RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100787 SEPARATION DATE: 20061115

BOARD DATE: 20120412

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7 (25B, Computer Analyst) medically separated for right shoulder and right knee conditions. The CI began experiencing recurrent dislocations of her right (dominant) shoulder in 1994, and ultimately required surgical procedures in 2004 and 2005 to stabilize the joint. She injured her right knee during training in 1996; and, although there was no surgical pathology, she suffered continued pain and swelling with activity. Neither orthopedic condition could be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was thus issued permanent U3 and L3 profiles, and referred for a Medical Evaluation Board (MEB). The right shoulder and right knee conditions were forwarded separately to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Recurrent headaches and gastroesophageal reflux disease (GERD) were also identified by the MEB and forwarded as medically acceptable conditions. Other conditions, contended or evidenced in the Disability Evaluation System (DES) file, are addressed below. The PEB adjudicated the right shoulder and right knee pathology as a single unfitting condition with presumptive application of Army Regulation (AR) 635.40, rated 10%; and, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with that service disability rating.

CI CONTENTION: “I was told that my right arm is permanently disabled. I was 8 days short of 13 yrs of active duty service. I trusted the army to do a routine operation on my arm and the army failed me. The doctor that the army sent me to did not fix my arm, but made it worse. … I hurt my knee around 1996 at Ft Hood, TX, while I was training. I went to the doctor, had a MRI done and went through months of therapy. I was on crutches for a long time. I was never told what was wrong with my knee. … The medical board found me unfit for duty, for my arm and knee. I was denied a chance to retire from the army. I was only 7 years away from retirement. I think that I should be allowed a medical retirement because I followed all the rules and did what I suppose to have done. … I had surgery for my acid reflux and for flat feet, since getting out of the army. I am now getting cortisone shots in both of my knees and my right arm to help tolerate the pain of doing everyday activities, such as walking and sleeping through the night. … I feel as though I gave 13 years of my life for nothing but aches and pain in return.” She additionally lists the VA conditions charted below; and, a request for consideration of service rating is implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060802** | **VA (2 Mo. Post-Separation) – All Effective Date 20061116** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain, R Shoulder & R Knee | 5099-5003 | 10% | Bursectomy … R Shoulder | 5020 | 10% | 20070112 |
| DJD, R Knee | 5010-5260 | 10% | 20070112 |
| Headaches | Not Unfitting | Migraine Headaches | 8100 | 0% | 20070112 |
| GERD | Not Unfitting | GERD | 7399-7346 | 10% | 20070112 |
| ↓No Additional MEB/PEB Entries↓ | Asthma | 6602 | 30% | 20070112 |
| Dry Eye Syndrome | 6099-6018 | 10% | 20070112 |
| 0% X 3 / Not Service-Connected x 1 | 20070112 |
| **Combined: 10%** | **Combined: 50%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the gravity of her conditions and the significant impairment with which her service-connected conditions continue to burden her. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of service fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for service ratings for other conditions which arose in service, and notes that its recommendations in that regard must comply with the same governance. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short the member’s career, and then only to the degree of severity present at the time of final disposition. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. Finally, the Board acknowledges the CI’s assertions that she received poor medical care in service; but, must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to such allegations. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of service rating and fitness determinations at separation, as elaborated above.

The PEB combined the right shoulder and right knee conditions under a single service disability rating, coded analogously to 5003. This coding approach is countenanced by AR 635-40; but, IAW DoDI 6040.44, the Board must apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. When the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. This combined rating approach by the PEB may reflect its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. The §4.71a criteria are met for separate joint ratings in this case. Both orthopedic conditions were specified in the commander’s statement; and, it elaborated both upper and lower extremity limitations as interfering with performance. Likewise there were separate and distinct profile restrictions imposed. All members therefore agreed that each condition should be conceded as separately unfitting, and the Board is forwarding separate rating recommendations as follows.

Right Shoulder Condition. The CI first suffered a spontaneous right shoulder dislocation doing push-ups in 1994, but recurrent dislocation did not become a significant issue until 2003. At that time she underwent arthroscopic surgical stabilization, but results were unsatisfactory. In February, 2005 she underwent an open procedure (subacromial bursectomy and capsular shift). She suffered no further dislocations, but continued to experience pain and functional limitations. Findings on imaging were confined to expected post-surgical changes. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Right Shoulder ROM | Civ. Ortho ~9 Mo. Pre-Sep | MEB ~8 Mo. Pre-Sep | VA C&P ~2 Mo. Post-Sep |
| Flexion (0-180⁰) | 165⁰ | 150⁰ | 180⁰ |
| Abduction (0-180⁰) | 165⁰ | 140⁰ | 180⁰ |
| Comments | No instability or subluxation; surgical scars; painful motion. |
| §4.71a Rating\* | 10% | 10% | 10% |

 \* With application of §4.59 (painful motion); minimal compensable ROMs are 90⁰ flexion/abduction.

At the MEB exam, the CI reported constant pain rated 5/10, and aggravations up to 10/10 with overuse. At the VA Compensation and Pension (C&P) exam after separation, the CI reported constant 10/10 pain sometimes requiring bedrest for relief. No prescribed bedrest was evidenced in the service treatment record (STR).

The Board directs attention to its rating recommendation based on the above evidence. The VA coded the right shoulder condition as 5020 (synovitis) which defaults to the rating criteria for 5003 (degenerative arthritis). As charted above, there is no compensable limitation of ROM. There was no clinical and/or radiologic evidence that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, nonunion or dislocation of the scapula, or recurrent dislocations of the humerus that would have justified any alternate shoulder code with higher rating potential. Since none of the higher rated shoulder joint codes are clinically applicable, the Board concurs that a default rating under 5003 criteria (leveraging §4.59 to achieve the minimal compensable 10% rating) is appropriate. In that regard, the action officer recommends code 5099-5024 (analogous to tenosynovitis) as the most applicable clinical fit. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a service disability rating of 10% for the right shoulder condition.

Right Knee Condition. The CI fell onto her knee running an obstacle course in 1996, and had experienced intermittent pain and swelling since the injury. It was not profiled until MEB proceedings were underway for the shoulder condition. She related to the MEB examiner that she had undergone a course of physical therapy and was issued a brace for use with activities. She reported pain with “any increase in usage, especially aggravated by stairs.” Plain x-ray revealed some mild degenerative changes. Magnetic resonance imaging (MRI) showed normal ligaments, cartilage and internal structures without effusion. The ROM measurements recorded in service were a flexion of 129⁰ (normal 140⁰) “limited by pain” and normal extension. Mild left lateral ligamental laxity was noted on exam. At the VA evaluation after separation, the CI reported constant pain rated 6/10 aggravated by “every movement.” The VA examiner reported normal ROM measurements for flexion and extension. Crepitus was noted on exam; but, there was no effusion, locking or instability. Gait was normal on all service and VA examinations.

The Board directs attention to its rating recommendation based on the above evidence. The VA coded the condition as 5010-5260 (traumatic arthritis rated for limitation of motion), although this is a somewhat enigmatic choice given a normal ROM by the VA examiner. Presumably §4.59 was applied to achieve the compensable rating. As with the shoulder condition, there is no compensable limitation of ROM and no applicable joint code which would achieve a higher rating than 10%. The MEB examiner specifically documented painful motion which would again support a minimal compensable rating under 5003 criteria, and there was radiographic confirmation of degenerative arthritis. A separate rating under 5257 (recurrent subluxation or lateral instability) was entertained based on the MEB examiner’s ligamental finding and the fact that a brace was prescribed; but, the absence of corroborating examinations and the MRI confirmation of intact ligaments were compelling arguments undermining support for additional rating on this basis. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a service disability rating of 10% for the right knee condition. The action officer recommends code 5010 (traumatic arthritis) for its clinical fit.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were headaches and GERD. The headache condition appeared in the narrative summary (NARSUM), but was not identified in the STR as an active clinical issue. The onset dated to 2004, and the CI related an association with pain from the shoulder condition. It was treated with acetaminophen and no prostrating episodes are in evidence. The first STR entry for GERD was in 2004 when the CI sought treatment for heartburn. Endoscopy in April 2006 revealed mild gastritis and a small hiatal hernia. At the time of separation she was treated with Aciphex (suppressor of acid production), but no acute symptoms were reported in the NARSUM; and, no clinical activity during the MEB period is evidenced in the STR. Neither of these conditions was profiled, implicated in the commander’s statement or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change in the PEB fitness determinations for the headache or GERD conditions.

Remaining Conditions. The CI had a previously addressed and stable asthma condition. She had undergone a MEB for it in 1999, and was found fit by the PEB at that time. The condition carried a permanent P3 profile and had not impeded MOS performance for the ensuing years up to the time of separation for the orthopedic conditions. There was no indication that the acuity of the asthma condition had changed at separation, and thus it was not re-adjudicated by the final PEB. The action officer and fellow Board members agreed that fitness for this condition was therefore well established, and that it was not subject to service rating at the time of separation for the orthopedic conditions. Other conditions identified in the core DES file included sinusitis, dry eyes, upper back pain, left knee pain, a previously fractured clavicle, and urinary tract symptoms. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period; none carried attached profiles; and, none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No additional conditions were identified at the VA evaluation after separation. The CI’s application refers to surgery after separation for GERD (as addressed above) and flat feet. The foot condition was not documented in service or by the VA at separation. It was identified by the VA in 2008, but not service-connected at that time. 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 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 and presumptively on AR 635-40 for rating the right shoulder and right knee conditions was operant in this case; and, the conditions were adjudicated independently of that policy and regulation by the Board. In the matter of the jointly rated right shoulder and right knee conditions, the Board unanimously recommends that they be rated for two separate unfitting conditions as follows: a right shoulder condition coded 5099-5024 and rated 10%, and a right knee condition coded 5010 and rated 10%; both IAW VASRD §4.71a. In the matter of the headache and GERD conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. In the matter of the asthma, flat feet, left knee or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional service disability rating.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Right Shoulder | 5099-5024 | 10% |
| Traumatic Arthritis, Right Knee | 5010 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110905, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXX, AR20120007688 (PD201100787)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation to modify the individual’s disability rating to 20% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

 BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA