RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100544 SEPARATION DATE: 20041221

BOARD DATE: 20120712

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (91J20, Medical Supply) medically separated for a bilateral knee condition. He experienced an onset of bilateral knee pain with running in 2000; and experienced progressive pain and physical limitations. He was diagnosed with retropatellar pain syndrome (RPS); and, did not improve adequately with conservative measures to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Bilateral RPS was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the knees as a single unfitting condition, rated 0%, citing criteria for code 5003 (degenerative arthritis) from the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal the PEB’s knee rating, and was medically separated with a 0% disability rating.

CI CONTENTION: “Bilateral retropatellar pain syndrome, and obstructive sleep apnea. My sleep apnea was not considered in my rating for my final disability rating.” He does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (DoDI) 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting knee condition is addressed below. An appeal for rating of the contended obstructive sleep apnea (OSA) condition was denied by the USAPDA; and, no PEB adjudication of the condition was undertaken; thus, it does not meet the criteria prescribed in DoDI 6040.44 for Board purview. The OSA condition, or any condition or contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20041020** | **VA (~4 Mos. Post-Separation) – All Effective Date 20041222** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Pain | 5009-5003 | 0% | Osteoarthritis R Knee w/ RPS  | 5010-5260 | 10% | 20050411 |
| Osteoarthritis L Knee w/ RPS | 5260 | 10% | 20050411 |
| No Additional MEB/PEB Entries | Sleep Apnea Syndrome | 6847 | 50% | 20050411 |
| Cold Injury Residuals, Right Foot | 7122 | 10% | 20050411 |
| Cold Injury Residuals, Left Foot | 7122 | 10% | 20050411 |
| 0% X 3 / Not Service-Connected x 5 | 20050411 |
| **Combined: 0%** | **Combined: 70%** |

ANALYSIS SUMMARY:

Bilateral Knee Condition. Per the service treatment record (STR), the clinical course and features for each knee were identical; and, all relevant evidence reflects a symmetric bilateral condition. In addition to the MEB and PEB nomenclature, both the profile and commander’s statement refer to bilateral knee pain. After the onset of symptoms in 2000, the CI responded sufficiently to anti-inflammatories, physical therapy, and orthotics to perform satisfactorily in his MOS until 2004. By then he was no longer able to meet operational and field requirements (ruck marching, load bearing, etc.), and a permanent profile was issued. Imaging revealed mild bilateral osteoarthritis, but no structural abnormalities. The narrative summary (NARSUM) reported that the CI was “symptom-free” at “baseline,” with exacerbations to 8/10 with “vigorous physical activity.” The MEB physical exam documented a normal gait, bilateral patellar tenderness, no effusion, no signs of cartilage impingement, and no varus/valgus or anterior/posterior ligamental laxity to stress maneuvers. Range-of-motion (ROM) measurements were flexion of 115⁰ (normal 140⁰) for the left knee and 120⁰ for the right (minimal compensable is 45⁰). Extension was normal (0⁰) bilaterally. The MEB examiner specifically stated “mild pain with full flexion.” At the VA Compensation and Pension (C&P) evaluation, 4 months after separation, the CI reported “baseline pain” of 4/10 increased to 7/10 “after walking approximately half a block.” The examiner also recorded “He states he has instability and giving way of both knees. He states he has locking of both knees but none noted today. He states he has easy fatigability and lack of endurance of both knees.” The CI displayed a “mild limp;” but, the VA examiner did not note any joint tenderness or other positive physical findings for either knee. Specifically there was no effusion, cartilage impingement (locking), or anterior/posterior/varus/valgus laxity (instability). The recorded ROM measurements were 110⁰ flexion and 0⁰ extension for each knee. The VA examiner specifically stated “there is no pain at limitations of motion of either knee.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined the separate knee conditions under a single rating, coded analogously to 5003. This coding approach is countenanced by AR 635-40; but, IAW DoDI 6040.44, the Board must apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. When the Board judges that two or more separate ratings are warranted in such cases; however, it must satisfy the requirement that each ‘unbundled’ condition was unfitting in and of itself. All members agreed that no distinctions between the two joints could be made regarding functional limitations, and that it was reasonable to concede that either knee alone would have resulted in the same fitness consequences. Although the PEB’s DA Form 199 stated that the knee condition was “rated analogous to degenerative joint disease with full motion.” which could justify a single rating for both joints, it failed to assign the specified rating of 10% for two or more major joints. The VA achieved separate 10% ratings with presumptive application of VASRD §4.59 (painful motion); although the VA examiner specified the absence of painful motion. The rating decision invoked “subjective pain” in its rationale. The MEB examiner did document painful motion at the extreme of flexion; and, the Board deliberated between two options for its recommendation: coding strictly under 5003 with “X-ray evidence of involvement of two or more major joints,” which would yield a single rating of 10% for both knees; or, conceding §4.59 or §4.40 (functional loss) to achieve the minimal compensable rating (10%) for each joint. After due deliberation and mindful of VASRD §4.3 (reasonable doubt), Board consensus was that separate ratings were supported; and, the Board recommends a disability rating of 10% each for the left and right knees. The action officer recommended, and the Board concurred with, the code 5099-5024 (tenosynovitis) for its clinical compatibility with PFS.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral knee condition, the Board by a vote of 2:1 recommends that each joint be separately adjudicated as follows: an unfitting left knee condition coded 5099-5024 and rated 10%, and an unfitting right knee condition coded 5099-5024 and rated 10%; both IAW VASRD §4.71a. The single voter for dissent (who recommended a combined 10% rating under 5024-5003) did not elect to submit a minority opinion. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Patellofemoral Pain Syndrome, Left Knee | 5099-5024 | 10% |
| Patellofemoral Pain Syndrome, Right Knee | 5099-5024 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110720, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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

for XXXXXXXXXXXXXXX, AR20120012965 (PD201100544)

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 20% 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 XXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA