RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900244 BOARD DATE: 20100813

SEPARATION DATE: 20060830

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SUMMARY OF CASE: This covered individual (CI) was an Army National Guard SSG (88M, Heavy Vehicle Driver) medically separated from the National Guard in 2006 after 3 years of active and 31 years combined service. The medical basis for the separation was his left knee and low back pain (LBP) conditions. While in Kuwait in June 2005 the CI hit his left knee on a pile of rocks and again during a convoy vehicle crash. The CI subsequently underwent surgical repair in Aug 2005 that included lateral meniscus removal and bony repairs. Symptoms persisted and he was not considered a near-term candidate for a second surgery, but prognosis was for a knee replacement in the distant future. The CI also began complaining of left hip and back pain in early 2006 without specific trauma. He had a hip injection and specialty pain clinic referral included three epidural lumbar spine injections that did not provide permanent relief. Despite rehabilitation and medications for the left knee and lower back conditions, he did not respond adequately to perform within his MOS or participate in the APFT. He was issued a permanent L3 profile and underwent a MEB with final DA Form 3947 detailing seven conditions; the left knee and lower back conditions were determined to be medically unacceptable IAW AR 40-501. Other conditions, specifically left hip, abdominal (GERD), hyperlipidemia, hypertension and bilateral foot (bunions) conditions were determined to be medically acceptable IAW AR 40-501. The CI was referred to the Physical Evaluation Board (PEB), found unfit only for the lower back and left knee conditions rated 10% and 0% respectively; all other conditions were found to be not unfitting. The CI appealed to the Formal PEB (FPEB) who found the CI unfit only for the same conditions, but increased the ratings to 10% each. The CI’s appeals of the FPEB did not lead to any changes in the findings, and the CI was determined to have a 20% combined disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Army and Department of Defense regulations including the USAPDA pain policy. The CI elected Reserve retirement in-lieu of discharge with disability severance pay.

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CI CONTENTION: The CI states: ‘The PEB did not review all records accurately detailing the full extent of knee and back injury. Was discharged from service a few days after being diagnosed with type II diabetes and never rated for the diabetes. The case manager was constantly trying to persuade me to accept the PEBs decision or risk losing the percentage of disability that had been awarded. A rebuttal was submitted to the board by fax on August 7, 2006 and I was discharged by the time I received notice that the board would not change their decision but would stand by 20% rating. I was never given the opportunity to discuss with anyone why after serving in the military for more than 31 years I was discharged from active duty on August 30, 2006 with no processing out. In addition, I was also discharged from the national guard on August 31, 2006.’ He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20060728** | **VA (4 Mo. after Separation) – All Effective 20060831** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| LBP … DDD, spinal stenosis | 5238 | 10% | Lumbosacral DDD\* | 5010-5237 | 10% | 20061218 |
| Left Knee, Osteoarthritis | 5003 | 10% | Left Knee DJD\* | 5010-5260 | 10% | 20061218 |
| Left Hip, Bursitis | Not Unfitting | Left Hip Pain | NSC | 20061218 |
| GERD | Not Unfitting | GERD\* … | 7346 | 10% | 20061218 |
| Hyperlipidemia | Not Unfitting | - |  |  |  |
| Hypertension | Not Unfitting | - |  |  |  |
| Bunions, Bilateral | Not Unfitting | - |  |  |  |
| ↓No Additional DA 3947 Entries↓ | Diabetes Mellitus\* | 7913 | 20% | 20061218 |
| Non-PEB x2 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%**   |

\* Ratings increased in 2008, plus nerve conditions added for 60% from 20080604. Multiple VA rating changes thereafter.

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ANALYSIS SUMMARY: It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected Disability Evaluation System (DES) improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VASRD standards, as well as the fairness of PEB fitness adjudications.

Back Condition. The CI had a history of primary left hip pain that the PEB and VA examiners linked as primarily due to LBP. Imaging demonstrated lumbar disc bulges at L3-4, L4-5, and L5-S1 with protrusion to the S1 nerve root. The CI was evaluated and treated by a specialty pain clinic and had only temporary symptom relief following three epidural injections. The CI was a potential surgical candidate, without indications of inappropriate declination in the record (‘He will only consent to surgery if there are not other alternatives’). There was insufficient evidence of ratable peripheral nerve impairment in this case since pain symptoms, whether or not it radiates, is considered under the General Rating Formulae for the spine IAW §4.71a. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below. The Medical Evaluation Board (MEB) ROMs were opined to be linked, as referenced in the summary, to the MEB Narrative Summary (NARSUM) Addendum’s focused exam dated 20060426.

|  |  |  |
| --- | --- | --- |
| Thoracolumbar ROM | MEB – 20060426 | VA C&P - 20061228 |
| Flexion | 40⁰ (40, 45, 49) | 70⁰ |
| Combined | 125⁰  | 220⁰ |
| §4.71a Rating | 20% | 10% |

Both exams demonstrated painful motion without significant radiating non-pain nerve disability. The military exam of 20060215 noted a ‘moderate left antalgic gait’ under the musculoskeletal exam focused on the left knee. The NARSUM addendum (20060426 exam) noted ‘tenderness of the left lumbar facets and low back,’ ‘gait: able to ambulate without difficulty,’ and the ROMs depicted three measurements for each axis of lumbosacral motion and detailing of pain. The VA exam noted the CI was wearing a back brace and had a ‘mild limp,’ but did not attribute the gait abnormality specifically to either the lower back or left knee condition. Both ROM exams were four months from the date of separation. There were multiple notes and exams that demonstrated low back tenderness and an abnormal gait. The Board determined that the military exam had at least as great a probative value for rating at separation as the VA exam. The Board also attributed abnormal gait as more likely due to the back condition than attributing it to the knee condition. The PEB’s DA Form 199 reflected likely application of the USAPDA pain policy for rating, and its 10% determination was not consistent with §4.71a standards for rating the exam of record. All evidence considered and IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI in recommending a separation rating of 20% for the lower back condition for ‘forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees’ under coding of 5238 Spinal stenosis.

Left Knee Condition. The CI had documented trauma to his left knee and there were multiple left knee exams in the record. All exams demonstrated painful motion to flexion. Exams proximate to separation, demonstrated limited flexion from 0-108° due to pain. There were objective episodes of knee effusion without locking or give-away. The PEB rating stated ‘objective limitation of motion to 120 degrees of flexion, with crepitus.” The NARSUM referenced focused exam of 20060215 noted ‘Quadriceps tone was poor.’ The VA exam 4 months post separation noted painful flexion to 130° without any instability. Either exam meets the §4.59, painful motion criteria for a 10% rating without meeting the VASRD 5260 criteria for a higher rating due to limited motion. The Board considered alternate knee coding under 5259, Cartilage, semilunar, removal of, symptomatic at 10%, but this coding was not predominate to the painful motion coding and consideration of non-pain symptoms to the lower back condition. It could therefore not be added as an additional knee coding as the CI’s symptoms were already considered under the painful motion rating and the lower back rating and it was determined that a second knee rating would be pyramiding. Coding of 5258 (20%) was rejected as there were not documented episodes of locking or meniscal signs on exam. Subsequent surgery to the left knee in Dec 2008, noted in the VA file, was outside of the window for consideration for rating at separation. All evidence considered, the Board determined that 5010-5260, Left knee degenerative joint disease due to trauma was the predominate coding at 10%.

Other DA 3947 Conditions. Left hip, abdominal (GERD), hyperlipidemia, hypertension and bilateral foot (bunions) conditions were determined to be medically acceptable conditions IAW AR 40-501). The left hip condition of hip bursitis was not in evidence at the time of MEB/PEB or separation. The condition was either resolved, or more likely the symptoms were more correctly attributed to radicular pain due to the CI’s lower back condition. The abdominal condition was under therapy and there was no indication that it interfered with duty. Hyperlipidemia is an abnormal laboratory test and is not a physical disability. There is no indication that either hypertension or bilateral foot conditions (bunions) led to any duty limitations. None of the above conditions were profiled or identified as impairments in the Commander’s statement or narrative summaries. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the Left hip, abdominal (GERD), hyperlipidemia, hypertension, or bilateral foot (bunions) conditions.

Other Condition – Diabetes Mellitus. The CI contends for addition of Diabetes Mellitus as a new unfitting condition at time of separation with subsequent rating. There was no mention of Diabetes Mellitus, or any precursor that could be attributed to Diabetes Mellitus in the DES file. The CI’s application indicated that Diabetes Mellitus was diagnosed 2-3 days prior to his separation from the service and it was noted in his treatment record. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Diabetes Mellitus and any contended conditions not covered above remain eligible for Army Board for Correction of Military Records (ABCMR) consideration. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the lower back condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lower back condition, the Board unanimously recommends a rating of 20% coded 5238 IAW VASRD §4.71a. In the matter of the left knee condition, the Board unanimously recommends a rating of 10% coded 5010-5260 IAW VASRD §4.71a. In the matter of the Left hip, abdominal (GERD), hyperlipidemia, hypertension and bilateral foot (bunions) conditions, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the separation be recharacterized to reflect permanent disability retirement, effective as of the date of his prior separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Low Back Pain with Stenosis | 5238 | 20% |
| Left Knee, Degenerative Joint Disease | 5010-5260 | 10% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090309, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

