | 20% | 20070315 |
| Hearing Loss | Not Unfitting | | Hearing Loss | | 6100 | | NSC | 20070315 |
| PPD, Liver test, Hematuria | Not Unfitting | | PPD | | NSC | | | 20070315 |
| ↓No Additional DA Form 3947 Entries↓ | | | Sleep Apnea | | | 6847 | 30% | 20070315 |
| Scars, L. Arm, R. Shoulder, & L. Leg | | | 7804 | 0% | 20070315 |
| Tinnitus | | | 6260 | 10% | 20070315 |
| Multiple NSC | | | | | |
| **TOTAL Combined: 20%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 90%** | | | | | |

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ANALYSIS SUMMARY:

PTSD Rating Recommendation. The PEB rating, as noted above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DOD adherence to Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DOD guidance (which applies current VASRD §4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive six month period of Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria at six months for its permanent rating recommendation. The MEB psychiatric evaluation, under §4.130 criteria, would rate no higher than 50% and the minimum TDRL rating of 50% applies. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA psychiatric rating evaluation 4 months after separation. That exam was fairly close to the 6 month post-separation rating period, and treatment notes indicated no significant improvements during the year after separation. It therefore serves as the primary basis for the Board’s permanent rating recommendation under §4.130. Although the CI had some alcohol abuse issues, this appeared to be secondary to his PTSD. The CI’s MDD was considered inclusive with the CI’s PTSD for disability rating. All of the CI’s mental health impairment was therefore considered to be service connected and ratable under the PTSD code. At the time of the VA rating exam, the CI had been employed for 1 month, and was having occupational difficulties at work related to his PTSD symptoms. He was not undergoing therapy and reported almost daily intrusive memories, nightmares, irritability, anger problems, difficulty with falling and staying sleep, exaggerated startle response, flashbacks, hypervigilance, arousal symptoms, avoidance, numbing symptoms, low self esteem, and feelings of worthlessness. He reported social isolation, and symptoms of depression. There was a linkage made to the CI’s shoulder and back pain to increased PTSD symptoms. The examiner noted speech was clear and coherent, but dull and monotone; affect was constricted with depressed mood. The CI admitted frequent suicidal ideation, but denied current plan or intent; thought processes were logical and goal directed. The examiner stated ‘He reported that intrusive symptoms may often have a hallucinatory quality of vividness. Insight and judgment were limited.’ ‘Suicidal or homicidal thoughts - Veteran reports frequent thoughts that his family would be better off without him, and have suicidal ideation. Has not progress to planning or serious intent.’ There was no impairment of thought process; communication was ‘seriously impaired by irritability and anger’, there was no evidence of obsessive behaviors, panic attacks, or anxiety symptoms. Global functioning (GAF) was assessed in the range of serious impairment (GAF=45; vice 60 at MEB evaluation, and 50 on VA evaluation at 32 months). The examiner did not indicate MDD or Psychological Factors as AXIS I diagnoses. The VA rated this exam as 50% by criteria of §4.130 (not §4.129). The VA Compensation and Pension (C&P) evaluation of 32 months after separation is beyond the 12 month special attention window for the Board, but provides useful historical information about the CI’s stable PTSD symptoms, and was accomplished by the same examiner as the VA’s earlier initial PTSD evaluation. The examiner stated ‘reported complaints essentially the same as when last seen 2 years ago.’ The CI was still employed and continued with work and family difficulties, alcohol abuse and a GAF of 50. The examiner’s assessment was ‘There is a direct link between PTSD symptoms, particularly arousal and numbing, and psychosocial impairment in almost all areas of his life, and a notable decrease in quality of life.’ All Board members agreed that reasonable doubt was insufficient to support a 100% rating under §4.130 based on this evaluation, and that the 30% threshold was well exceeded. The Board deliberated therefore primarily between 70% vs. 50% as the permanent rating recommendation IAW §4.130. The general description for a 50% rating states, ‘occupational and social impairment with reduced reliability and productivity’. Although at 32 months after separation the examiner stated ‘In summary, veteran has shown continued impairments in functioning since his return from Iraq in almost all life areas, including self-care, social and family relations, physical health and health behaviors and recreational/leisure activities,’ there was no deficit in thought or judgment. There appeared to have been some worsening of symptoms since the 4 month post separation evaluation, despite a slightly higher GAF. In addition to the general description of occupational and social impairment, the §4.130 general formula fleshes out each rating description with a list of features or symptoms as examples for this level of impairment. This helps to determine a potential level of psychiatric impairment regardless of how well or poorly the veteran is actually faring with work and social activities at the time. Of nine such descriptors under the 70% rating, three were likely manifest at six months. Of the nine descriptors listed for the 50% rating, three were likely manifest at six months. After due deliberation, the Board agreed that a permanent PTSD rating of 50% is the most representative of impairment and a fair recommendation in this case.

Chronic Right Shoulder & Knee Pain Conditions. The PEB combined the right shoulder and right knee into a single rating IAW the USAPDA Pain Policy. IAW the VASRD alone, these conditions will be discussed and rated separately.

Right Shoulder Condition: The right handed CI was diagnosed with right shoulder rotator cuff tear by Magnetic Resonance Imaging (MRI) and underwent two surgeries with ‘some improvement.’ He was noted to have ‘a painless, congenital shoulder condition: absence of the right serratus anterior and pectoralis minor muscles consistent with Poland syndrome’ that indicated a poor prognosis for recovery to the level of being able to perform duties. The provider noted that the limitations attributed to his shoulder (and knee) condition limited the CI’s ability to recover sufficiently from his neck and LBP conditions. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. The MEB exam noted flexion and abduction limited to less than 30° by pain. The VA noted flexion and abduction limited to 90°. The military ROM appeared to be from 20060706 (referenced physical exam) or at latest 20060920 (MEB); however, the CI underwent right shoulder surgeries on 20060301 and 20060808 so that the military ROMs do not indicate full healing following surgery. The VA exam was 2 months after separation and is opined to have a higher probative value for the CI’s permanent right shoulder rating. The Board determined that the rating for the right shoulder for entry into TDRL should be appropriated coded Right Shoulder arthritis due to trauma 5010-5201 at 30% for Arm, limitation of motion Midway between side and shoulder level; and then a new permanent rating at the end of the constructive 6 month TDRL period (for PTSD) as Right Shoulder arthritis 5010-5201 at 20% for Arm, limitation of motion at shoulder level.

Right Knee Condition: There were two goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation. Neither exam demonstrated limited ROM to the level of rating for limitation of flexion or extension; however, both exams demonstrated pain-limited motion short of the VA normal range of 0-140° by at least 10°. Therefore IAW VASRD §4.59 Painful motion, the right knee should be rated as 5010-5003 at 10%.

LBP Condition. There were two goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below. There were no ratable radiating nerve symptoms.

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| --- | --- | --- |
| Thoracolumbar ROM | MEB – 20061023 | VA – 20070315 |
| Flexion | 35⁰, 37⁰, 30⁰ | 50⁰ |
| Combined | 80⁰ | 145⁰ |
| §4.71a Rating | 40% | 20% |

The military exam noted abnormal gait, and pain limited thoracolumbar flexion of 35°, 37°, and a 30° on the third repetition with a combined ROM of 80°. The VA exam noted flexion limited to 50° and combined ROM of 145°. The Board determined that the military exam (2.5 months prior to separation), indicating 30° limitation due to pain, as the last of three repetitions, met the VASRD 40% criteria of ‘forward flexion of the thoracolumbar spine 30 degrees or less.’ The remainder of the record, and the VA exam 2 months after separation demonstrated some improvement of the back condition. After due deliberation, the Board agreed that the most appropriate rating for the back condition for entry into TDRL should be Lumbar spine degenerative changes due to trauma rated as 5010-5237 at 40%; and then a new permanent rating at the end of the constructive 6 month TDRL period (for PTSD) as 5010-5237 at 20%.

Other Conditions. By inference, the CI contends for every MEB condition and all those rated on the post-separation VARD. Neck condition, Hearing Loss, Positive PPD, Abnormal Liver function tests, Hematuria, Tinnitus, and multiple other non-service connected conditions. All of these conditions are mentioned in the DES file. The Disability Evaluation System (DES) conditions of Neck condition, Hearing Loss, Positive PPD, Abnormal Liver function tests, and Hematuria all met standards and were adjudicated by the PEB as not unfitting. There was no evidence that the neck or hearing conditions interfered with duty. The Positive PPD, Abnormal Liver function tests, and Hematuria are ’abnormal tests’ and do not constitute a physical disability. In regards to Tinnitus, there is no indication that it interfered with performance of duty. No other conditions than those addressed by the PEB as unfitting had sufficient limitation by profile, Commander’s statement or indication in the record that they approached the level of interfering with the performance of duty. Sleep Apnea and Bilateral Tympanic Membrane Perforation were not mentioned in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Sleep Apnea and Bilateral Tympanic Membrane Perforation and any contended conditions not covered above remain eligible for Army Board for Correction of Military Records (ABCMR) consideration. The Board can make no recommendation for any additionally unfitting conditions.

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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 and Right Knee and lower back conditions and on DoDI 1332.39 for rating PTSD were operant in this case and the conditions were adjudicated independently of that policy and instruction by the Board. In the matter of the post-traumatic stress disorder condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed; and a 50% permanent rating at 6 months IAW VASRD §4.130 coded 9411. In the matter of the Chronic Right Shoulder & Knee Pain condition, the Board unanimously recommends that it be rated for two separate unfitting conditions of Right Shoulder and Right Knee: The Right Shoulder condition should be rated 30% going into the constructive TDRL period with a permanent 20% rating coded 5010-5201 IAW VASRD §4.71a; The Right knee condition, should be rated 10% coded 5010-5003 IAW VASRD §4.71a and §4.59. In the matter of the Lower Back condition, the Board unanimously recommends a rating of 40% going into the constructive TDRL period with a permanent 20% rating coded 5010-5237 IAW VASRD §4.71a. In the matter of the Neck, Hearing Loss, Positive PPD, Abnormal Liver function tests, and Hematuria conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. In the matter of the Tinnitus condition or 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.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be recharacterized to reflect that rather than discharge with severance pay, the CI was placed on the TDRL at 80% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then permanently retired by reason of physical disability with a final combined 70% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Post-Traumatic Stress Disorder | 9411 | 50% | 50% |
| Right Shoulder Arthritis | 5010-5201 | 30% | 20% |
| Right Knee Arthritis | 5010-5003 | 10% | 10% |
| Lumbar Spine Degenerative Changes | 5010-5237 | 40% | 20% |
| **COMBINED** | **80%** | **70%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090129, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

