RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900168 COMPONENT: guard

BOARD DATE: 20090721 SEPARATION DATE: 20050418

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SUMMARY OF CASE: This covered individual (CI) was a SSG Truck Driver medically separated from the Army in 2005 after 3 years active and 9 years of total service. The medical basis for the separation was left shoulder and both knees arthritis and chronic low back pain (LBP). The CI injured his shoulder and back in Iraq while lifting a tailgate. His left knee was injured in a fall and no trauma was recalled for a right knee injury. CI was referred to the PEB, found unfit and separated at 10% disability.

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CI CONTENTION: The CI contends for a higher rating as the Army found him unfit for duty with 10%, and upon release, the VA awarded him 40%.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service (**PEB**)** | | | | **VA ~ 2 mos** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| **Left shoulder** and **bi lateral knee pain** due to degenerative arthritis, permanently service aggravate by injury. No significant loss of range of motion or Joint instability. Rated as degenerative osteoarthritis, two or more major joints with x-ray evidence. Cannot meet the physical requirements required in PMOS because of extensive profile restrictions and pain. | 5099 -5003 | 10 | 20050228 | DEGENERATIVE ARTHRITIS **LEFT SHOULDER** | 5010-5201 | 10 | **20050808** | 20050419 |
|  |  |  |  | DEGENERATIVE ARTHRITIS, **LEFT KNEE** | 5010-5261 | 10 | **20050808** | 20050419 |
|  |  |  |  | DEGENERATIVE ARTHRITIS, **RIGHT KNEE** | 5010-5261 | **0** | **20050808** | 20050419 |
| Adjustment Disorder with mixed anxiety and depression | Not unfit |  |  | - |  |  |  |  |
| Chronic **Low back pain** which existed prior to mobilization, permanently service aggravated in a fall in Apr 04. No significant Loss of spinal motion, radiculopathy, spasm or tenderness to palpation. | 5237 | 0 | 20050228 | DEGENERATIVE DISK DISEASE, **LUMBAR SPINE** | 5010-5242 | 10 | **20050808** | 20050419 |
| Left olecranon spur | Not unfit |  |  | - |  |  |  |  |
| Hearing Loss | Not unfit |  |  | HEARING LOSS, LEFT EAR | 6100 | 10 | **20050808** | 20050419 |
|  |  |  |  | HEARING LOSS, RIGHT EAR | 6100 | 0 | **20050808** | 20050419 |
|  |  |  |  | TINNITUS |  | 10 | **20050808** | 20050419 |
| **TOTAL Combined: 10 %**  Present Rating:10%  EPTS factor: UND  Net Rating: 10% | | | | **TOTAL Combined (*incl non-PEB Dxs*): 40%** | | | | |

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ANALYSIS SUMMARY: The NARSUM, MEB, and PEB essentially agree with the VA history and physical. The Army adjudication of LOD and unfit for left shoulder and bilateral knee pain, as well as for chronic low back pain is supported and administratively final including an undetermined EPTS factor, so no EPTS deduction was made. The mental health diagnosis of adjustment disorder was not ratable, and left elbow and hearing loss were not unfitting. There is no indication in the record that hearing or tinnitus (ringing in the ears) should be added as unfitting conditions. The predominant issues are related to the rating for the 4 unfitting musculoskeletal areas: Left shoulder, Low back pain (LBP, Lumbosacral spine (LS)), left knee, and right knee.

Left Shoulder. The Left shoulder was documented in the NARSUM as having arthritic changes and painful motion. Pain was specifically addressed as ‘**with pain as noted with abduction of the left shoulder over 90’**. If this measure alone were used as the basis of rating, it would justify 20% as the ‘90’ would equate to ‘at shoulder level’ using code 5201 (Arm, limitation of motion of:). There is no other formal ROM for the shoulder documented in the military records, but there were no complaints of overhead work. Painful shoulder is mentioned in the psychiatry NARSUM Addendum, but not mentioned in the commander’s memo. Painful shoulder motion is well documented with some support (NARSUM) for a 20% rating. However, the military exams did not address measured ROM endpoints for each motion, fatigability, and pain onset for each axis. Absent the pain rule, any painful motion below VA normals would justify rating 10% IAW **§4.59 Painful motion**. The comprehensive VA left shoulder exam was 2 months following separation and documented pain limited motion that would meet only the 10% criteria IAW §4.59.

Low Back Pain. Painful motion from the low back (LS) was documented as a complaint multiple times in the record, with occasional radicular pain. There is imaging demonstrating LS spine osteophytes and arthritic changes. The NARSUM indicates FROM of the back without mentioning painful motion. The commander’s memo indicated LBP as the primary cause of CI’s inability to perform the duties of his MOS. The comprehensive VA back exam was 2 months following separation and indicated pain with motion ‘with repetitive use of the back, consisting of having the veteran flex and extend his back several times and rotate several time he did complain of increased pain and there was no additional limitation of motion noted.’ The LBP was rated 0% by the Army and 10% by the VA. Given the brevity of the military exam, lack of addressing repetitive motion, primacy of LBP exacerbated by movement as a complaint by the CI, and more complete VA exam without any intervening exacerbation, the probative value of the VA exam is likely higher and the LBP meets the criteria for 10% IAW §4.59.

Left Knee Pain. The left knee had a recent arthroscopy for a torn meniscus and the military exam did not address formal ROMs. The VA Left knee exam, done within 2 months of discharge without intervening exacerbation, demonstrated comprehensive ROMs. That exam indicated slight restriction from full ROM due to pain and has a higher probative value. The left knee meets the criteria for 10% IAW §4.59.

Right Knee Pain. Both the military and VA exams concur that there was no painful motion of the right knee and if rated, the knee would support a 0% 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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board determined that only the Left shoulder, Lumbosacral spine, left knee, and right knee were unfitting and that there any EPTS factor could not be determined. The central discussion was on rating these conditions in the absence of the Army pain rule, and determining which exams had the highest probative value to apply the VASRD rating criteria. The three general schema discussed were to use only the Army NARSUM exams [20% shoulder, 10% bilateral knees, 0% back], use only the VA exams [10% shoulder, 10% left knee, 0% right knee, and 10% back], or a mix of exams for different diagnoses. The combined rating percentages were 30% for use of either predominate exam source. The Board opined that the entire VA orthopedic exam had a higher probative value than the military exam(s) as there were full measured ROMs, specific attention to what degree pain began, and repetitive motion to address fatigue. The Board voted unanimously to rate the CI’s left shoulder, left knee and Lumbar spine at 10% each.

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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 the CI’s prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| DEGENERATIVE ARTHRITIS LEFT SHOULDER | 5099-5003 | 10% |
| DEGENERATIVE ARTHRITIS, LEFT KNEE | 5010-5261 | 10% |
| DEGENERATIVE ARTHRITIS, RIGHT KNEE | 5010-5261 | 0% |
| DEGENERATIVE DISK DISEASE, LUMBAR SPINE | 5010-5242 | 10% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090213, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

