RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100781 SEPARATION DATE: 20040308

BOARD DATE: 20120601

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (63B, Vehicle Mechanic) medically separated for right knee pain. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The right knee condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, identified below, were listed on the DA Form 3947 as medically acceptable. The PEB found the right knee condition unfitting, and rated it 10% IAW the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with a 10% disability rating.

CI CONTENTION: The CI states, “right knee limitation of motion, VA provided 20% rating, secondary left knee. Military did not consider all conditions as a result of motorcycle accident. Back condition was not considered, will be having surgery 8/1/2011.”

SCOPE OF REVIEW: The Board’s scope of review, as defined in DoDI 6040.44, is limited to those conditions which were determined by the PEB to be unfitting for continued military service; or, when requested by the CI, those condition(s) identified but not determined to be unfitting by the PEB. In this case, the right knee condition and the low back pain (LBP) meet the criteria prescribed in DoDI 6040.44 for Board purview, and are addressed below. Right ankle stiffness, tinnitus, and the left knee problem are outside the Board’s scope of review, but remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20031223** | **VA (1 mo. Pre-Separation) – All Effective 20040309** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Condition | 5261 | 10% | Right Knee Injury | 5099-5014 | 10% | 20040220 |
| Low Back Pain (LBP) | Not Unfitting | Lumbar Myofascial Strain | 5237 | 10% | 20040220 |
| Right Ankle Stiffness  | Not Unfitting | Right Distal Fibula Fracture | 5271 | 20% | 20040220 |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20040301 |
|  | 0% x 2 / Not Service Connected x 1 | 20040220 |
| **Combined: 10%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that service ratings should have been conferred for other conditions. The Board 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 CI'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 separation. However the Department of Veterans’ Affairs (DVA) 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. In November 2002, the CI injured his right knee in a motorcycle accident. He had surgical repair of his knee injury, followed by extensive rehabilitation. In May 2003, a second surgical procedure was performed on the right knee; which included lysis of adhesions, partial lateral meniscectomy, and a mini-open lateral release. However, in spite of treatment, his right knee problems persisted and an MEB was initiated. At his September 2003 Orthopedic visit, he had full muscle strength of the distal extremities, and significant tightness at the retinaculum of the patella. Six weeks later, at his November 2003 MEB exam, there was joint warmth and tenderness to palpation (TTP). Lachman’s test was negative. In February 2004, he had a VA Compensation and Pension (C&P) exam. At that time, he was limping and wearing a right knee brace. The examiner noted painful motion of the right knee. The range-of-motion (ROM) was better, but became more restricted with repetition. The ROM from these three knee exams is summarized below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –Right Knee | Ortho – 23 wks. Pre-Sep(20030929) | MEB – 17 wks. Pre-Sep(20031112) | VA C&P – 2½ wks. Pre-Sep(20040220) |
| Flexion (140⁰ is normal) | 112⁰ | 110⁰ |  90⁰ 0⁰ |
| Extension (0⁰ is normal) | 15⁰ | 10⁰ |
| Comment | Significant tightness | Tender to palpation | Painful motion |
| §4.71a Rating | 20% | 10% | 10%\* |

 \*10% is based on VASRD §4.40, §4.45, and §4.59

The Board carefully examined all evidentiary information available. The Board determined that the February 2004 C&P exam had the greatest probative value, since it was temporally most proximal to the date of separation. At that exam, the right knee ROM failed to reach compensable levels for the VASRD codes specific to leg flexion and extension (5260 and 5261). Thus, there was no compensable ROM impairment for the right knee. However; IAW VASRD §4.40, §4.45 and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. The Board noted that there was no objective evidence of ligamentous laxity or joint instability which would be required for a rating under code 5257. Likewise, the CI’s symptoms did not warrant an evaluation under code 5258. He does qualify for a rating under code 5259, but the maximum rating is only 10%. Thus, there was no path to a rating higher than 10%. After due deliberation, considering all of the evidence, and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a rating of 10% for the right knee condition, IAW VASRD §4.40, §4.45, §4.59, and §4.71a.

Other Condition. LBP was adjudicated by the PEB as not unfitting. This condition was not profiled, implicated in the commander’s statement, or noted as failing retention standards. LBP was reviewed by the action officer and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the LBP condition. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for 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 condition, and IAW VASRD §4.40, §4.45, §4.59, and §4.71a; the Board unanimously recommends no change in the PEB adjudication. In the matter of the LBP, the Board unanimously recommends no change in the PEB determination as not unfitting.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right knee condition | 5261 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110728, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 MICHAEL F. LoGRANDE, DAF

 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 Mr., AR20120011829 (PD201100781)

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 CATHERINE C. MITRANO

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA