RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1101025 SEPARATION DATE: 20090410

BOARD DATE: 20120416

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10 / Infantry), medically separated for bilateral patellofemoral pain syndrome. The history of knee injury or insidious pain onset was discussed in the narrative summary (NARSUM) and Disability Evaluation System (DES) file. The CI underwent left knee arthroscopic surgery for meniscal repair. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Bilateral knee pain and chronic left knee pain status post medial and lateral meniscus repair were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the bilateral knee condition as unfitting, rated as 10% for each knee (20%); with application of the VASRD. The CI appealed to a Formal PEB (FPEB); however, later waived the appeal process prior to the FPEB convening and was then medically separated with a 20% combined disability rating.

CI CONTENTION: “Lack of ability to perform labor intensive jobs due to chronic pain resulting from bilateral patellofemoral pain syndrome, thereby limiting the employment options in an already competitive job market.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20081031** | | | **VA (2 Mo. After Separation) – All Effective Date 20090411** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Patellofemoral Pain Syndrome | 5099-5003 | 10% | Patellofemoral Pain Syndrome Lt Knee | 5260 | 10% | 20090608 |
| 10% | Patellofemoral Pain Syndrome Rt Knee | 5260 | 10% | 20090608 |
| Pes Planus | Not Unfitting | | No Corresponding VA Entry | | | |
| Mechanical Back Pain | Not Unfitting | | Mechanical Low Back Pain | 5237 | 10% | 20090608 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 2/Not Service-Connected x 5 | | | 20090608 |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the 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 also noted the CI’s service appeal contended primarily categorizing his condition as “in the performance of duty under conditions simulating war.” The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The Board has no jurisdiction on combat-related determinations.

Bilateral Knee Condition. The CI had onset of bilateral knee pain in March 2007. There are numerous notes regarding the causative trauma for the knee conditions that relate to a combat-related determination, but are not germane for rating determination. The CI underwent arthroscopic surgery of the left knee including repair of a meniscus tear and osteochondral repair in August 2007. Prolonged post-surgical convalescence and use of crutches was not successful in decreasing the CI’s pain. Evaluation for right knee pain indicated radiographic abnormality, which on consult was determined to likely not be the etiology of the CI’s pain. The NARSUM diagnosis was bilateral patellofemoral pain syndrome. The PEB found both the left and right knee as unfitting. There were three range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. The exams are summarized below.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| ROM – Knees | MEB ~ 6 Mo. Pre-Sep  (20080714) | | PT ~ 6 Mo. Pre-Sep  (20080722) | | VA C&P ~ 2 Mo. After-Sep  (20090608) | |
| Left | Right | Left | Right | Left | Right |
| Flexion (140⁰) | 122⁰ | 126⁰ | 121⁰ | 126⁰ | 105⁰ | 100⁰ |
| Extension (0⁰) | Normal | normal | -1⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment:  L surgery 20070803 | Pain on motion; tender along both knee joint lines medially, L>R; L retro-patellar crepitus; ligaments intact except for minimal laxity of the L ACL; McMurray’s test was negative bilaterally for clicks, but mildly painful on the left | | AROM limited due to pain/arthritis | | Mild pain-no weakness or fatigue; no laxity, no instability present; negative McMurray's; negative Lachman's test bilaterally; neg DeLuca | |
| §4.71a Rating\* | 10% | 10% | 10% | 10% | 10% | 10% |

\* Conceding §4.59 (painful motion)

All exams indicated normal gait and sensory and motor exams of both lower extremities. There was no post-surgical history of either knee giving way or locking. The PEB and the VA chose different coding for the knee conditions, but arrived at the same rating. The PEB coded analogous to degenerative arthritis and rated 10% for each knee; the VA coded 5260 for (knee) leg, limitation of flexion, and rated 10% for each knee. All exams documented pain-limited ROM which is noncompensable under the appropriate diagnostic knee codes for flexion or extension; but warrant a rating of 10% by limitation of motion under the criteria of 5003 or with application of §4.59 (painful motion). There is no route to rating higher than 10% under any applicable code and no coexistent pathology which would merit additional rating for the right knee condition under a separate code.

The left knee had semilunar cartilage surgery and MEB exam indication of minimal ligament laxity. The Board considered alternate or dual left knee coding under 5257 (knee, other impairment of), 5258 (cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint - 20%), and 5259 (cartilage, semilunar, removal of, symptomatic -10%) and consideration of VASRD §4.40 (functional loss). No exam demonstrated significant instability, the later VA exam demonstrated no ligament laxity, and there were no significant indications of recurrent effusion or symptoms of locking or give way. Alternate coding of 5259 at 10% would rate no higher than the PEB 10% coding and offered no benefit to the CI. There were insufficient findings for dual rating the left knee with adherence to the tenants of VASRD §4.14 (avoidance of pyramiding). All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s coding or 10% rating decision for the each knee condition (10% left; 10% right).

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were pes planus and mechanical back pain. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. All evidence considered there is not a preponderance of the evidence in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were wrist sprain, hypertension, ankle problem, sleep apnea or narcolepsy, history of broken left fifth finger (1997), history of brief loss of consciousness (2001), surgery for wisdom teeth and orthodontics. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 bilateral patellofemoral pain syndrome condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation of rating of 10% for the left knee and 10% for the right knee. In the matter of the pes planus and mechanical back pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional service disability rating.

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** |
| Bilateral Patellofemoral Pain Syndrome | Left | | 5099-5003 | 10% |
| Right | | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111117, 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 XXXXXXXXX, AR20120007682 (PD201101025)

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 XXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA