RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900133 BOARD DATE: 20091119

SEPARATION DATE: 20040712

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (logistical specialist) medically separated from the Army in 2004 after 9 years of service. The medical basis for the separation was diabetes mellitus. He was diagnosed with diabetes in 2001 by laboratory findings in the course of an emergency room evaluation for an unrelated complaint. He was initially stabilized as an inpatient and then controlled by diet and oral agent as an outpatient. He underwent an MEB at that time, but was found fit by the PEB in 2002. His control worsened over time, however, and in 2003 he was diagnosed with Type 1 diabetes and placed on insulin. Because of the impact on deployability, he underwent a second MEB. His diabetes was determined to be medically unacceptable IAW AR 40-501 by the MEB. The CI had additional orthopedic conditions (back, right knee, and right ankle) which were forwarded by the MEB as medically acceptable. He was diagnosed with diabetic retinopathy as well, which was noted in the NARSUM but not listed on the DA 3947 for PEB adjudication. The CI was referred to the PEB; found unfit only for the diabetes and separated at 20% disability.

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CI CONTENTION: The CI notes the VA’s 40% rating for his diabetes and states that the Army rating was unfair. His application does not mention his other conditions.

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (Pre-Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| DIABETES MELLITUS, INSULIN REQUIRING | 7913 | 20% | 20040414 | DIABETES MELLITUS, TYPE I | 7913 | 40% | 20040628 | 20040713 |
| RECURRENT LOW BACK PAIN | NOT UNFITTING | 20040414 | RECURRENT LUMBOSACRAL STRAIN | 5010-5242 | 10% | 20040628 | 20040713 |
| RETROPATELLAR PAIN SYNDROME (R) KNEE | NOT UNFITTING | 20040414 | RETROPATELLAR PAIN SYNDROME (R) KNEE | 5010 | 10% | 20040628 | 20040713 |
| RECURRENT ANKLE SPRAINS | NOT UNFITTING | 20040414 | RECURRENT RIGHT ANKLE SPRAIN | 5010 | 0% | 20040628 | 20040713 |
| NO DA 3947 ENTRY | BILATERAL DIABETIC RETINOPATHY | 6099-6079 | 0% | 20040628 | 20040713 |
| NO ADDITIONAL DA 3947 ENTRIES. | NON-PEB X 1 / NSC X 2 | 20040628 | 20040713 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

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ANALYSIS SUMMARY:

Diabetes. The PEB DA 199 does not elaborate the basis for the 20% rating, but makes it clear that it was derived from the VASRD and not from service or DoD guidance. The VA rating decision for their 40% rating stated ‘you must avoid strenuous physical exertion due to the risk of hypoglycemia’, directly referencing the MEB NARSUM. The VA pre-separation rating examiner also referenced the NARSUM for the diabetic condition, and did not provide an independent history. IAW VASRD §4.119 for rating diabetes under 7913, the only distinction between the 20% and 40% ratings is ‘regulation of activities’. The VA rating decision quote regarding strenuous activity was verbatim from the NARSUM. Similar language, in fact, appears three times in the NARSUM, in addition to specific proscriptions against running and other strenuous requirements of basic soldiering. Similar restrictions are documented in the medical profiles and the Commander’s statement. On the other hand, the NARSUM specifically states that ‘he has not had hypoglycemia resulting from his usual activities of daily living’ and that the prognosis was optimistic for ‘minimal physical limitation in a civilian environment’. The VA rating decision indicated that ‘the report does not specifically address restricted diet’, but concluded that ‘the prescription of insulin infers that your condition should be managed by restricted diet’. The NARSUM, however, specifically states ‘must have access to diabetic diet’ and this requirement is documented in medical profiles and diabetic clinic notes. The primary question before the Board in this case, therefore, is whether the physician-directed avoidance of ‘strenuous physical exertion’ constitutes a VASRD definition of ‘regulation of activities’. The different rating determinations make it clear that the PEB and the VA answered this question differently. Appellate decisions in 2005 ruled that the definition for ‘regulation of activities’ elaborated in the 100% rating under 7913, i.e., ‘avoidance of strenuous occupational and recreational activities’, applies to the lower ratings as well. That would clearly support the 40% rating in this case. Although this interpretation could not be invoked as the ‘VASRD in effect at the time’ standard for PDBR recommendations, it adds weight to the 40% side of the deliberation. The basic fact is that the VA pre-separation rating decision, based on the same evidence as that considered by the PEB, specifically defined ‘regulation of activity’ to include avoidance of strenuous activities. All evidence considered and IAW VASRD §4.3, reasonable doubt should be resolved in favor of the CI in recommending a separation rating of 40% for the diabetes condition.

Orthopedic Conditions. There is no evidence the CI’s back, knee and ankle conditions, individually or collectively, significantly interfered with MOS performance or the requirements of basic soldiering. The back condition was of a lumbar strain nature without radiculopathy. It was subject to mild exacerbations, the last being 8 months prior to separation. He was not profiled for his back. The right knee condition, diagnosed as retropatellar pain syndrome, dated to 1997. It was the basis for an L2 profile prohibiting running, and had not been significantly symptomatic since the profile was placed in 2001. The right ankle had been subject to repeated sprains, commencing in 1999. The last one was 18 months prior to separation and the ankle was reported as asymptomatic at separation. He was not profiled for the ankle. The only pain medication at separation was occasional ibuprofen (specific indication not elaborated). The Commander’s letter made no mention of any orthopedic conditions or limitations and lauded overall performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the back, right knee or right ankle conditions.

Other Conditions. The CI was diagnosed with mild diabetic retinopathy shortly before discharge. Although a residual of the unfitting condition, it was not associated with impaired vision and consequently unrelated to fitness. Occasional left hip pain was noted in the VA exam, although not noted on the MEB physical exam or in the NARSUM. The VA examiner stated that the hip condition did not affect occupational or daily living activities. There were no other conditions service connected and rated by the VA. 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 diabetes mellitus condition, the Board unanimously recommends a rating of 40% coded 7913 IAW VASRD §4.119. In the matter of the back, right knee and right ankle conditions, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the retinopathy, left hip 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** |
| DIABETES MELLITUS, INSULIN REQUIRING | 7913 | 40% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090210, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

