RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100819 SEPARATION DATE: 20020830

BOARD DATE: 20120628

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (75B10/Personnel Administrative Specialist), medically separated for pain upper and lower back as well as both knees with negative imaging studies. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U4 and L4 profile and referred for a Medical Evaluation Board (MEB). Chronic upper and lower back pain (LBP) and chronic bilateral knee pains were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB determined the combined pain of upper and lower back as well as both knees as unfitting and adjudicated a single 0% rating for the combined conditions IAW DoDI 1332.38. The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “My initial complaints have only exacerbated, my neck I can barely keep up, it's like my neck can't suppport the weight of my head;My knees are in constant pain to where i can’t stand and even when I'm sitting they hurt, weight bearing is becomming al most impossible for periods of ten minutes and more. My lower back in and in the "but " area feel like at times when i walk my hip and but bone are seperating then comming back together. I have constant throbbing of muscles in my back, I constantly take muscle pain pills and muscle relaxers that make me to weak and drowsy to do a lot of things. When I lay down at night my hands numb to the point it hurts, the VA doc sais thats most likely a nerve problem in my neck. Theres no specialist I can see for my problems inb my town because there is no VA major medical center, all the therapy and most likely surgery I need on my knees I have to drive hours away to get, that's not feasible, for surgery it may be, but not multiple trips for physical therapy. I haven't had my eyes checked lately, but my cataracts, seemed like they were comming back. I had cataract surgery while in the Army.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The back pain and knee pain conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The other requested conditions and the remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DA Form 294 are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20020516** | **VA (~3 Mo. Before Separation) – All Effective Date 20020831** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Pain Upper and Lower Back as Well as Both Knees with Negative Imaging Studies | 5099 5003 | 0% | Mechanical Low Back Pain | 5295 | 0% | 20020610 |
| Retropatellar Pain Syndrome, Right Knee | 5099-5019 | 0% | 20020610 |
| Retropatellar Pain Syndrome, Left Knee | 5099-5019 | 0% | 20020610 |
| ↓No Additional MEB/PEB Entries↓ | Cervical Spine condition | 5290 | 0% | 20020610 |
| Postoperative Cataract, Pseudophakla, Right Eye | 6028-6029 | 30% | 20020610 |
| 0% x 4/Not Service-Connected x 0 | 20020610 |
| **Combined: 0%** | **Combined: 30%** |

The rating for the back condition was increased to 10% effective 20071018, and to 20% effective 20080911.

The rating for the neck condition was increased to 10% effective 20051114.

The ratings for the left and right knee conditions were increased to 10% effective 20040128.

Cataract condition diagnosed at the time of entrance into service. Entrance Physical Standard Board (20001023), allowed to CI enter service, underwent cataract surgery and met standards for military service.

ANALYSIS SUMMARY: The Disability Evaluation System (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 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 his 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 in effect at the time, and based on severity at the time of separation.

The PEB combined upper and LBP with bilateral knee pain as a single unfitting condition in accordance with DoDI 1332.38, paragraph E3.P3.4.4.; “Overall Effect. A member may be determined unfit as a result of the overall effect of two or more impairments even though each of them, standing alone, would not cause the member to be referred into the DES or be found unfit because of physical disability.” This approach by the PEB reflects its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. When combining conditions in this manner, the PEBs concluded that there was no need for separate fitness adjudications. However, the Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB.

The Board notes that the 2002 Veteran Administration Schedule for Rating Disabilities (VASRD) standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. DoDI 6040.44 requires the Board consider its rating recommendations using the VASRD rating guidance in effect at the time of separation, in this case the 2002 standards.

Upper and Lower Back Pain Condition. The CI sought care for persisting back pain following airborne school in 2001 without specific traumatic event. Back pain was reported to involve the mid and lower back and varied in location. An examination performed on 24 October 2001 recorded tenderness of the upper thoracic spine. Range-of-motion (ROM) was full, and the CI could “touch toes without hesitation.” Straight leg raising was negative. A bone scan and X-rays of thoracic and lumbar spines were normal. Magnetic resonance imaging (MRI) of the lumbosacral spine performed on 29 November 2001 was normal. A physical medicine and rehabilitation examination 14 December 2001 documented full ROM of the spine, normal gait, normal strength, reflexes and sensation. There was tenderness of paraspinal muscles. Orthopedic evaluation performed on 15 January 2002 recorded CI report that his back pain could occur all over his back. On examination, there was mild tenderness of thoracic spine paraspinal muscles without evidence of muscle spasm. Strength of the lower extremities was normal, deep tendon reflexes were normal, and straight leg raising was negative. Back ROM was normal (flexion 90 degrees, extension 30 degrees) with extension eliciting mild symptoms. Rheumatology evaluation performed on 4 February 2004 recorded complaint of diffuse back pain. On examination, there was full ROM of the lumbar spine. Strength of the extremities was normal. There was tenderness of the trapezius area. The rheumatologist considered the back pain to be mechanical. Physical therapy evaluation 12 February 2002 documented back active ROM of flexion 100 degrees, extension 20 degrees, lateral bending 45 degrees bilaterally, and rotation of 45 degrees bilaterally.

The MEB NARSUM performed on 12 April 2002 recorded presence of diffuse generalized tenderness, without muscle spasm. Strength, reflexes and sensation were normal, with negative straight leg raising. The CI reported back pain occurred with any physical activity. A 22 April 2002 clinic appointment documented a normal gait, full active ROM, and mild tenderness of the right lower back paraspinal muscles, with negative straight leg raising. The IPEB determined the back pain condition combined with the knee pain condition, rendered the CI unfit for continued military duties.

The VA compensation and pension (C&P) examination, was performed on 10 June 2002, 3 months prior to separation. On examination, gait and posture were normal. There was no muscle spasm and spinal curvature was maintained. Back ROM was normal (flexion 95 degrees, extension 35 degrees, lateral bending 40 degrees bilaterally, rotation 35 degrees bilaterally) and occurred without restriction or pain. Weakness, lack of endurance or incoordination did not impact further on ROM. Lower extremity strength, sensation and reflexes were normal. There was no muscle atrophy and straight leg raising was negative. X-rays of the lumbar spine were normal. The examiner concluded there was no pathology to render a diagnosis. The VA adjudicated a 0% service-connected rating for the back pain condition based on this examination. The commander’s letter dated 6 May 2002 reported the CI was unable to perform physically demanding duties due to complaints of pain and limited movement. Board members agreed that the back pain condition interfered with performance of duties separate from the knee pain condition.

The Board directs attention to its rating recommendation based on the above evidence. As noted previously, the Board must use the VASRD rating guidance in effect at the time of separation. The documented ROM was normal and non-compensable. The Board also considered rating using the VASRD diagnostic code 5295 for lumbosacral strain. There were subjective symptoms but no characteristic pain on motion and no objective findings on imaging. There was no evidence of intervertebral disc disease for consideration under the diagnostic code for intervertebral disc syndrome. All members agreed that the preponderance of evidence of the service treatment records, NARSUM and C&P examination supports the 0% rating adjudicated by both the PEB and the VA. Although separately listing and rating the unfitting back pain condition is considered appropriate, no benefit to the member results, therefore the Board recommends no change to the PEB’s combining of conditions under the provision of DoDI 1332.38 for the overall effect. The Board noted the VA gave a separate 0% rating for the upper back coded as cervical spine, the Board did not conclude upper back pain was separately unfitting from the remainder of the back pain condition warranting a separate rating. 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 back pain condition.

Bilateral Knee Pain Condition. In 2001 the CI sought care for bilateral knee pain without specific trauma. He reported swelling, locking and give-away symptoms. Repeated examinations of both knees during 2001 were recorded as normal including full ROM, negative tests for meniscus problems, absence of swelling, no instability, and negative apprehension testing for patellofemoral pain syndrome. Gait was normal and muscle strength was normal without atrophy. X-rays of the knees were normal. A bone scan performed on 1 November 2001 demonstrated some increased uptake at the intercondylar notch, right more than left, and the right lateral femoral condyle near articular surface. There was no abnormal tracer uptake in patella or retropatellar regions to indicate patellofemoral syndrome. An MRI of the right knee performed on 29 November 2001 was normal including all ligaments, menisci, cartilage and bone. There were no abnormalities on MRI at the locations indicated on bone scan. At the time of a physical medicine and rehabilitation examination performed on 14 December 2001, the CI reported that walking hurt his knees, right greater than left. On examination, ligaments were intact, and tests for pathology of the meniscus and instability were negative. The gait was normal, the CI was able to perform a deep squat and strength was normal. Orthopedic evaluation 15 January 2002 recorded a history of right greater than left anterior knee pain with running and stair climbing. Except for some give-way symptoms during pain, the CI denied giving way, swelling or locking. On examination there was no evidence of quadriceps atrophy which often accompanies significant patellofemoral pain syndromes and occurs with reduced physical activity. There was tenderness of the right knee cap. The patella of both knees showed normal and symmetric mobility and were normally positioned. Knee ROM was normal bilaterally. Tests for patellofemoral pain were positive on the right. Tests for instability, meniscus pathology were negative. The orthopedic surgeon diagnosed retropatellar pain syndrome, mild, right greater than left.

A rheumatology evaluation performed on 4 February 2002 recorded complaint of right greater than left knee pain with intermittent locking and pain with stairs, but no swelling. On examination of the knees, there was full ROM, without crepitus, instability, or swelling. Muscle tone and strength was normal. Physical therapy examination, February 2002, documented active flexion of 135 degrees, and active extension of 0 degrees bilaterally. A clinic appointment performed on 22 April 2002 documented normal gait, full ROM of both knees, without swelling or instability. A clinic examination performed on 13 May 2002 recorded complaint of pain behind the right knee cap. On examination there was patellar apprehension, but full ROM, no swelling, and no instability. The examiner diagnosed retropatellar pain syndrome. The VA C&P) examination, was performed on 10 June 2002, 3 months prior to separation. On examination, there was no tenderness, swelling, or muscle atrophy. Gait and muscle strength were normal. Tests for instability and meniscus pathology were negative. ROM of both knees was full without restriction or pain (flexion 140 degrees and extension 0 degrees). There was no weakness, lack of endurance or incoordination. X-rays of both knees were normal. The examiner concluded there was no pathology to render a diagnosis. Based on this examination the VA adjudicated a 0% service-connected rating for each knee. The commander’s letter dated 6 May 2002 reported the CI was unable to perform physically demanding duties due to complaints of pain and limited movement. Board members agreed that the right knee pain condition interfered with performance of duties separated from back pain condition; however, the preponderance of evidence did not indicate the left knee alone was unfitting. The Board directs attention to its rating recommendation based on the above evidence. The ROM in all examinations was non-compensable and there was no meniscus or ligamentous pathology upon which to rate under diagnostic codes for dislocated meniscus or instability. An orthopedic surgeon diagnosed mild patellofemoral pain syndrome; however, a prior examination documented the ability to perform a deep squat. All members agreed that the preponderance of evidence of the service treatment records, NARSUM and C&P examination supports the 0% rating adjudicated by both the PEB and the VA for the knee condition. Although separately listing and rating the unfitting left knee pain condition is considered appropriate, no benefit to the member results, therefore the Board recommends no change to the PEB’s combining of conditions under the provision of DoDI 1332.38 for the overall effect. 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 knee pain condition.

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 DoDI 1332.38 for combining the back and knee pain conditions as unfit based on the overall effect was operant in this case. The Board considered whether each condition was separately unfitting and if so, considered a separate rating recommendation for each unfitting condition. In the matter of the back pain condition, the Board unanimously recommends that the back pain condition was a separately unfitting and recommends a disability rating of 0%, coded 5299-5295 IAW VASRD §4.71a. In the matter of the right knee pain condition, the Board unanimously recommends that the right knee pain condition was a separately unfitting and recommends a disability rating of 0%, coded 5099-5019 IAW VASRD §4.71a. In the matter of the left knee pain condition, the Board unanimously recommends that the left knee pain condition was not separately unfitting. Although separately listing and rating the unfitting back pain condition and unfitting left knee condition is considered appropriate, no benefit to the member results, therefore the Board recommends no change to the PEB’s combining of conditions under the provision of DoDI 1332.38 for the overall effect. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Pain Upper and Lower Back, Bilateral Knees, Overall Effect | 5099-5003 | 0% |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110901, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXX, AR20120011970 (PD201100819)

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 XXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA