RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100908 SEPARATION DATE: 20071012

BOARD DATE: 20120817

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B, Infantry) medically separated for a bilateral knee condition. He developed recurrent knee pain following an injury in 2001; and, was subsequently diagnosed with chondromalacia patellae (damaged cartilage under the kneecap) and patellofemoral syndrome. There were no surgical indications, and the worsening symptoms did not improve adequately with conservative measures 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 were the two other conditions identified in the rating chart below, designated as medically acceptable. The PEB adjudicated the knee condition as unfitting, rated 0% under a bilateral code, referencing the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “I received a medical separation for degenerative cartilage in my right knee. They said my knee was past their limit. My left shoulder and Hepatitis C was not bad enough for a medical separation. They never explained why I wasn't available for a medical retirement.” He additionally elaborates several conditions, including posttraumatic stress disorder (PTSD), which were not rated by the Service or by the VA at separation; and, concludes with “I would appreciate a review of my case so that I may be allowed to medically retire and receive the benefits I believe me and my family should have been receiving. Thank you.”

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 bilateral knee condition is addressed below. The wording of the CI’s statement suggests a request for review of the hepatitis and left shoulder conditions which were determined to be unfitting by the PEB; thus, those conditions are also addressed below. The PTSD and other conditions identified after separation, as well as any condition or contention not requested in this application, remain eligible for future consideration by the Army Board for the Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20070727** | **VA (2 Mo. Pre-Separation) – All Effective 20071013**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Chondromalacia Patellae  | 5099-5003 | 0% | Left Knee Condition  | 5024-5010 | 10% | 20070817 |
| Right Knee Condition | 5024-5010 | 10% | 20070817 |
| Hepatitis C (Non-Active) | Not Unfitting | Hepatitis C | 7354 | 10% | 20070817 |
| Left Shoulder AC Synovitis | Not Unfitting | Left Shoulder AC Synovitis | 5099-5024 | 10% | 20070817 |
| No Additional MEB/PEB Entries | Tinea Versicolor | 7813-7806 | 10% | 20070817 |
| 0% x 3 | 20070817 |
| **Combined: 0%** | **Combined: 40%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention for ratings for his Hepatitis C and left shoulder conditions which were adjudicated as not unfitting by the PEB, and notes that its recommendations in that regard must comply with governance for the Disability Evaluation System (DES). 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; and the Board’s assessment of fitness determinations is premised on the MOS-specific functional limitations in evidence at the time of separation. The Department of Veterans’ Affairs (DVA); however, is empowered to compensate 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.

Bilateral Knee Condition. The 2001 injury occurred in Kosovo and resulted from a fall in full gear. There are periodic entries in the service treatment record (STR) for left, right, and bilateral knee pain over the ensuing years. In 2006 he suffered a twisting injury of the left knee, and magnetic resonance imaging confirmed the diagnosis of chondromalacia patellae; without structural damage. Plain X-rays revealed mild degenerative patellofemoral changes bilaterally. Orthopedic consultation in 2007 yielded an additional diagnosis of bilateral patellofemoral syndrome. No surgical remedy was possible, and MEB proceedings were advised. The narrative summary (NARSUM) noted bilateral knee pain “rated at 3/10 at rest and up to 8/10 after running or road marching.” The exam documented bilateral tenderness over the lateral patellae and crepitus. There was no edema or effusion; no signs of cartilage impingement; and, no ligamental laxity to stress maneuvers. Goniometric range-of-motion (ROM) measurements were flexion 145⁰ (normal 140⁰) and 0⁰ extension (normal). There was no comment on painful motion in the NARSUM physical exam, or by the physical therapist performing the goniometry. At the VA Compensation and Pension (C&P) evaluation performed prior to separation, the CI reported weakness, stiffness and intermittent swelling of both knees. There was constant pain rated 3-6/10 exacerbated by “physical activity.” The physical exam documented positive patellar grinding for each knee; but “no edema, effusion, weakness, tenderness.” There were no meniscal signs or instability with stress testing. The VA ROM measurements were normal (flexion 140⁰/extension 0⁰). Pain at extreme of flexion and after repetitive use was noted bilaterally.

The Board directs attention to its rating recommendation 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. In this case, both knees were considered to fail retention standards; both were implicated by the NARSUM and in the commander’s statement and both were profiled. Members concurred therefore that each knee should be conceded as separately unfitting; and, that coding and rating features were logically identical. There was no ROM limitation, instability, locking or effusion which would achieve a rating higher than 10% for either knee under the available joint codes; but, the Board members agreed that criteria for VASRD §4.59 (painful motion) were evidenced by the VA examiner prior to separation, and criteria for §4.40 (functional loss) were evidenced in the MEB and VA examinations. Either route would yield the minimum compensable rating (10%) for each joint. 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 knee condition. The action officer recommended, and the Board concurred with, the code 5099-5024 (tenosynovitis) for its clinical compatibility.

Contended Hepatitis C and Left Shoulder Conditions. Positive serology for hepatitis C was discovered during MEB screening and was documented in the NARSUM and forwarded to the PEB as a condition meeting retention standards. Liver function was normal and the CI was asymptomatic. The CI suffered from chronic synovitis of the acromioclavicular joint of his left shoulder dating to the same 2001 fall associated with the knee condition. There were no outpatient treatment notes for the left shoulder later than 2001. Both the NARSUM and VA C&P evaluations prior to separation documented normal shoulder ROMs without instability or other significant findings. The condition was profiled U2, which is not disqualifying; and, met AR 40-501 retention standards. It was noted in the commander’s performance statement, but not linked to any specific limitation intrinsic to shoulder function. The Board’s main charge with respect to the hepatitis and left shoulder conditions is an assessment of the fairness of the PEB determination that they were not unfitting. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Both conditions were reviewed by the action officer and considered by the Board. There was no performance based evidence from the record that either of them significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for either condition; thus no additional disability ratings can be recommended.

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 bilateral 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 at 10%, coded 5099-5024, IAW VASRD §4.71a. In the matter of the Hepatitis C and left shoulder conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chondromalacia/Patellofemoral Syndrome, Left Knee | 5099-5024 | 10% |
| Chondromalacia/Patellofemoral Syndrome, Right Knee | 5099-5024 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 201111010, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015235 (PD201100908)

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 rating to 20% without 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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA