RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100626 SEPARATION DATE: 20030814

BOARD DATE: 20120221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (93C, Air Traffic Controller), medically separated for chronic right knee pain. The CI developed knee pain beginning in basic training without a history of specific injury. He was not deemed to be a surgical candidate and underwent a trial of conservative management; but, did not improve adequately to fully perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a MOS Medical Retention Board (MMRB); which in turn referred the CI to a Medical Evaluation Board (MEB). Right anterior 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 adjudicated the right knee condition as unfitting, rated 10%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “At the time of my medical discharge the Medical Review Board did not consider my Right Shoulder tendonitis that had occurred in August, 2000. This disability should have been rated at the time of my discharge and I feel that it would have given me the rating for Medically Retired instead of discharge. VA rated me service-connected for 20% and knee condition 10%.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20030417** | **VA (1 Mo. Post-Separation) – All Effective 20030815** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Knee Pain | 5099-5003 | 10% | R Knee Patellofemoral Syndrome | 5020-5260 | 10% | 20030912 |
| ↓No Additional MEB/PEB Entries↓ | Right Shoulder Tendinitis | 5024-5201 | 20% | 20030912 |
| 0% x 1 | 20030912 |
| **Combined: 10%** | **Combined: 30%** |

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 Disability Evaluation System (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.

Right Knee Condition. The CI first experienced right knee pain during basic training in 1998; and, subsequently reported occasional swelling and popping in the knee. Imaging in May 2001 revealed a possible meniscal tear; but, the orthopedic consultant did not advise arthroscopic or surgical intervention. The CI was diagnosed with overuse syndrome and managed with physical therapy and anti-inflammatory medications; but, experienced no lasting relief. He reported one episode of the knee giving way due to pain in 2002. The limitations imposed by his permanent profile were so restrictive that the MMRB determined that the CI was not eligible for retraining into any available MOS. 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.

|  |  |  |
| --- | --- | --- |
| Right Knee ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~1 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 130⁰ | 40⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ |
| Comment | No instability.  | Crepitus, severe pain with motion. |
| §4.71a Rating | 10%\* | 10% |

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

At the MEB exam, performed by an orthopedic surgeon, the CI reported pain rated 7/10. The physical exam documented a positive patellar grind, a slightly limited ROM, and inability to perform a straight leg raise without a lag. There was no instability to stress maneuvers or positive meniscal signs. The orthopedist opined that there were no current surgical indications; that the prognosis was good for a full recovery; and, rated the pain as slight and frequent. At the post-separation VA Compensation & Pension (C&P) evaluation, the CI reported significantly more severe pain and stated that he could no longer drive or walk for more than 15 minutes without pain and swelling. He related no history of additional injury or other aggravating event. It was noted that the CI had a slight limp favoring the right side, although there was no documentation of gait disturbance in service entries. Upon examination, the VA physician noted moderate to severe tenderness around the patella and over the joint line; and, documented that ROM was “severely restricted because of the extreme pain in the right knee. The right knee flexes only to about 40 degrees, beyond which flexion is limited secondary to pain. Severe guarding is noted.” VA radiographs showed no evidence of degenerative change.

The Board directs its attention to its rating recommendations for this condition based on the evidence presented. It is obvious that there is a clear disparity between these examinations, although the significant ROM limitations recorded by the VA examiner still did not exceed the 10% criteria under code 5260 (limitation of flexion). In assessing the probative value of the disparate evidence the Board notes that: (1) The MEB measurements are consistent with corroborating evidence; (2) The MEB measurements are consistent with the other collateral physical findings; (3) The MEB measurements are consistent with the diagnostic and clinical pathology in evidence; (4) There is not a reasonable accounting for progressively impaired ROM in the fairly short interval between the MEB and VA examinations; and, (5) VA rating evaluations based on ROM rely on subjective pain thresholds which are patently associated with financial incentive, thus inherently subject to some loss of objectivity. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB’s DA Form 199 referenced application of the USAPDA pain policy for rating, but its 10% determination was consistent with §4.71a standards. The Board also considered the VA’s rating of 10% under code 5020-5260 (synovitis rated on limitation of flexion of the leg). A 10% rating under this code is also warranted even if the VA ROM evidence is assigned preponderant probative value. There was no documented mechanical instability, locking or frequent effusions which would yield a rating higher than 10% under any alternative coding options. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the right knee condition.

Contended Right Shoulder Condition. Right shoulder tendonitis was diagnosed approximately two years prior to separation, but there were only two entries in the service records referable to the complaint after the initial diagnosis; and, the shoulder condition was not clinically active during the months preceding and throughout the MEB period. Although the CI manifested “extremely painful” motion of the shoulder at his post-separation VA C&P evaluation, there were no positive upper extremity findings on the MEB physical. There was no upper extremity profile; and, specifically push-ups and upper body activities were not restricted by profile. The commander’s statement referenced only the CI’s knee condition and limitations. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the right shoulder condition was not subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. 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 right knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of right knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended right shoulder condition, the Board unanimously agrees that it cannot recommend a finding 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Right Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110810, 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)