RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900132 BOARD DATE: 20100225

SEPARATION DATE: 20050502

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SUMMARY OF CASE: This covered individual (CI) was a Guard NCO (Chemical Operations Specialist) medically separated from the Army in 2005 after 23 years of combined service (17 years active duty). The medical bases for the separation were a right shoulder condition, right knee condition and low back condition. He injured his right shoulder during a parachute landing in 1985. He required intermittent physical therapy (PT) and temporary profiles afterwards. He re-injured it during training in 2003 and underwent rotator cuff surgery in 2004. He continued to have pain and physical limitations, however, and was placed on a permanent U3 profile. He had a long-standing history of knee problems following different injuries. He underwent arthroscopic meniscal repair of the left knee in 2004. This knee improved, but the right knee was symptomatic at the time of his Medical Evaluation Board (MEB) and a Magnetic Resonance Imaging (MRI) demonstrated meniscal tears. Surgery was offered, but deferred by the CI. He had a history of low back pain dating to a parachute injury in 1985. This was also managed conservatively and resulted in temporary profiles. An MRI in 2004 demonstrated some mild degenerative changes but no disc disease. The back was included in a permanent L3 profile. The CI managed an OIF deployment in 2003, but the physical limitations from all of his orthopedic conditions progressively worsened after remobilization. He could no longer meet the physical requirements of his military occupational specialty (MOS), was not deployable with his ARNG unit and underwent an MEB. The knee, shoulder and back conditions were forwarded to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR-40-501. Additional conditions were supported in the Disability Evaluation System (DES) packet and are discussed below. Only the three orthopedic conditions were forwarded for PEB adjudication on the DA Form 3947. The PEB consolidated the right knee and right shoulder as a single unfitting condition rated 10%. The back condition was adjudicated as a separate unfitting condition rated 10%. The CI was thus medically separated with a combined disability rating of 20%.

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CI CONTENTION: The CI states: ‘Bias physical examination by the physician...The physician assisted my range of motion...I was discharged with a 20% disability rating. My present VA rating is 80% with a pending increase.’

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RATING COMPARISON:

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| **Service PEB** | | | | | **VA (~10 Mo. after Separation) – Effective 20050503** | | | |
| **Condition** | | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Pain and Right Shoulder Pain… | | 5099-5003 | 10% | 20050413 | Degenerative Changes Of The Right Shoulder, S/P Surgery | 5201 | 20% | 20060228 |
| R Knee, Meniscal Tear | 5259 | 10% | 20060228 |
| Chronic Low Back Pain… | 5299-5237 | | 10% | 20050413 | Chronic Low Back Strain… | 5242 | 10% | 20060228 |
| No Additional DA 3947 Entries. | | | | | Non-PEB X 5 / NSC X 8 | | |  |
| **TOTAL Combined: 20%** | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%** | | | |

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ANALYSIS SUMMARY:

The Board initially considered the PEB’s consolidation of the shoulder and knee conditions under the analogous 5003 rating. Although both conditions were associated with degenerative changes by imaging, both met Veterans Administration Schedule for Rating Disabilities (VASRD) criteria for compensable separate ratings. Although the PEB may have relied on AR 635.40 (B.24 f.) guidance for the consolidated rating, the Board must recommend separate codes and ratings IAW VASRD §4.7 (higher of two evaluations). The PEB’s DA Form 199 specifies that the US Army Physical Disability Agency (USAPDA) pain policy was applied to its ratings.

Right Shoulder Condition. A post-operative MRI of the shoulder demonstrated a significant degree of residual pathology and ‘tendinopathy’. The range of motion (ROM) documented in the narrative summary (NARSUM) was active abduction to 135⁰ ‘with pain beginning at 60⁰’. The VA rating examiner noted 100⁰ of abduction. Several PT notes document non-goniometric ranges of motion (ROMs) in excess of 90⁰. One PT note appeared to reflect a separate goniometric exam from the one quoted in the narrative summary (NARSUM) and documented 135⁰ of abduction. The Board agrees that the appropriate coding for the shoulder is 5201 as applied by the VA. Under this code, 90⁰ is the cut-off between 20% and 30% ratings for the dominant right shoulder. Although consideration was given to application of §4.59 (painful motion) to achieve a 30% rating based on the NARSUM pain at 60⁰ statement, the Board believes that the probative value of that single comment (especially considering the disparity between onset of pain and active motion achieved) was outweighed by the balance of the evidence. The Board therefore recommends a 20% rating for the shoulder coded 5201. Given that the Board is relying on *active* ROM from the MEB as well as the VA exam for its rating recommendation, the CI’s contention that ROM was unfairly obtained is moot.

Knee Condition. The Board’s initial consideration was whether the PEB’s decision to find only the right knee unfitting was appropriate. Confusion arises because both the physical profile and the Commander’s statement designate the left knee as the impairment. The NARSUM and the DA Form 3947 forwarded the condition as ‘knee pain’. It is noted, however, that the clearly unilateral shoulder condition was also forwarded as ‘shoulder pain’. The body of the NARSUM discussed both knees, but provided a goniometric exam for only the right knee. The NARSUM and the VA exam documented significant improvement of the left knee after the surgical procedure. It can only be assumed that the left knee entry on the profile was left over from the immediate post-operative period and that the Commander drew his statement from the profile. Although it would have been clearer if the DA Form 3947 and DA Form 199 entries were more directed to this issue, the Board cannot find enough reasonable doubt in the CI’s favor to recommend addition of the left knee as separately unfitting. It is clear that the PEB made the distinction based on the different acuity of the knees at the time of separation. Regarding the coding and rating recommendation for the right knee, the Board is in agreement with the VA’s choice. There was no compensable ROM impairment noted in either the MEB or VA exams, and the 5259 code for pain after meniscectomy is a precise clinical fit for this case. This code provides for a singular 10% rating, which is the Board’s recommendation.

Back Condition. As stated above, the PEB applied the USAPDA pain policy to rating. The goniometric exam provided in the NARSUM documents flexion of 100⁰ with ‘pain beginning at 60⁰’. Combined ROM (even with pain deductions) was >240⁰. The VA exam noted a flexion of 70⁰ with the CI declining measurements in other planes. The NARSUM exam noted a ‘slightly antalgic’ gait (not clear if in reference to the knee). The VA rating examination and other entries in the VA records documented a normal gait. There are non-goniometric PT back exams noting normal ROM and gait. One stated specifically, ‘Patient ambulates without pain, sits and quickly rises from exam chair without any difficulty.’ The Board deliberated if either the pain at 60⁰ comment and/or the slightly antalgic gait comment in the NARSUM should be invoked to support a 20% rating recommendation for the thoracolumbar spine IAW VASRD §4.71a. Akin to the discussion regarding the shoulder rating, the Board agreed that probative value of these comments was outweighed by the balance of the evidence. Without regard to the USAPDA pain policy, 10% was still a fair rating decision by the PEB. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the back condition.

Other Conditions. There were no additional conditions documented in the NARSUM which were particularly relevant to Board consideration as additionally unfitting. It mentioned a remote stab wound to the neck (from a gridiron during early training), a prior heat injury and numbness in the buttocks from an anthrax immunization. None of these conditions were clinically active at separation. On the MEB physical the CI related some respiratory difficulties associated with duty at the World Trade Center recovery operation. He also reported epistaxis (nosebleed) and a prior evaluation for chest pain. His cardiac studies and a pulmonary function test had been normal. None of these conditions were clinically active during the MEB period. The physical profile was P1. The Commander’s statement made note only of the shoulder and knee conditions. The CI received a rating for post-traumatic stress disorder (PTSD) from the VA, noting his Operation Iraqi Freedom (OIF) and World Trade Center stressors. Although he mentioned sleep impairment (from pain) and a history of ‘personality disorder’ (described as the reason for separation from the Army in 1990), he denied any psychiatric symptoms on the MEB physical. He likewise denied any PTSD symptoms on his post-deployment health assessment. The VA rating decision for PTSD was not made effective to separation and specifically stated that there was no record of service treatment for it. In addition to rating the left knee (already discussed), the VA also rated the left shoulder. Left shoulder pain was not noted by the CI on the MEB physical nor mentioned in the NARSUM. 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. PTSD, the left shoulder condition and any contended conditions not covered above remain eligible for Army Board for Correction of Military Records (ABCMR) consideration.

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. As discussed above, PEB reliance on the USAPDA pain policy and possibly on AR 635.40 for rating was operant in this case. The conditions were adjudicated independently of that policy and regulation by the Board. In the matter of the right shoulder and right knee conditions, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right shoulder condition coded 5201 and rated 20%; and, an unfitting right knee condition coded 5259 and rated 10%; both IAW VASRD §4.71a. In the matter of the back condition and IAW VASRD §4.71a, the Board unanimously recommends no recharacterization of the PEB adjudication. In the matter of the respiratory condition, chest pain condition, anthrax immunization reaction 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 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 Changes and Surgical Residuals, Right Shoulder | 5201 | 20% |
| Meniscal Disease Right Knee | 5259 | 10% |
| Chronic Low Back Pain | 5299-5237 | 10% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090208, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

