RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100827 SEPARATION DATE: 20031216

BOARD DATE: 20120719

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (67U, Helicopter Repair) medically separated for lumbar spine and right knee conditions. He experienced an atraumatic onset of low back pain (LBP) in 1997 which was ultimately diagnosed as degenerative disease with disc involvement. He had a history of worsening right knee pain which began in 1991; which carried a non-specific diagnosis; and, for which there were no surgical indications. Neither the lumbar spine nor right knee conditions could be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Both conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the lumbar spine and right knee conditions as unfitting, rated 10% each; citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD) for the spine condition; and, referencing the US Army Physical Disability Agency (USAPDA) pain policy for the knee condition. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Upon my separation (December 2003), I was given a disability rating of 20% (10% knee and 10% back). By August 2004, my disability rating was determined by the VA to be 70%. … [He details a history of escalating VA and Social Security disability determinations to the granting of individual unemployability retroeffective to separation.] … my ratings by the Veteran’s Affairs support me receiving a medical retirement status as evidenced by the quick approval of my application for VA services. There are obvious inconsistencies regarding my unfitting disabilities between the determinations made by the United States Army and those made shortly thereafter by the Department of Veterans Affairs.” He does not contend for service rating of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 conditions “identified but not determined to be unfitting by the PEB.” The rating for the unfitting lumbar spine and right knee conditions are addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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 (ABCMR)

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20031113** | | | **VA (6 Mo. Post-Separation) – All Effective 20031217** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Low Back Pain, w/o Neurologic Abnormality | 5299-5237 | 10% | Osteoarthritis … L4-L5 | 5239 | 20% | 20040610 |
| Radiculopathy, LLE (a/w LS Spine) | 8599-8520 | 10% | 20040610 |
| Chronic Right Knee Pain | 5099-5003 | 10% | Right Knee Condition | 5299-5024 | 10% | 20040610 |
| No Additional MEB/PEB Entries | | | Generalized Anxiety Disorder … | 9400 | 30% | 20040609 |
| Cervical Sprain | 5237 | 20% | 20040610 |
| Multiple Muscle Sprains … | 5099-5257 | 10% | 20040610 |
| Tinnitus | 6260 | 10% | 20040610 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the post-separation course of the CI’s Department of Veterans’ Affairs (DVA) disability ratings, and notes that increased and retroeffective ratings were awarded after the initial post-separating ratings charted above. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the DVA, operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximate to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of fitness decisions and rating determinations for disability at the time of separation. DoDI 6040.44 specifies a 12-month interval for special consideration to DVA findings. Post-separation evidence, however, is probative only to the extent that it reasonably reflects the disability at the time of separation. It is further clarified that, while the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short the member’s service career. The DVA, however, 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.

Lumbar Spine Condition. The back condition was managed over a number of years with conservative measures and temporary profiles. There was associated radicular radiation of the pain, without motor/sensory features or positive findings by neurologic exam. A magnetic resonance imaging (MRI) performed 4 months prior to separation, demonstrated spondylosis (degenerative facet disease) with disc protrusions at L4/5 and L5/S1 (possible neural encroachment at that level). Orthopedics opined that there were no surgical indications. The narrative summary (NARSUM) noted pain rated 6/10, exacerbated to 10/10 “with activity.” The physical exam recorded no tenderness and normal neurologic findings. At the VA Compensation and Pension (C&P) evaluation performed 6 months after separation, the back pain was not characterized by the examiner and no radicular symptoms were noted. The exam documented a gait that was “occasionally unsteady due to joint pain.” There was no comment on lumbar spasm or tenderness, and neurologic findings were normal. Regarding ratable parameters for range-of-motion (ROM), the NARSUM recorded only “he flexes to touch the floor [equates to 90⁰] extension of 30 degrees.” The VA examiner recorded 70⁰ flexion and 10⁰ for each of the other 5 planes of motion, yielding a combined ROM of 120⁰; with further notation that, “during a flare-up or after repetitive use the ROM is further decreased by 25%.” However this identically worded sentence appeared after the other joint exams on the VA exam template (including those with normal ROMs), thus it is unlikely that quantifiable DeLuca evaluations were performed (especially “during a flare-up”). Several MEB outpatient notes commented on decreased ROM without specifying degree. An entry dated 4 months prior to separation, documented flexion of 50%, extension 10% (not clear if this represented excursion or limitation), and “sidebending good.” An entry dated a week after the preceding note documented “90% flexion, full extension.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s DA Form 199 cited “forward flexion 90 degrees” in support of the 10% rating, presumably extrapolated from the NARSUM comments. It is noted that there was not a formal goniometric evaluation, documenting ROM in all planes, in evidence from the service. The 6 month VA C&P measurements, yielding a combined ROM of 120⁰, just meet the §4.71a threshold for a 20% rating (as cited and conferred in the VA rating decision). Since only this VA combined ROM evidence would support a rating higher than 10%, there was protracted deliberation regarding the probative value of this finding. The final consensus was that the VA combined ROMs were too incongruent with the preponderance of the evidence and with clinical logic to carry the determinant probative value in this case. No MEB evidence would suggest that ROM was so severely restricted in all planes of motion except flexion. The NARSUM and corroborative outpatient notes suggest that extension and lateral excursion remained essentially unaffected; and, there was no documentation or explanation of any factor during the terminal MEB or 6-month interval after separation, which would have precipitated such a severe reduction of ROMs. The action officer further notes that the recorded severe ROM limitations in the other planes of motion, sparing flexion and not associated with spasm or tenderness, are clinically incongruent. Given that even a 5⁰ discrepancy in one plane of motion would fail to achieve the 20% threshold; it is illogical to concede all of the probative value concerns just elaborated in support of the higher rating. There was no clinical evidence of a ratable neuropathy. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), Board consensus was that there was insufficient cause to recommend a change in the PEB adjudication of the lumbar spine condition.

Right Knee Condition. The knee condition was also managed over a long period with temporary profiles, physical therapy, occasional crutch support, and anti-inflammatories. An MRI performed 7 months prior to separation, identified some inflammatory changes of the anterior cruciate ligament and a possible cyst (benign). There is no concise orthopedic diagnosis in service or VA records; and the MEB orthopedist documented that continued non-surgical management was indicated, stating “When he is able to control his own activities, his symptoms should abate.” The NARSUM did not elaborate the characteristics of the knee pain, but provided an overall assessment of “slight and frequent.” The physical exam noted “mild swelling;” and documented the absence of tenderness, ligamental laxity, or signs of cartilage impingement. Active flexion was 130⁰ (normal 140⁰, minimal compensable 45⁰). The VA C&P examiner, after separation, also did not elaborate pain severity; and documented similar exam findings. ROM was recorded as 110⁰ flexion and “full” extension.

The Board directs attention to its rating recommendation based on the above evidence. Although the PEB’s 10% rating adhered to the USAPDA pain policy, it was consistent with the VASRD §4.71a standards for the evidence under consideration. There was no compensable ROM impairment. The MEB and VA evaluations documented the absence of mechanical instability, locking or frequent effusions. Thus, there is no route to a rating higher than 10%, or criteria for dual ratings of the knee. 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 of the right knee 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 the USAPDA pain policy for rating the right knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the lumbar spine condition and IAW VASRD §4.71a, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter for dissent (who recommended a 20% thoracolumbar rating premised on the VA combined ROM measurements) did not elect to submit a minority opinion. In the matter of the right knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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** |
| Chronic Low Back Pain | 5229-5237 | 10% |
| Chronic Right Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **20%** |

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

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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 XXXXXXXXXXXXXXXXXXXXX, AR20120012967 (PD201100827)

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 XXXXXXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA