RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100033 SEPARATION DATE: 20080927

BOARD DATE: 20110818

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13B10/Cannon Crewmember), medically separated for right knee anterior cruciate ligament (ACL) instability following ACL tear and reconstruction. Prior to entrance onto active duty, the CI injured his right knee playing football and underwent a right knee ACL reconstruction with no knee problem upon entry to active duty. The CI did well until May 2006 when he jumped off a cart and heard a pop in his right knee sustaining a re-injury during training at Joint Readiness Training Center (JRTC). The CI underwent an MRI which showed a right knee medial meniscus tear and moderate joint effusion. The CI was issued a permanent L3 profile. Despite treatment by orthopedics and medication, the CI continued with persistent right knee pain and instability. The CI was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards and he was referred to a Medical Evaluation Board (MEB). The MEB forwarded “Right Knee Instability; Right Knee Medial Meniscus Tear and Lateral Meniscus Tear and Right Hip Pain” to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB adjudicated the right knee ACL instability existed prior to service (EPTS) and right knee medial meniscus tear and lateral meniscus tear conditions as unfitting, combined under a single code and rated 20% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy, Department of Defense Instruction (DoDI) 1332.39 and Veteran’s Administration Schedule of Rating Disabilities (VASRD). The CI made no appeals, and thus was medically separated with a 20% disability rating.

CI CONTENTION: “I was only rated through the military for one injury; but that injury alone did not get me Med boarded it was a combination of injuries that happened during my three years of service. My Med Board counselor told me that twenty percent was the best I [sic] would get and it was a waste of time to appeal my rating. If i [sic] would have had all the facts that I [sic] know now I [sic] would have challenged my rating while still in the Army”.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20080716** | **VA (2 Mos. After-Separation) – All Effective Date 20080928** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee ACL Instability (EPTS), … Meniscus Tears | 5257 | 20% | Right Knee S/P ACL Repair w/ Arthritic Changes | 5260-5010 | 10% | 20081104 |
| Right Hip Pain | Not Unfitting | Right Hip Trochanteric Bursitis | 5252-5019 | 10% | 20081104 |
| ↓No Additional MEB/PEB Entries↓ | L Knee S/P Surgery & DJD | 5260-5010 | 10% | 20081104 |
| Lumbar Strain | 5237 | 10% | 20081104 |
| Tinnitus | 6260 | 10% | 20081104 |
| Sleep Disorder NOS w/Anxiety Disorder NOS | 9410-9413 | 10% | 20110128 |
| 0% x 2/Not Service Connected x 1 | 20081104 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY: 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 Military Disability Evaluation System (MDES) counseling 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, as well as the fairness of PEB fitness adjudications. The MDES is responsible for maintaining a fit and vital fighting force. While the MDES 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 Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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.

Right Knee Condition. There were three range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM Right Knee  | Ortho ~ 5 Mo. Pre-sep | MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 2 Mo. After-Sep |
| Flexion (140⁰ normal) | *No goniometrics* | 140⁰ | 130⁰ (110⁰) |
| Extension (0⁰ normal) | *No goniometrics* | 0⁰ | 0⁰ |
| Comment | Tender to palpation (TTP); pain medially; increased excursion with Lachman firm endpoint; Pivot secondary to pain  | TTP; + Lachman’s Grade II; ; + Crepitus; guarding & pain; + increased excursion with anterior drawer | Decreased endurance 0-110⁰; negative Lachman’s and Mc Murray tests; mild quadriceps weakness 4/5 strength |
| §4.71a Rating\* | 10% | 20% | 10% |

Testing indicated painful motion with ROM on all exams and all exams were adjudged to meet the intent of §4.59 (painful motion) for the right knee. There were multiple service treatment notes that indicated that the CI had chronic right knee pain and knee abnormalities on physical examination. The MEB examination indicated an increased in severity of the right knee laxity based on the finding of the Lachman test Grade II. The Board adjudged the worsening laxity and guarding pain along with crepitus at the time of the MEB exam to meet the 20% criteria rating for the right knee. The VA exam did not show knee laxity/instability; however, the preponderance of the record and evidence, indicated laxity with significant joint pathology to the knee (ligaments and meniscus). The MEB exam was adjudged as having the highest probative value for rating. Alternate coding of 5260-5010 as applied by the VA, or dual coding under 5260 (knee for painful motion) and 5259 (symptomatic cartilage-10%) was considered in lieu of the PEB coding of 5257, but neither coding option was predominate. The record did not indicate “frequent episodes of ‘locking,’ pain, and effusion into the joint” to meet the rating criteria for 5258 (symptomatic cartilage-20%). Although there was an EPTS component to the knee condition, no EPTS deduction was applied by the PEB or this Board, and the VA indicated EPTS of 0%. After due deliberation, there is not reasonable doubt in the CI’s favor therefore to justify a Board recommendation for other than the 20% rating assigned by the PEB for the Right Knee conditions.

Other PEB Conditions (Right Hip Pain): The PEB adjudicated the right hip pain condition as not unfitting and elaborated: “There is no objective pathology causing the pain and it has been present since a deployment in 2006. There’s no evidence that this adversely impacts performance of his duties.” The right hip condition was profiled, but not specifically implicated in the commander’s statement. Right hip pain was addressed in an undated NARSUM by the Division Surgeon indicating tenderness to palpation and “an audible popping with range of motion.” Plain radiographs were normal. The NARSUM examiner stated “Right hip pain – although not specifically unfitting under AR …, it may contribute to inability to perform military duties …” The MEB indicated the hip condition was medically unacceptable and the only diagnosis was “right hip pain”. VA treatment records from one month post-separation indicated “right hip with loss of active motion, popping, decreased flexion, abduction, internal rotation and external rotation.” The diagnosis was right hip tendinitis. The VA C&P exam, from two months post-separation, showed no painful motion and 1/10 pain over the trochanteric site. The VA examiner diagnosed right hip trochanteric bursitis and the VA rated this condition at 10% for episodic pain. This condition was reviewed by the action officer and considered by the Board. The hip condition may have been related to the knee condition; however, there was no evidence of abnormal gait, or any imaging abnormality of the hip (however, no advanced imaging [MRI, bone scan, etc., was performed]. There were few medical treatment notes specifically for the hip condition. There was no indication from the record that this condition significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there was not sufficient evidence or doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the right hip pain condition.

Remaining Conditions: The left knee s/p surgery and degenerative joint disease, lumbar strain, tinnitus, sleep disorder NOS w/anxiety disorder NOS were each rated 10% by the VA. These conditions were mentioned in the DES package as was laceration left ring finger. Several additional non-acute conditions or medical complaints were also documented. There was no permanent profile for these conditions, nor were they mentioned in the commander’s statement. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to Service disability rating.

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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 Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the right knee ACL instability (EPTS), medial and lateral meniscus tears condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication and rating of 5257 at 20%. In the matter of the right hip pain condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the left knee s/p surgery and degenerative joint disease, lumbar strain, tinnitus, sleep disorder NOS w/anxiety disorder NOS, arthritis in knee and laceration left ring finger conditions 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, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee ACL Instability(EPTS), Medial and Lateral Meniscus Tears | 5257 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110120, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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 Deputy Director

 Physical Disability Board of Review

**DEPARTMENT OF THE ARMY**

ARMY REVIEW BOARDS AGENCY

*1901* SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA *22202-4508*

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* , 2530 Crystal Drive, Arlington, VA 22202

**12** OCT **2111**

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110019964 (PD201100033)

I have reviewed the enclosed Department of Defense Physical Disability Board of

Review (DoD PDBR) recommendation and record of proceedings pertaining to the

subject individual. Under the authority of Title 10, United States Code, section 1554a,

I accept the Board's recommendation and hereby deny the individual's application.

This decision is final. The individual concerned, counsel (if any), and any Members of

Congress who have shown interest in this application have been notified of this decision

by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) DVA

Deputy Assistant Secretary

(Army Review Boards)