RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100613 SEPARATION DATE: 20011216

BOARD DATE: 20120319

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B, Infantry) medically separated for a left knee condition. The CI ruptured his left anterior cruciate ligament (ACL) as a sports injury in 1999; and, underwent a surgical ACL reconstruction. He developed chronic post-surgical pain which was diagnosed as retropatellar pain syndrome, which continued to limit activities and was recalcitrant to full rehabilitation. He was consequently unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards; was issued a permanent L3 profile; and, was referred for a Medical Evaluation Board (MEB). The left knee condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Also addressed by the MEB and forwarded on the DA Form 3947 were “diskogenic low back pain” (judged to meet retention standards) and “vascular headaches” (judged to fail retention standards). Other conditions evidenced in the Disability Evaluation System (DES) file, or contended, are addressed below. The PEB adjudicated the left knee condition as unfitting, rated 0%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. The lumbar and headache conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “The Medical board concentrated on my Left Knee, but neglected to review my back, right knee, shoulders, feet, and head (migraines from airborne). To date, I have gained weight, have difficulty with lifting shoulders, doing any prolonged activity because of my back, knees, and feet. My migraines have worsened over the years. Not one rating has improved. ”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20010827** | **VA (2 Mo. Pre-Separation) – All Effective 20011217** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Retropatellar Pain Syndrome ( L)  | 5299-5003 | 0% | Residuals, L Knee Injury | 5024 | 0%\* | 20021023 |
| Diskogenic Low Back Pain | Not Unfitting | DDD, Low Thoracic  | 5003-5295 | 10% | 20021023 |
| Vascular Headaches | Not Unfitting | Vascular Headache | 8100 | 10% | 20021023 |
| ↓No Additional MEB/PEB Entries↓ | Plantar Fasciitis, R Foot | 5276 | 10% | 20021023 |
|  | Plantar Fasciitis, L Foot | 5276 | 10% | 20021023 |
| R Shoulder Strain | 5203 | 10% | 20021023 |
| L Shoulder Strain | 5203 | 10% | 20021023 |
| RPPS, R Knee | 5024 | 0%\* | 20021023 |
| 2 Additional Conditions at 0%. | 20021023 |
| **Combined: 0%** | **Combined: 40% → 60%\*** |

\* Both retroeffectively increased to 10% based on exam of 20020410 (4 mo. post-separation); VARD dtd 20020605.

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 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 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. The Board further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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.

Left Knee Condition. There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

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| Left Knee ROM | MEB ~8 Mo. Pre-Sep | VA C&P ~2 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 125⁰ | 130⁰ | 120⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ |
| Comments | ROM limited by pain. | No painful motion documented. | Pain at 60⁰. |
| §4.71a Rating | 10%\* | 0% | 10%\* |

 \*Conceding §4.59 (painful motion).

At the MEB exam, the CI reported “some occasional popping but no real effusions;” and running was limited to one mile by the pain. The MEB physical exam noted a mild patellar grind without crepitus or patellar malalignment. There was no joint line tenderness; no signs of cartilage impingement; and, a normal Lachman test with stability to varus/valgus stress. There was no use of an assisted ambulation device or gait disturbance. At the VA Compensation and Pension (C&P) exam prior to separation, the CI reported “continued discomfort, episodic swelling, and sometimes feelings of instability to the left knee.” On exam, there was no joint laxity, signs of cartilage impingement, or other abnormal findings except “mild amount of tenderness … inferior patellar aspect.” At the VA C&P exam after separation, the CI reported “the knee locks up with walking and especially climbing stairs. He has to hold on to prevent himself from falling down. … Even in bed it hurts him.” The VA physical exam was unremarkable for signs of cartilage impingement (locking), joint instability to stress maneuvers, effusion, or gait disturbance. No tenderness was documented, but pain in mid-flexion was recorded as charted above.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB’s analogous 5003 (degenerative arthritis) code and VA’s 5024 (tenosynovitis) code default to the same 5003 rating criteria. There is no compensable ROM impairment under any of the knee joint codes, as demonstrated by all of the goniometric evidence. The minimal compensable rating of 10% can be achieved with application of VASRD §4.59 (painful motion); and, this was supported by the MEB and VA examinations after separation. The VA examination prior to separation; in fact, required speculation on the rater’s part to assume no painful motion; since, it more likely reflected a failure of documentation rather than a finding that joint motion was painless. Members thus agreed that, although the PEB’s 0% rating could be supported by the USAPDA pain policy, it was not compliant with VASRD §4.59. There was no physical instability, clinical locking or frequent effusions which would allow a rating higher than 10% under an alternate joint code; or, which would permit separately ratable codes. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a service disability rating of 10% for the left knee condition. The action officer prefers the code 5099-5024 for its clinical compatibility.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were low back pain and vascular headache. Both of these conditions are also contended by the CI for service rating. The lumbar spine condition was noted in the narrative summary (NARSUM), but there was a paucity of entries in the service treatment record (STR) for back issues during the MEB period. Although characterized as “diskogenic” in the NARSUM, with a similar nomenclature by the VA examiner prior to separation, the only magnetic resonance imaging (MRI) evaluation in evidence (March 2000) was interpreted as unremarkable with no disc abnormalities. The VA examiner noted an onset of back pain in 1997 associated with parachute jumping, and specifically documented that the CI “has never had radicular symptoms.” Normal ROMs and normal neurologic exams were documented by all examiners of record. The lumbar condition was not profiled, and was not documented as failing retention standards. The headache condition was likewise noted in the NARSUM and addressed by a neurology consultant. The onset was in 1997 following a closed head injury. A non-narcotic rescue medication (Midrin) was prescribed. The neurologist stated that the headache failed retention standards “primarily due to occupational triggers;” but, did not elaborate; and, no corroboration for this impression is evident in the STR. The headache condition was not profiled. There is no STR evidence for any acute treatment of headache during the ratable period; thus, no compensable rating is supported even if the condition were conceded as unfitting. The VA’s 10% rating for “characteristic prostrating attacks averaging one in two months” was not corroborated in the referenced VA C&P evaluation or by the STR; and, in fact was contradicted in the rating decision itself which stated, “the examiner noted that although [CI] experiences daily headache, he was still able to perform his office duties.” Both of these conditions 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 duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the lumbar or headache conditions.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for right knee, bilateral shoulder, and bilateral foot conditions. In the knee discussion, the NARSUM stated, “he has similar, but less severe symptoms on the right with no mechanical symptoms or instability.” The NARSUM mentioned “indistinct” right shoulder pain, but did not address the podiatric complaint. The VA C&P prior to separation covered a chronic history of bilateral shoulder pain and bilateral plantar fasciitis (Haglund’s deformity by x-ray). There were no incriminating physical findings referable to the right knee, shoulder or feet on any of the exams in evidence. Other than a consult to podiatry for the foot condition two months prior to separation (seen; referred to PT; C&P states that inserts were issued and abandoned), none of these conditions appeared to be clinically active during the MEB period. No condition appeared on the permanent profile other than the left knee. The Board takes note that the commander’s statement lists “ACL tear … bi-tibial band syndrome and patellar tendonitis in both knees, lower back pain, plantar fasciitis in both feet, tension headaches, rotator cuff pain, and right testicular pain;” and, implicates them collectively in the CI’s “significantly decreased” capabilities; although, the onset of this deterioration was dated to the ACL tear in 1999. The fitness implications of the commander’s impression were weighed against the clinical evidence from the STR, MEB evaluation and proximate VA evaluations. After due deliberation, all members concluded that the preponderance of the evidence would not adequately support a recommendation that any of these conditions were separately unfitting and subject to service disability rating.

Remaining Conditions. A history of epididymitis of the right testicle, intermittent abdominal pain, onychomycosis (fungal infection) of the great toenails, and several additional non-acute conditions or medical complaints was documented in the DES file; and, at the VA evaluation prior to separation. 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. 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 condition was operant in this case; and, the condition was adjudicated independently of that policy by the Board. In the matter of the left knee condition, the Board unanimously recommends a service disability rating of 10%, coded 5099-5024 IAW VASRD §4.71a. In the matter of the lumbar spine and vascular headache conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the contended right knee, bilateral shoulder, and bilateral foot conditions; the Board unanimously agrees that it cannot recommend any finding of unfit for additional 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Left Knee  | 5099-5024 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110804, 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)