RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900169 COMPONENT: REGULAR

BOARD DATE: 20090813 SEPARATION DATE: 20061108

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SUMMARY OF CASE: This covered individual (CI) was an NCO medically separated from the Army in 2006 after 5 years of service. The medical basis for the separation was an elbow condition. The elbow was injured in garrison during a 2004 OIF deployment. Initial management was confined to analgesics only, and the severity of the injury was not recognized until his return. He suffered post-traumatic arthritis with limitation of motion and mild ulnar nerve entrapment. Corrective surgery was indicated and discussed, but deferred by the CI. The MEB forwarded the joint and neuropathy conditions to the PEB as separate medically unacceptable conditions. Additionally the CI was evaluated for a bilateral bunion disorder during the MEB process. The Podiatry addendum deemed the bilateral disorder non-surgical and not medically acceptable. The CI also underwent a Behavioral Health evaluation during the MEB for possible PTSD. The Psychiatry addendum deferred a diagnosis of PTSD pending confirmation of combat experiences, but opined that the condition was within retention standards. The PEB found the neuropathy and the psychiatric condition as fit. The foot conditions were found to be EPTS, based on an earlier Podiatry note that they were pre-existing. The CI was separated at 20% disability for the elbow condition only.

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CI CONTENTION: The CI states that the VA rates his elbow at 30% and withholds 30% for repayment of his severance pay, suggesting ‘the ratings should match’. He contends ‘My rating should be increased to 30% and I should receive my full retirement benefits’.

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (< 1 Mo. from Separation)** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| LEFT ELBOW CONTRACTURE WITH POST-TRAUMATIC ACTIVITIES... | 5010- 5206 | 20% | 20060913 | DEGENERATIVE JOINT DISEASE AND BONES SPURS, LEFT ELBOW | 5010-5207 | 20% | 20061003 | 20061119 |
| LEFT CUBITAL TUNNEL SYNDROME | FIT | - | - | LEFT ULNAR NEUROPATHY | 5299-8516 | 10% | 20061003 | 20061119 |
| BILATERAL BUNION **/** BUNIONETTE DEFORMITIES | 5299-5280 | EPTS | 20060913 | BUNIONS LEFT  BUNIONS RIGHT | 5299-5280 | 0%  0% | 20061003 | 20061119 |
| ANXIETY DISORDER | FIT | - | - | PTSD | 9411 | 30% | 20061003 | 20061119 |
|  |  |  |  | NON-PEB X 4 |  |  |  |  |
| **TOTAL Combined: 20 %** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 70%** | | | | |

ANALYSIS SUMMARY:

Elbow Rating. There was significant functional impairment of the elbow secondary to limited range-of-motion (ROM). The VASRD coding was appropriate. The ROM goniometry forwarded in the NARSUM was 80⁰ flexion/35⁰ extension. The VA rating exam quoted 145⁰ flexion/64⁰ extension, significantly better. The PEB measurements would have rated 20% for either flexion or extension, although rated under the limited flexion code. It was ascertained that combined rating of both ROM impairments beyond 10% each is not intended by the VASRD rating scheme. The VA rated under impaired extension, but this still yielded a 20% rating (barely). There is nothing to suggest adverse influence of the USAPDA pain policy on the PEB rating, and it is fair and IAW §4.71a of the VASRD.

Ulnar Neuropathy. This condition was forwarded to the PEB on the MEB form 3947 as not meeting retention standards IAW AR 40-501 3-30J, and specifically adjudicated as fit by the PEB. It is coded and rated (10%) by the VA. The MEB physical exam documented a mild ulnar sensory deficit, but described 5/5 motor strength. The VA examiner noted ‘slight’ hand weakness. No electromyelogram is in evidence. The neuropathy had to have had some interplay with fitness as it involved the same extremity, even though it is clear that it would not have been *separately* unfitting. The profiles or Commander’s statement could not be expected to dissect any specific limitations between the two conditions. AR 40-501 3-30J stipulates impairment ‘of such a degree as to *significantly* interfere with performance of duty’. The threshold for PDBR recommendation of an additionally unfitting condition should be that it makes a *significant* contribution to unfitness. Especially in an instance where the PEB has specifically adjudicated fitness (even if the MEB judges it to not meet retention standards IAW AR 40-501), the BOARD threshold for making a recommendation contrary to the PEB expertise is not conclusively reached for this condition.

Foot Condition. Whether the CI’s podiatric issues were truly EPTS or at least service-aggravated is a debatable question. They were service-connected by the VA. Furthermore they were opined medically unacceptable by the podiatrist and the CI carried an L3 profile, so an argument for unfitting is strong. This is, however, of little consequence since the ratings would be 0% as agreed by the VA. With the lack of any benefit to or contention by the CI, a PDBR recommendation contrary to the PEB findings is pointless.

PTSD. The condition is documented. The MEB psychiatrist acknowledged and the VA confirmed the diagnosis. The psychiatric opinion specifically stated that the diagnosis of PTSD was pending confirmation of the CI’s combat experiences. It is obvious, however, that the CI had no demonstrable significant impairments to duty performance on this basis. The Commander’s statement was, in fact, laudatory regarding his leadership and professional performance. His profile was S1. There is no basis to challenge the psychiatric opinion or PEB adjudication regarding fitness for this condition.

Other Conditions. Bilateral knee, right shoulder and low back conditions were rated by the VA and evident in the service treatment record. They were not specifically addressed by the MEB or noted in the NARSUM. Although all of them could have influenced some of the profile limitations, none were convincingly significant in that regard upon review of the medical record. The CI did not contend for any of them.

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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 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 elbow coding and rating, the BOARD unanimously concluded that the PEB adjudication was fair and IAW VASRD §4.71a. In the matter of the ulnar neuropathy, the Board unanimously concluded that our threshold for opposing the PEB expertise in its fitness adjudication was not reached. In the matter of the bunion deformities, the Board questions as to whether service aggravation overcomes the EPTS determination by the PEB and believes that evidence for unfitness exists. The Board unanimously agreed, however, that adjudicating this condition formally was pointless in the face of inevitable 0% ratings. In the matter of the psychiatric condition, since the evidence required by the consulting psychiatrist to make a formal diagnosis of PTSD is now available, the Board concludes that the ‘ANXIETY DISORDER’ on MEB form 3947 reflects a de facto diagnosis of PTSD. The Board unanimously agrees, however, that the condition was not unfitting and that the rating consequences of acknowledging it as PTSD are moot. The Board unanimously concluded that there is no justification for finding the knee, shoulder, low back or other conditions as additional unfitting conditions for PEB rating.

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RECOMMENDATION: The Board therefore recommends that there be no re-characterization of the CI’s disability and separation determination.**\***

**\*** The Board respectfully notes the following errors in the DA Form 199 for the PEB convened 20060816. The left elbow is erroneously designated as dominant. There is ample documentation of right-handedness. This did not have a bearing on rating in this case, however. Elbow is confusingly misspelled ‘LOW’.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090204, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

