RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100108 SEPARATION DATE: 20020105

BOARD DATE: 20111110

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SGT/E-5 (63E, M1 Abrams Tank System Mechanic), medically separated for bilateral patellofemoral arthritis. The CI had a six year history of bilateral knee pain, with no history of significant knee trauma. Radiographs revealed mild bilateral patellofemoral degenerative changes. Rheumatologic evaluation ruled out autoimmune etiology. His treatment included physical therapy, medications (including opiates), and left knee surgery (lateral release); all without significant improvement. He remained unable to perform within his military occupational specialty (MOS) or meet physical fitness standards; and, was consequently issued a permanent U2/L3 profile and referred for a Medical Evaluation Board (MEB). Bilateral knee arthritis, bilateral shoulder pain with impingement syndrome, and bilateral hand pain were forwarded to the Physical Evaluation Board (PEB) as three separate medically unacceptable conditions IAW AR 40-501. No other conditions appeared on the MEB’s DA Form 3947 submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. An Informal PEB adjudicated the bilateral patellofemoral arthritis condition as unfitting, rated 20%, with presumptive application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The bilateral shoulder and bilateral hand conditions were determined to be not unfitting. The CI waived appeal for a formal PEB, and was medically separated with a 20% disability rating.

CI CONTENTION: “The Veteran received no rating for disabling condition at discharge as he disagreed with being separated from the military service; he also felt that his disabling conditions were sufficient to award a minimum of 30% if he were indeed unfit for further service.” He elaborates no other contentions regarding rating or coding and mentions no additionally contended conditions. All service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20010925** | | | **VA (2 Mo. Pre-Separation) – All Effective Date 20020106** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mild Bilateral Patellofemoral Arthritis | 5003 | 20% | Mild Patellofemoral Arthritis…L. | 5010 | 10% | 20011012 |
| Mild Patellofemoral DJD, R. | 5010 | 10% | 20011012 |
| Bilateral Shoulder Pain | Not Unfitting | | Bilateral Shoulder Impingement | 5019 | NSC | |
| Bilateral Hand Pain | Not Unfitting | | Bilateral Hand Pain | 5099-5003 | NSC | |
| No Additional MEB/PEB Entries | | | Tinnitus | 6260 | 10% | 20011012 |
| 0% x 2/Not Service Connected x 2 | | | 20011012 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: 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’s Affairs (VA), 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.

Bilateral Patellofemoral Arthritis: There were two knee evaluations with documentation of ratable criteria in evidence proximate to separation, with one goniometric range-of-motion (ROM) evaluation, which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM  Knees | MEB ~ 5 Mo. Pre-Sep | | VA C&P ~ 3 Mo. Pre-Sep | |
| Left | Right | Left | Right |
| Flexion (140⁰ Normal) | ROM “full and smooth” | | 130⁰ | 130⁰ |
| Extension (0⁰ Normal) | “full” | “full” |
| Comments | “Walks, sits, and stands well;” TTP; stability “good;” L knee incisions well healed; repeat exams show some swelling, warmth & crepitus on L, but no effusion; Hx – L locking | | Diffuse TTP; FAROM with no pain; no ligament laxity; no effusion; L knee surg scars barely discernible; partial deep knee bend due to pain | |
| §4.71a Rating | 10% | 10% | 10% | 10% |

The narrative summary (NARSUM) noted “full and smooth” knee motion bilaterally, with no mention of painful motion. There was tenderness to palpation over the anterior left knee. The incisions were well healed. The examiner noted a history of left knee locking, but did not state frequency. Repeat exams showed some swelling, warmth and crepitus on the left knee, but no effusion. The remainder of the exam was unremarkable. The CI “walked, sat, and stood well.” There was no redness, swelling, heat, effusion, or instability. A brief addendum to the NARSUM noted the CI related his pain was more than intermittent and mild, and could reasonably be called “occasional and slight.” Radiographs showed mild patellofemoral degenerative joint disease of both knees. A bone scan reported increased uptake in both knees, consistent with degenerative arthritis. More detailed imaging did not reveal any relevant findings. Rheumatology obtained standing knee radiographs which were interpreted as normal, and the standard battery of rheumatologic serum assays were normal. Outpatient clinical records proximate to separation also noted full range of motion bilaterally. The VA exam, two months closer to separation, provided the goniometric data charted above and noted the absence of painful motion. There was diffuse tenderness to palpation bilaterally. Left knee surgical scars were barely discernible. The examiner noted absence of ligamentous laxity, deformity and effusion. Although remote from separation (14 months), a second VA exam reported similar (slightly limited) ROMs, but noted a significant increase in pain. The CI used a cane and walked with a “left leg limp.” Radiographs remained normal, and the VA continued their 10% rating based on this exam.

The Board deliberated its rating recommendation(s) based on the evidence just elaborated. Since there was no compensable limitation of motion (beyond application of §4.59 or §4.40), the Board considered alternative coding options and the possibility of dual rating for each knee condition. Both exams proximate to separation noted an absence of ligamental laxity; thus, additional rating under 5257 (recurrent subluxation or lateral instability) was not warranted. Coding under 5258, which requires “frequent episodes of ‘locking,’ pain, and effusion into the joint,” was also considered. The NARSUM noted left knee locking (frequency unspecified), and the CI reported in the MEB history that the “left knee locks every once in a while.” The VA exam reported pre-surgical locking, giving way, and swelling of left knee; but, specifically denied recent symptoms of swelling or locking (noting only morning stiffness, redness, warmth, and occasional giving way bilaterally). Effusion was notably absent on both the MEB and VA exams, and no effusions were documented in treatment notes subsequent to resolution of a mild post-operative effusion. Thus it was judged that additional rating under 5258 was not supported. Thus, there is no route to higher than a 10% rating under any other applicable codes for either knee, and no criterion for dual coding of the joint impairment for either knee. Rating each knee separately based on range of motion limitations or other impairments results in a 10% rating for each knee and does not result in a higher overall rating than the 20% applied by the PEB under the single 5003 (degenerative arthritis) code. Although ideal coding would be for a separate 10% rating for each knee, that schema is not predominate to the PEB coding nor would it provide any benefit to the CI. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication for the bilateral knee condition.

Other PEB Conditions: The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were bilateral shoulder pain (with impingement) and bilateral hand pain. Both of these conditions were recognized, but not service connected, by the VA. The shoulder conditions were profiled U2 in the permanent profile most proximate to separation. The “2” designator indicates the condition “may require some activity limitations”; and, for the upper extremities, this means “slightly limited mobility of joints, muscular weakness, or other musculoskeletal defects that do not prevent hand-to-hand fighting and do not disqualify for prolonged effort.” The commander’s statement identified “arthritis in the knees, shoulders, and hands,” and stated the CI was “unable to climb on and off tanks or turn wrenches without undergoing tremendous pain.” The NARSUM reported full range of shoulder motion bilaterally. The VA exam reported “full active range of motion” of the shoulders and hands, with no mention of painful motion for the shoulders, and absence of pain noted for the hands. The only positive findings for the shoulders were “some tightness with forward flexion and abduction” bilaterally, and “mild crepitus” of the right shoulder. The examiner noted only mild tenderness over the metacarpals in the hands, and a “barely discernible 8 mm scar over the left ring finger.” Radiographs of the shoulder and hands were normal bilaterally, and the VA examiner concluded that there was “insufficient clinical evidence at present to warrant a diagnosis of any acute or chronic disorder” for both the bilateral shoulders and the bilateral hand conditions.

This evidence was reviewed by the action officer and considered by the Board. There was insufficient evidence to support a recommendation that either the shoulder or hand conditions were separately unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

The Board further considered alternate coding of the CI’s multiple painful joints analogously to 5002, arthritis as an active process, but the CI did not have sufficient “symptoms of definite impairment of health objectively supported by examination findings” or of “incapacitating exacerbations occurring 3 or more times a year” to support higher than a 20% overall rating; thus, this approach offers no advantage to the combined rating conferred by the PEB.

Remaining Conditions: Other conditions identified in the DES file were: arthritis of the elbow, wrist, foot, and back; reduced range of motion of the elbows, and ophthalmic ulcers during allergy season. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were 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, tinnitus was noted in the VA rating decision proximate to separation, but was 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. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 bilateral knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the bilateral shoulder condition and bilateral hand condition, the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Mild Bilateral Patellofemoral Arthritis | 5003 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110223, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President

Physical Disability Board of Review

SFMR-RB

DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

17 NOV 2011

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB *I* , 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110022181 (PD201100108)

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