RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900205 COMPONENT: reserve

BOARD DATE: 20090721 SEPARATION DATE: 20050315

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SUMMARY OF CASE: This covered individual (CI) was a SSG Military Police medically separated from the Army in 2005 after 12 years active and 20 years of total service. The medical basis for the separation was moderate to severe bilateral knee pain and chronic left shoulder impingement syndrome. The CI’s bilateral knee pain began in 1996 during annual training when the CI landed on both knees after going through a window. Left shoulder pain began in 2004 without recalled specific trauma. Despite treatment, the CI’s pain progressed and restricted his ability to accomplish the duties of his MOS. CI was referred to the PEB, found unfit and separated at 10% disability.

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CI CONTENTION: ‘Injured knees during two week training. Had no problems prior to injury. Sleep Apnea got worse during assignment at Aberdeen PG. Called up on AD after 911.’

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RATING COMPARISON:

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| **Previous Determinations** | | | | | | | | |
| **Service (**PEB**)** | | | | **VA Exam 12 months** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Moderate to severe **bilateral knee** osteoarthritis … Range of motion was measured as +10-125 degrees with measurements limited by pain. | 5003 | 10% | 20041130 | ARTHRITIS, **BILATERAL KNEES**  Not Service Connected, Not Aggravated by Service  Four unsuccessful appeals: 20050412, 20060707, 20061013,20090309 | 5003 | NSC | **-** | **-** |
| Chronic impingement syndrome **Left** **shoulder** without a history of trauma. … constant pain of an intensity of 3-9/10 worsened with activity … | 5201 | 0% | 20041130 | TORN ROTATOR CUFF, **LEFT** **SHOULDER** (CLAIMED AS OSTEOARTHRITIS, LEFT SHOULDER WITH RADICULAR SYMPTOMS) | 5299-5024 | 10% | 20060326 | 20050316 |
| 4. Chronic impingement **right** shoulder status post surgery. | Not unfitting |  | 20041130 | SUBACROMIAL DECOMPRESSION, STATUS POST PARTIALLY TORN **RIGHT** ROTATOR CUFF | 5299-5203 | 10% | 20060326 | 20050316 then 20041012 |
| 5. GERD | (Medically Acceptable). |  | 20041130 | HIATAL HERNIA WITH GERD | 7346 | 10% | 20060326 | 20050316 |
|  |  |  |  | LEFT ELBOW | 5099-5024 | 10% | 20060326 | 20050316 |
| 7. Pre-Glaucoma | (Medically Acceptable). |  | 20041130 | GLAUCOMA | 6099-6013 | NSC |  |  |
| 6. Cholesterol | (Medically Acceptable). |  | 20041130 |  |  |  |  |  |
|  |  |  |  | Sleep Apnea | 6847 | NSC |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*incl non-PEB Dxs:*** 10% from 20041012  40% from 20050316  (Bilateral factor of 2.7 Percent for diagnostic codes 5203, 5024, 5024) | | | | |

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ANALYSIS SUMMARY: OSA: OSA with prescribed CPAP was diagnosed in 2002. This diagnosis was addressed in the NARSUM addendum (20040727), but not added to the specific MEB diagnoses list or considered by PEB as a diagnosis. There is the EPTS nature of the condition, and lack of in-service exacerbating event or exposure. Despite the CI’s contention of worsening during assignment at Aberdeen PG, there is no evidence that it exceeded normal progression of the disease, or that service permanently aggravated the condition. However, since the CI has over 8 years active duty credit, it may be presumed as service aggravated/connected on that basis. There is mention of continued excessive daytime hypersomnolence despite CPAP. However, there is no linkage to the CI’s inability to perform the duties of his MOS due to this condition. The Army frequently retained members with OSA controlled on CPAP in 2005. The VA found OSA as not service connected, so did not provide a rating. The CI’s OSA did not rise to the level for being added as a new unfitting condition.

Left Shoulder: Left shoulder pain began in 2004 without acute trauma recalled. There was abnormal imaging, diagnosis of shoulder impingement, and the CI’s symptoms were not resolved following physical therapy including an injection. The orthopedic surgeon NARSUM (20041103) indicated Left shoulder painful ROM including history of difficulty with overhead work and push-ups. Physical exam states: ‘The soldier has pain in both shoulders with resisted flexion with the shoulder at 90 degrees and resisted external rotation with the shoulder at 90 degrees abduction. This represents positive impingement signs. He has more pain on the left than on the right. He is diffusely sore to palpation over the left anterior shoulder. He has some localized soreness at the acromioclavicular joint. There is no deformity.’ This wording equates to pain-limited ROM to ‘at the shoulder level’ which is the 20% criteria for VASRD 5201 Arm, limitation of motion. However, other formal ROM (20040623) in the service treatment record (STR) indicates shoulder painful motion at greater than 90 degrees, but less than 180 degrees.

The left shoulder was not examined or rated on initial VA rating decision of 20050412, but was added in rating decision of 20060707 at 10% due to VA examination, with pain on motion when reaching upward and behind the back. VA exam (20060326 ~1 year post discharge) revealed pain limited ROM beginning at 100 degrees. Due to the time between separation and VA exam, this could indicate improvement of the shoulder ROMs. All exams indicated that the left shoulder does have pain-limited ROM, but only the NARSUM exam rises to the 20% threshold of ‘at shoulder level.’ The left shoulder should be rated at 10% IAW §4.59 Painful motion.

Knees: NARSUM (20040727) bilateral knee ‘pain began in 1996 during AT and soldier landed on both knees after going through a window. Pain has progressed since then. Soldier also states that knee locks twice daily while walking. Past treatment has included bilateral knee arthroscopy, which found osteoarthritis, and osteochondral defects. Other treatment has included physica1 therapy, advil, vioxx.’ There was no painful motion noted on exam. However, given the Army culture of relying and rating only on mechanical limitations to ROM, it is possible that the examiner did not feel commenting on pain was required. There was no repetitive motion, fatigue, or absence of pain specifically addressed. Formal ROMs (20040511) indicated Left knee pain-limited ROM to 125 degrees, Right knee pain-limited motion to 122 degrees. The PEB description indicated painful motion: ‘Range of motion was measured as +10-125 degrees with measurements limited by pain.’, but did not rate for painful motion. Imaging of both knees showed abnormalities.

The service (PEB) and VA disagreed on the permanent service aggravation for the CIs Left and Right knee conditions. The PEB found for permanent aggravation and is logical given the CI’s history and MOS. The CI also had over 8 years active duty credit, so had a presumption of service aggravation. The PEB also addressed, but could not quantify the portion of knee disability attributable to pre-service knee conditions (EPTS). The PEB specifically noted no deduction for EPTS (UND-Undeterminable). The VA rationale for ‘Not Service Connected’ (NSC) was upheld on multiple appeals. It appears that the VA did not conclude that the CI’s service line of duty injury in 1996 led to traumatic arthritis of the knees, and that there was no permanent service aggravation of a condition that the CI had diagnosed while not on active duty. However, if the Board were to adopt the VA rationale, it would overturn the PEB decision to the detriment of the CI and is likely beyond the scope of this Board. Once service connection or permanent aggravation is granted, the EPTS proportion of the disability is undeterminable. As each knee had painful motion short of VA normal ROMs, each knee should be separately rated at 10% IAW §4.59 Painful motion.

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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 unanimously agreed that OSA should not be added as a new unfitting condition and that only the Left shoulder, Left knee and Right knee were unfitting. Despite the single measure for greater pain limited motion of the left shoulder, the preponderance of evidence and more weighty evidence supported Left shoulder pain limited motion below the 20% rating criteria. Each knee was clearly limited short of full ROM by painful motion. The Board unanimously voted to rate the CI’s orthopedic conditions, absent the pain rule, IAW §4.59, as left shoulder at 10%, Left knee at 10%, and right knee at 10%; each for pain-limited motion IAW §4.59.

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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 |
| Right knee, osteoarthritis w/ painful motion | 5010-5260 | 10% |
| Left knee, osteoarthritis w/ painful motion | 5010-5260 | 10% |
| Left shoulder impingement syndrome, painful motion | 5201-5003 | 10% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090225, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

