RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000976 SEPARATION DATE: 20070604

BOARD DATE: 20111202

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (3E871, EOD Craftsman) medically separated for a left knee condition. The condition began in 2004 when he injured the knee while running. A surgical option was declined. He did not respond adequately to treatment and was unable to perform within his Air Force specialty (AFS) or meet physical fitness standards. He was issued an L4 profile and underwent a Medical Evaluation Board (MEB). Left knee chondromalacia was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication on the AF IMT 618. The Informal PEB (IPEB) adjudicated the left knee pain due to chondromalacia patella status post medial collateral ligament repair condition as unfitting, rated 10% IAW with the Veterans’ Administration Schedule for Rating Disabilities (VASRD). Gastroesophageal reflux disease was included as Category II: conditions that can be unfitting but are not currently compensable or ratable. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “There are a couple of issues to consider in why the rating for the condition rendering me unfit should be changed. They are: 1) Within six weeks of Air Force processing for combined total disability rating equating to 10%. I was reprocessed through the Department of Veterans’ Affairs (VA) disability rating process, which equated to a combined total disability rating of 30%. Creating the question of how does the same individual go through the same process within two months time frame and end in such controversial differences in the assigned rating. A combined total rating of which, would have been high enough (30%) to grant me my full retirement and benefits. 2) The U.S. Air Force's diagnosis for my left knee was chondromalacia patella with arthritis and loose MCL. A temporary fix to the loose MCL was discussed with doctors with controversial outcome. Never once was it documented or portrayed of the overlooked, more critical injury at hand that could have not only allowed me to continue my career to retirement at 20 years or more, but also could have negated the requirement of processing through the physical disability review board. I recently was seen by an orthopedic specialist and underwent surgery to correct this undocumented 2004 injury (while on active duty) to fix my restrictive left knee issues. In seeing this specialist, I provided my copies of X-rays and MRI (2004) conducted by the 96th Medical Group, Eglin AFB for his historical review. He also had a new MRI conducted this year, 2010, of which confirmed the same evident injury in the 2004 MRI. I was diagnosed with a torn meniscus in me [*sic*] left knee. This torn meniscus is clearly evident in the Air Force's 2004 MRI, but yet was overlooked and led to my processing for separation. If this injury from 2004 while on active duty was calculated into account as well, would the % rating have been high enough for retirement or would I have had to retire/separate at all?” 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:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070413** | **VA (3 Mo. After Separation) – All Effective 20070605** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Pain… | 5003 | 10% | Left Chondromalacia Patella | 5003 | 10% | 20070912 |
| Gastroesophageal Reflux | Cat II | Gastroesophageal Reflux | 7346 | 0% | 20070912 |
| ↓No Additional MEB Entries↓ | Tinnitus | 6260 | 10% | 20070827 |
| Obstructive Lung Defect | 6604 | 10% | 20070912 |
| Not Service Connected x 5 | 20070912 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY: The CI’s contention suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the DES operates. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the VA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. The Board notes the CI’s assertions that service providers missed a diagnosis of a torn meniscus. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Left Knee Pain Condition. The CI required surgical repair of the left knee medial collateral ligament (MCL) in 1986, prior to enlistment. He experienced no functional problems or symptoms until 2004 when a suspected recurrent MCL injury occurred while running. However, because of the presence of metal artifact from previous surgery, magnetic resonance imaging (MRI) was unable to clearly identify MCL damage. Two months of conservative treatment led to resolution of knee pain and symptoms of instability. Treatment records reflect the CI returned to running. The CI presented one year later (November 2005) with complaints of ongoing pain, laxity and instability in the knee, but continued running. Recurrent pain prompted issue of a physical profile in May 2006 limiting running. Some symptoms were inconsistently reported by different providers. For example, in the 3 November 2006 narrative summary, a history of knee “buckling” was noted, but in 9 January 2007 clinic encounter the occurrence of this symptom was denied. Intermittent locking was reported by one examiner but not by others. Left knee pain appeared as the primary complaint throughout the service record. An orthopedist exam seven months prior to separation (20 November 2006) noted complaints of side to side instability. Examination showed “full extension” and “flexion to 130⁰” (normal 140⁰), and MCL laxity. MCL reconstruction was recommended but the CI declined this option, because, according to a 9 January 2007 encounter, his pain had subsided. Other service examiners reported “full ROM” of the knee (3 November 2006) and “normal gait and stance” (January 2007). X-rays showed mild degenerative changes while MRI showed limited arthritic changes, intact anterior and posterior cruciate ligaments, and intact meniscal structures (although the images of the medial knee compartment findings were compromised by artifact from surgical hardware). The VA compensation and pension (C&P) examiner 12 September 2007 (three months after separation) reported that the CI used a brace intermittently. The knee locked up once per month and he could not run due to pain with impact. Exam showed a normal gait and no joint swelling, tenderness or laxity. Flexion was measured to 115⁰, but an improbable extension of 90⁰ was reported; this level of extension limitation would prohibit ambulation, and in combination with 115⁰ of flexion would reflect a virtually ankylosed knee, which was clearly not present. The PEB and VA both rated the condition 10% using the 5003 code. This rating is appropriate under §4.71a when limitation of motion is noncompensable, as in this case. Pain with use (§4.40) provides an alternate means to the same rating. Although the MRI report stated that there was no evidence of meniscal pathology, the Board also considered a pathway to a higher rating under the 5258 code (dislocated semilunar cartilage). However, the CI’s meniscus was not dislocated and the frequent episodes of knee locking required for the 20% rating under this code were not in evidence. The Board considered rating under the code for instability (5257, other impairment of knee) but concluded the preponderance of evidence did not support rating under this code. All evidence considered there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the left knee condition.

Other PEB Conditions. The other condition adjudicated as not unfitting by the PEB was gastroesophageal reflux disease, present since at least 1999. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that it 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 this condition.

Other Contended Conditions. The CI’s application asserts that compensable rating should be considered for tinnitus and asthma (wheezing with upper respiratory tract infections for 10 to 12 years but no wheezing or dyspnea at any other time including running). Neither of these conditions was documented in the DES file, and the Board therefore does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for them. However, even if their presence in the DES file was conceded, there is no evidence that they interfered with duty performance to a degree that could be argued as unfitting.

Remaining Conditions. Other conditions identified in the DES file were hearing loss (2 May 2007 audiogram was essentially normal), head concussion (1998), and shoulder displacement (1994). Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles and none 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 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 gastroesophageal reflux disease condition, the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the hearing loss 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. 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** |
| Left Knee Pain Due To Chondromalacia Patella | 5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100828, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00976.

 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