RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100894 SEPARATION DATE: 20021218

BOARD DATE: 20120814

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B, Infantry) medically separated for a bilateral knee condition. He injured his right knee in 1990, suffered persistent pain, and ultimately developed left knee pain as well. Surgical intervention was undertaken for the right knee, but the condition could not 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). The bilateral knee condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Also addressed by the MEB and submitted on the DA Form 3947 was a right shoulder condition, characterized as “mild rotator cuff impingement” and designated as medically acceptable. The PEB adjudicated the bilateral knee condition as unfitting, rated 10%, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The shoulder condition was determined to be not unfitting. The CI made no appeals, and was medically separated with that Service disability rating.

CI CONTENTION: The application does not elaborate any specific comments or requests. The CI provides a current list of conditions and ratings from the VA which were either not identified or did not receive a compensable rating at the time of separation.

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 condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting bilateral knee condition is addressed below; the PEB’s fitness determination for the right shoulder condition was not requested for review; 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 20020905** | | | **VA (6 Mo. Pre-Separation) – All Effective 20021219** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Knee Pain | 5099-5003 | 10% | Surgical Residuals, R Knee | 5299-5259 | 10% | 20020612 |
| L Knee Pain | 5257 | NSC | 20020612 |
| Mild Impingement, R Shoulder | Not Unfitting | | Mild Impingement, R Shoulder | 5299-5201 | 0% | 20020612 |
| No Additional MEB/PEB Entries | | | 0% x 2 Additional / Not Service Connected x 1 Additional | | | 20020612 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY:

Bilateral Knee Condition. The right knee was injured via a twisting mechanism during desert operations in 1990, resulting in persistent anterior knee pain worsen over time. This failed to improve with physical therapy (PT) and other conservative measures. Associated left knee pain, ascribed to gait dysfunction from the right knee, developed around 1997. He underwent diagnostic arthroscopy of the right knee in March 1999, with normal findings. An arthroscopic lateral release was performed on the right knee in May 2001, followed by a protracted course of PT. The narrative summary (NARSUM) documented “right greater than left anterior knee pain that is increased with prolonged sitting, standing, walking, kneeling, squatting, bending, stairs, and climbing on and off of military vehicles.” The physical examination was comprehensive and noted only parapatellar tenderness (left > right) and some crepitus with patellar grind. There was no tenderness or effusion; no signs of cartilage impingement; and, no ligamental laxity to stress maneuvers. Active and passive range-of-motion (ROM) was essentially normal (135⁰ flexion/5⁰ extension bilaterally); and, there was no notation of painful motion on this or other contemporary outpatient examinations. At the VA Compensation and Pension (C&P) evaluation (6 months pre-separation), each knee was addressed separately. The right knee was noted to produce “pain on a constant daily basis with a limp with prolonged standing or walking.” For the left knee, the VA examiner documented, “he states that this is an aggravating condition and does not necessarily impact his ability to perform his normal duties.” The VA physical exam was documented as “within normal limits including full ROM [140⁰ flexion/0⁰ extension bilaterally], able to squat without difficulty.” Painful motion was excluded. Ligamental stress maneuvers were negative for laxity, and no effusions or positive signs for cartilage impingement were present. All service and VA X-ray examinations were normal for both knees.

The Board directs attention to its rating recommendations based on the above evidence. IAW VASRD §4.71a, the Board must consider separate ratings for PEB bilateral joint adjudications; although, separate fitness assessments must justify each disability rating. It is clear that the right knee was the primary source of the disability in this case; and, indeed, the VA could not service-connect the left knee condition for lack of documented diagnosis, treatment, or abnormality. It remains, however, that both knees were considered to fail retention standards; both knees were implicated by the NARSUM; and, both were profiled. Since the disability attendant to only the left knee cannot be isolated by the clinical evidence, or extricated from the fitness implications of the bilateral limitations, Board members agreed that the left knee condition should be conceded as separately unfitting.

Regarding rating of the right knee condition, there was no ROM limitation, instability, locking or effusion which would achieve a rating higher than 10% under the available joint codes. The PEB’s combined rating was coded analogously to 5003 (degenerative joint disease), and the VA rated analogously to 5259 (cartilage removal). The latter is not a clinical fit. Although literal §4.59 (painful motion) criteria were not supported to achieve a minimum compensable rating, the VA rating decision cited “pain with impact and weight bearing activities.” The Board agreed that, applicability of §4.59 notwithstanding, a minimum compensable rating (10%) was supported by §4.40 (functional loss). The action officer recommended, and the Board concurred with, the analogous code 5099-5010 (traumatic arthritis) for its clinical compatibility. Regarding rating of the left knee condition, there was a lack of any documented evidence for painful motion; and, given the lack of any directed clinical entries, there was no supporting evidence for substantiating functional loss. The Board could not therefore find a basis for recommending a separate compensable rating for the left knee condition. It was agreed that the most compatible code was 5099-5024 (tenosynovitis). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separate disability ratings of 10% for the right knee condition and 0% for the left 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 knee condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the bilateral knee condition, the Board unanimously recommends that each joint be separately rated as follows: an unfitting right knee condition coded 5099-5010 and rated 10%, and an unfitting left knee condition, coded 5099-5024 and rated 0%, both IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Surgical Residuals, Right Knee | 5099-5010 | 10% |
| Left Knee Pain | 5099-5024 | 0% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111010, 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 XXXXXXXXXXXXXXXXXXXX, AR20120015491 (PD201100894)

1. 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 to modify the individual’s disability description without modification of the combined rating or recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA