RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900202 COMPONENT: Active

BOARD DATE: 20090729 SEPARATION DATE: 20050827

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SUMMARY OF CASE: This covered individual (CI) was a SPC/E-4 medically separated from the Army in 2005 after 5 years of service. The medical basis for the separation was Osteoarthritis of the Right Knee. The CI had a fracture of his right kneecap (patella) in 2000 with an open surgical repair (ORIF), and in 2003 during deployment to OIF developed recurrent Right knee pain that limited his duty. Physical therapy and medication did not resolve the duty limiting symptoms. The CI was referred to the PEB, found unfit and separated at 0% disability.

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CI CONTENTION: The CI contends: “During my military career I had two operations on my right knee. When I got assigned to the 101st Air Assault Division, I went to war in 2003 and reinjured my right knee and got some additional injuries such as Flat Foot, Fasciitis Plantar, Hypertension, Insomnia, Pain in left hand finger joint, shoulder pain joint Arthralgias, osteoartheosis involving knee and dealing with depression and dental problem. I am wishing that you all review my medical records and give me a fair hearing.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Osteoarthritis, RIGHT KNEE. STATUS POST PATELLAR FRACTURE. X-RAY REVEALS MILD DEGENERATIVE CHANGES. NO LIMITATION OF MOTION. | 5003 | 0% | 20050624 | OSTEOARTHRITIS, RT KNEE, STATUS POST PATELLAR OPEN REDUCTION INTERNAL FIXATION (CLAIMED AT AS KNEE CONDITION RE-INJURY RT KNEE) | 5010  then  5010-5027 | 10% | 20040910  from military exam records  (STR) | 20050828  2008 rating |
|  |  |  |  | HYPERTENSION | 7101 | 10% | STR | 20050828 |
|  |  |  |  | BILATERAL PES PLANUS | 5276 | 0%  10% | STR | 20050828  20070321 |
|  |  |  |  | GASTROESOPHAGEAL REFLUX DISEASE (GERD) | 7399-7346 | 0% | STR | 20050828 |
|  |  |  |  | TINNITUS | 6260 | 10% |  | **20080724** |
|  |  |  |  | LEFT SHOULDER | 5203 | NSC |  |  |
|  |  |  |  | L MIDDLE FINGER | 5229 | NSC |  |  |
|  |  |  |  | L KNEE | 5260 | NSC |  |  |
|  |  |  |  | RECURRENT BILATERAL EAR ACHE | 6210 | NSC |  |  |
|  |  |  |  | Insomnia |  | NSC |  |  |
|  |  |  |  | + other NSC CONDITIONS |  |  |  |  |
| **TOTAL Combined: 0%** | | | | **TOTAL Combined (*incl non-PEB Dxs):* 20**% from 20050828  ***30***% from 20070321  Non Service Connected (NSC) ***40%*** from 20080724 | | | | |

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**ANALYSIS SUMMARY:**

**Right Knee.** The CI fractured his right kneecap (patella) in 2000 and had open reduction internal fixation that following rehabilitation resolved his pain. In 2003, during OIF, the CI started experiencing right knee pain and swelling after a 6-mile ruck march where he was carrying a 60-pound ruck. After returning from OIF, the CI underwent physical therapy from Feb to Nov 2004 without relief. The initial 10/10 pain did decrease to 6/10 with standing throughout most of the day but with decrease to 3/10 with rest. The CI also complained of occasional locking and swelling of the knee. Orthopedics evaluation and treatment including three medication injections for osteoarthritis of the knee failed. An MRI of the knee showed a grade 3 inter-substance tear of the posterior horn of the medial meniscus and the lateral meniscus. The right patella demonstrated crepitus, a positive McMurray test, and a positive patellofemoral grinding test. There was no effusion, atrophy, or tenderness to palpation at the joint line. ROM was reported as normal "Active flexion was normal. Passive flexion was normal. Active extension was normal. Passive extension was normal. No hyperextension or instability." There was positive pain with heel walk. A formal ROM on 20041203 from physical therapy with goniometer showed flexion to 100 degrees active, 125 degrees passive. [VASRD Normal flexion to 140 degrees].

The VA used the military treatment records history and NARSUM exam for rating. They noted osteoarthritis, right knee, with constant, slight pain; patella demonstrated crepitus, a positive McMurray test, and positive patella femoral grind. Based on the constant pain, an evaluation of 10 percent was assigned.

Absent the Army pain rule, the knee should be rated for painful motion IAW **§4.59 Painful motion**. There was no mechanical limitation of motion. There was demonstrated MRI evidence of meniscal tear and a positive McMurray test with history of "occasional" locking and swelling of the knee. This did not appear to rise to the compensable level of frequent instability and was not rated by the VA.

**Other conditions:**

Hypertension. Mentioned in NARSUM and BP was 147/102. VA rated 10% as not well controlled on chronic medication. This would not be an unfitting condition.

GERD. Mentioned in NARSUM. VA rating of 0%. This would not be an unfitting condition.

Left Hand/Finger Pain. No evidence of disability or permanent residuals. VA Non Service Connected (NSC). This would not be an unfitting condition.

Shoulder Pain Joint Arthralgias. No evidence of disability or permanent residuals. VA NSC. This would not be an unfitting condition.

Bilateral Pes Planus (Flat Foot). There was scant mention of painful feet in the STR. It was not addressed in the MEB/PEB. VA original rating of 0%. This would not be an unfitting condition.

Plantar Fasciitis. No Dx in STR. As above with Pes Planus-- This would not be an unfitting condition.

Depression. No diagnosis or pre-discharge treatment was noted in the record. It was not addressed in the MEB/PEB and cannot be added as an unfitting condition. VA NSC.

Insomnia. Not a disability condition. VA noted: No treatment or care sought; no diagnosis was made. Not an unfitting condition.

Dental Problem. Noted as dental pain in H&P/MEB, with Dental class acceptable. Not an unfitting condition.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board evaluated the evidence for all contended conditions and VA evaluated conditions other than the right knee and could not find sufficient evidence to indicate that any other conditions should have been unfitting at the time of discharge. Hypertension, GERD, and dental problems were mentioned in the disability package and were formally found to be not unfitting. The other diagnoses were not addressed within the disability package and although they appear to be not unfitting, are outside the scope of this Board. If the CI wishes to contend for their addition as unfitting conditions, he should seek redress from the Army Board of Corrections of Military Records as they retain that authority.

The Board unanimously agreed that the CI's right knee meniscal tears with "occasional" locking and swelling of the knee did not rise to the compensable level and should not be added as an additional rating for the knee. Given the documented painful motion, lack of full ROM, X-ray evidence of arthritis, and absent the Army pain rule, the provisions of §4.59 Painful motion were applied and the right knee rated at 10%. The Board elected to continue using code 5003 as it provided similar rating to the VA's elected code of 5257. The Board voted unanimously for increasing the CI's right knee rating from 0% to 10% and adding no other new ratings.

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

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| Unfitting Condition | VASRD Code | Rating |
| Osteoarthritis, RIGHT KNEE | 5003 | 10% |
| Combined | 10% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090225, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

