RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100832 SEPARATION DATE: 20061127

BOARD DATE: 20120511

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SFC/E-7 (62B40 / Heavy Equipment Repair Technician), medically separated for chronic right knee pain and left knee pain. The CI had onset of pain in August 2004 when he sustained an injury during an alert in OIF. He completed his deployment and was treated by various conservative modalities without improvement. Evaluation indicated bilateral knee degenerative changed (DJD) with meniscal tears on both knees and an anterior cruciate ligament (ACL) partial tear on the right. The CI underwent surgical interventions on both knees (right in April 2005, left in November 2005). Despite surgery and extensive physical therapy, he did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). “Right knee degenerative joint disease and left knee medial meniscus tear” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The Informal PEB (IPEB) adjudicated the right knee pain condition unfitting at 20% and the left knee pain condition as unfitting rated 0%; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD) and possible application of the US Army Physical Disability (USAPDA) Pain Policy. The CI appealed to a Formal PEB (FPEB), which changed the IPEB findings to unfit for each knee at 10% for each knee (combined 20%), each being “existed prior to service (EPTS) and was not permanently aggravated by service, but was compensable IAW 10 USC 1207a. The CI rebutted the FPEB determination. The formal hearing EPTS determinations and ratings were upheld and the CI was subsequently medically separated with a 20% combined disability rating.

CI CONTENTION: “During my M.E.B evaluation, I feel the rating was not properly evaluated and rated”.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” 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 FPEB – Dated 20060809** | **VA (4 Mos. After Separation) – All Effective Date 20061128** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Knee Pain … | 5003 | 10% | Right Knee, DJD | 5010 | 10% | 20070302 |
| Left Knee Pain … | 5003 | 10% | Left Knee, DJD | 5010 | 10% | 20070302 |
| ↓No Additional MEB/PEB Entries↓ | Obstructive Sleep Apnea | 6847 | 30%\* | 20070702 |
| PTSD | 9411 | 30% | 20070306 |
| 0% x 0/Not Service Connected x 2 | 20070302 |
| **Combined: 20%** | **Combined: 60%** |

\* Added OSA 6847 at 30% on VARD dated 20070827. Increased 6847 to 50% effective 20070925 on VARD dated 20080126 (combined 70%).

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the rating was not properly evaluated and rated. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans' Affairs. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Right and left Knee Pain Condition. The FPEB determined the CI’s left and right knee conditions were both unfitting and ratable. There was no deduction made for any EPTS component, and the Board will not deduct for any EPTS component. The CI initially complained of knee pain in August of 2004 when he sustained an injury during his deployment to Iraq while running during a mortar alert. He was able to complete his tour. Post-deployment imagery demonstrated a medial meniscus tear on the left as well as tri-compartmental degenerative changes with a complex degenerative tear of the posterior horn of the medial meniscus on the right. In April 2005, he underwent right knee arthroscopy that revealed chondromalacia and a partially torn anterior cruciate ligament (ACL) and medial meniscus tear. In November 2005, he underwent a microfracture of the medial femoral condyle and debridement of the left knee. The FPEB disability description summarized the NARSUM findings, and the Board focused on rating each knee IAW the VASRD at the date of separation. There were multiple goniometric range of motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation which are summarized in the chart below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| ROM – Knees | MEB ~8 Mo. Pre-Sep | PT ~7 Mo. Pre-Sep | PT ~4 Mo. Pre-Sep | Ortho ~2 Mo. Pre-Sep | VA C&P ~4 Mo. Post-Sep |
| Left | Right | Left | Right | Left | Right | Right (only) | Left | Right |
| Flexion (140⁰ normal) | 110⁰ | 100⁰ | 116⁰ | 120⁰ | 121⁰ | 108⁰ | 120⁰+ | 140⁰ | 140⁰ |
| Extension (0⁰ normal) | “full” | -15⁰ | 0⁰ | 0⁰ | 0⁰ | 0-5⁰ | 0⁰ | 0⁰ |
| Comment: SurgeriesR. 042005L. 112005  | Walked with a cane with mild antalgia, left greater than right; maintained full extension; flexion limited due to stiffness; trace effusion bilaterally; 2B Lachman’s on R., 1A on L.; stable to varus and valgus  | **ROM-only** | **ROM-only** | stable to A/P V/V; trace effusion; +crepitus; +tenderness joint lines; “endstage DJD scheduled tentatively for right knee replacement” | Gait/posture normal; no use of ambulatory device; + bilateral patellar crepitus; no decrease ROM after repetition (DeLuca); “Anterior and posterior cruciate ligaments, medial and lateral collateral ligaments and medial and lateral joint lines (menisci) were normal” |
| §4.71a Rating\* | 10% | 20% | 20% | 10% | 10% | 10% | 10%-20% (PEB 10%) | 10% | 10% |

A physiatrist evaluation 2 months after separation did not provide knee ROMs, but indicated continuing care with knee Synvic injections x5 and steroid injections, use of narcotic pain medication, bilateral knee bracing and use of a cane.

The Board directs attention to its rating recommendation based on the above evidence. The FPEB and VA each coded the individual knees at 10% using the criteria for arthritis (5003), with the VA indicating a traumatic onset by using code 5010. There was no evidence of incapacitating episodes for either knee. There was no significant complaint of instability, locking or give way for either knee. Both knees had significant DJD, crepitus and meniscal repair. The right knee was subjectively more symptomatic, had a partial ACL tear, meniscus repair, and was diagnosed as in “endstage DJD” with likely future need for a total knee replacement. Multiple in-service exams documented trace effusion of each knee, and only one exam (PT ~7 Mo. Pre-Sep) indicated ROM limited to a degree that would have been compensable under the specific knee ROM codes. The left knee extension of -15 degrees was compensable under the 5261 (Leg, limitation of extension) criteria, however, that exam was preceded and followed by exams documenting full extension of the left knee as charted above.

The NARSUM exam, performed 8 months prior to separation, was potentially ratable at 20% for the right knee based on the antalgic gait, effusion, and 2B Lachman’s test, with coding analogous to either 5257 (Knee, other impairment, moderate), or 5258 Cartilage, semilunar, dislocated, with frequent episodes of pain, and effusion into the joint (absent “locking”). However, the orthopedic exam performed 2 months prior to separation and the VA exam performed 4 months after-separation found no objective evidence of instability; the VA exam also indicated no effusion or tenderness. The VA C&P exam did not have a complete history, did not mention meniscal surgery or ACL tear or make comment on MRI or surgical evaluations of the knee. The VA exam was as an outlier and appeared “boilerplated”, and was assigned lowered probative value.

Left Knee: With regards to the left knee, the Board considered that the preponderance of the record supported the 10% rating for the left knee for limited motion. After due deliberation, considering all of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left knee conditions.

Right Knee: With regards to the right knee, the Board considered that the preponderance of the evidence indicated that the right knee had degenerative arthritis and pain-limited motion sufficient to meet the 10% criteria under code 5003. The Board deliberated at length concerning the possibility of alternative coding and/or dual rating the right knee, the highest probative value exam, and weighting of symptoms. The Board determined that the orthopedic exam, dated 2-months prior to separation, had the highest probative value for rating the right knee at the time of separation. The Board considered the right knee meniscal damage/repair, joint line tenderness, ACL partial tear, effusion, antalgic gait with use of a cane, and pain-limited motion with end stage DJD. The Board also considered the tenants of §4.40 (functional loss), §4.14 (avoidance of pyramiding) and the potential overlap between the knee codes for arthritis, meniscal symptoms, and ligament injury for dual coding of the knee. The Board adjudged that there was insufficient documentation of instability or subluxation of the knee for dual coding under code 5257 (Knee, other impairment of: Recurrent subluxation or lateral instability), and insufficient evidence for a 20% rating under code 5258 (Cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint). The Board majority adjudged that the right knee symptoms and findings were not sufficient to warrant additionally disability coding and rating under 5259 (Cartilage, semilunar, removal of, symptomatic). There was no other coding or rating scheme to higher that a 10% rating for the right knee. After due deliberation, considering all of the evidence, the Board majority concluded that there was insufficient cause to recommend a change in the PEB’s 10% adjudication for 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. In the matter of the left knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the right knee condition and IAW VASRD §4.71a, the Board by a simple majority recommends no change in the PEB adjudication. The single voter of dissent (who recommended right knee rating at 20%) did not elect to submit a minority opinion. 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** |
| Right knee condition | 5003 | 10% |
| Left knee condition | 5003 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110801, 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 XXXXXXXXXXXXX, AR20120010146 (PD201100832)

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