RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900196 COMPONENT: Regular

BOARD DATE: 20090626 SEPARATION DATE: 20070119

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

SUMMARY OF CASE: This covered individual (CI) was an active duty SSG medically separated from the Army in 2007 after 14 years of service. The medical basis for the separation was non-traumatic right foot pain and chronic bilateral knee pain. CI’s long standing right foot pain was not resolved following multiple treatments and surgery. CI’s bilateral knee pain and swelling was also duty limiting and noted by his commander to prevent CI from accomplishing required common soldier tasks. CI was referred to the PEB, found unfit, and separated at 20% disability. The VA rated CI’s unfitting conditions at 30%. The VA additionally rated sleep apnea (OSA at 30%), hypertension (10%) and sinusitis (10%), yielding a combined VA rating of 60%. The CI contends that he was not given a rating for surgical pins in his foot, and not rated for OSA as he was being evaluated for OSA and ‘my MEB returned before I could get a sleep study done and PTSD.’

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

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 PEB specifically addressed OSA and found it not unfitting. The PEB did not address any mental health disorders (PTSD), nor did CI claim PTSD from the VA, so this may be a typo or misunderstanding of CI’s contention of ‘PTSD’. Regardless, the Board found no indication or evidence that any symptoms due to OSA (or fatigue), or any type of mental health symptoms or signs (PTSD) played any role in the CI being found unfit. Neither OSA nor PTSD diagnoses should be added as unfitting.

The Board found that the VA analogous coding of ‘Right foot status post surgery to 3rd metatarsal (5279-5280)’ at 10% better described the CI’s diagnosis and answered his petition as that coding provided the highest (amputation-level) rating available for his foot disability including post surgical pins. The Board also determined that, absent the pain rule, and IAW §4.59 Painful motion, that each knee should be separately rated at 10% for painful motion under code 5003.

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

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 disability retirement, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Right foot status post surgery to 3rd metatarsal | 5279-5280 | 10% |
| Right knee patellofemoral and medial compartment arthrosis | 5003 | 10% |
| Left knee patellofemoral and medial compartment arthrosis | 5003 | 10% |
| Combined | 30% |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090209, w/atchs.

Exhibit B. Service Treatment Record.

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

