RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900505 SEPARATION DATE: 20051202

BOARD DATE: 20110315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-5 (2A353B Tactical Aircraft Maintenance), medically separated from the Air Force in 2005. The medical basis for the separation was chronic left knee pain. He injured his left knee and right shoulder in a motorcycle accident in August 2003. Following several surgeries to repair a partial patellar tendon avulsion and aggressive rehabilitation, he did not respond adequately to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a permanent U3, L3 profile, and underwent a Medical Evaluation Board (MEB). Chronic knee pain was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication. The informal PEB adjudicated the chronic left knee pain condition as unfitting, rated 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD), and added malingering as a Category III condition (conditions that are not separately unfitting and not compensable or ratable). The CI appealed to the formal PEB who increased the disability rating to 20%, and added right shoulder separation as a Category II condition (conditions that can be unfitting, but are not currently compensable or ratable). The CI appealed to the Secretary of the Air Force Personnel Council, resulting in no change to the PEB adjudication, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “I have been rated by the Department of Veterans Affairs at 30% for post-operative residuals of ACL [anterior cruciate ligament] tear, left knee in which the Air Force only granted me a rating of 20%. The VA has given me with 3 higher ratings for other service connected disabilities since my separation from the Air Force. They include evaluation of posttraumatic stress disorder with depression and opioid dependence rated at 70% disabling, evaluation of sleep apnea rated at 50% disabling, and evaluation of low back strain rated at 40% disabling. I would like the board to take these other disabilities into consideration when making a decision on my case.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

Rating Comparison Chart on Page 2

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20050908** | | | **VA (9 Mo. after Separation) – All Effective 20051203** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic L Knee Pain | 5257 | 20% | Left Knee ACL Tear | 5260 | 30%**\*** | 20060925 |
| Right Shoulder Separation | Category II | | R Shoulder Separation | 5203 | 10% | 20060925 |
| Malingering | Category III | | No VA Entry | | | |
| ↓No Additional MEB Entries↓ | | | PTSD | 9411 | 70%**\*\*** | 20060909 |
| Sleep Apnea | 6847 | 50%**\*\*\*** | 20061002 |
| Low Back Muscle Strain | 5237 | 40%**\*\*\*\*** | 20060925 |
| Vastus Medialis… | 5314 | 10% | 20060925 |
| GERD | 7399-7346 | 10% | 20060920 |
| 6 x 0% / 3 x Not Service Connected | | | 20060920 |
| **Final Combined: 20%** | | | **Total Combined: 100%** | | | |

**\*Initial 10%** increased to 30% based on 20071030 exam; **\*\*Initial 30%** increased to 70% based on 20071113 exam;

**\*\*\*Initial 0%** increased to 50% based on 20071016 exam; **\*\*\*\*Initial 0%** increased to 40% based on 20071030 exam.

ANALYSIS SUMMARY: The Board notes the current Department of Veterans’ Affairs (VA) ratings listed by the CI for all of his service connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Veterans’ Administration.

Left Knee Condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below:

|  |  |  |
| --- | --- | --- |
| Knee Goniometric ROM | MEB > 7 Mo. Pre-Sep | VA C&P > 9 Mo. Post-Sep |
| Flexion 0-140⁰ normal | 0⁰ - 125⁰ | 0⁰ - 130⁰ |
| Extension 0⁰ normal | 0⁰ | 0⁰ |
| §4.71a Rating | 10%\* | 10%\* |
| Comments | 1+ Lachman, drawer | Painless ROM, no instability |

**\***Conceding §4.59 (painful motion)

Following a series of surgeries to repair a partial patellar tendon avulsion, the CI showed continual improvement with rehabilitation, achieving full ROM and strength by one year prior to separation. Pre-separation exams of the left knee were variously described as “1+ Lachman” and “ligamentously stabile,” but magnetic resonance imaging (MRI) demonstrated an intact anterior cruciate ligament (ACL). There were similar findings at the VA exam nine months after separation. The PEB and VA chose different coding options for the condition, accounting for the differences in rating. The PEB chose to code the knee condition 5257 (knee, other impairment of) and rate the minimal findings noted above as moderate instability. The VA chose to rate the knee for painful motion, despite the examiner’s findings of a normal, painless ROM. The VA later increased the rating for the left knee to 30% for extension limited to 20 degrees based on an exam dated 30 October 2007 (22 mo. post-sep). It is not clear why the 5260 original code was not changed nor is it clear why the effective date was retroactive to separation, considering that the 25 September 2006 (nine month post-sep) showed painful motion only and the original rating of 10% was accurate based on that exam. There is no objective data in evidence within one year before or after separation that would support a VASRD rating higher than 10%, regardless of code choice. Per DoDI 6040.44 this Board will not recommend a reduction of the previously issued combined disability rating. Therefore, there is no justification for a Board recommendation for other than the 20% rating assigned by the PEB for the left knee condition.

Other PEB Conditions. One other condition, right shoulder separation, was forwarded by the MEB and adjudicated as Category II by the PEB. The CI injured his right shoulder in the same accident in which he injured his knee. Examination prior to separation showed a full ROM, mildly positive impingement, and a normal MRI. This condition carried a series of temporary profiles prior to the MEB, but was not implicated in the Commander’s statement or noted as failing retention standards. This condition was reviewed by the Action Officer and considered by the Board. There was no indication from the record that the right shoulder condition significantly interfered with satisfactory performance of AFS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the right shoulder condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for PTSD, sleep apnea and low back strain. All of these conditions were reviewed by the Action Officer and considered by the Board. There was no evidence either before separation or within one year after separation for concluding that any of the conditions might have interfered with duty performance to a degree that could be argued as unfitting. Therefore, the Board determined that none of the stated conditions were subject to Service disability rating.

Remaining Conditions. Other conditions identified in the DES file were left shoulder pain and chest pain. These conditions were thoroughly evaluated during the MEB period, without abnormal findings. Neither condition carried an attached profile or was implicated in the commander’s statement. These conditions were reviewed by the Action Officer and considered by the Board. It was determined that neither condition could be argued as unfitting and subject to separation rating. Additionally a vastus medialis muscle injury and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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.

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 left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right shoulder condition, PTSD, sleep apnea and low back pain condition 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.

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Knee Pain | 5257 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090819, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00505.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings