RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100769 SEPARATION DATE: 20080221

BOARD DATE: 20120405

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (68W20/Health Care Specialist), medically separated for arthritis, degenerative, both knees*.* He did not respond adequately to conservative or surgical treatment and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 L3 profile and underwent a Medical Evaluation Board (MEB). Chronic bilateral knee pain, secondary to chondromalacia and osteoarthritis, status post multiple surgeries and obstructive sleep apnea were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the arthritis, degenerative, both knees condition as unfitting, rated 10% for each knee for a combined rating of 20%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB found the obstructive sleep apnea (OSA) not unfitting and therefore not ratable. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I was diagnosed with PTSD and TBI. The Army rated me at 0% for these. While in the Army I was under a psychiatrists care and was prescribed Celexa to ease the anxiety/depression. I was also treated with cognitive therapy for my PTSD. The cognitive therapy completed after only 5 sessions. After discharge, I continued to seek treatment for these issues from the VA. The Celexa continued, and I was placed on Welbutrin, Prozacin, and Ritalin. My sleep/dream issues were never adequately addressed (if at all) and I still struggle with sleep. I wake up periodically throughout the night from nightmares and am afraid to go back to sleep. My attention span has improved with the introduction of Ritalin, though my memory has not. I still need to have things written down to remember them and I have to use my GPS whenever I go anywhere. I still think about my experiences all the time, it seems like everything is a reminder. I am in counseling bi-monthly and I see my psychiatrist once a month to help me try to cope with this.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB (Admin corrected) – Dated 20080923** | | | **VA (6 Mo. After Separation) – All Effective Date 20080222** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Arthritis, Degenerative, Both Knees | 5003 | 20% | Degenerative Changes, Bilateral Knees, S/P Surgery | 5010 | 20% | 20080828 |
| Obstructive sleep apnea | Not Unfitting | | Sleep Apnea | 6847 | 50% | 20080828 |
| Post Traumatic Stress Disorder | Not Unfitting | | Post Traumatic Stress Disorder | 9411 | 30% | 20080828 |
| Mild traumatic brain injury | Not Unfitting | | Traumatic Brain Injury | 9304-8045 | 10% | 20080828 |
| History of elevated blood pressure | Not Unfitting | | Hypertension | 7101 | NSC | 20080828 |
| Hypercholesterolemia. | Not Unfitting | | NO VA ENTRY | | | |
| Hyperglycemia | Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20080816 |
| 0% x 2/Not Service-Connected x 3 | | | 20080828 |
| **Combined: 20%** | | | **Combined: 80%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings were conferred for posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI) rated at 0% when in fact the evidence documents these conditions were specifically adjudicated by the PEB to be not unfitting. The Board also 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, 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.

Bilateral Knee Condition. Upon redeployment from Kuwait in 2003 the CI injured his left knee, was surgically treated and was issued a permanent L-2 profile. In 2005 he injured his right knee, was conservatively treated and was cleared for a year deployment to Iraq. He had intermittent pain and swelling while deployed and upon redeployment in 2006 underwent both left and right knee surgery over the next year for meniscal disease and chrondromalacia. He did not fully respond to postoperative physical therapy and was issued an L3 profile for chronic bilateral knee pain (chondromalacia and osteoarthritis, s/p multiple surgeries). The commander’s statement documented ongoing bilateral knee problems which caused the CI unable to physically carry out his MOS duties, unable to perform any APFT events, and was reassigned to perfom routine administrative tasks which he did above standard. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ROM – L/R Knee | MEB ~ 4 Mo. Pre-Sep  (20071016) | | VA C&P ~ 6 Mo. After-Sep  (20080828) | |
|  | LEFT | RIGHT | LEFT | RIGHT |
| Flexion (140⁰ normal) | 120⁰ | 130⁰ | 115⁰ | 120⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | -2⁰ | 0⁰ |
| Comment | Painful motion with flexion and extension | Painful motion with flexion and extension |  |  |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

\*IAW 4.59 (painful motion)

At the time of narrative summary (NARSUM) exam symptoms of right knee included; swelling once a month and left knee swelling twice a month, baseline pain 2/4 of 10 with maximum pain of 7/10 bilaterally, worse on the left, with kneeling, prolong standing, marching, rucking, running carrying litters, and wearing combat gear. On examination there were bilateral, crepitus, multiple surgical scars, no edema, normal motor strength and negative testing for ligament or meniscal disease rendering an exam consistent with bilateral stable knees. The VA Compensation and Pension (C&P) exam documented similar knee symptoms as the NARSUM and additionally noted pain was relieved with rest, and the knees do not lock or give way, suggesting bilateral stable knees. Again, a similar exam was noted to the NARSUM exam except the right knee was positive to McMurray's testing suggesting cartilage disease. Radiographs noted post-operative changes and degenerative changes bilaterally.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB was consistent with the VASRD with use of the 5003 code (arthritis, degenerative) with radiographic evidence of degenerative changes bilaterally and applying 10% to each major non compensable joint. The VA; however, chose the arthritis code 5010 (traumatic arthritis) which is more specific to an unfitting joint yet uses the same criteria as the 5003 code and generously rated the bilateral knee condition 20% based on two or more major joints with occasional incapacitating exacerbations. The Board looked for higher ratings using the VASRD knee and leg codes specifically the 5258 (cartilage code) and the opportunity to dual code (instability), but there was insufficient evidence to justify a higher rating or dual coding. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the bilateral knee condition.

Other PEB and Contended Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB and contended by the CI were OSA, PTSD, mild TBI history of elevated blood pressure, hypercholesterolemia and hyperglycemia. The Boards’ main charge in respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Approximately 3 months prior to separation the CI was diagnosed with OSA which was then profiled. Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. There was also no evidence to suggest impairments from OSA prior to this diagnosis throughout his service career. The PEB’s fitness adjudication was therefore expected and reasonable. In April of 2007, 8 months prior to separation, the CI sought treatment for insomnia, nightmares, irritability, anger, and overall decreased energy level and was diagnosed with PTSD. At the time of his NARSUM, 4 months prior to separation, he was taking Celexa and Ambien and had significant improvement in his symptoms. The psychiatric exam, completed 3 months prior to separation, demonstrated a euthymic mood, normal thought processes and no evidence of psychosis and the psychiatrist opined “his functional impairment for military duty is minimal and psychiatrically fit for duty.” In October 2007, 4 months prior to separation, the CI underwent a neuropsychologist exam for MTBI symptoms, specifically, short-term memory lapses and the examiner opined “obviously a very bright man with no evidence of cognitive deficits, the marginal to mild deficits would not even be classed with cognitive disorder NOS.” The commander’s statement documented that he had known the CI for over 2 years and was impressed with his work ethic, loyalty to the unit, one of the company’s go-to guy and always gave 100% no matter how tough and challenging, possessed superior leadership attributes and would “be asset to any institution where he works” which suggested that neither PTSD nor mild TBI had impaired him to the level of unfitting. While OSA was profiled, none of the other conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All 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 performance of MOS duty requirements. All evidence considered there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were migraine headaches, hypertension, shoulder pain and low back pain. 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. Additionally tinnitus and several other non-acute conditions were noted in the VA proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. 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 bilateral knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the obstructive sleep apnea (OSA), post traumatic stress disorder (PTSD), mild TBI history of elevated blood pressure, hypercholesterolemia and hyperglycemia conditions the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the migraine headaches, hypertension, shoulder pain and low back pain conditions or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings 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** |
| Arthritis, Degenerative, Both Knees | 5003 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110823, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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Director of Operations

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, AR20120010673 (PD201100769)

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 XXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA