RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD201000031 SEPARATION DATE: 20090316

BOARD DATE: 20110211

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a right-handed U.S. Army Reserve SPC (42L10, Administrative Specialist) medically separated from the Army in 2009. The final DD 214 is not in the record. The medical basis for the separation was “Limitation of Motion of Right Shoulder to Level of Shoulder.” The CI states that she injured her right shoulder in 1994 while firing an M60 machine gun that recoiled during a training exercise. She underwent a Military Occupational Specialty [MOS] Medical Retention Board (MMRB) in 1994, was placed on a permanent profile and returned to duty. A retention physical on 13 May 03 noted that she was not eligible for retention and that she should be referred to non-duty Physical Evaluation Board (PEB). She had been treated with physical therapy, medications, local injections and pain management. She did not respond adequately to perform within her military occupational specialty or participate in a physical fitness test and was issued a permanent U-3 profile in Nov 05. A non-duty PEB found her unfit for duty on 9 Nov 06. The CI appealed this finding and contended that the injury was secondary to firing the M60. A second MMRB was convened on 8 Dec 07 which referred her to the Medical Evaluation Board (MEB). The right shoulder injury as well as left knee pain, right wrist pain and foot pain were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) on the DA Form 3947 as medically unacceptable IAW AR 40-501. Anxiety, not otherwise specified, and adjustment disorder with insomnia was forwarded as a medically acceptable, fifth condition. On 29 Aug 08, a PEB returned her to duty. The CI appealed this finding and requested to be found unfit. The US Army Physical Disability Agency (USAPDA), noting her stated desire to be found unfit, convened on 17 Nov 08 and adjudicated her as unfit, despite adequate job performance, and recommended separation at 20% disability IAW the Veterans Administration Schedule of Rating Disabilities (VASRD), coded 5003 5201, and with DoDI 1332.38 (E3.P3.3.3.). She rebutted this decision and appealed to the US Army Physical Disability Appeals Board (APDAB) which convened on 3 Feb 09. The APDAB unanimously adjudicated the right shoulder condition as unfitting with a 20% disability rating.

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CI CONTENTION: The CI contends for combat-relatedness for her condition, and separate ratings for shoulder and knee conditions with addition of a back condition with radiculopathy and bilateral foot conditions. The CI states:

“DA FORM 18 BLOCK 9 A COMBINED RATING OF 20% 10 (A) IT IS INSTRUMENTALLY OF WAR INCURRING IN LINE OF DUTY. (C) THE DISABILITY DID RESULT FROM A COMBAT RELATED INJURYAS DEFINED IN 26 USC 104. The two contradict each other. The APDAP states injury was of instrumentally of war. PHYSICAL EVALUATION BOARD (PEB) COMBINED RATING OF 20% FOR ALL LODs (LINE OF DUTY). THE TWO ABOVE INJURIES SHOLDER AND KNEE IS DUE TO THE C1, C7 VERTEBRA (RADICULOPATHY) NUMBNESS AND TINGLING AND LOWER LUNBAR WHICH IS SPONDYLOSIS IS A CONTRIBUTING FACTOR TO PES CAVS WHICH IS DIAGNOSED AS TARSAL TUNNEL”.

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RATING COMPARISON:

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| **Service FPEB 20080829-DA Form 18 of 20081117** | | | | **VA (Pre- / 6 Mo. Post-Separation) – All Effective 20051004** | | | | |
| **Condition** | **Code** | | **Rating** | **Condition** | **Code** | **Rating** | **Exam\*** | |
| Right Shoulder Condition | 5003- 5201 | | 20% | Right Shoulder Bursitis | 5020-5201 | 20% | 20090917 | |
| Left Knee Pain | | Not Unfitting | | Left Knee PFS | 5024 | 10% | 2001-2009 | |
| Right Wrist Pain | | Not Unfitting | | Right Wrist pain | 5215 | NSC | | |
| Foot Pain plantar fasciitis w/ spur & pes cavus | | Not Unfitting | | R Foot pain w/ pes cavus | 5278 | 0%\* | STR & VA Rx Notes | |
| Anxiety Disorder with Insomnia | | Not Unfitting | | Anxiety with Insomnia | 9413 | NSC | | |
| ↓No Additional DES Entries↓ | | | | R Knee; L Shoulder; Left Wrist; Sexual Dysfn a/w L Knee; Nerve Damage Right Arm; Bilateral Arm Pain; L Groin Tendinitis; Spondylosis, Lower Lumbar; L Hand; Eye Condition; R Wrist/Hand Pain fr R Shoulder Bursitis | | | | NSC |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined: 30%** | | | | |

\*Multiple exams not all listed. Left knee rated 10% since 20010423. R Shoulder 10% from 20031224 and increased to 20% 20051004. VA combined 30% from 20051004. 5278 at 0% added effective 20090303 without change of 30% combined rating from 10051004

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ANALYSIS SUMMARY. We note that the applicant asks the Board for re-characterization of her condition to a combat related injury. By law, the Board authority is limited to making recommendation on correcting disability determinations. The determination of combat-relatedness is the responsibility of the applicable service. The applicant's request will of course remain with the application as it is processed.

Right Shoulder Condition. The service finding of unfit for the shoulder condition was considered administratively final. The Board focused on the appropriate rating at separation. The CI was right-hand dominate, had a long history of right shoulder pain, abnormal imaging (MRI); and normal electrophysiological studies of the right upper extremity (RUE – NCV/EMG). The complex history and various disparate exams were discussed by the Board. The CI first complained of right shoulder pain in March 1994. No acute trauma was noted, but it was aggravated by push-ups. She was noted to be right-hand dominant. Her shoulder pain initially responded well to physical therapy (PT) and medications. She continued to have complaints over the ensuing 15 years. On a PT evaluation on 31 May 94, the CI stated that she awoke with the pain without prior trauma. An orthopedic evaluation two days later noted resolution of pain, again without history of injury. After multiple visits between March and July 1994, there are no entries until a VA C&P dated 5 Mar 97 at which time she states that the right shoulder was hurt in basic training doing push-ups. The exam was essentially normal other than “some pain”, loss of strength with supraspinatus testing and minimal decrease in range of motion (ROM). The next entry is dated 30 Jun 00. Although the exam states left shoulder, all other entries are for the right and this is thought to be a typographical error. It was noted that she was unable to tolerate any motion of the arm due to pain and moaned in pain with palpation of the shoulder. Her left knee exam was similar. Over the next 8 years, there were multiple visits for her right shoulder, wrist and hand. Some entries document tenderness of the rotator cuff and bicipital tendon. An MRI on 11 Jun 03 showed minimal hypertrophic change at the AC joint and mild tendinosis or tendinitis of the supraspinatus tendon. Neurology evaluation on 18 Apr 06 concluded that the symptoms were most likely functional, but requested further testing. C-spine X-Rays showed mild degenerative changes and disc space narrowing with C6-C7 spurring. A subsequent exam showed T-1 spina bifida (a developmental error). Right upper extremity (RUE) nerve conduction velocity (NCV) and electromyography (EMG) were normal without evidence of RUE neuropathy or myopathy or of right cervical radiculopathy. In 2007, the CI started to complain of radiation of the pain to both the left shoulder as well as down the RUE. A VA physiatrist gave her a duty restriction from lifting no greater than 20 pounds as well as recommended that she not be required to get up frequently to open a door (an automatic device was recommended). The CI was seen by an orthopedist on 12 Jun 08, nine months prior to separation. Right wrist and shoulder pain were noted to be difficult to localize and disproportionate to the injury. Right shoulder abduction was less than 75 and flexion less than 90 degrees. Less than maximal effort was noted along with significant guarding. A subsequent VA C&P was accomplished 6 months after separation. It was noted that she received significant benefit from Neurontin. The examiner wrote “There is no obvious deformity of the right shoulder, but veteran complains of exquisite pain with light touch to anterior, posterior and lateral shoulder. There is no edema, erythema, warmth of the shoulder. There was pain with any motion, limiting flexion to 40 degrees, abduction to 90 degrees, interior and exterior rotation to 40 degrees each…Veteran moaned loudly with complaints of pain and guarding neck and shoulder.” Repetitive motion increased pain, but other DeLuca criteria were negative. X-Ray was normal. The PEB and VA both awarded 20% disability for the right shoulder condition. The Board considered the relative probative value of the two exams, noting the varying history of the etiology for the pain, paucity of objective findings, and comments by the examiners including a probable functional basis for the pain, non-anatomic distribution of the pain, as well as global, and disproportionate tenderness of the RUE. After deliberation, the Board agreed that the MEB examination had the highest probative value, was more consistent with outpatient notes, more reflective of the severity suggested by the clinical pathology, and accomplished by an orthopedist vice an internist. The limitation of the CI’s shoulder was adjudged to be at no higher than shoulder level and met the 20% criteria for VA code 5201 (Arm, limitation of motion of). All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision of 5003- 5201 at 20% for the shoulder condition.

Other DA Form 3947 Conditions: Left Knee, Right Wrist, Foot, and Anxiety Disorder with Insomnia. The first three (orthopedic) conditions were referred to the PEB as medically unacceptable; the anxiety disorder with insomnia was considered to meet standards. The minimum profile for the CI’s MOS was PUHLES 323222, which she met except for the U-3 described above. In 2006, her Commander noted that she met duty requirements with a 133121 profile. There are no records of visits to military providers after 2000 for the left knee or right wrist. Plantar fasciitis was noted on the right and treated with orthotics. EMG/NCV excluded tarsal tunnel syndrome. The orthopedic conditions were chronic and stable with slight worsening over the multiple years of documented records. The CI had been able to accomplish an alternate fitness test in October 2006. There are no entries in the record documenting lost duty time from any of these conditions. Although the MEB’s judgment that a condition does not meet AR 40-501 retention standards is but a factor in the PEB’s fitness determination, it raises the bar for an adjudication of not unfitting. However, the evidence is that the Army review authorities carefully considered these conditions. The USAPDA adjudicated these conditions as not unfitting for her MOS. APDAB review reasonably affirmed this decision. The entire record and VA examinations were carefully reviewed and there was no evidence of any missed diagnosis or disability to the level that it would have been clearly unfitting at the time of separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s “not unfitting” rating decision for these conditions.

Other Conditions in the DES: Left Shoulder Condition, Right Knee Condition, Left Wrist Condition, Sexual Dysfunction, Right Arm Nerve Damage, Lumbar Spondylosis (back) with radiculopathy. Review of the record shows no lost duty time from any of these conditions. The commander did not comment on them, they were not profiled nor noted on the MEB exam as abnormal. All evidence considered, there is not reasonable doubt in the CI’s favor for adding these conditions as unfitting.

Other Conditions: Left Groin Tendinitis, Left Hand and Eye Conditions. These conditions were not in the DES nor is there any indication that they limited duty. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for these or any other conditions not considered by the DES. 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. 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 right shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication of 5003-5201 at 20%. In the matter of the Left Knee, Right Wrist, Foot, and Anxiety Disorder with Insomnia conditions, the Board unanimously recommends no recharacterization of the PEB adjudications 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Shoulder Condition | 5003-5201 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091217, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

