RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxx BRANCH OF SERVICE: air force

CASE NUMBER: PD1100901 SEPARATION DATE: 20080507

BOARD DATE: 20120620

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E5, 3N071, Public Affairs Craftsman, medically separated for a right knee condition. She failed to respond adequately to conservative and operative treatment and was unable to perform within her Air Force Specialty (AFS) or meet physical fitness standards. She was placed on a U2/S2 physical profile and underwent a Medical Evaluation Board (MEB). Osteoarthritis/chronic right knee pain status post chrondroplasty was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. The PEB adjudicated the right knee condition as unfitting, rated 10%, with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “When I was medically discharged, the board only looked at one knee during the review of my case. Upon review with the Veterans Administration, it was found that the osteoarthritis was actually in both knees and both feet. In addition, it was also found that I have degenerative disc disease of the cervical and lumbar spine. All of these conditions are degenerative arthritis that have been found to be service connected.” She additionally lists all of her VA conditions and ratings as per the rating chart below.

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 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 Air Force Board for the Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080324** | | | **VA (~10 Mo.After Separation) – All Effective Date 20080508** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Osteoarthritis/Chronic Right Knee Pain | 5003 | 10% | Right Knee Osteoarthritis and Osteochondral Defect | 5299-5260 | 10% | 20090319 |
| ↓No Additional MEB/PEB Entries↓ | | | Depressive Disorder/Anxiety | 9413-9434 | 30% | 20090224 |
| Bilateral Hallux Valgus w/Metatarsalgia | 5280-5003 | 10% | 20090319 |
| C Spine w/DDD | 5299-5243 | 10% | 20090319 |
| 0% x 5/Not Service-Connected x 25 | | | 20090319 |
| **Combined: 10%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that only one knee was evaluated through the PEB process. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted improprieties in the disposition of a case. 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, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the CI's contention suggesting that ratings should have been conferred for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). While the Disability Evaluation System (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 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 his degree of impairment vary over time. The Board further notes the DVA rated only the right knee.

Right Knee Condition. In June 2006 the CI injured her right knee using a leg press machine and was evaluated with a CT radiograph and by Orthopedics. A year later, in May 2007, she opted for definitive surgical care of her right anterior knee pain and for a medial femoral condyle cartilage defect. The right knee pain persisted and was refractory to multiple treatment modalities over 2 years and was permanently profiled with the following limitations; no walking, running or cycling, and no bending or squatting. The commander’s statement documented these additional limitations; inability to traverse uneven terrain, qualify or participate in field related exercises, deploy and perform duties that require her any length of time on her feet. The commander also documented the CI was performing in her AFS which required her to work on a computer and this did not aggravate her condition further there was no loss of time from work. Cross training was considered; however, this was not feasible due to a denial of an assignment.

There were three goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM –Right Knee | PT ~ 10.5 Mo. Pre-Sep | PT for MEB ~ 3.5 Mo. Pre-Sep | VA C&P ~ 10 Mo. After-Sep |
| Flexion (140⁰normal) | 130⁰ | 110⁰ | 130⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ |
| Comment | Moderate effusion |  | Pain and mild crepitus noted. Gait normal. |
| §4.71a Rating\* | 10% | 10% | 10%\* |

\*4.59 painful motion

At the MEB exam, the CI reported constant pain with or without activity. The service treatment record (STR) within a year prior to separation consistently reflected a post-operative pain scale of 5/10 with 10 being the worst. The MEB physical exam demonstrated painful but normal ROM, normal motor and sensory findings, and normal gait and stance. The examiner opined knee pain with ability to perform her job dutifully and recommended she be returned to duty with permanent restrictions regarding the run, cycle and deployments. At the VA Compensation and Pension (C&P) exam, completed approximately 10 months after separation, the CI reported worsening right knee pain with fair response to physical therapy and non steroidal medications. The C&P physical exam demonstrated tenderness of the medial joint line, mild crepitance, normal gait and mild pain throughout all ROMs.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and similar in terms of ratable data; and, therefore assigns them equal probative value. The PEB and VA chose different coding options for the condition but this did not bear on rating. The PEB coded analogously to 5003 (arthritis, degenerative (hypertrophic or osteoarthritis)) and assigned a rating of 10% for painful motion. The VA coded analogous 5260 (leg, limitation of flexion of) and assigned a rating of 10% for the minimum noncompensable ROM loss and residual post-operative pain. Both the PEB and VA were consistent with VASRD §4.71a, Musculoskeletal System and with VASRD §4.59 Painful Motion. Both examinations were adjudged with consideration of IAW VASRD §4.40 criteria for the right knee. The Board agreed there was no evidence of incapacitating episodes to support additional or a the 20% higher rating under the 5003 code. There was no viable approach to additional or a higher rating for the right knee which was countenanced by the VASRD. There was no evidence of ratable peripheral nerve impairment which would provide for additional or higher 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 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 right knee condition, the Board unanimously recommends a disability rating of 10%, coded 5003 IAW VASRD §4.71a. 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Osteoarthritis/Chronic Right Knee Pain | 5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110926, 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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

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Dear xxxxxxxxxxxxxx:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2011-00901

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

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Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings