RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900187 BOARD DATE: 20090923

SEPARATION DATE: 20080413

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SUMMARY OF CASE: This covered individual (CI) was a Specialist medically separated from the Army in 2008 after 6 years of service. The medical basis for the separation was a bilateral shoulder condition. She was also medically boarded for depression. In 2006 she was diagnosed with bilateral shoulder impingement syndrome for which she underwent laparoscopic surgical repairs: for the left shoulder in December, 2006 and right shoulder in July, 2007. She did not respond adequately to conservative treatment and was issued a permanent U3 profile. This was not compatible with her MOS (radiology technician), and she underwent an MEB. In June, 2007 she was evaluated by Behavioral Health for depression. She received an Axis I diagnosis of Major Depressive Disorder. The psychiatric addendum was explicit regarding obesity as the main underlying cause for the depression, and opined that the condition was EPTS and not permanently service-aggravated. In that obesity (only administratively unfitting) was the primary etiology of depression, the PEB adjudicated the depression as not medically unfitting. The CI was evaluated for back and bilateral knee conditions by the MEB, which were forwarded as medically acceptable on the DA 3947. The PEB adjudicated the CI as unfit for the shoulder condition only, and she was separated at 20% combined disability.

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CI CONTENTION: The CI’s application states, ‘Shortly after separation from active duty status, SM had additional surgery on right shoulder for which she had previously undergone once already for impingement symptoms. MEB was not aware of additional surgical treatment as it was not scheduled till after MEB proceedings had started. SM has continued with physical therapy with mixed results.’

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RATING COMPARISON:

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| --- | --- |
| **Service PEB** | **VA (~1 Mo. after Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| BILATERAL SHOULDER IMPINGEMENT… | 5099-5003 | 20% | 20080808 (Revised) | L SHOULDER IMPINGEMENT… | 5201 | 20% | 20080508 | 20080414 |
| R SHOULDER IMPINGERMENT | 5201 | Deferred (Post-Op) | 20080508 | 20080414 |
| DEPRESSION | 2⁰ TO OBESITY-NOT UNFITTING | 20080808 | PTSD WITH DYSTHYMIA | 9411 | 30% | 20080520 | 20080414 |
| LOW BACK PAIN | FIT | 20080808 | L/S DDD | 5243 | 20% | 20080508 | 20080414 |
| ANTERIOR KNEE PAIN | FIT | 20080808 | L KNEE PFSL KNEE SUBLUXATION | 50145257 | 10%10% | 20080508 | 20080414 |
| R KNEE PFSR KNEE SUBLUXATION | 50145257 | 10%10% | 20080508 | 20080414 |
| NO ADDITIONAL DA 3947 ENTRIES. | NON-PEB X 8 | 20080430 | 20080414 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%**   |

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ANALYSIS SUMMARY:

Shoulder Condition(s). The CI’s contention implies that her right shoulder was under-rated because of the imminent surgery at separation. Records for that surgery or notation of the exact date are not in evidence, but the CI’s statement indicates that it was scheduled during the MEB and performed right after separation. The VA orthopedic examiner’s record notes ‘a recent Bankart repair’ in April and that she was still undergoing rehabilitation. The right shoulder was in a sling, and range-of-motion (ROM) measurements were deferred in the initial VA rating examination. The rating decision assigned 0% for the right shoulder pending an accurate rating exam. There is no evidence that this has occurred to date. Per the VA rating exam, left shoulder goniometry measured abduction to 140⁰, but pain with repetitive motion lowered it to 90⁰ for rating. This was the basis of the VA rating of 20% under 5201. The NARSUM examination stated, ‘Abduction for both shoulders was 170 degrees with pain at the end point.’ One can credibly speculate that repetitive motion, presumably not performed by the MEB examiner, would have reduced the ratable ROM. If the same 50⁰ deduction invoked by the VA examiner were applied, however, abduction would still have attained 120⁰. Any abduction over 90⁰ (shoulder level) does not qualify for the minimum 20% rating under 5201, although one could still assign a 10% rating IAW VASRD §4.59 (painful motion). The PEB, even though it coded both shoulders together under analogous 5003, still assigned a 10% rating for each joint and applied the bilateral factor. The PEB cited ‘non-compensable limitation of motion’, properly characterizing the MEB exam. Coding each shoulder separately at 10% would have been more compliant with the VASRD, but would not have affected rating. Therefore, application of VASRD §4.7 (higher of 2 evaluations) would not benefit the CI. The consequences of the eminent surgery, no matter how close after separation, cannot affect Board recommendation applicable to the PEB rating at the time of separation. One could argue for a 20% left shoulder rating based on the VA exam and coding, coupled with a 10% right shoulder rating based on the MEB exam. The incongruity of this approach, however, undermines the threshold for resolution of VASRD §4.3 (reasonable doubt) in the CI’s favor. There is no compelling difference in the probative value of either exam, given the better abduction baseline noted in the MEB exam independently of the repetitive motion factor. The AO, therefore, recommends no recharacterization of the PEB adjudication for bilateral shoulder impingement.

Psychiatric Condition. The history obtained by the VA psychiatrist, within a month of separation, was at odds with that obtained by the MEB psychiatrist. Although a mood disorder situationally precipitated by the stigma of her obesity was well described in the VA exam, there is an additional history of PTSD symptoms dating to a 2003 OIF deployment. The VA psychiatrist made two Axis I diagnoses: PTSD and Dysthymia. It is noted that the VA did not apply the §4.129 provisions for PTSD. No PTSD symptoms were recorded by the MEB psychiatrist, although they were not noted as pertinent negatives. Most of the CI’s responses on a PTSD questionnaire administered January, 2007 were negative and no PTSD symptoms were elicited on the MEB physical. The PEB adjudication of the psychiatric condition as singular depression was therefore reasonable. The CI’s history to the MEB and the VA psychiatric examiners did link the depression to her obesity, and did not note a contribution from her medical or other situational issues. She also had a childhood history of molestation and a stormy upbringing, which was presumably the MEB psychiatrist’s basis for establishing the disorder as EPTS. He opined that the condition fell below retention standards, but also noted that it was not permanently service-aggravated. The PEB’s rationale for adjudicating the depression as not unfitting based on the link to obesity is questionable, albeit irrelevant, since it would not have been compensable anyway (EPTS/non-aggravated). Furthermore the Commander’s letter would not lend support for any psychiatric contribution to unfitness. She was manning the front desk job in the Radiology Department and active in volunteer work. The S3 profile was confined to a proscription against weapon access, which would not of itself be unfitting in her MOS. The VA psychiatric rating exam specifically stated, ‘She denied any difficulties completing her work duties.’ The Board, therefore, has no reasonable basis for recommending recharacterization of the PEB’s fitness determination for the psychiatric condition.

Other Conditions. Regarding the other DA 3947 conditions, there is no mention of back or knee impairment in the Commander’s letter and the medical profile was L1. The CI had various service connected conditions rated at 0% by the VA, but her only additional compensable ratings were for hip, ankle and neck conditions. None of these can be linked to fitness in the Commander’s letter, medical profiles or entries in the service medical record. The Board, therefore, has no reasonable basis for recommending any other conditions as additionally unfitting 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 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 bilateral shoulder condition, the Board voted 2:1 to recommend no recharacterization of the PEB coding or rating IAW VASRD §4.71a. The single voter for dissent (who recommended 5201 coding with ratings of 20% for the right and 10% for the left shoulders) submitted the addended minority opinion. The Board stipulates that the consolidation of two or more unfitting joint conditions under the analogous 5003 code is generally not adherent to VASRD §4.7 (higher of 2 evaluations). In this case the PEB did not apply such coding in a way that adversely affected rating, although separate coding and rating for each joint is still preferable. In the matter of the psychiatric condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting and not ratable for separation. In the matter of the back pain, knee pain 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination, stipulating that the combined shoulder coding was suboptimal.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090222, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

