RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900274 BOARD DATE: 20100114

SEPARATION DATE: 20060714

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SUMMARY OF CASE: This covered individual (CI) was a Reserve NCO (Heavy Equipment Operator) medically separated from the Army in 2006 after 24 years of combined service. The medical bases for the separation were a back condition, bilateral knee conditions and bilateral foot conditions. He injured his low back and both knees during a 2004 deployment to Kuwait. He was managed conservatively in theater and further evaluated after redeployment. MRI of his back demonstrated a herniated disc at L5/S1. EMG (nerve conduction study) demonstrated a left S1 radiculopathy (sensory only by exam). He was not a surgical candidate and responded inadequately to conservative measures to meet the physical requirements of his MOS. The left knee condition was diagnosed as iliotibial band syndrome (connective tissue inflammation) by MRI. The right knee was diagnosed as osteoarthritis, chondromalacia patella and meniscal (cartilage) disease. He underwent arthroscopic intervention for the right knee prior to separation. The knees responded inadequately to conservative measures to meet the physical requirements of his MOS. In addition the CI suffered an onset of bilateral foot pain in 2004. This was diagnosed as plantar fasciitis and bilateral fascia relief surgeries were planned at the time of the NARSUM. Plantar fasciitis was incorporated into a permanent L3 profile which included the lumbar and bilateral knee conditions. All three orthopedic conditions were judged to be medically unacceptable IAW AR 40-501 by the MEB.

The CI was also evaluated and treated for depression during the MEB process. This began during the Medical Hold period. He related some of his psychiatric issues to his Kuwait deployment and was initially diagnosed with adjustment disorder. He did not meet DSM IV criteria for PTSD per the MEB or VA psychiatric evaluations. His symptoms progressed in spite of medication and psychotherapy, and he was diagnosed with Axis I major depressive disorder. He was placed on an S3 profile and the MEB psychiatrist judged the condition to be medically unacceptable. It was forwarded as such on the DA 3947. The only other condition identified by the MEB was bilateral hearing loss, forwarded as medically acceptable.

The CI was referred to the PEB, which found the back, knee and foot conditions unfitting. Depression and hearing loss were adjudicated as not unfitting. The back condition was rated 10%. The knees were combined at a 0% rating and bilateral plantar fasciitis was rated 0%. The CI was thus medically separated with a combined disability rating of 10%.

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CI CONTENTION: The CI (via his VSO representative) states: ‘Conditions were under-rated by Physical Evaluation Board. VA rating had rendered veteran unemployable.’

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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** |
| Chronic Low Back Pain | 5299-5237 | 10% | 20060605 | Degenerative Lumbar Spine Joint Disease | 5243-5242 | 40% | 20060829 | 20060715 |
| Bilateral Knee Pain | 5099-5003 | 0% | 20060605 | Right Knee Patellofemoral Dysfunction | 5299-5257 | 10% | 20060829 | 20060715 |
| Left Knee Patellofemoral Dysfunction | 5299-5257 | 10% | 20060829 | 20060715 |
| Bilateral Plantar Fasciitis | 5399-5310 | 0% | 20060605 | Right Foot Plantar Fasciitis  | 5099-5020 | 0% | 20060828 | 20060715 |
| Left Foot Plantar Fasciitis  | 5099-5020 | 0% | 20060828 | 20060715 |
| Major Depressive Disorder | Not Unfitting | 20060605 | Depressive Disorder NOS | 9434 | 10% | 20060817 | 20060715 |
| Bilateral Hearing Loss | Not Unfitting | 20060605 | Left Ear Hearing Loss | 6100 | 0% | 20060824 | 20060715 |
| No Additional DA 3947 Entries. | Non-PEB X 3/ NSC X 9 | 20060925 | 20060715 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%**  |

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ANALYSIS SUMMARY:

Back Condition. The PEB rated the back condition under the USAPDA pain policy. Two goniometric range-of-motion (ROM) exams were performed during the MEB process, one by Physical Therapy (P.T.) and one by the MEB examiner. These exams, along with the one performed by the VA rating examiner, are reflected in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar ROM | P.T. - 3/6/06 | MEB - 4/21/06 | VA C&P - 8/29/06 |
| Flexion | 30⁰ | 20⁰ | 18⁰ |
| Combined | 110⁰ | 160⁰ (Extension 60⁰??) | 110⁰ |

All of the exams noted spasm and tenderness; none reflected abnormal gait; the P.T exam noted reverse kyphosis. The MEB examiner did not specify pain as the end-point. The VA examiner did. The P.T. exam values are derived from active ROM, which should reflect appropriate rating thresholds. Of note, thoracolumbar extension was recorded as 60⁰ by the MEB examiner (10⁰ by P.T. and 20⁰ by VA). Normal extension is 30⁰ and 60⁰ is not a plausible measurement in this case. It is assumed that this was either a typographical error or that the examiner intended to document 60⁰ flexion and 20⁰ extension. Although the latter has significant rating implications, the probative value would not be sufficient to outweigh the P.T. and VA exams and result in a different Board recommendation. Thoracolumbar flexion values recorded for all three of these exams merits a 40% rating IAW VASRD §4.71a. The 5243 code (without a suffix) best reflects the pathology in the opinion of the Action Officer, since imaging reported single level disc disease and did not show significant degenerative changes. Although there were intermittent sensory symptoms and EMG findings of radiculopathy in evidence, there was no motor or other functional component impairing fitness. The VA also did not find evidence of a ratable peripheral nerve impairment. The Board cannot recommend one. All evidence considered and IAW DoDI 6040.44 the Board recommends a disability rating of 40% for the back condition, coded 5243.

Bilateral Knee Condition. The PEB’s decision to combine both knees under the analogous 5003 code was not IAW VASRD §4.7 (higher of 2 evaluations), since there was separate ratable pathology in each joint. This coding decision was presumably derived from AR 635-40 (B.24 f.). The PEB rating was explicitly derived from the USAPDA pain policy, as stated on the DA 199. The VA coded and rated the knees separately, but the examiner did not make the distinction in different pathology for each joint. The distinction was, however, well delineated in the records. The pathology of the right knee was more acute; although the severity of pain, physical limitations and exams were similar for each knee. Rating, therefore, would have unlikely been affected by more distinctive separate coding. None of the numerous ROM exams in evidence demonstrated compensable impairment under VASRD codes 5260 or 5261 for achieving a higher rating. For the left knee pathology, the analogous 5299-5257 code applied by the VA is the best fit. Given the benign ROM and other favorable clinical features, the 10% rating for ‘slight’ impairment is reasonable. Based on the clinical evidence, the best code for the right knee pathology is 5259 for the cartilage surgery since there is no §4.7 route to a higher rating. This provides a singular rating of 10%. A 0% rating could not be supported for either knee in light of VASRD §4.59 (painful motion). All evidence considered and IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI in recommending a separation rating of 10% for the left knee condition (coded 5299-5257) plus a 10% rating for the right knee condition (coded 5259).

Bilateral Foot Condition. The plantar fasciitis diagnosis for each foot is well established in the Army and VA records and there is no indication that either foot was more affected. The CI had completed the surgical interventions at the time of the VA examination, but there was no indication that he had improved or worsened since the MEB exam. There was no distinct foot examination entered in the NARSUM or on the MEB physical. Near normal (non-compensable) ROM’s were documented by P.T. The VA rating examination was completely normal except for some calcaneal tenderness of each foot. Normal ROM’s, absence of painful motion and normal gait were documented. X-rays were normal. The PEB’s coding is confusing since the analogous muscle code chosen does not lend to combining both feet into the same condition as was done. Had the feet been separately coded, however, a 0% rating for each foot (designated for ‘slight’ severity) would be justified under this code. There is no VASRD-compliant coding option that would allow combining both feet under a single code for plantar fasciitis. Since there is no specific VASRD code for the condition, an analogous code must be substituted. The VA choice of 5099-5020 is common practice. The USAPDA table of analogous codes specifies 5299-5284. Under 5284 the lowest compensable severity is ‘moderate’ for 10%. Since a severity greater than ‘slight’ would be hard to justify by the clinical facts, an implied 0% rating would ensue. The VA coding option requires compensable ROM impairment, evidence of painful motion or radiographic evidence in two or more joints to achieve a compensable rating. None of these requirements were met in the case, as was elaborated in the VA rating decision. There is not reasonable doubt in the CI’s favor supporting a compensable rating for either foot under any analogous code. The Board recommends coding in conformity with the VA choice and a commensurate rating of 0% for each foot.

Depression. The principal decision facing the Board regarding this condition is whether it concurs with the PEB’s fitness adjudication. At the time of separation, the CI was on three psychoactive medications and carried an S3 profile prohibiting firearms (not an absolute requirement for his MOS). The MEB psychiatrist’s mental status exam described ‘moderate psychomotor retardation’, depressed mood and constricted affect. It was otherwise normal. Cognition and thought processes were intact and there was no indication of homicidal/suicidal ideation or behavioral lability (questioning the indication for the firearm stipulation on his profile). Decreased family interaction was cited, but no comparison to the work place was possible. Although the psychiatric addendum stated that the condition failed retention standards, it did not elaborate the degree of any social, occupational or military impairment. An outpatient psychiatric evaluation was performed two months after the MEB addendum, upon discharge from an intensive ambulatory treatment program. It noted ‘marked improvement in mood’ and ‘interacting well with peers and staff’. His VA psychiatric exam noted a benign mental status exam except for mild mood and affect impairment. Although he was unemployed, the examiner opined ‘mild impairment of his social and laboral [sic] function’. His global assessment of functioning was in the mildly impaired range (GAF = 65). The VA’s 10% rating reflects a fairly functional individual.

Since there is no evidence that the CI was engaged in any specific military duties during the MEB period, there is no good yardstick for directly measuring the impact of any psychiatric impairment on performance. The Commander’s statement does not provide specific detail. The psychiatric diagnosis is acknowledged in his opening statement, but his conclusion is ‘some doubt as to [CI’s name] physical ability to perform his PMOS’. There is no statement in either of his psychiatric examinations that points to an inability to perform his MOS from a mental standpoint. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the psychiatric condition.

Hearing Loss and Other Conditions. The CI carried an H3 profile for his hearing impairment and H2 is required for the MOS, but there is no evidence that his prior performance was ever affected by the condition. He was not prescribed hearing aids. The VA coded only the left ear and rated it 0%. Hearing impairment was not covered in the Commander’s statement and was judged medically acceptable by the MEB. There is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the hearing condition. The only additional conditions with compensable VA ratings were migraine headache and tinnitus, but these were not noted in the DES packet and therefore not eligible for PDBR review. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions 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 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 and AR 635-40 for rating the back and knee conditions was operant in this case. These conditions were adjudicated independently of that policy and regulation by the Board. In the matter of the lumbar spine condition, the Board unanimously recommends a rating of 40% coded 5243 IAW VASRD §4.71a. In the matter of the bilateral knee conditions, the Board unanimously recommends that they be separately coded and rated: the left knee coded 5299-5257 and rated 10%; the right knee coded 5259 and rated 10 %; both IAW VASRD §4.71a. In the matter of the plantar fasciitis condition, the Board unanimously recommends that the feet be coded and rated separately: each coded 5090-5020 and each rated 0%, IAW VASRD §4.71a. In the matter of the major depressive disorder, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the hearing impairment or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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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 his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Lumbosacral Intervertebral Disc Disease | 5243 | 40% |
| Left Knee Pain  | 5299-5257 | 10% |
| Right Knee Osteoarthritis and Meniscal Disease with Surgical Residuals | 5259 | 10% |
| Plantar Fasciitis Right Foot | 5099-5020 | 0% |
| Plantar Fasciitis Left Foot | 5099-5020 | 0% |
| **COMBINED (Incorporating BLF)** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090406, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

