RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100478 SEPARATION DATE: 20080402

BOARD DATE: 20120330

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, PFC/E-3 (92A, Automated Logistical), medically separated for left knee pain. She did not respond adequately to treatment and was unable to perform within her Military Occupational Specialty (MOS) or meet physical fitness standards. She was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Left knee pain, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Lower back pain and right hip bursitis conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the left knee condition as unfitting, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: The CI states: “Weakness in left leg, lower back strain, right hip strain, patellofemoral syndrome. Wrongly diagnosed, I actually had multiple sclerosis which got diagnosed after my discharge from the military.” She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20071218** | | | **VA (2 Mo. After Separation) – All Effective Date 20080403** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Pain | 5099-5003 | 0% | Left Knee Patella Femoral Syndrome | 5299-5261 | 10% | 20080610 |
| Low Back Pain | Not Unfitting | | Lumbar Strain | 5237 | 10% | 20080610 |
| Right Hip Bursitis | Not Unfitting | | Right Hip Strain | 5252-5024 | 10% | 20080610 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Shoulder Strain | 5201-5024 | 10% | 20080610 |
| **Combined: 0%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges multiple sclerosis and its complications as currently rated conditions by the Department of Veterans’ Affairs (DVA), but notes that the scope of its recommendations does not extend to conditions which were not diagnosed or in evidence at the time of medical separation. This includes conditions which may have had early manifestations during active service. The Board also acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (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 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. While the DES 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. The DVA, however, 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 the degree of impairment vary over time as well as to determine service-connection for DVA purposes under Title 38 (not military disability under Title 10) for conditions diagnosed after separation.

Left knee Pain Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM –  L Knee | PT ~ 6 Mo. Pre-Sep | VA C&P ~ 2 Mo. After-Sep |
| Flexion (140⁰ normal) | 100⁰ (100,100,104) | 90⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ |
| Comment | Limitation due to pain.  No locking.  No instability. | Not decreased after repetitive motion.  No instability.  Negative meniscus signs.  Gait normal. |
| §4.71a Rating | 10% | 10% |

The CI first developed left knee pain in March 2006 when she was pushed while ascending stairs and struck her partially flexed knee against a step. She was managed conservatively for the contusion and able to finish basic training. Later, it was found that she had a stress fracture of the left medial tibial plateau on imaging done for persistent pain. She was again managed conservatively with duty restriction and medications. Radiographically, this resolved, but her pain persisted and she was unable to meet full duty requirements and she was referred to MEB. The MEB narrative was prepared 31 October 2007, 5 months prior to separation. It noted a normal posture and gait. No effusion or swelling was present. ROM was noted to be normal, but actual values not documented. Patellofemoral crepitus was noted on ROM maneuvers and a positive patellofemoral grind test was positive bilaterally. Drawers, Lachmans and McMurrays tests were all negative. Plain X-rays were normal. She was thought to have patellofemoral syndrome (PFS). The VA Compensation and Pension (C&P) exam was accomplished 10 June 2008, slightly over 2 months after separation. She complained of weakness, stiffness, giving way and locking. She denied any functional limitations from her knee condition. Posture and gait were again noted to be normal. The anterior and posterior cruciate ligaments, medial and lateral collateral ligaments, and medial and lateral menisci were all normal to exam. Pain was the only DeLuca criterion present. Joint function was not additionally limited by pain, fatigue, weakness, lack of endurance or incoordination after repetitive use. X-rays were normal. The PEB rated the left knee at 0% and coded it 5099-5003, analogous to degenerative arthritis, utilizing the now rescinded USAPDA pain rule. The VA coded the knee as 5299-5261, and rated it at 10% for painful motion. The Board considered these two coding options as well as others available in the VASRD for the knee. None can provide more that the 10% awarded under 5299-5261. After due deliberation, in consideration of the totality of the evidence, and IAW §4.59 (painful motion), the Board recommends a separation rating of 10% for the left knee pain condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were low back pain and right hip bursitis. Neither of these conditions was noted as failing retention standards. After the MEB was initiated, the back condition had a temporary profile. However, imaging (X-rays and MRI) was normal and ROM essentially normal. The C&P examination 10 June 2008 records CI report of no functional impairment from the back and examination showed normal range of motion. No specific visits for the hip condition were recorded after December 2006. Both conditions 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 other than temporarily. 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.

Contended conditions. The CI contends that her conditions all derive from multiple sclerosis (MS), diagnosed after separation. Documentation in the service treatment record clearly links the knee and back pain to precipitant trauma. On multiple occasions leading up to her separation, normal neurological examinations were documented and systemic symptoms were denied. On the separation DD Form 2807, she specifically denied visual symptoms or neurological symptoms. The C&P examination, 10 June 2008, documented a normal neurological examination without complaint of neurologic symptoms. The VA C&P examination dated 26 April 2010, over 2 years after separation, records CI report that she had pain in the right side of her head with blurred vision of the left eye, numbness in the fingers of the left hand and weakness in the left leg in September 2007. Review of service treatment records contemporaneous to that time does not show that this history was provided to any examiner; rather, the CI denied symptoms other than those from the knee and back. The Board also noted that the VA examiner opined that the onset of MS was months after separation. MS is not mentioned 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. Service treatment records also do not show evidence to suggest MS symptoms were present prior to separation. The Board, therefore, has no reasonable basis for recommending the addition of MS as an unfitting condition for separation rating. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Corrections of Military Records (ABCMR).

Remaining Conditions. Other conditions identified in the DES file were bronchitis, sinusitis, shoulder injury, headaches, irregular menstrual cycles and irregular sleep pattern. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or 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. No other conditions were service-connected with a compensable rating by the VA within 12 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 left knee pain condition was operant in this case and the condition was adjudicated independently of that policy regulation by the Board. In the matter of the left knee pain condition, the Board unanimously recommends that the rating be increased to 10% and the code changed to 5299-5261. In the matter of the low back pain, right hip pain, bronchitis, sinusitis, shoulder injury, headaches, irregular menstrual cycles and irregular sleep pattern or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Knee Pain | 5299-5261 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110701, 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

1. 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 to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

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.

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

Deputy Assistant Secretary

(Army Review Boards)