RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100964 SEPARATION DATE: 20080516

BOARD DATE: 20120830

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (25U, Signal Support) medically separated for sciatic neuritis, lumbar spine and bilateral knee conditions. He experienced an onset of low back pain and bilateral knee pain early in service during Advanced Individual Training (AIT). His lumbar spine condition was diagnosed as disk disease, and was associated with left sciatic radicular symptoms. The knee condition was diagnosed as bilateral patellofemoral syndrome (PFS). All of the conditions worsened over the course of his service, and 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). Two conditions were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501: bilateral PFS, and “chronic low back pain without radiculopathy.” No other conditions were submitted by the MEB. The PEB split the lumbar spine diagnoses into an unfitting “left sciatic neuritis” and an unfitting “intervertebral disk syndrome;” each rated 10% citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). Bilateral PFS was adjudicated as a single unfitting condition, rated 0%, referencing VASRD §4.31 (no-percent rating). The CI made no appeals, and was medically separated with a combined disability rating of 20%.

CI CONTENTION: “These medical issues have not been getting better but worse and the VA has given a higher rating and then increased my percentage based on that.” He does not elaborate further or specify a request for Board consideration of any additional conditions.

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 sciatic neuritis, lumbar disk disease, and bilateral knee conditions are addressed below; 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 20080324** | | | **VA (2 Mo. Post-Separation) – All Effective 20080517** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Sciatic Neuritis | 5243-8620 | 10% | Left Sciatic Neuritis | 8620 | 10% | 20080708 |
| Intervertebral Disc Syndrome | 5243 | 10% | DDD, Lumbar Spine | 5243 | 10% | 20080708 |
| Bilateral PFS | 5099-5003 | 0% | PFS, Left Knee | 5260 | 10% | 20080708 |
| No Additional MEB/PEB Entries | | | PFS, Right Knee | 5260 | 10% | 20080708 |
| Osteoarthritis, Left Ankle. | 5010-5271 | 10% | 20080708 |
| Bilateral Pes Planus | 5276 | 10% | 20080708 |
| 0% x 2 / Not Service-Connected x 1 | | | 20080708 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected conditions continue to burden him. It is a fact, however, that the Disability Evaluation System (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 (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes DVA evidence proximate 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 6044.40, however, resides in evaluating the fairness of DES rating determinations for the disability existing at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability at the time of separation.

Lumbar Spine Condition. The narrative summary (NARSUM) states that although the CI suffered persistent back pain “with all episodes of lifting and carrying” since its onset in AIT, he did not seek medical care until MEB proceedings were initiated for the knee condition. Magnetic resonance imaging (MRI) identified degenerative disk disease (DDD) with a bulge at L4/5; and, no surgery was advised. The NARSUM documented only the profile limitations as functional impairments, and the physical exam recorded “no evidence of palpable spasm tenderness or deformity of his spine.” The VA Compensation and Pension (C&P) exam, performed 2 months after separation, noted constant pain rated 8/10 aggravated by prolonged sitting or standing, and various physical exercises. The physical exam noted a normal gait, and no tenderness or spasm.

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.

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| --- | --- | --- | --- |
| Thoracolumbar ROM | MEB PT  ~3 Mo. Pre-Sep | NARSUM Examiner  ~3 Mo. Pre-Sep | VA C&P  ~2 Mo. Post-Sep |
| Flexion (90⁰ Normal) | >90⁰ | 90⁰ | >90⁰ |
| Combined (240⁰) | 205⁰ | 220⁰ | 220⁰ |
| §4.71a Rating | 10% | 10% | 10%\* |

\* Based on documented painful motion and modest DeLuca degradations.

The Board directs attention to its rating recommendation based on the above evidence. ROM criteria were closely correlated by all examiners. Under the VASRD §4.71a general rating formula for the spine, the combined ROM’s on both exams rate 10%; and, §4.59 (painful motion) was supported on the VA exam to achieve the minimum compensable 10% rating. There were no gait or contour abnormalities to achieve the 20% rating, and there was no documentation of incapacitating episodes which would achieve a higher rating under that formula. 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 of the lumbar spine condition.

Left Sciatic Neuritis. The NARSUM documented that the DDD was associated with “some radiation of pain to the left buttock and down his left leg.” The MRI reported “mild to moderate narrowing of the central canal traversing L5 and S1 nerve roots bilaterally.” An electrodiagnostic study was performed 3 months prior to separation which reported “nonspecific findings on electromyography of the left lower extremity, suggesting possible mild irritation to the left S1 nerve root, but no evidence of any significant axonaldamage.” Detailed normal neurologic findings on exam were also documented. The MEB examiner did not assess the radiculopathy as significant, and did not forward a neuropathy condition on the DA Form 3947. The VA C&P examiner, after separation, recorded normal neurologic testing except for an absent patellar reflex on the left; and, also did not identify neuropathy as a specific condition.

The Board directs attention to its rating recommendation based on the above evidence. In adding sciatic neuritis as an unfitting condition, the PEB’s DA Form 199 cited the imaging and electrodiagnostic findings described above; and further noted “exam shows normal sensation, muscle strength and reflexes.” The fitness link was elaborated as, “left lower extremity pain prevents training for APFT [Army Physical Fitness Test].” The VA rating decision, conferring the same 10% rating under 8620 (sciatic neuritis) as did the PEB, quoted the DA Form 199 statements in its rationale. Since the APFT limitations cannot be functionally segregated from the intrinsic spine impairment, and there were no motor or sensory limitations linked to fitness (pain is subsumed under the general spine rating); the evidence in this case does not meet the Board’s established threshold for conferring additional rating for spinal neuropathy. That said, however, the Board (by firm precedence and prior legal opinion) does not exercise the latitude of making unfavorable recommendations countering a PEB determination that a condition was separately unfitting. Having so conceded the sciatic neuropathy as separately ratable, however, no member could conclude that a compensable rating was supported IAW the applicable VASRD stipulations. The §4.71a spine formula specifically subsumes pain, i.e., “with or without symptoms such as pain (whether or not it radiates);” and, the evidence is quite conclusive that there was no motor, sensory, or other functional disability associated with the equivocal sciatic radiculopathy which would support a compensable rating. VASRD §4.123 (neuritis) and the §4.124a rating schedule for peripheral nerves specifically provide for the rating of sensory loss and progressive degrees of incomplete paralysis; neither of which was in evidence. In the instance of this condition, therefore, all members agreed that VASRD §4.31 (no-percent rating) did attach. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board therefore concedes sciatic neuritis as a separately unfitting condition; but, recommends that it be rated 0% under code 8620.

Bilateral Knee Condition. The CI experienced an onset of bilateral knee pain in AIT which was diagnosed as PFS (no surgical indications), and was treated conservatively with physical therapy (PT) and a temporary profile. Treatment notes document continued complaints of bilateral knee pain, predominantly on the right. Bilateral MRI’s noted “trivial” effusion on the left, but there was no internal derangement or significant abnormality identified for either knee. In December 2007 orthopedics issued a permanent profile and recommended a MEB. A physiatry/rehabilitation consult of January 2008 noted that “objective findings do not correlate with the severity of reported symptoms,” and suggested psychological evaluation. No follow-up in that vein is in evidence. The NARSUM noted persistent pain (right > left) aggravated by prolonged standing, crouching and kneeling. The NARSUM did not provide a physical exam of the knees, but the MEB orthopedic consultant, performed in December 2007, documented a positive patellar grind for each knee; without effusion, ligamental laxity, or signs of cartilage impingement. That note specifically documented the presence of painful motion for the right knee and the absence of same for the left knee. The MEB’s ROM measurements by PT recorded flexion of 130⁰ (normal 140⁰; minimal compensable 45⁰) and normal extension for each knee. The physical therapist recorded “muscle bulk,” rather than pain, as the cause of the minimal limitation of flexion. The VA C&P examiner, after separation, recorded the CI’s subjective complaint of bilateral knee pain rated 7 1/2/10, now aggravated by prolonged walking and sitting in addition to the limitations described in the NARSUM. The VA physical exam noted only right patellar tenderness; with no effusion, laxity, or cartilage signs. The ROM measurements were 120⁰ flexion bilaterally, “probably full flexion for this patient related to his size,” with “discomfort” on the left at 75⁰ and right at 90⁰.

The Board directs attention to its rating recommendation based on the above evidence. IAW VASRD §4.7 (higher of two evaluations), 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. Deliberation ensued; however, as to whether the left knee could be considered separately unfitting; given the evidence of disproportionate severity on the right. Member consensus was that each knee should be conceded as separately unfitting, although it was agreed that rating criteria were not equal. There was no degree of ROM limitation, instability, locking or effusion which would achieve a compensable rating under the available joint codes; barring application of VASRD §4.59 (painful motion) or §4.40 (functional loss) to achieve the minimum compensable rating of 10%. Although the orthopedic evaluation referenced above (of considerable probative weight) provided confirmation for painful motion of the right knee, it was specifically excluded for the left knee. The PT ROM evidence excluded painful motion as contributory for either knee. The §4.40 stipulation for pain “supported by adequate pathology and evidenced by the visible behavior of the claimant” was not in evidence; and, its stipulation that “a part which becomes painful on use must be regarded as seriously disabled” is dubiously applicable to at least the left knee in this case. Only more demanding physical tasks were limited by pain, and even this was logically disproportionately in favor of a right knee rating. The VA examiner, after separation, documented “discomfort” as a substitute for pain on motion and described more significant physical limitations, which was the rationale for separate compensable ratings in the VA rating decision. Probative value concerns are relevant for the VA evidence; however, since VA rating exams are vulnerable to secondary gain bias; and, speculation regarding a psychogenic contribution was raised during the MEB evaluation. After due deliberation, members agreed that the preponderance of the evidence (reasonable doubt considered) supported the minimum compensable rating of 10% for the right knee; but, that IAW VASRD §4.31 no compensable rating was supported for the left knee. The action officer recommended, and the Board concurred with, the code 5099-5024 (tenosynovitis) for each knee, based on its clinical compatibility.

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 lumbar disk condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left sciatic neuritis condition, the Board unanimously recommends a disability rating of 0%, coded 5243-8620, IAW VASRD §4.124a. In the matter of the bilateral knee condition, the Board by a vote of 2:1 recommends that each joint be rated as separately unfitting; the right knee with a disability rating of 10%, and the left knee with a disability rating of 0%; each coded 5099-5024 and IAW VASRD §4.71a. The single voter for dissent (who did not agree that the left knee was separately unfitting) 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 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** |
| Intervertebral Disc Syndrome | | 5243 | 10% |
| Left Sciatic Neuritis | | 5234-8620 | 0% |
| Patellofemoral Syndrome, Right Knee | | 5099-5024 | 10% |
| Patellofemoral Syndrome, Left Knee | | 5099-5024 | 0% |
| **COMBINED (w/ BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111018, 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 XXXXXXXXXXXXXXXXXXXXXX, AR20120016895 (PD201100964)

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 and 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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA