RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100352 SEPARATION DATE: 20040829

BOARD DATE: 20120328

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (91W, Health Care) medically separated for bilateral knee pain. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. The CI was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Bilateral knee pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB found the bilateral knee pain unfitting, and rated it 10% IAW the U.S. Army Physical Disability Agency (USAPDA) pain policy. The CI did not concur with the PEB findings, but he waived a formal hearing. The entire case was then reviewed by the USAPDA, and the PEB findings were affirmed and upheld. The CI was thus medically separated with a 10% disability rating.

CI CONTENTION: “The rating took into account that only the knees were injured. I was awarded 10% for one knee and 0% for the other. It failed entirely to take into account the injury to the back. An X-Ray or an MRI would have shown lumbar disk injury, as reported by the VHA. Further disability has been determined as service connected as shown in Item 5b and 14.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20040702** | **VA (1 year Post-Sep) – All Effective 20041004** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Pain | 5099-5003 | 10% | Right Knee Osteoarthritis  | 5010-5260 | 10% | 20050907 |
| Left Knee Osteoarthritis | 5010-5260 | 10% | 20050907 |
| ↓No Additional MEB/PEB Entries↓ | Lower Back Strain | 5010-5237 | \*20% | 20071206 |
|  | Not Service Connected x 1 | 20050907 |
| **Combined: 10%** | **Combined: 20% originally (\*later increased to 40%)** |

 \* VA rating for Lower Back Strain was added later, based on a Decision Review Officer (DRO) decision dated 20080124

ANALYSIS SUMMARY:

Bilateral Knee Pain. The CI began having knee pain in February 2002, during basic training. He was treated with non-steroidal anti-inflammatory drugs (NSAIDs) and physical therapy (PT). Magnetic resonance imaging (MRI) of the right knee was normal. MRI of the left knee revealed a minimal Baker’s cyst, but was otherwise unremarkable. In October 2003, the CI had arthroscopy on both knees, with removal of plica bilaterally, and chondroplasty of the femoral trochlea on the left. After surgery he had only minimal improvement, and he continued to have knee pain. Due to his persistent knee problems, an MEB was initiated. At his May 2004 MEB exam, he reported that the left knee was more painful than the right. Examination of his knees revealed no restriction in range-of-motion (ROM). Flexion of both knees was measured at 130 degrees. Lachman’s and McMurray’s tests were negative, and there was no effusion or edema. As noted above, the Army PEB found him unfit due to bilateral knee pain and he was separated with 10% disability. One year later, the CI had a VA Compensation and Pension (C&P) exam. Flexion of both knees was measured at 140 degrees. Drawer sign and McMurray’s sign were negative. The two ROM evaluations are summarized in the charts below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –Right Knee | MEB – 15 wks. Pre-Sep(20040513) | VA C&P – 53 wks. Post-Sep(20050907) |
| Flexion (140⁰ is normal) | 130⁰ | 140⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ |
| Comment | No mention of pain | No mention of pain |
| §4.71a Rating | 0% | 0% |

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –Left Knee | MEB – 15 wks. Pre-Sep(20040513) | VA C&P – 53 wks. Post-Sep(20050907) |
| Flexion (140⁰ is normal) | 130⁰ | 140⁰ |
| Extension (0⁰ is normal) | 0⁰ | 0⁰ |
| Comment | No mention of pain | Painful motion |
| §4.71a Rating | 0% | 10%\* |

The Board carefully reviewed all evidentiary information available. The Army PEB combined left knee pain and right knee pain as a single unfitting condition. The Board evaluated whether or not it was appropriate for the two knees to be “bundled” together. The Board must determine if the PEB’s approach of combining the conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. The key issue therefore, was whether a compensable evaluation could be granted for the right (less severe) knee. There was no evidence of any significant right knee abnormalities at the MEB or the VA C&P examinations. After due deliberation, the Board determined by majority decision (2:1 vote) that the CI’s right knee pain did not meet the intent of VASRD §4.59 (painful motion) since “the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability.” The Board determined by majority decision that the evidence did not support a conclusion that the right knee pain, separately, would have rendered the CI incapable of performing his required military duties; and, accordingly cannot recommend a separate service disability rating for it.

The Board then directed its attention to the left (worse) knee. The left knee limitation of motion was essentially non-compensable based on the VASRD §4.71a diagnostic codes for loss of knee motion (5260 and 5261). However, IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. There was no path to a rating higher than 10% since there was no evidence of ligamentous instability, subluxation, locking, or other significant joint abnormality at the time of separation from service. After due deliberation and consideration of all the evidence, the Board recommends by majority decision (2:1 vote) a rating of 10% for the bilateral knee pain.

Back Pain. The CI contends that a disability rating should be considered for back pain. According to the service treatment record (STR), the CI injured his back in October 2002. After that, he had intermittent episodes of back pain. However, the back condition was not clinically significant during the MEB/PEB period, did not require permanent profiling, and was not implicated in the commander’s statement. On the DD Form 2808 (Report of Medical Examination) dated 13 May 2004, the spine examination was normal. There was insufficient evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the back condition was not subject to service disability rating.

Remaining Conditions. Other conditions were also noted in the file. None of these conditions were clinically significant during the MEB/PEB period, none carried profiles and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. There was insufficient evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. 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 the USAPDA pain policy for rating the bilateral knee pain was operant in this case and the condition was adjudicated independently of that policy by the Board.

In the matter of the bilateral knee pain, the Board recommends by majority decision (2:1 vote) no change to the PEB adjudication. The single voter for dissent (who recommends 10% for each knee, for a combined rating of 20%) did not elect to submit the attached Minority Opinion. In the matter of the back pain, or any other conditions eligible for 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Knee Pain | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF)** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110415, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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

 Deputy Assistant Secretary

 (Army Review Boards)