RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100459 SEPARATION DATE: 20061121

BOARD DATE: 20120427

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, E-5 SGT (13B20/Canon Crewmember), medically separated for right knee pain. He initially injured his right knee while playing basketball in August 2001. After conservative measures failed, he was referred to the orthopedic service and underwent an arthroscopic repair in February 2002. Six months after his surgery he reinjured his knee during a motor vehicle accident. In November 2004 despite extensive therapy he was issued a permanent L3 profile and recommended for the Military Occupational Specialty (MOS) Medical Retention Board (MMRB). In February 2005, he underwent additional right knee surgery along with extensive therapy. He continued to have knee pain and swelling postoperatively. In April 2005 he was recommended for reclassification by the MMRB; however, no reclassification occurred. He was unable to perform within his MOS or meet physical fitness standards and was recommended for a Medical Evaluation Board (MEB). He was initially referred for MEB proceedings in August 2005; however, his case was returned for further orthopedic evaluation as his condition was not considered stable. In March 2006 he was re-evaluated by orthopedic services and was issued a revised permanent L3 profile and referred to the MEB. Chronic right knee pain due to arthritis was forwarded 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 PEB adjudicated the right knee pain condition as unfitting, rated 20%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI initially requested a Formal PEB (FPEB) but then subsequently waived his request for a FPEB and requested a continuation on active duty (COAD) which was denied. He was then medically separated with a 20% combined disability rating.

CI CONTENTION: “(Right Knee) I had two major knee surgery (sic) on my right knee. The first surgery (ACL) was in 2002 before deploying to Afghanistan and second surgery (reconstruction) was after I came back from Afghanistan in 2005. As a result of my second reconstruction knee surgery and going through physical therapy, I was not in the best shape and unfit for duty as being a soldier. So I went through Med-Board and got my Med-Board Review. They told me that the VA will take care of everything. VA only gave me 30%, 10% surgical repair right knee, 10% bilateral recurring tinnitus and 10% hypertension. Being in the military for 16 years, I think it’s fair for me to have 30% early medical retirement from the Army. As of right now I am still having problems with my right knee.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060719\*** | | | **VA (2 Mo. Pre Separation) – All Effective Date 20061122** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Failed ACL Reconstruction and Arthritis with history of Menisci Tears | 5257 | 20% | Degenerative Joint Disease, status post Trauma with Surgical Repair, Right Knee | 5003 | 10% | 20060919 |
| ↓No Additional MEB/PEB Entries↓ | | | Bilateral Recurring Tinnitus | 6260 | 10% | 20060922 |
| Hypertension | 7101 | 10% | 20061122 |
|  | | | 0% x3/Not Service-Connected x10 | | | 20060919 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

\*Administrative Correction

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Right Knee Failed Anterior Cruciate Ligament Reconstruction, Arthritis, and Menisci Tears. There were three goniometric 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.

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| --- | --- | --- | --- |
| Goniometric ROM –  Right Knee | Ortho Addendum  ~ 8 Months Pre-Separation  20060321 | PT\* and NARSUM\*\*  ~ 6 Months Pre-Separation  \*20060502 and \*\*20060427 | VA C&P  ~ 2 Months Pre-Separation  20060919 |
| Flexion (140⁰ normal) | 120⁰ | \*110⁰ | 114⁰ |
| Extension (0⁰ normal) | 3⁰ | \*5⁰ | 10⁰ |
| Comment | Positive Lachman’s (2A), 2+ anterior drawer, normal posterior drawer, McMurray positive on medial aspect; Significant crepitance with ROM and a mild effusion some laxity to varus stress at 30 degrees. No laxity to varus and valgus at 0 degrees; MRI: deficient ACL, operative changes, and early tricompartmental arthritic changes. | \*\*Slight edema noted; normal gait, no erythema; tenderness of medial joint line; crepitus; McMurray positive, medial aspect; Motor 5/5; also included report from Ortho addendum; ROM from PT | No edema, effusion, weakness, tenderness, redness, heat or abnormal movement, no evidence of recurrent subluxation, locking pain, joint effusion or crepitus, no varus/valgus instability; Drawer & McMurray negative |
| §4.71a Rating 5257 | 20% | 20% | 0% |
| §4.71a Rating 5260 | 10% | 10% | 10% |

PEB Summary: After a jump while playing basketball during physical fitness training in 2001, the CI felt his right knee "pop” and he experienced pain and swelling. Conservative therapy, including physical therapy, did not result in any significant improvement. An MRI performed in December 2001 noted right knee anterior cruciate ligament (ACL) disruption as well as medial and lateral meniscal tears and a large effusion. In February 2002 he underwent arthroscopy with ACL reconstruction, partial medial meniscectomy, and debridement on the medial femoral condyle. He apparently was doing well with physical therapy after the surgery but about 6 months later he was involved in a motor vehicle accident where he was in a 5-ton truck which flipped. MRI was consistent with failed ACL. Again, his symptoms failed to resolve with conservative therapy. He was issued a permanent profile in November and was evaluated for possible MOS change. A repeat MRI documented a failed ACL reconstruction and varus deformity with evidence of the partial medial meniscectomy. In February 2005 he had a second right knee arthroscopy with a high tibial osteotomy due to the severity of his varus deformity. He was also noted to have severe cartilage damage in the trochlear groove. The failed ACL reconstruction and a significant varus deformity were observed during this surgery. His ACL was not reconstructed at that time due to the arthritic changes in his knee. Despite this second surgery and more than 12 months of rehabilitation, he continued to have chronic and persistent right anterior knee pain with crepitance with ROM, recurrent swelling, and symptoms of instability which precluded him from participating in his functional military activities. His case was forwarded for a MEB but as he was still recovering, it was returned to allow for stabilization of his condition. He continued to be followed by orthopedics and was receiving physical therapy. His permanent L3 profile was updated in April 2006. In May 2006 his case was sent forward to continue MEB processing. The case was resubmitted with no further surgery planned.

A MEB physical exam was performed on April 27, 2006 and recorded on a DD Form 2808. The examiner dictated the MEB narrative summary (NARSUM) the same day and included information about the physical examination completed by the orthopedic surgeon in an MEB Addendum dated March 21, 2006. He also later added right knee ROM measurements to the NARSUM after these were measured by physical therapy on May 2, 2006. The ROM measurements and pertinent findings are noted in the ROM chart above. A VA C&P examination was completed in September 2006 and it noted similar findings of arthritis and similar levels of ROM limitations. However, this examiner did not evaluate for subluxation as no anterior drawer or Lachman’s test was specifically documented. The exam does include a finding of “negative drawer” but it is not clear if this was anterior or posterior. These tests were significantly positive on both service examinations. The VA examiner noted that there was no varus or valgus (lateral) instability whereas the orthopedic surgeon’s examination noted some varus laxity when the knee was flexed to 30 degrees. Additionally both service examinations note a positive McMurray’s test and the NARSUM exam also noted medial joint line tenderness. However, the VA exam documented a negative McMurray’s test. And lastly, edema or effusion was noted by both military examiners but not the VA examiner. All exams noted a normal gait and the NARSUM and VA exams noted a normal neurologic examination.

There is a disparity between the service and VA examinations, with implications for the Board's rating recommendation. The Board deliberated the probative value of these conflicting evaluations, and reviewed the service file for corroborating evidence in the 12-month period prior to separation. There is no information about outpatient visits after March and April 2006 available in the record for review. However, outpatient visit notes from the time prior to the MEB examinations show physical findings similar to those seen on the orthopedic addendum and the MEB NARSUM examination. Additionally, as discussed below, the deficient ACL was clearly seen by the surgeon at arthroscopy prior to the VA exam and no reconstruction was completed in the intervening time period. It is not medically feasible that the ACL would not be deficient at the time of the C&P examination. Therefore the orthopedic addendum and the MEB NARSUM exam are afforded higher probative value than the VA C&P examination.

In this case, separate ratings for instability and ROM impairment are allowed as established by VA policy in effect at the time of separation (general counsel opinion of July 1, 1997 and FAST Letter 04-22 of October 1, 2004). The Board considered this guidance. Although the C&P examination documented a negative Drawer, the MEB NARSUM and orthopedic addendum both noted positive Lachman’s and anterior Drawer specified as 2A and 2+ respectively. There is also anatomic and MRI evidence of an ACL deficient knee. The failure of the initial ACL reconstruction was clearly documented visually by the surgeon at the February 2005 arthroscopy and the ACL was not repaired during this surgery. A significant varus deformity was also noted during this surgery. Both moderate subluxation and slight lateral instability of the right knee were noted on the orthopedic addendum examination and the anatomic correlates were noted during arthroscopy. The operative report noted the ACL had completely torn off its insertion. With instability in two planes and complete separation of the ACL from its insertion, rating IAW VASRD code 5257 at 20% for moderate instability is appropriate. The CI also clearly has pain-limited flexion noted on all examinations and this supports and additional rating IAW code 5260 at 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separation ratings of 20% for the 5257 right knee failed ACL reconstruction condition and 10% for the 5260 right knee degenerative arthritis with pain-limited motion condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for degenerative joint disease (DJD) of the right knee, bilateral tinnitus, and hypertension. The degenerative joint disease, or arthritis, is discussed above. Bilateral tinnitus and hypertension were reviewed by the action officer and considered by the Board. Neither condition was profiled, implicated in the commander’s statement, or noted as failing retention standards. Both were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for either of the stated conditions. The Board determined therefore that neither condition was subject to disability rating.

Remaining Conditions. Other conditions identified in the DES file were fractured nose, chronic right ankle pain, and sea sickness. None of these conditions were profiled, implicated in the commander’s statement, or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. 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 determined therefore that none of these conditions were subject to disability rating. Additionally headaches and gout were identified by the VA 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. The Board thus has no 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. In the matter of the right knee failed ACL reconstruction condition, the Board unanimously recommends a permanent disability rating of 20%, coded 5257 IAW VASRD §4.71a. In the matter of the right knee degenerative arthritis with pain-limited motion condition, the Board unanimously recommends a permanent disability rating of 10%, coded 5260 IAW VASRD §4.71a. In the matter of the bilateral tinnitus, hypertension, fractured nose, chronic right ankle pain, and sea sickness conditions, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee Failed ACL Reconstruction | 5257 | 20% |
| Right Knee Degenerative Arthritis with Pain-Limited Motion | 5260 | 10% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110401, 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

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

XXXXXXXXXXXXXX, AR20120008431 (PD201100459)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)