RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900030 BOARD DATE: 20090903

SEPARATION DATE: 20070721

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an Army Reserve officer who was medically separated in 2007 after 8 years of combined service. The medical bases for the separation were a left knee condition and PTSD. He was first deployed to OIF in 2003. He suffered a meniscal injury to his left knee requiring arthroscopic repair consequent to that deployment, although it did not result in medevac or medical separation. He had a 10% VA rating for the knee prior to a second deployment (OIF 2006-07). During the second deployment, he re-injured the same knee with additional meniscal damage. He underwent arthroscopic repair in country, but eventually required medevac. Despite conservative management and additional arthroscopic interventions, the knee could not be rehabilitated adequately for retention and he underwent an MEB. The CI was treated as an outpatient for PTSD during his first deployment, but his symptoms stabilized on return. They re-surfaced during the second deployment. There were numerous combat substrates for PTSD during both deployments. He was managed in theater for PTSD during the second tour and refused a suggestion that he defer further combat missions. He continued outpatient management and required medication for the PTSD after medevac to CONUS for the knee condition. The PTSD condition was deemed not medically acceptable by psychiatry and was included with the knee condition as a PEB referral on the DA 3947. The PEB found him unfit for both conditions and he was medically separated at a combined disability of 20%.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI contends for rating left knee and PTSD conditions equivalent to the VA.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB** | **VA (4 Mo. after Separation)** |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| CHRONIC LEFT KNEE PAIN DUE TO LEFT LATERAL MENISCAL DAMAGE | 5099- 5003 | 10% | 20070620 | INSTABILITY, LEFT KNEE | 5257 | 20% | 20071129 | 20070721 |
| LEFT KNEE POST-OPERATIVE | 5258 | 20% | 20071129 | 20070721 |
| PTSD | 9411 | 10% | 20070620 | PTSD | 9411 | 30% | 20071211 | 20070721 |
| NO ADDITIONAL DA 3947 ENTRIES. | NON-PEB X 2 | 20071129 | 20070721 |
| **TOTAL Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 70%**   |

ANALYSIS SUMMARY:

PTSD. The 10% PEB rating was based on DoDI 1332.39 (E2.A1.5). Under the DoDI, the case is an appropriate fit with the 10% criteria. Under the VASRD, the clinical picture would have met criteria for a 30% rating. This is moot, since PDBR adjudication at 50% TDRL for 6 months supersedes IAW DoDI 6040.44 and DOD guidance. The primary source for approximating a 6 month permanent rating recommendation was the initial VA psychiatric rating examination performed at 5 months after separation. The CI’s symptoms at that time were typical of PTSD, moderately acute and constant. He was employed as a government contractor, although had difficulty with group interactions. His marriage was intact, but strained. Social activities were restricted. He was being treated with 2 psychotherapeutic medications. Global functioning was rated in the mildly dysfunctional range. His impairment exceeded the ‘mild or transient’ and ‘only during periods of significant stress’ requirements for the 10% rating. The VA rating based on the 5 month exam was 30%, connoting ‘occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks’. He met all of the ‘due to’ descriptors except panic attacks for the 30% rating. He did not meet the ‘reduced reliability and productivity’ threshold for the 50% rating, and only a minority of the ‘due to’ descriptors. The VA rating of 30% at 5 months is supported by the facts and consistent with the VASRD. Assuming no change in condition over the interim month, 30% is a fair permanent rating recommendation in this case.

Left Knee. The PEB rated the knee under the general arthritis 5003 code. A 10% rating would follow from this code and does not reflect influence by the USAPDA pain policy. The VA rated the knee under both the 5257 (instability) code and the 5258 code for meniscal injury. This is IAW promulgated VA policy that instability is coded separately when it coexists, and that it does not constitute pyramiding. The MEB and VA rating examinations for the knee differed in range-of-motion (ROM) findings. The MEB goniometric exam measured 145⁰ (normal) flexion, stipulating ‘limited by pain’. The VA examiner described 90⁰ flexion (still within the 10% rating criteria). The NARSUM did not comment on stability, but other entries in the service treatment record (STR) documented mild lateral instability. The VA examiner described ‘slight’ medial and lateral instability. Neither exam noted an effusion or severe tenderness. The VA examiner commented on frequent locking of the knee; the MEB examiner did not. One note in the STR did describe ‘occasional’ locking. The VA examiner noted daily ‘giving way’ of the knee and use of a brace. The VA rater invoked these entries in assigning a 20% rating for instability. Neither of these issues was noted in the MEB physical exam, NARSUM or elsewhere in the STR.

Regarding coding, Board practice is to follow the VA precedent for rating knee instability separately. This is also IAW VASRD §4.7 (higher of 2 evaluations). The relatively mild physical instability of the knee documented on all examinations does not correlate well with the severity of instability connoted in the history recorded by the VA examiner or with necessity for a brace. Although additional rating for instability was indicated, the 20% rating applied by the VA appears to overstate the severity. A fair recommendation is 10% under 5257. The frequency of locking, especially in the absence of an effusion, required for the 5258 code and consequent 20% rating is not well supported in the STR. The more appropriate separation rating is 10% under the 5259 code.

Other Conditions. The CI was additionally rated by the VA for service-connected low back pain and a right knee condition. Neither was addressed in the NARSUM nor forwarded to the PEB on the DA 3947 from the MEB. Low back pain, but not the right knee, was noted by the CI on his MEB physical. Spine and right knee exams were documented as normal. The NARSUM and VA rating exams specified normal ROM and essentially benign exams of the contralateral knee. Neither condition is noted in the medical profiles. Neither the back nor the right knee ratings applied by the VA meet a reasonable threshold for Board recommendation as additions to the combined separation rating. The CI does not contend for them.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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. As discussed above, PEB reliance on DoDI 1332.39 for rating PTSD was apparent in this case and the condition was adjudicated independently of that policy by this Board. In the matter of PTSD, the Board unanimously recommends an initial rating of 50% in retroactive compliance with VASRD §4.129 as directed, and a 30% permanent rating at 6 months IAW §4.130. In the matter of the left knee condition, the Board unanimously recommends separately added ratings of 10% under 5237 and 10% under 5239. In the matter of the back and right knee conditions, the Board unanimously recommends no separation ratings as additionally unfitting conditions.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| PTSD | 9411 | 50% | 30% |
| CHRONIC LEFT KNEE PAIN DUE TO MENISCAL DAMAGE | 5257 | 10% | 10% |
| LATERAL INSTABILITY, LEFT KNEE | 5259 | 10% | 10% |
| **COMBINED** | **60%** | **50%** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20070721, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

