RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900126 BOARD DATE: 20100401

SEPARATION DATE: 20070430

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SUMMARY OF CASE: This covered individual (CI) was a Guard SFC (Infantry) medically separated from the Army in 2007 after 26+ years of combined service (7+ active duty). The medical bases for the separation was a back condition and a bilateral knee condition. He had a long-standing history of back pain dating to 1976. This was exacerbated in 2006 from the physical requirements of a mobilization. Likewise he had suffered bilateral knee pain since 1996 which worsened after mobilization. Lumbar x-rays showed some mild vertebral wedging and lordotic straightening, but normal disc spaces and no acute changes otherwise. There was no clinical radiculopathy. Knee x-rays showed some mild degenerative changes bilaterally. Exams did not suggest any significant cartilage or ligamental involvement. He was diagnosed with osteoarthritis and was issued bilateral knee braces. He underwent an extensive trial of physical therapy (PT) and conservative measures for his knees and his back. He improved somewhat but still could not sustain the physical requirements of his military occupation specialty (MOS). He was assigned a permanent L3 profile for his knees and back and underwent a Medical Evaluation Board (MEB). The MEB forwarded the bilateral knee condition and the back condition to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Hypertension was the only additional medical condition identified in the Disability Evaluation System (DES) packet and was not forwarded on the DA Form 3947. An informal PEB found the CI unfit for the bilateral knee condition (combined under 5003) and the back condition rated 10% each. These findings were upheld by a formal PEB and the CI was medically separated with a combined rating of 20%.

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CI CONTENTION: The CI states: ‘I was not rated fairly for my condition by the Department of the Army. (1) Back (2) Both Knees.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20070221** | | | | **VA (~3 Mo. after Separation) – All Effective 20070501** | | | |
| **Condition** | | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Knee Pain | | 5003 | 10% | Degen. Arthritis, L Knee | 5099-5010 | 10% | 20070717 |
| Degen. Arthritis, R Knee | 5099-5010 | 10% | 20070717 |
| Chronic Low Back Pain | 5299-5237 | | 10% | Residuals, Lumbar Strain | 5237-5242 | 10% | 20070717 |
| ↓No Additional DA 3947 Entries.↓ | | | | Degen. Disc, Cervical | 5010-5242 | 10% | 20070717 |
| Hypertension | 7101 | 0% | 20070717 |
| Non-PEB X 2 / NSC X 11 | | | 20070717 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%** | | | |

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ANALYSIS SUMMARY:

Knee Condition. The Board deliberated if the knee condition, which was clearly Existing Prior To Service (EPTS), met a reasonable threshold for permanent service aggravation. The PEB’s DA Form 199 stated, ‘The presumption of permanent service aggravation is not overcome.’ The facts are, however, that the knee condition was a long standing (onset 1996) chronic osteoarthritis which had been tolerated throughout an extended period of service. The CI had, in fact, successfully completed an Army Physical Fitness Test (APFT) concurrent with mobilization. He was seen for knee pain two days after reporting to the mobilization site. There is no report of specific trauma or indications that aggravation from training or other physical activities had intervened, much less evidence of permanent service aggravation. There is no specific evidence, however, that the knees were not aggravated by the APFT itself or other mobilization requirements. It is noted, furthermore, that DoDI 6040.44 would not countenance elimination of a knee rating since that would result in a lower combined rating than that granted by the PEB. The Board, therefore, concedes the EPTS issue.

The PEB rated both knees under the Veterans Administration Schedule for Rating Disabilities (VASRD) coded 5003 for two major joints. Radiographic evidence would support that approach. There was no compensable range-of-motion (ROM) impairment or evidence of instability. The VA separately rated each knee analogously to 5003 as traumatic arthritis, based on painful motion for each joint. VASRD §4.71a specifies for 5003 that ‘satisfactory evidence of painful motion’ constitutes limitation of motion and specifies application of a 10% rating ‘for each such major joint or group of minor joints affected by limitation of motion’. Since both decisions were IAW §4.71a otherwise, the only distinction between the Army and VA ratings was based on the rater’s threshold for ‘satisfactory’ evidence regarding painful motion. In the case of the VA rating examination the presence of painful motion was specifically stated, ‘From this exam, the veteran has [right/left (identical wording both exams)] knee pain on motion.’ In addition the VA goniometric ROM exams stipulated onset of pain in degrees. The final entry in each knee exam, however, was ‘The [right/left] knee motion is *not* limited by pain. Repetitive use with 3 repetitions showed *no* additional loss of motion by pain, fatigue, weakness, or lack of endurance.’ The VA rating decision referenced the goniometric exam statements and not the contradicting statements in concluding ‘the evidence shows painful motion’. The PEB had no such distinctions to make. The MEB examiner did not make a specific statement that there was or was not painful motion regarding the knee exam, although in the preceding hip exam he specified that there was no pain with ROM. Joint line tenderness and positive McMurray’s tests (evidencing loose cartilage) were the only positive findings documented on the knee exam. There were numerous non-goniometric knee ROM exams to be found in the PT notes, none of which documented any indicators of painful motion. Some of them identified mild limitations of flexion, but did not specify that this was on the basis of pain. Daily chronic knee pain with activity, qualifying as ‘painful on use’ IAW VASRD §4.40 (functional loss), was documented in the service record, although the additional §4.40 stipulation ‘evidenced by the visible behavior of the claimant undertaking the motion’ was not. It should be recalled that the CI was prescribed knee braces, although the indication for them was unclear given the absence of instability. The Board deliberated at length regarding the issue of whether the VASRD requirement for ‘satisfactory evidence of painful motion’ was met to the advantage of the CI in this case. The majority of members remained unconvinced that this was the case. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the bilateral knee condition.

Back Condition. The PEB’s DA Form 199 did not invoke application of the US Army Physical Disability Agency (USAPDA) pain policy in support of its spine rating decision. The MEB examiner stipulated a goniometric ROM exam, although noted the results as ‘full range of motion’ without specifying numeric values. Although an argument could be made that this undermines the probative value of the exam to some extent, it is conceded that normal values (≥90° flexion and ≥240° combined) can be applied to the §4.71a spine formula for purposes of the Board’s recommendation. As specified in the DA Form 199, localized tenderness was appropriately attributed as the basis for a 10% rating determination. The narrative summary (NARSUM), PT notes and VA rating examination did not evidence abnormal gait or contour which would justify a 20% spine rating. The VA goniometric ROM examination specified the normal values cited above, noting pain as the end point. The VA rating decision identified tenderness and painful motion as the basis for its 10% determination. Although the CI achieved higher spine ratings in subsequent VA evaluations, it is quite clear that 10% was a fair rating under §4.71a at the time of separation. The PEB’s coding includes an unnecessary prefix, but is accurate and extraneous to rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB adjudication for the back condition.

Other Conditions. The only other condition noted in the NARSUM was hypertension. This was chronic, stable and received a non-compensable rating for the VA. It is not relevant for Board consideration as additionally unfitting. The MEB physical identified ‘bilateral hamstring tenderness’ as one diagnostic impression, but this was not noted elsewhere in the service or VA records. It must therefore be considered as an incidental finding, not a ratable condition for Board purposes. The CI received a VA rating for a cervical spine condition and identified numerous other conditions which were not service connected by the VA. None of them were cited by the CI on the MEB physical or contended to the PEB at separation. Neither the physical profile nor the Commander’s statement identified any conditions other than the back and knees. The only documented physical limitations were those attributed to the adjudicated conditions. 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 cervical spine condition and any contended conditions not covered above remain eligible for Army Board of Correction for Military Record consideration. The Board 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 bilateral knee condition and IAW VASRD §4.71a, the Board recommends by a vote of 2:1 no change in the PEB adjudication. The single voter for dissent (who recommended separate ratings equivalent to the VA decision) submitted the addended minority opinion. In the matter of the lumbosacral condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the hypertension 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090215, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

MICHAEL F. LoGRANDE

President

Physical Disability Board of Review

MINORITY OPINION:

The Action Officer (AO) recommended separate knee coding and rating in this case, based on reasonable doubt regarding the ‘satisfactory evidence of painful motion’ issue as elaborated in the Record of Proceedings. The AO’s draft opinion in that regard is excerpted below to provide balance.

The PEB rated both knees under the VASRD coded 5003 for two major joints. Radiographic evidence would support that approach. There was no compensable range-of-motion (ROM) impairment or evidence of instability. The VA separately rated each knee analogously to 5003 as traumatic arthritis, based on painful motion for each joint. VASRD §4.71a specifies for 5003 that ‘satisfactory evidence of painful motion’ constitutes limitation of motion and specifies application of a 10% rating ‘for each such major joint or group of minor joints affected by limitation of motion’. In the case of the VA rating examination the presence of painful motion was specifically documented. In addition the VA goniometric ROM exams stipulated onset of pain in degrees. The MEB examiner did not make a specific statement that there was or was not painful motion regarding the knee exam, although in the preceding hip exam he specified that there no pain with ROM. Joint line tenderness and positive McMurray’s tests (evidencing loose cartilage) were the only positive findings documented on the knee exam. There were numerous non-goniometric knee ROM exams to be found in the PT notes. Some of them identified mild limitations of flexion, although did not specify that this was on the basis of pain. Daily chronic knee pain with activity, qualifying as ‘painful on use’ IAW VASRD §4.40 (functional loss), was well documented in the service record; and, it should be recalled that the CI required knee braces. There is reasonable doubt in the CI’s favor, therefore, to assume that the §4.71a threshold for painful motion was met for each knee at the time of separation.

Especially in light of the ambivalence in the VA rating examiner’s documentation, the AO can endorse the majority opinion. The PEB’s decision was faithful to the VASRD and consistent with the evidence before it. Nevertheless the AO contends that the reasonable doubt standard was not sufficiently overcome to support a vote unfavorable to the applicant. The draft recommendation to the Board remains defended, to wit:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Degenerative Arthritis, Left Knee | | 5099-5010 | 10% |
| Degenerative Arthritis, Right Knee | | 5099-5010 | 10% |
| Chronic Low Back Pain | | 5299-5237 | 10% |
| **COMBINED (Incorporating BLF)** | | **30%** |

The applicant should be assured that his service is gratefully acknowledged by the Board and it recognizes that his acquired disabilities were no small price to pay.

