RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900117 BOARD DATE: 20090714

SEPARATION DATE: 20071102

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SUMMARY OF CASE: This covered individual (CI) was an E-5 Food Service Specialist medically separated from the Army in 2007 after 6 years of service. The medical basis for the separation was bilateral knee pain with full active range of motion (ROM). CI injured his knees in Iraq when a water trailer tongue fell onto his knees. Medical treatment did not resolve CI’s bilateral knee pain, and CI reasonably declined surgery. CI was referred to the PEB, found unfit and separated at 0% disability. The VA initially rated each of CI’s knees separately at 10% each, obstructive sleep apnea (OSA) at 50%, and Pseudofolliculitis at 30% for a combined 70% rating. The VA later diagnosed and rated PTSD at 30% (exam 20080707, rating 20081014) for a new combined rating of 80%. The CI contends for a higher rating as he ‘was mentally unstable at the time’ of his medical board, ‘was misdiagnosed by mental health doctors,’ ‘was diagnosed with Post Traumatic Stress Disorder (PTSD) from the VA’ and has an overall rating of 80% from VA and 0% from the Army and receives Social Security for his PTSD.

COMPARISON OF VA AND DISABILITY RATINGS:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Previous Determinations | | | | | | | |
| Service (PEB) | | | | VA Initial Rating via BDD | | | |
| PEB Condition | Code | Rating | Date | Condition | Code | Rating | Rating Date |
| Bilateral knee pain with full active ROM. | 5099-5003 | 0 | 20071017 | Patellofemoral syndrome, Left knee | 5260-5019 | 10 | 20071220 |
|  |  |  |  | Degenerative joint disease, Right knee | 5260-5003 | 10 | 20071220 |
| OSA | - | Fit | 20071017 | OSA | 6847 | 50 | 20071220 |
| Restless leg syndrome | - | Fit | 20071017 | *Omitted 0% and NSC ratings* |  |  |  |
|  |  |  |  | Pseudofolliculitis | 7813-7800 | 30 | 20071220 |
|  |  |  |  |  |  |  |  |
|  |  |  |  | PTSD  Exam - 20080707 | 9411 | 30 | 20081014 |
| TOTAL Combined: 0% | | | | TOTAL Combined (incl non-PEB Dxs): 70% original; Later to 80% | | | |

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. Both OSA and restless leg syndrome were specifically addressed by the PEB as not unfitting and that determination is well supported. The record did not support adding either of those conditions as unfitting. The Army pain rule was likely applied in rating bilateral knee pain at 0% under a single VASRD code at 0%. The VA rated the left knee at 10% and the right knee at 10% using slightly different codes. The Board determined that separately rating each knee due to painful motion (IAW §4.59 Painful motion) at 10% each was the predominate application of the VASRD absent the pain rule. Although the pathology of each knee was slightly different, there was no benefit to the CI of changing the original VASRD codes used by the Army versus adopting the VA’s knee coding.

CI was not diagnosed with PTSD during service. No active psychiatric condition is mentioned in the NARSUM or PEB. The MEB exam (20070806) mentions 6 counseling sessions early in 2001 and an S1 profile. The CI’s original VA rating determination from pre-discharge application did not address or rate any anxiety disorder, depression, or PTSD-like symptoms. PTSD was diagnosed by the VA based on examination of 20080707 (8 months post discharge). The VA linked PTSD to stressor(s) in Iraq of another division Soldier dying of IED injuries. VA noted STR’s indicated a diagnosis of adjustment disorder with anxiety NOS in Feb 2007 and atypical depressive disorder in Aug 2007. In Mar 2008 CI had a post service treatment record VA diagnosis of adjustment disorder with anxiety and systemic disorder that was changed to a diagnosis of PTSD in May 2008. Even were a diagnosis of PTSD present at the time of discharge, it was not evaluated as part of CI’s disability evaluation. Accordingly the issue of whether to add PTSD as an unfitting diagnosis is beyond the scope of this board (but can of course be addressed by the CI’s Service Board for Corrections).

The Board unanimously voted to rate each knee separately at 10% and not to add any other unfitting condition(s).

RATIONALE: Adding or denying PTSD as an unfitting diagnosis was beyond the scope of this Board. No other diagnosis rose to the unfitting level. Both knees were determined as unfitting by the original PEB and had painful motion, therefore §4.59 Painful motion led to separately rating each knee.

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RECOMMENDATION: The Board recommends that the CI’s prior separation be modified from 0% to a 20% rating as indicated below.

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| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Right knee, painful motion | 5099-5003 | 10% |
| Left knee, painful motion | 5099-5003 | 10% |
| COMBINED | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090202, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

