RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100776 SEPARATION DATE: 20050409

BOARD DATE: 20120410

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5 (31L20/F6 Wire System Installer), medically separated for chronic pain, right knee without significant instability. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (31L) or meet physical fitness standards. He was issued a permanent L3 and H2 profile and underwent a Medical Evaluation Board (MEB). Medial meniscus myxoid degeneration with knee pain, locking and instability was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the chronic pain, right knee without significant instability condition as unfitting, rated 10%, with application of the US Army Physical Disability Agency (USAPDA) pain policy and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Only a single condition was evaluated. From my understanding now of this matter a full medical evaluation should of been done. When I was going through the process I was informed only my knee was being looked at. I have chronic migraines since 2000, constant pain in groin area which was check out and said possible hernia. Problems with both my wrists and shoulders.” 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 – Dated 20050305** | | | **VA (~3 Mo. Post Sep) – All Effective Date 20050410** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain, Right Knee | 5099-5003 | 10% | DJD, Right Knee | 5010-5260 | 10%\* | 20050725 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraine Headaches | 8100 | 30% | 20050725 |
| Left Shoulder Tendonitis | 5203 | 10% | 20050725 |
| Right Shoulder Tendonitis | 5203 | 10% | 20050725 |
| Tinnitus | 6260 | 10% | 20050716 |
| Right Elbow Ulnar Neuropathy | 8516 | 10% | 20050725 |
| 0% x 2/Not Service Connected x 1 | | | 20050725 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

\*Continued at 10% after re-evaluations in 2006 and 2008; Right wrist tendonitis increased to 10% effective 20070828

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. 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. Furthermore, a “crystal ball” requirement is not imposed on the service PEB’s by the Board; and, the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected DES improprieties in the processing of his case.

Chronic pain, right knee without significant instability. There were three range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. Although the 2006 VA Compensation and Pension (C&P) examination is over 14 months after separation, it is both after the second arthroscopy (done after separation) and also after the post-operative recovery period.

|  |  |  |  |
| --- | --- | --- | --- |
| ROM – Right Knee | MEB (NARSUM), ~1 Mo. Pre-Sep  (20050309) | VA C&P  ~3 Mo. After-Sep  (20050725) | VA C&P  ~14 Mo. After-Sep  (20060607) |
| Flexion (140⁰ normal) | 91⁰ (90⁰) | 90⁰ | 140⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ |
| Comment | No instability | 17 days post arthroscopy.  Pain at 90⁰ flexion.  Limited examination. | No ligamentous instability. McMurrays negative |
| §4.71a Rating | 10% | 10% | 10% |

The CI initially injured his right knee in 1994 after falling from a telephone pole while on active duty. He had persistent pain, but was returned to duty in 1996 by a MOS Medical Retention Board (MMRB). However, his pain persisted and increased leading to a diagnostic and therapeutic arthroscopy in 1997. The menisci were intact, but medial and lateral tibial plateau grade I chondromalacia (mild degenerative changes) was present. Both menisci and the anterior cruciate ligament were intact. He was managed conservatively and able to meet his MOS requirements until exacerbation in December of 2004 with increased activity during military training in preparation for deployment and stepping into a hole, twisting his ankle and knee. MRI of the right knee showed a small peripheral tear of the posterior horn of the medial meniscal with myxoid degeneration of the medial meniscus. The MEB examination was accomplished 9 February 2005. The CI reported he was able to walk without difficulty, but running and marching with load bearing caused pain knee and swelling. Pain with rotation was noted as well as crepitus with flexion and extension. The examiner stated that the remainder of the exam was unremarkable implying no ligamentous instability, abnormal McMurrays test or effusion. In the diagnosis, the examiner recorded locking and instability that was not noted in the clinical history or noted previously by orthopedic examiners. There were no ligamentous injury to cause instability and there was no dislocation of the meniscus or loose bodies to cause locking. An orthopedic examination a month later, performed on 9 March 2005, noted full ROM of the knee with diffuse, mild tenderness. No effusion or instability was noted. Physical therapy ROM on 9 March 2005 recorded extension of 0 degrees and flexion of 91 degrees with pain. Four months after separation on 8 July 2005, the CI underwent arthroscopic surgery of the right knee. The initial VA C&P exam, performed on 25 July 2005, 17 days after his arthroscopy. He was noted to be in the immediate post-operative period and to have pain with flexion and weight bearing. The exam was very limited due to pain. The VA did a second C&P, performed on 7 June 2006, 14 months after separation and 11 months after surgery. No effusion or atrophy was present. ROM was normal and tests for instability (drawers, collateral ligament) and meniscus pathology (McMurrays tests) were all normal. No crepitus was noted. Deluca criteria were negative. The PEB and VA both rated the knee at 10%, but coded it as 5099-5003, analogous to degenerative arthritis, and 5010-5260, traumatic arthritis and limitation of leg flexion, respectively. The Board notes that the VA continued the 10% rating at both the 2006 and 2008 re-evaluations. The Board noted that there was no effusion, only one annotation of “locking,” and a non-compensable limitation in ROM. The Board considered the different coding options available, but none would support a higher rating than the 10% awarded by the PEB. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the right knee condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for migraines, groin condition and right hip, wrists and shoulders, tinnitus with impaired hearing, and ulnar neuropathy. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were foot issues, trouble sleeping and headaches. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles at the time of separation, 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 additional service-connected conditions were noted in the VA records proximal to separation. 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. In the matter of the right knee pain condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the migraines, groin condition and right hip, wrists and shoulders, tinnitus with impaired hearing, and ulnar neuropathy or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional 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 Pain, Right Knee | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110831, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXX

President

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 XXXXXXXXXXX, AR20120007701 (PD201100776)

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 XXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA