RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100645 SEPARATION DATE: 20080925

BOARD DATE: 20120322

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (19D, Cavalry Scout) medically separated for a right knee condition. The CI began experiencing right knee pain during a 2005 deployment to Iraq without discreet injury. He was eventually diagnosed with patellofemoral syndrome, and managed conservatively. The knee could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards; and, he was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic right knee pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB; but, other conditions evidenced in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the right knee condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Condition was deemed to be temporary but pain continues and worsens on a daily basis, sometimes hindering me from any activity involving my knee

RATING COMPARISON:

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| **Service PEB – Dated 20080716** | **VA (5 Mo. Post-Separation) – All Effective 20080926** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Knee Pain | 5099-5003 | 10% | R Knee Strain … Meniscal Tear | 5099-5014 | 0% | 20090121 |
| No Additional MEB/PEB Entries | 0% x 1 / Not Service Connected x 1 | 20090121 |
| **Combined: 10%** | **Combined: 0%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Right Knee Condition. The CI developed right knee pain while deployed to Iraq as a scout in 2005. The pain would resolve with rest, and he did not seek medical attention. Over the next few years, he experienced occasional flare-ups which would also resolve with rest. In 2007, the CI experienced an exacerbation during Special Forces training which did not permit him to complete the qualification. Medical intervention included activity restriction, physical therapy and medication without significant improvement. A bone scan in February 2008 revealed only patellofemoral inflammation; and, magnetic resonance imaging shortly afterwards revealed a possible tear of the medial meniscus. The orthopedic consultant diagnosed patellofemoral syndrome, opining that surgery was not indicated; and, further conservative measures were not fruitful. 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.

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| Right Knee ROM | MEB ~3 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 135⁰ | 135⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ |
| Comments | Pain at extreme ROM. | No painful motion; Neg. DeLuca. |
| §4.71a Rating | 10%\* | 0% |

 \*Conceding §4.59 (painful motion).

At the MEB exam, the CI reported baseline pain rated 2/10; with exacerbations to 6/10. He could not easily dismount vehicles, keep up with his team members, march, handle heavy equipment, or run long distances. The physical exam noted a slightly limited ROM with pain at the mechanical limit. A “DeLuca assessment” documented increased pain, but not decreased ROM, with repetition. Contemporary MEB orthopedic notes further documented the absence of laxity to stress maneuvers or signs of cartilaginous impingement. At the VA Compensation and Pension (C&P) examination, the CI reported improved symptoms; but, he still experienced daily pain that would worsen with increased activity. He could walk for an unlimited period, run for 30 minutes, and perform all daily activities without any problems. The physical exam noted a normal gait; no joint effusion, crepitus, or tenderness; and no instability. A normal ROM was measured; with specific annotation of no painful motion or DeLuca degradation.

The Board directs attention to its rating recommendation based on the above evidence. All members agreed that the MEB evidence was more proximate to separation and more probative. The Board first considered the VA’s rating of 0% under code 5099-5014 (osteomalacia). Since VASRD §4.59 (painful motion) did not attach (per the C&P) to achieve the minimal compensable rating; the VA’s 0% rating was appropriate for the VA exam. The MEB exam; however, did record pain with motion. The PEB’s code, 5099-5003 (patellofemoral pain syndrome analogous to degenerative arthritis), was appropriate to the clinical features. There was no mechanical instability, locking or frequent effusions which would allow a rating higher than 10% under an alternate joint code; or, which would permit separately ratable codes. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s adjudication of the right knee condition.

Remaining Conditions. Other conditions identified in the DES file were hearing loss, a concussion, and panic attacks. Several additional non-acute conditions or medical complaints were also documented. 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. 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 right knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 re-characterization of the CI’s disability and separation determination.

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| **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 20110815 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)