RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1000009 SEPARATION DATE: 20050815

BOARD DATE: 20110413

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt (4N071, Medical Services Craftsman) medically separated from the Air Force in 2005 after ~15 years of service. The medical basis for the separation was osteochondritis dissecans (OCD), a disease of the joint surface of the right knee. The condition began as knee pain in 1995, and was diagnosed in 2003. Arthroscopic debridement was accomplished and the CI underwent a trial of conservative management. He did not respond adequately to perform within his career field or to meet physical fitness standards. He was issued an L-4 profile and underwent a Medical Evaluation Board (MEB). OCD was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AFI 48-123. The informal PEB (IPEB) adjudicated the OCD condition as unfitting, rated 10% IAW with the Veterans’ Administration Schedule for Rating Disabilities (VASRD), and, added allergic rhinitis as a Category II condition (conditions that can be unfitting but are not currently compensable or ratable). The CI appealed to a formal PEB which determined that it was an unreasonable risk to return the member to duty and concurred with the 10% rating. The CI appealed to the SAF Personnel Council, resulting in no change to the PEB adjudication, and was thus medically separated with a 10% disability rating.

CI CONTENTION**:** The CI states: “In my opinion, my rating was unjust and should be changed due to several reasons: 1) I do not feel that the system that is set up currently gives a fair rating for the condition of osteochondritis dissecans (OCD Lesion); 2) my joint function is very limited after repetitive use; 3) regarding my range of motion exam, there is no consideration given to the fact that when you have a condition that is on a weight bearing surface, it significantly impacts the range of motion and hinders just about everything I do, from daily living activities to being cautious with work duties; and 4) from my understanding, the disability rating is based on the severity and long-term impact of a veteran's condition. I do not feel that has happened with my situation”. He additionally lists all of his VA conditions as per the rating chart below.

RATING COMPARISON

|  |  |
| --- | --- |
| **Service FPEB – 20050509** | **VA (2 Mo. after Separation) – All Effective 20050816** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Osteochondritis Dissecans | 5003-5299 | 10% | Arthritis, R Knee | 5010 | 10% | 20051018 |
| Instability R Knee | 5257 | 10% | 20051018 |
| Allergic Rhinitis | 6501-6599 | Not Unfitting | Chronic Maxillary Sinusitis | 6513 | 10% | 20051018 |
| ↓No Additional MEB Entries↓ | R. Radial Nerve Condition | 8099-8514 | 20% | 20051018 |
| Osteoarthritis, L Knee | 5010 | 10% | 20051018 |
| Ganglion Cyst, R Wrist | 7819-5215 | 10% | 20051018 |
| 1 x 0% / 2 x Not Service Connected |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current quality of life. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Veterans Administration. The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. This is based on severity at the time of separation, but not on “long term impact” as expressed by the CI in his application. The Board further acknowledges the nuances of his knee condition, as expressed by the CI, which might not be ideally rated under the specifications of VASRD §4.71a. Just as the VA was unable to achieve a higher rating for the knee condition, the DES (and this Board) cannot provide ratings tailored to the specific factors inherent in individual cases which are not authorized by the VASRD. The Board, like the VA, does hold the discretion for an “extra-schedular” rating for exceptional cases but the specific limitations elaborated in this application are not unique to the etiology of this joint condition, but inherent in any disease of any weight-bearing joint.

Knee Condition. There were two goniometric range of motion (ROM) evaluations and knee examinations in evidence which the Board weighed in arriving at its rating recommendation. The MEB examiner documented 140⁰ of flexion (normal = 140⁰) and 0⁰ full extension (normal = 0⁰); the VA examiner documented 118⁰ flexion (minimal compensable = 45⁰) and 0⁰ extension. There was thus no compensable ROM impairment, and application of §4.59 (painful motion) is required to achieve the lowest compensable rating under any code chosen. This yields a 10% rating via analogous 5003 rating (the route chosen by both the PEB and the VA) or via any of the applicable knee joint codes available in VASRD §4.71a. A 20% rating achievable under code 5258 is not justified since there was no frequent locking or persistent effusion in evidence. Additional rating on the basis of instability under code 5257, as applied by the VA, was deliberated by the Board. The VA rating was justified on the basis of slight anterior instability documented by the VA examiner. The MEB examination, performed by an orthopedist (VA examiner was not) did not demonstrate any instability or laxity in the knee. Furthermore, imaging had confirmed that, although there was damage to the anterior cruciate ligament, it remained intact. Thus anatomically, no significant anterior instability of the joint would be expected. The Board agreed that the probative value of the MEB evidence outweighed the VA evidence for ratable instability and that additional rating on this basis could not be adequately supported. No rating beyond “mild” at 10% could be achieved under the instability code, even conceding its applicability to service rating, and this would have been of no practical benefit to the CI. The Board noted the in-service contention by the CI that he should have received a 30% rating for “severe” instability under 5257, and it is clear from the above discussion that such would not have been defensible. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right knee OCD condition.

Other PEB Conditions. The other condition added by the IPEB and adjudicated as a Category II condition by the FPEB was allergic rhinitis. This condition existed since 2001 and caused no incapacitation or functional impairment. This condition was not profiled, implicated in the commander’s statement, or noted as failing retention standards. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for allergic rhinitis.

Remaining Conditions. Other conditions identified in the DES file were hyperlipidemia and prostatitis. None of these conditions were clinically problematic during the MEB period, carried attached profiles, or were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, radial nerve impingement, right elbow; osteoarthritis, left knee; and ganglion cyst, right wrist 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 osteochondritis dissecans condition of the right knee and IAW with VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the allergic rhinitis condition, the Board unanimously recommends no change from the PEB adjudication as Category II, not ratable. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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** |
| Osteochondritis Dissecans, Right Knee | 5299 - 5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091218, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

