RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100593 SEPARATION DATE: 20050316

BOARD DATE: 20120404

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (91W, Ranger Medic) medically separated for bilateral knee pain. In April 2003, the CI injured his knees on a parachute landing fall (PLF). He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He 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 made no appeals, and was medically separated with a 10% disability rating.

CI’s CONTENTION: “I feel my rating should be changed to Retired for several of the following reasons: When I re-enlisted my last time at nine and a half years in the Army, I re-enlisted through to my retirement date which would have been September 2011, I had planned to make it to my 20 years if not more. When I was injured, I tried to work and perform as I always had but was unable due to the pain in both knees from my injury. I had surgery to both knees which seemed to only improve my status temporarily and was ultimately Medically Boarded at nearly 14 years of service. The VA rated me at 20% which didn't seem right due to my rating is based on a degenerative disability, one that does not improve. I have since had surgery on both knees again which has not helped and only seems to make the problem worse. My rating of 20% seems short since all of the activities I used to enjoy with my family which contained lots of physical activity has been ceased due to the pain I have in both knees. The lack of physical ability and even simple things like squatting down to get something out of a cabinet or even checking air pressure in a tire have become very painful to perform. My job requires quite a bit of walking and climbing ladders, I work a 4 day work week but toward the third and fourth days I am working thru pain that a lot of people would stay home for. I am currently enrolled in college so I can enter a profession that does not cause as much pain as my current job. So I don't feel as though I have had 20% of my life taken away but far more. I am now possibly facing another surgery. As I stated earlier, my full intent while in the service was to retire, that ended after injury and now the opportunity has come to where I can receive my retirement. I wasn't a soldier who joined for 4 years so I could get the college money and get out, I joined to serve and complete my service until retirement. I thank you for your consideration.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20041220** | **VA (3 mos. Pre-Separation) – All Effective 20050317** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Pain | 5099-5003 | 10% | Arthritis, Right Knee | 5257-5010 | 10% | 20041213 |
| Arthritis, Left Knee | 5257-5010 | 10% | 20041213 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his condition continues to burden him. The Board is subject to the same laws for service disability entitlements as those under which the DoD Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Veterans’ Affairs (DVA). 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 from service.

Bilateral Knee Pain. In April 2003, the CI injured both knees on a hard PLF. Magnetic resonance imaging (MRI) of the right knee showed meniscal tear, and a medial collateral ligament sprain. Right knee arthroscopy was done on 15 August 2003, to repair the medial meniscal tear, debride a lateral meniscal tear, and debride some femoral condyle chondromalacia. A month later, an MRI of the left knee showed a medial meniscal tear on that side as well. He then underwent left knee arthroscopy, with debridement of the medial meniscal tear, and femoral condyle chondroplasties for grade III chondromalacia. He improved after surgery, but his knee pain persisted. The CI was issued a permanent profile, and an MEB was initiated.

At the November 2004 MEB evaluation, 4 months prior to separation, the CI reported bilateral knee pain and swelling. He was unable to squat, kneel, or walk longer than one mile. There was a slight effusion, patellar crepitus and joint line tenderness in each knee, but no instability. X-rays showed mild degenerative changes in both knees. As noted above, the Army PEB found him unfit, and he was separated with 10% disability. At the December 2004 VA Compensation and Pension (C&P) examination, 3 months prior to separation, the CI reported pain, swelling and stiffness in both knees. On examination, his gait was normal. McMurray’s tests were normal. His two goniometric range-of-motion (ROM) evaluations are summarized below.

|  |  |  |
| --- | --- | --- |
| Goniometric ROM – Knees | MEB – 4 mo. Pre-Sep | VA C&P – 3 mo. Pre-Sep |
| Flexion (140⁰ is normal) | Left 126⁰ / Right 127⁰ | Left 135⁰ / Right 138⁰ |
| Extension (0⁰ is normal) | Left 0⁰ / Right 0⁰ | Left 0⁰ / Right 0⁰ |
| §4.71a Rating | 10%\* | 10%\* |
| Comment | Trace effusion | Posture and gait normal |

\*10% based on §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The Army PEB combined the CI’s bilateral knee pain into a single unfitting condition, coded 5099-5003 and rated at 10%. 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 the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.71a. If the Board judges that two or more separate ratings are warranted; however, it must satisfy the requirement that each “unbundled” condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that the chronic painful condition in each knee, separately, would have rendered the CI unable to perform his required military duties. Accordingly, the Board recommends a separate service disability rating for each knee.

The limitation of knee 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% for either knee since there was no evidence of ligamentous instability, subluxation, locking, or other significant joint abnormality. The Board unanimously recommends 10% for each knee.

Remaining Conditions. Vasectomy, elevated blood pressure, elevated cholesterol, and several other conditions were also noted in the DES file. None of these conditions were clinically significant during the MEB/PEB period, none were profiled, 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 specifically contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for 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 condition was operant in this case and the knee condition was adjudicated independently of that policy by the Board.

In the matter of the bilateral knee pain, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right knee condition coded 5259-5010 and rated 10%, and an unfitting left knee condition coded 5259-5010 and rated 10%, IAW VASRD §4.40, §4.45, §4.59, and §4.71a. In the matter of the vasectomy, high blood pressure, high cholesterol, 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 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 Right Knee Pain | 5259-5010 | 10% |
| Chronic Left Knee Pain | 5259-5010 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110723, 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 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

 Deputy Assistant Secretary

 (Army Review Boards)