RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100542 SEPARATION DATE: 20060112

BOARD DATE: 20120221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5 (92Y, Supply), medically separated for chronic left knee pain following an anterior cruciate ligament (ACL) repair. The CI suffered an ACL tear from a fall in 2001; underwent initial surgical repair in 2002; and, required another arthroscopic surgical intervention in 2005. A subsequent trial of conservative measures and attempts at rehabilitation were unsuccessful in allowing him to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was consequently placed on a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic left 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. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the left knee condition as unfitting, rated 20%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “… At the time I was permanently separated from my military service by reason of disability. I also was receiving atenolol for high blood pressure and this was not rated by the Army but was later rated by the Department of Veterans Affairs at 10%. All of these items made me unfit for duty but was [sic] not rated by the Army. Because the injury to my knee had a pain rating of moderate constant and the service member was found unfit for duty due to the fact that he cannot pass a PT Test or perform his job as a 92Y20. I only received a rating of 10% [sic] from the Army but received a rating of 50% from the Department of Veterans Affairs. PTSD was not included in my Army rating but rated at 30% from the VA and I was placed on anti-depressants upon returning from the combat theatre.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20051115** | **VA (7 Mo. Post-Separation) – All Effective 20060113** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Knee Pain | 5099-5003 | 20% | Left Knee Internal Derangement  | 5260 | 10%\* | 20060802 |
| Left Knee Internal Derangement  | 5260 | 10%\* | 20060802 |
| ↓No Additional MEB/PEB Entries↓ | Hypertension | 7101 | 10% | 20060802 |
| PTSD | 9411 | 30% | 20060802 |
| 0% x 1 | 20060802 |
| **Combined: 20%** | **Combined: 50%** |

\* A ‘clear and unmistakable error’ in assigning two identical ratings under code 5260 was corrected by consolidating both

 ratings into a single rating of 10%, coded 5003-5259, effective 20090301.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

The Board makes note that one of the CI’s contended conditions posttraumatic stress disorder (PTSD) is derived from VA evaluations performed after separation, diagnosing a condition which was not addressed by the PEB. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the DA Form 3947, the DA Form 199, the narrative summary (NARSUM) (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. 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).

Left Knee Condition. Magnetic resonance imaging (MRI) following the 2001 injury demonstrated a popliteal cyst and a lateral femoral condyle bone bruise, in addition to the torn ACL. A successful ACL repair was performed in April 2002, and the CI was able to return to work with physical therapy and analgesics. He reinjured his knee in 2003, and an MRI done in November showed a probable impingement of the ACL and a significant tear in the posterior horn of the medial meniscus. The CI chose not to undergo another surgery, and was then deployed to Iraq in January 2005. While in theatre, his knee pain worsened and resulted in medical evacuation in April 2005. A second surgery was performed in May 2005 which included an ACL revision and a partial medial menisectomy. Post-operative exams consistently documented joint stability, and the condition improved with physical therapy; but, the continuing pain was treated with escalating doses of narcotics which eventually led to opioid dependence. There is no evidence of incapacitating episodes. There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. These are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Left Knee ROM | MEB ~3 Mo. Pre-Sep | VA C&P ~7 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 127⁰ | 140⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ |
| §4.71a Rating | 10%\* | 10% (under 5259) |

 \* Conceding §4.59 (painful motion) as below.

At the MEB exam, the CI reported that his pain was well controlled with medication and only rated 1 of 10. He could not lift over 20 pounds, kneel, squat, run, jump, or march for long distances. On physical exam, there was a modest limitation of ROM with only slight discomfort at the limit. There was mild popliteal tenderness; no effusion; no positive meniscal signs; and, and no instability to stress maneuvers. The examiner opined that the condition was stable, with a good prognosis for a less physically demanding occupation. A VA clinical note two weeks after separation documented a full passive and active ROM, but pain with weight bearing. At the post-separation VA Compensation & Pension (C&P) exam, the CI reported constant pain (2/10) with daily flares (6/10). The flares were controlled by narcotics. On physical exam, gait was normal; and, there were no positive joint findings or laxity with stress testing. A full ROM was also noted on this exam with pain only at the far limit. The diagnosis was internal derangement of the left knee with chronic pain.

The Board directs its attention to its rating recommendation based on the above evidence. The Board first considered the PEB’s rating of 20% under the analogous 5003 code (degenerative arthritis). The PEB’s DA Form 199 cited “moderate/constant” pain in support of a 20% rating with reference to the USAPDA pain policy. However, given that a single major joint was involved with a noncompensable loss of ROM and no incapacitating episodes, no rating higher than 10% can be achieved under this code IAW VASRD §4.71a. The Board next considered the VA’s rating of 10% under code 5260 (limitation of flexion of the leg). The VA originally conferred two identical ratings for the left knee under code 5260, citing painful motion in support of a minimal compensable rating. Review of the VA rating decision (VARD) suggests that this was most likely an inadvertent administrative duplication in the list of compensable ratings. The error was corrected in a subsequent VARD which stated, “only a single disability is warranted, and is implemented under diagnostic code 5003-5259 [cartilage removal, symptomatic, solely rated 10%].” The clinical evidence supports a rating of 10% under either the 5003 or 5259 codes; but, the two cannot be combined. There is no route to a rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the joint under a separate code. Thus the PEB applied code would have achieved a maximal rating of 10% under the VASRD; but, PEB application of the USAPDA pain policy achieved a more favorable rating than that supported solely by VASRD criteria. DoDI 6040.44 directs that the Board will apply service and DoD regulations in effect if they achieve a more favorable rating than permitted by the VASRD; and, furthermore directs that the Board may not recommend a lower combined rating than that conferred by the service. The Board therefore, although concluding that the left knee condition is appropriately rated 10% under the VASRD, recommends no change from the PEB’s 20% adjudication.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for high blood pressure and PTSD. The service treatment record (STR) indicates that hypertension was well controlled with a single first-line medication. The STR contains a number of behavioral health clinic entries, mostly pertaining to opioid abuse, in which the CI specifically denied symptoms consistent with PTSD. There is no diagnosis of PTSD in evidence in the DES file. There is furthermore no evidence of unfitting psychiatric impairment. There was no psychiatric profile, and the commander’s statement was laudatory regarding the CI’s administrative performance within his physical profile restrictions. Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that the high blood pressure condition interfered with duty performance to a degree that could be argued as unfitting. As noted above, the PTSD condition is not eligible for Board consideration; but, remains eligible for submission to the ABCMR.

Remaining Conditions. Several additional non-acute conditions or medical complaints were identified in the DES file. 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 12 months of separation. 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 directives which are inconsistent with the VASRD in effect at the time of separation are not applied to Board recommendations; unless, they result in a more favorable rating than permitted by the VASRD. PEB reliance on the USAPDA pain policy for rating the left knee condition was operant in this case, and the service directive was advantageous to rating; thus, provisions of the USAPDA pain policy do attach to the Board’s recommendation. In the matter of the left knee condition, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended high blood pressure condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the contended post-traumatic stress disorder condition, the Board unanimously agrees that it is ineligible for a recommendation regarding Service disability rating.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 his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Left Knee Pain | 5099-5003 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110719, 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)