RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100953 SEPARATION DATE: 20030809

BOARD DATE: 20121009

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Reserve SFC/E-7 (88U40/Railway Operations Crew Member), medically separated for mechanical low back pain and bilateral patellofemoral chondromalacia. The CI developed back and bilateral knee pain conditions from routine military activities in 1994. These conditions could not be adequately rehabilitated with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic back pain and bilateral patellofemoral chondromalacia as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the back and bilateral knee conditions as unfitting, rated 10% and 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “Please review for accuracy and fairness of current disability rating and disability retirement status.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20030616** | | | **VA (2 Mos. Post-Separation) – All Effective Date 20030810** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mechanical Low Back Pain | 5299-5295 | 10% | Low Back Pain | 5237 | 10% | 20031010 |
| Bilateral Patellofemoral Chondromalacia | 5099-5003 | 10% | Chondromalacia Rt Knee | 5014-5257 | 20% | 20031010 |
| Chondromalacia Lt Knee | 5014-5257 | 20% | 20031010 |
| ↓No Additional MEB/PEB Entries↓ | | | Anxiety Disorder w/ Chest Pain | 9400 | 30% | 20031011 |
| Cervicothoracic Strain | 5290-5237 | 10% | 20031010 |
| Tinnitus | 6260 | 10% | 20031010 |
| 0% X 1 / Not Service-Connected x 4 | | | 20031010 |
| **Combined: 20%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the 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 DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation or for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However, the DVA, operating under a different set of laws (Title 38, United States Code), 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. 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.

Back Condition. The CI developed intermittent pain without radiation in 1994 described as thoracic, midback and low back on various examinations. At C&P examination performed in May 1998, the examiner recorded there was no complaint of back pain. Civilian medical records in evidence of the file record complaint of low back pain after non-duty related automobile accidents in October 2001 and September 2002 while in the Reserves. The CI presented to the clinic on 28 March 2003, 6 weeks following mobilization, complaining of back pain associated with muscle spasms. Gait was normal, reflexes intact, and straight leg raises negative. The CI was evaluated in the orthopedic clinic on 17 April 2003 complaining of continued chronic low back pain since 1994 without trauma (no reference to the recent motor vehicle crashes was made). Examination was detailed in the NARSUM noted below. X-rays of the lumbosacral spine were normal. The examiner concluded the CI was not deployable and initiated the MEB. At the MEB/NARSUM exam performed on 12 May 2003, approximately 3 months prior to separation, the CI reported low back pain mainly on the left side with occasional burning in the upper back when lifting heavy objects. The MEB/NARSUM exam noted no tenderness or spasm of the back with the CI able to flex to within one foot of the floor and rotate fully without pain. Reflexes were normal, and no numbness or tingling in the feet reported. At the C&P exam performed on 10 October 2003, 2 months after separation, the CI reported low back pain since 1994 worsening since that time without mention of trauma. The pain (rated 8/10) was reported to occur without radiation 4 times a week not related to any particular activity. On physical examination of the back, no deformity, spasm or tenderness was noted. Goniometric measurement of range-of-motion (ROM) was 95 degrees flexion, combined ROM 235 degrees with tightness but no pain at full ranges. Sensory and reflex exams were normal.

The Board directs attention to its rating recommendation based on the above evidence. The 2003 Veterans’ Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were modified to the current §4.71a rating standards on 26 September 2003. The pre-September 2003 VASRD spine limitation of motion standards were based on the rater’s assessment of limitation as slight, moderate, or severe, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. The PEB rated the condition 10% code 5295, lumbosacral strain. A higher rating of 20% under this code requires muscle spasm with extreme forward bending not supported by the record in evidence. The VA rating under new codes, implemented 27 September 2003, continued the rating of 10% granted by VARD citing a combined ROM of 235 degrees. A higher rating of 20% under this code requires reduction of flexion to 30 to 60 degrees or combined ROM of no greater than 120 degrees not supported by the record in evidence. The Board agreed that the ROM evaluation of the MEB, although not goniometric, was consistent with the goniometric findings of the C&P exam and supported the 10% disability 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 back pain condition.

Bilateral Knee Condition. The CI had chronic bilateral knee pain since 1994. Service treatment records (STRs) from that time indicate there was no history of trauma other than that of routine military activity and X-rays and magnetic resonance imaging (MRI) were normal. The CI presented to the clinic on 28 March 2003, 6 weeks following mobilization, complaining of left knee pain for which he had a profile. He returned to the clinic on 5 April 2003 and reported he was unable to walk the physical fitness test due to chronic left knee pain related to an injury in 1994 while on active duty. There was no new injury but the CI reported pain with prolonged standing. On 17 April 2003, he reported bilateral knee pain, left greater than right, without a history of trauma. Left knee pain was reported as constant. On examination, there was tenderness of the patella, left more than right with patellar crepitus. There was no swelling. ROM examination of both knees demonstrated full extension (0 degrees) and near normal flexion (130 degrees). There was no instability on examination. The examiner concluded the CI was not deployable and initiated the MEB. X-rays of both knees, performed on 17 April 2003 were normal including of each patella. At the MEB/NARSUM exam performed on 12 May 2003, approximately 3 months before separation, the CI reported pain in both knees, left greater than right. He noted the back condition to be the main source of pain but also the left knee when it was bad. On physical examination patellar tenderness, left greater than right with crepitus, was noted for both knees. ROM was slightly reduced for both to 130 degrees with no instability. At the C&P exam performed on 10 October 2003, 2 months after separation, the CI reported pain and popping in the knees without locking, or instability, provoked by walking two blocks, squatting or climbing stairs. The CI noted shifting weight from left knee, when painful, to the right resulting in a slightly abnormal gait. The knee examination was not recorded at this C&P examination and an examination of the knees performed on 17 December 2003, revealed mild subjective tenderness on palpation of the right patella and moderate on the left without crepitus. No instability was present; flexion was reduced to 75 degrees with pain; extension was normal for both knees. Gait and station were recorded as normal. X-rays of the knees were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined the bilateral knee conditions as a single unfitting condition coded analogously to 5003 and rated 10%. The approach by the PEB not uncommonly reflected its judgment that the constellation of conditions was unfitting, and there was no need for separate fitness adjudications or implied adjudication that each condition was separately unfitting. The Board also noted that “bundling,” the combining of two or more major joints (in this case knees), is permissible under the VASRD 5003 rating requirements, and that this approach does not compromise the VASRD §4.7 directive to choose the higher of two valid ratings. Under code 5003, when the limitation of motion of the specific joint or joints involved is non-compensable under the appropriate diagnostic codes, a rating of 10% is applied for each such major joint or group of minor joints affected by limitation of motion. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. The Board’s initial charge in this case was therefore directed at determining if the PEB’s approach of combining conditions under a single rating was justified in lieu of separate ratings. When considering a separate rating for each condition, the Board first must satisfy the requirement that each unbundled condition was unfitting in and of itself based on a preponderance of evidence. When the Board recommends separate fitness recommendations in this circumstance, its recommendations may not produce a lower combined rating than that of the PEB. The Board first considered whether each knee, considered alone, was unfitting for the military. All Board members agreed the preponderance of evidence indicated the left knee was unfit. The evidence regarding the right knee was not clear with respect to fitness for duty, however after discussion, the Board unanimously agreed that there was not sufficient evidence to conclude the PEB’s fitness determination was in error. The Board then undertook to evaluate each knee condition individually for rating. The NARSUM ROM examination demonstrated near normal, non-compensable ROM of both knees without instability; therefore, the Board agreed that neither knee condition was compensable IAW §4.71a (limitation of motion or instability). The Board next considered whether a 10% rating IAW §4.59 or §4.40 was appropriate for each knee. The Board noted the left knee was the more symptomatic condition as noted on all proximate examinations. On review of the treatment records, the Board found specific treatment entries for the left, but not the right knee condition. The Board noted a preponderance of references to the left knee in all records including shifting of weight from left knee to the right during painful left knee flares. However, the Board noted that neither knee caused functional incapacitation in the CI’s civilian occupation. The Board unanimously agreed the right knee condition was minimal in its impact and the left knee condition, although mild in itself, was the major contributor to the functional disability. The Board concluded that the left knee warranted a rating of 10% while the right knee did not. The Board noted that the VA rated each knee 20%, analogously to diagnostic code 5257 (recurrent subluxation or lateral instability), citing recurrent subluxation or lateral instability. However, there was no objective evidence of recurrent subluxation or instability on MEB or C&P examinations. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left knee condition and a disability rating of 0% for the right knee condition IAW §4.59. As this provides no rating benefit to the CI, the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bilateral 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the mechanical low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the bilateral patellofemoral chondromalacia 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** |
| Mechanical Low Back Pain | 5299-5295 | 10% |
| Bilateral Patellofemoral Chondromalacia | 5099-5003 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111020, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXX, AR20120019254 (PD201100953)

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA