RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100138 SEPARATION DATE: 20010924

BOARD DATE: 20111202

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11M, Mechanized Infantryman) medically separated for a left knee condition. He injured the knee after stepping into a hole during training in 1992, and was diagnosed with a left anterior cruciate ligament (ACL) tear and osteoarthrosis in December 2000. The CI reasonably declined a surgical option, and did not improve adequately with conservative measures to satisfy the physical requirements of his military occupational specialty (MOS) or meet physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Left knee osteoarthrosis with ACL deficiency was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. An Informal PEB adjudicated the knee condition as unfitting, rated 20% with application of Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “I was unfit to continue my career with the Army. My condition has gotten worse over time.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20010621** | **VA – All Effective 20010925** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L Knee ACL Deficiency with Osteoarthrosis | 5257 | 20% | Residuals, L Knee Injury… | 5257 | 20% | STR\* |
| No Additional MEB/PEB Entries | Not Service Connected x 4 | STR |
| **Combined: 20%** | **Combined: 20%** |

\*Service Treatment Record (No-show for VA exam)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application that his condition has worsened over time. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (VA). The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12 month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Left Knee Condition. The CI gave a history of his left knee being unstable and giving out approximately six to seven times per day with routine activities. He did not present for a scheduled VA compensation & pension (C&P) exam. The only goniometric range-of-motion (ROM) evaluation in evidence was that documented in the narrative summary (NARSUM) by the MEB orthopedic examiner. The NARSUM documented flexion of 130⁰ (normal 140⁰). Ligamental stress testing revealed approximately 10 mm of anterior translation, with a clunk and a 2+ pivot shift (ACL instability). The posterior cruciate and lateral collateral ligaments were stable and intact. The medial collateral ligament (MCL) was stable in full extension, although there was modest laxity with partial flexion. Imaging studies revealed mild degenerative changes with partial tears of the ACL, MCL and lateral meniscus (cartilage). The orthopedist opined that “currently this soldier is significantly limited in his ability to carry on with aggressive heavy manual labor type activities because of left knee pain and instability.” The PEB’s DA Form 199 reflected application of DoDI 1332.39 for rating, but its 20% determination was consistent with §4.71a criteria for code 5257 (recurrent subluxation or instability of the knee). The VA, applying service evidence, arrived at the same code and rating, a decision that was upheld following appeal and review. In deliberating its recommendation based on the same service evidence, the Board agreed that 5257 was the most clinically applicable code; and, the one which achieves optimal rating IAW VASRD §4.7 (higher of two evaluations). Dual coding and rating was also entertained, but no additional codes reasonably applied in the absence of restricted motion in flexion or extension, or any evidence of locking or effusion due to meniscus damage. The 5257 code provides for ratings of slight, moderate, and severe without defining those terms. The Board concluded that the functional impact of the knee condition on even routine activities could not fairly be characterized as slight, but characterization as severe could not be justified. The moderate rating, 20%, was therefore judged to be the most appropriate fit with the available data. Therefore, all evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the left knee condition.

Remaining Conditions. One other condition, mechanical low back pain, was identified in the DES file. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating the left knee was operant in this case and the condition was adjudicated independently of that instruction by the Board. 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 low back 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 modification of the CI’s disability and separation determination, as follows:

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110325, 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

**12** DEC 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 AR20110023649 (PD201100138)

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

Review (000 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

( ) OVA